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Committee of Advertising Practice (Non-broadcast)

Help Note on Health, Beauty and Slimming Marketing Communications that Refer to Medical Conditions

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing (the CAP Code). For advice on the rules for television or radio commercials, contact Clearcast www.clearcast.co.uk for television advertisements or the Radio Advertising Clearance Centre www.racc.co.uk for radio advertisements.

Background

These guidelines, drawn up by the Copy Advice team, are intended to help marketers, agencies and media owners interpret the rules in the CAP Code as far as they relate to the subject discussed. They are based on ASA adjudications and neither constitute new rules nor bind the ASA Council in the event of a complaint about a marketing communication that follows them.

The Law

Marketers should establish whether medicines law, medical devices law or food law applies to the product, its constituents or the claims made for it. Advice on medicine law and medical devices law can be sought from the Medicines & Healthcare products Regulatory Agency (MHRA) and food law from Trading Standards Officers (TSOs).

The CAP Code states “Marketers have primary responsibility for ensuring that their marketing communications are legal. Marketing communications should comply with the law and should not incite anyone to break it” (**clause 4.1**);

The CAP Code

All relevant Code clauses apply but those listed below have particular relevance to health, beauty and slimming marketing communications that refer to medical conditions:

“Medical and scientific claims made about beauty and health-related products should be backed by evidence, where appropriate consisting of trials conducted on people.... Substantiation will be assessed by the ASA on the basis of the available scientific knowledge” (**clause 50.1**);

Marketers should hold robust evidence for all claims, particularly those that imply or state efficacy and “new” or “breakthrough” claims.

"Marketers should not discourage essential treatment. They should not offer advice on, diagnosis of or treatment for serious or prolonged conditions unless it is conducted under the supervision of a doctor or other suitably qualified health professional (eg one subject to regulation by a statutory or recognised medical or health professional body). Accurate and responsible general information about such conditions may, however, be offered" (**clause 50.3**);

Marketers should delete all references, including implied references, to medical conditions for which suitably qualified medical advice should be sought, unless advice, diagnosis or treatment is carried out under the supervision of a doctor or other suitably qualified health professional. Marketers should not encourage readers to mistakenly self-diagnose or shun qualified medical advice or treatment in favour of the marketed products or therapies. The ASA is unlikely to accept references to such conditions in a marketing communication addressed to the public, even if the marketed product or therapy is proven to treat that condition. That does not apply to marketing for medicines that hold a product licence or a marketing authorisation to treat conditions for which advice from a suitably qualified person should be sought.

“Medicines must have a marketing authorisation from the MHRA before they are marketed and any claims made for the products must conform with the authorisation. Medicinal claims should not be made for unauthorised products. Marketing communications should refer to the MHRA, the authorisation or the EC only if required to do so by the MHRA” (**clause 50.11**)

Marketers should ensure that medicinal claims are made for authorised medicines only. Medicinal claims made for non-medicines are likely to render marketed products medicinal by presentation and so subject to medicines law.

References to Medical Conditions in Marketing Communications

To help the industry the Copy Advice team has compiled two lists. The first identifies medical conditions for which medical advice from a suitably qualified person should be sought, the second identifies conditions which could legitimately be referred to in marketing communications without breaching clause 50.3, subject to them complying with all other appropriate Code clauses.

When referring to either list, please consider these points:

1. Clause 50.3, and therefore the rest of these guidelines, does not apply to marketing communications: for products that hold a product licence or a marketing authorisation to treat a serious or prolonged medical condition; for hospitals, clinics and the like that employ qualified practitioners; that are addressed only to members of the medical or allied professions;
2. Clauses 50.3 and 50.1, and therefore the rest of these guidelines, do apply to marketing communications for products classified as a medical device under the Medical Devices Regulations;
3. Clause 50.3 is not intended to prohibit claims that products or therapies can help reduce the risk of contracting a serious or prolonged medical condition (although it is important to ensure that such claims are legal);
4. Most health practitioners specialise in treating different types of ailments and medical conditions. For example, a physiotherapist may treat aches and pains and a psychotherapist may help someone suffering from a phobia. Practitioners of the disciplines represented by these capital letters can probably treat those listed ailments or medical conditions that display the same capital letter:

P Psychology (for example, psychotherapy, behavioural therapy, counselling)

M Manipulation (for example, osteopathy, physiotherapy, chiropractic)

H Hypnotherapy

Ac Acupuncture

That information is not exhaustive and may, on receipt of satisfactory evidence, be updated from time to time. More information on other therapies is available at www.cap.org.uk/adviceonline;

5. unless otherwise indicated, prefixing an acceptable reference to a medical condition with "serious", "chronic", "persistent" or similar is likely to render it unacceptable;
6. the lists are not exhaustive and are subject to amendment and updating in line with ASA adjudications and prevailing medical opinion, including Government reports.

