

COMPLAINTS RESOLUTION PANEL DETERMINATION

Complaint 2010-02-016 Natural Health Direct: Zapper

Meeting held 22 April 2010

Complaint summary

Complainant	Requested anonymity
Advertiser	Natural Health Direct
Subject matter of complaint	Website advertisement
Type of determination	Final
Sections of the Code, Regulations or Act found to have been <u>breached</u> *	Act section 42DL(1)(g) Code sections 4(1)(b), 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(2)(g), 4(6)(b), 5
Sections of the Code, Regulations or Act found <u>not to have been breached</u> *	None
Sanctions	Publication of a retraction Withdrawal of advertisement Withdrawal of representations

* only sections of the Code, Act, or Regulations that were part of the complaint or were raised by the Panel are listed

The advertisement(s)

1. The complaint concerned an internet advertisement published at the website *www.naturalhealthdirect.com.au*.
2. The advertisement included claims that the advertised product “designed to kill bacteria, viruses, and parasites”, and made reference to a book called “Cure For All Diseases” by Dr Hulda Clarke, which was said to “describe in detail the correct use of the zapper”. The advertised device was said to be “made in Germany according to Dr Clark’s specifications” and “manufactured under licence to Hulda Clark.” The advertisement also advised consumers to “refer to Dr Clarke’s book” for a “full description of the correct use of the zapper”, and stated that “we make no claims for the zapper other than those made by Dr Hulda Clarke.”
3. An excerpt of the advertisement can be viewed in the relevant Appendix to this determination.

The product(s)

4. The advertisement promoted the Zapper product.

The advertiser(s)

5. The advertiser was Natural Health Direct.

The complaint

6. The complainant requested anonymity.
7. The complainant alleged that the advertisement breached sections 4(1)(b), 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(2)(g), and 5 of the Code, and section 22(5) and 42DL(1)(g) of the Act.
8. The complainant also raised concerns about the references to Dr Hulda Clarke and her book, which the Panel took to raise an allegation of a breach of section 4(6)(b) of the Code.

The advertiser’s response to the complaint

9. The advertiser stated that, in response to the complaint, they had “conducted a complete review of the information currently contained on [their] website in relation to this product, considering the product details and limitations of the act”. The advertiser also provided a copy of the relevant updated website pages. The advertiser did not respond to the particulars of the complaint.

Findings of the Panel

10. Section 1(3) of the Code states that the Code should be interpreted with an emphasis on the object and the principles of the Code, and the total presentation and context of the advertisement. Section 3(2) of the Code states that the conformity of an advertisement with this Code should be assessed in terms of its probable impact upon the reasonable

person to whom the advertisement is directed. In assessing the advertisement, the Panel was mindful not only of the particular words cited by the complainant, but of the entire context of the advertisement and its likely impact on a reasonable consumer.

11. The Panel was satisfied that, although it used words such as “designed to”, the advertisement represented the advertised product as having benefits such as killing bacteria, viruses, and parasites, as being a cure for all diseases, and as having many benefits described in the book “Cure For All Diseases” by Dr Hulda Clarke. The Panel was also satisfied that the advertisement represented the advertised goods as being endorsed by Dr Hulda Clarke, and that Dr Hulda Clarke would be taken by any reasonable consumer to be a healthcare professional.
12. Therapeutic goods are defined in the Act to include goods that are represented in any way to be for therapeutic use. Therapeutic use is defined to include use in or in connection with influencing, inhibiting, or modifying a physiological process in persons.
13. Section 42DL(1)(g) of the Act prohibits the publication of advertisements for therapeutic goods that are not included in the Register. The Panel noted that the product is not included in the Register, but that the advertisement clearly contained therapeutic claims which ought not to have been made. The advertisement therefore constituted a breach of section 42DL(1)(g) of the Act, and this aspect of the complaint was justified.
14. Section 4(1)(b) of the Code requires that advertisements for therapeutic goods “contain correct and balanced statements only and claims which the sponsor has already verified.” Section 4(2)(a) of the Code prohibits representations that are “likely to arouse unwarranted and unrealistic expectations of product effectiveness”. Section 4(2)(c) of the Code prohibits representations that “mislead directly or by implication or through emphasis, comparisons, contrasts or omissions”.
15. In the absence of any relevant submission from the advertiser, the Panel was satisfied that the representations that the advertised product could have therapeutic benefits, or that it could have benefits in relation to bacteria, parasites, viruses, or diseases, had not been verified, were likely to arouse unwarranted expectations in relation to the product, and were misleading. These aspects of the complaint were therefore justified.
16. Section 4(2)(b) of the Code prohibits advertisements that are “likely to lead to consumers self-diagnosing or inappropriately treating potentially serious diseases”. Section 5(1) of the Code prohibits advertisements that “contain, expressly or by implication, a representation specified in Part 1 of Appendix 6.” The representations specified in Part 1 of Appendix 6 of the Code include representations regarding the treatment, cure, or prevention of certain serious diseases. Section 5(2) of the Code prohibits advertisements that “refer, expressly or by implication, to serious forms of diseases, conditions, ailments or defects specified in Part 2 of Appendix 6, unless prior approval is given under the Therapeutic Goods Act 1989.” The diseases and conditions specified in Part 2 of Appendix 6 of the Code include “serious forms of” a wide range of health concerns.
17. The Panel was satisfied that the unqualified claim that the advertised product could kill bacteria, viruses, and was a “cure for all diseases”, meant that the advertisement made implicit reference to the cure and prevention of any and all serious diseases, and therefore clearly breached sections 4(2)(b), 5(1), and 5(2) of the Code.

18. Section 4(2)(d) of the Code prohibits advertisements which “abuse the trust or exploit the lack of knowledge of consumers or contain language which could bring about fear or distress.” The Panel was satisfied that the claims that the advertised product had therapeutic benefits in the manner described abused the trust and exploited the lack of knowledge of consumers. This aspect of the complaint was therefore justified.
19. Section 4(2)(g) of the Code prohibits representations that therapeutic goods are “infallible, unfailing, magical, miraculous”, or that they are “a certain, guaranteed or sure cure”. The Panel was satisfied that the unqualified claim that the advertised product could kill bacteria, viruses, and was a “cure for all diseases” amounted to a claim that it was a certain, guaranteed, or sure cure, in breach of section 4(2)(g) of the Code. This aspect of the complaint was therefore justified.
20. Section 4(6)(b) of the Code prohibits representations that therapeutic goods are endorsed by healthcare professionals. The Panel found that the advertisement represented the advertised product to be endorsed by a healthcare professional, Dr Hulda Clarke. This aspect of the complaint was therefore justified.
21. Sections 22(5) and 41FN of the Act do not apply to products that are not included in the Register. The Panel therefore did not give these aspects of the complaint any consideration.
22. The Panel noted, without making any formal finding, that the advertisement appeared likely to breach section 6(3) of the Code, by failing to include certain mandatory statements.
23. The Panel noted that revised website pages had been provided by the advertiser in response to the complaint. The Panel considers and determines complaints about advertisements, and does not review alternative advertisements for compliance. However, for the benefit of the advertiser, the Panel noted that the proposed alternative wording did not appear at all likely to comply with the Code, Regulations, and Act, as it included references to Dr Hulda Clarke and to the “Cure For All Diseases” book. In the Panel’s view, such references clearly convey a representation that the advertised product is both endorsed by a healthcare professional, and has the benefits and uses described in the book.

Sanctions

24. The Panel requests Natural Health Direct, in accordance with subregulation 42ZCAI(1) of the *Therapeutic Goods Regulations 1990*:
 - a) to withdraw the advertisement from further publication;
 - b) to withdraw any representations that the advertised product has any benefits in relation to bacteria, parasites, viruses, or diseases, together with any other representation that it has therapeutic effects, or that it is endorsed by a healthcare professional;
 - c) not to use the representations in (b) above in any other advertisement unless Natural Health Direct satisfies the Panel that the use of the representation would not result in a

contravention of the *Therapeutic Goods Act 1989*, the *Therapeutic Goods Regulations 1990* or the *Therapeutic Goods Advertising Code*;

- d) where the representation has been provided to other parties such as retailers or website publishers, and where there is a reasonable likelihood that the representation has been published or is intended to be published by such parties, to advise those parties that the representation(s) should be withdrawn;
- e) to arrange for publication on the website www.naturalhealthdirect.com.au of a retraction in the form of, and in accordance with, the conditions set out in the attachment to this determination; and,
- f) within 14 days of being notified of this request, to provide evidence to the Panel of its compliance, including a response in writing that they will comply with the Panel's sanctions, and where appropriate, supporting material such as copies of instructions to advertising agents or publishers, or correspondence with retailers and other third party advertisers.

25. The advertiser's attention is drawn to the provisions of sub-regulations 42ZCAI(3) and (4) which permit the Panel to make recommendations to the Secretary in the event of non-compliance with this request.