Conditions for which suitably qualified medical advice should be sought

Addictions	Impotence [c.f. Temporary Erection Problems, Temporary Erectile Dysfunction]
Alcoholism (Dependence)	Infectious diseases
Age related Macular Degeneration, AMD	Infertility [c.f. Sexual Counselling]
Anaemia	Insomnia, Chronic
Angina	Jaw Joint Dysfunction
Anorexia	Learning Difficulties
Arthritis [c.f. Arthritic Pain (M)]	Leukaemia
Asthma	
Attention Deficit Hyperactivity Disorder, ADHD	
Autism	
Blood Pressure, High	Kidney Disorders
Bronchitis	
Bulimia	Malignant Diseases
	Mania (P)
Cancer	Multiple Sclerosis, MS
Cataracts	Malaria
Crohn's Disease	Memory problems or Memory Lapses
Circulation, Poor [c.f. Circulatory Problems]	Menopausal Symptoms
Chronic Obstructive Airway Disease, COAD	Menstruation, Regulation of
Compulsions (P)	Metabolic Diseases
	Migraine [c.f. Migraine Headaches]
Depression [c.f. Feeling Down or Feeling Blue] (P)	Muscular Dystrophy
Diabetes	Myopathy
Diverticulitis	
Dizziness	Obesity [c.f. Diet, Trouble Sticking to]
Drowsiness	Obsessions (P)
Drug Addiction (Substance Abuse)	Obsessive Compulsive Disorder, OCD (P)
	Osteoporosis
Ear Disorders, Serious	Overdose
Eating Disorders	
Emphysema	Pancreatitis
Epilepsy	Paralysis
Erection Problems or Erectile Dysfunction [c.f. Temporary Erection Problems, Temporary Erectile Dysfunction]	Parkinson's Disease
Eye Disorders, Serious	Prostate Problems
	Psoriasis [c.f. Skin Problems]
Fibroids	Psychosis (P)
Fits	Polycystic Ovary Syndrome
Frigidity (P)	
	Respiratory Diseases
Gall Bladder Disorder	Schizophrenia
Gall Stones	'Senility'
Genito-Urinary Disorders	Sexually Transmitted Diseases
Glaucoma	Skin Disorders, Serious
Gout	Spinal Injuries
	Stroke

Hiatus Hernia
Heart Disease
Herpes Zoster (Shingles)
Human Immunodeficiency Virus, HIV
Hypertension

Suicidal thoughts (P)

Thrush, Oral [c.f. Thrush, Vaginal]
Tonsillitis
Tuberculosis

Ulcer, Gastric
Under-eating

Whiplash

Conditions for which evidence could be sought by the ASA or CAP

Aches and Pains (M)	Flatulence
Acid Indigestion	Fluid Retention
Acidity, Stomach	Foot Odour
Acne	Frozen Shoulder (M)
Allergic Rhinitis	
Alopecia (Hair Loss)	Gastric Reflux
Anxiety (P)	Gastroenteritis
Arthritic Pain (M)	Gingivitis
Athlete's Foot	Glue Ear
	Grief (P)
	Guilt (P)
Backache (M, Ac)	
Back Pain (M, Ac)	Haematoma
Bacterial Vaginosis, BV	Haemorrhoids
Bedwetting (P)	Halitosis
Bronchial Congestion	Hayfever
Bunion	Headaches (P, Ac)
	Heartburn
Calluses	Herpes Simplex
Candida	Hoarseness
Catarrh	
Chilblains	Impetigo
Circulatory Problems, Local or Minor (M) [c.f. Poor Circulation]	Indigestion
Cold	Indigestion, Nervous
Cholesterol, High	Inflammation
Chronic Fatigue Syndrome (Formerly ME) (P)	Influenza
Colic	Insomnia
Concentration (P)	Irritable Bowel Syndrome, IBS (H)
Confidence (P)	
Constipation	Joint Pains (M)
Conjunctivitis	Jumpy (P)
Cough	
Cramp (M)	Lethargy (P)
Cystitis	Libido, Low (P)
	Lumbago (M)
Dandruff	
Dental Pain (Ac)	Menopause
Dermatitis	Menstrual Pain
Diarrhoea, Acute	Migraine Headache [c.f. Migraine]
Diet, Trouble Sticking to (P) [c.f. Obesity]	Motion Sickness
Digestion Problems (M)	Mouth Ulcers
Dyspepsia	Muscle Spasms (M)
	Muscle Tension (M, P)
Earache	
Eczema	Nailbiting (P)
Eczema, Stress-related (P)	Nails, Fungal infections
Emotional Problems (P)	Nappy Rash

Enuresis (Bedwetting) (P)
Erection, Improved
Erection Problems, Temporary; Erectile Dysfunction, Temporary [c.f. Impotence, Erection Problems, Erectile Dysfunction]
Fears (P)
Feeling Down or Feeling Blue (P) [c.f. Depression]
Fever
Fibromyalgia (Fibrositis) (M)

Relax, Inability to (P, M)
Rheumatic Pain (M, Ac)
Rheumatism (M)
Ringworm

Sexual Counselling (P)
Sciatica (M)
Sinuses, Congested
Sinusitis
Skin Problems [c.f. Psoriasis]
Skin Problems, Stress-related (P)
Sleep, Trouble Getting to (P)
Sleeplessness, Intermittent (P)
Smoking Cessation (P, H)
Snoring (P)
Spasms (M)
Sports Injuries, Minor (M)
Stammering (P)
Stomach, Upset
Stress (P, H)

Tension (P, M)
Tiredness
Thrush, Vaginal [c.f. Thrush, Oral]
Travel Sickness

Verrucae

Water Retention
Warts
Wind

Nausea (Ac)
Neck Ache (Ac)
Neuralgia (M)
Numbness

Pre-menstrual Tension or Pre-menstrual Syndrome (P)
Panic Attack (P)
Period Pain
Phobias (P)
Piles
Pins and Needles

Relationship Problems (P)

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or by e-mail on advice@cap.org.uk. The CAP website at www.cap.org.uk contains a list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code clauses and ASA adjudications.

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