Dated 24 June 2010

For the Panel

A handwritten signature in blue ink, appearing to read 'Jason Korke', with a long horizontal line extending to the right.

Jason Korke
Chairman

Appendix A: Definitions

In this determination, unless otherwise specified:

- a) “the Act” means the Therapeutic Goods Act 1989;
- b) “the Regulations” means the Therapeutic Goods Regulations 1990;
- c) “the Code” means the Therapeutic Goods Advertising Code;
- d) “the Register” means the Australian Register of Therapeutic Goods;
- e) “any other advertisement” appearing in sub-regulation 42ZCA1(1)(d) is not confined to advertisements in specified or broadcast media (in relation to which complaints may be made to the Panel under Regulation 42ZCAB).

Appendix B: Retraction

An advertisement to appear on the homepage of the website www.naturalhealthdirect.com.au at the earliest booking opportunity.

A copy of the retraction advertisement, and the page on which it will be published, is to be provided to the Complaints Resolution Panel for approval before publication.

RETRACTION

An advertisement for the **Zapper** product, which we published on this website, should not have been published.

In promoting the **Zapper** product, we were advertising **illegal therapeutic goods in breach of section 42DL(1)(g) of the Therapeutic Goods Act 1989. We also unlawfully made claims that the product could have therapeutic benefits such as killing bacteria, viruses, and parasites, and could cure diseases.**

A complaint about the advertisement was recently upheld by the Complaints Resolution Panel. **We provided no evidence to support the claims we made, and the Panel found that the claims were unlawful, misleading, and unverified and breached the Therapeutic Goods Advertising Code.**

The Panel therefore requested that Natural Health Direct publish this retraction.

The full text of the Panel's determination can be found at: www.tgacrp.com.au/complaints

No other copy should be included in the advertisement.

Location:	website front page, so that it can be viewed without scrolling the page
Size:	No less than 500 pixels wide and 200 pixels high
Heading:	Arial or Helvetica Red on a white background The letters should be no less than 20 pixels in height, and should be no smaller than any other body text on the page Bold
Text:	Arial or Helvetica Red, black and blue on a white background The letters should be no less than 14 pixels in height, and should be no smaller than any other body text on the page Bold
Text Box:	Red on a white background
Duration:	180 days
HTML	In the case of website retractions, the retraction is to be presented in ordinary and valid HTML 4 in the body of the page. Pop-ups, Flash objects, or images are not acceptable formats for website retractions.

Appendix C: Excerpt of the Advertisement

ZAPPER ZAPPER - Neuro Muscular Stimulator ZAPPER or Neuro Muscular Stimul... Page 1 of 1



Spec: Treatments

Product 12/12
(prev) (listing) (next)



ZAPPER
AUD236.80

- Model: ZAPPER
- Shipping Weight: 0.6kg
- Manufactured by: Innerglow Health Products

Add to Cart: 1

[add this to my cart](#)

[larger image](#)

As described in Dr Hulda Clarke's books the ZAPPER or Neuro Muscular Stimulator, is designed to kill bacteria, viruses and parasites. The zapper has a 33 KHz of frequency and is user friendly with easy to follow instructions. Warranty excludes battery replacement, and is invalid if unauthorised repairs or modifications have taken place. Please note: In her book Cure For All Diseases, Dr Hulda Clarke describes in detail the correct use of the zapper. For a full description of the correct use of the zapper, please refer to Dr Clarke's book. We make no claims for the zapper other than those made by Dr Hulda Clarke.

Features:

- Comes with velcrose wrist bands, and special silicon- graphite-rubber electrodes. (No paper towels needed)
- Special features include LED timer (7-20-7-20-7) This is 7 minutes on, 20 minutes off for three continuous sessions.
- Includes a choice of continuous mode, LED indicator, plus a reminder to renew the 9 Volt battery. Has warning beep sound when contact is broken or insufficient.
- Belt clip.
- Instruction booklet included.

Specifications:

- Made in Germany according to Dr Clark's specifications
- Manufactured under licence to Hulda Clark
- 2-year parts and labour warranty in the event of breakdown during normal use

[ask us about this item](#) ?

Customers who bought this product also purchased...

 <p>Vital Vitamin E 500IU Natural Bulk Pack - 100 Caps</p>	 <p>Colloidal Four 250ml</p>	 <p>Vital Zinc & C 300mg - 60 Tablets</p>
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Design 2.