

insubstantial as the testimonials are concerned, these are clearly personal opinions, and cannot be said to be in contravention of the Code.

In relation to the challenge over efficacy of the product, it relied on a confidential clinical trial done by the Nelson R Mandela School of Medicine at the University of KwaZulu Natal carried out in 2003 and involving 60 personnel of the University. The university has not published any papers relating to this trial, other than one relating to an animal study. This, however, was done at the discretion of the university. When the Directorate requested a copy of the relevant study, the respondent submitted an executive summary, and index and a list of the investigators.

Finally, it confirmed that the website had been changed shortly before the complaint was received, and it has been inactive ever since in anticipation of an ASA ruling, and the respondent is reviewing its content to ensure that the website is clear and cannot be misconstrued.

ASA DIRECTORATE RULING

The ASA Directorate considered all the relevant documentation submitted by the respective parties.

Jurisdiction

The respondent questioned whether or not the material in question qualifies as an “advertisement” in terms of the Code. It emphasised that the website is hosted in the UK and was not intended as an advertisement for the South African company Hivex Ltd.

Clause 4.1 of Section I of the Code defines an “advertisement” as “... any visual or aural communication, representation, reference or notification of any kind ... which is intended to promote the sale, leasing or use of any goods or services; or ... which appeals for or promotes the support of any cause”.

The website at issue provides a brief history of the respondent’s “HIVEX treatment” and proclaims the success of this treatment. There are testimonials of people who claim to have benefited from the product / treatment as well as comments from a Dr Rosen and a Dr Naidoo. Interested consumers are also informed that the treatment is “one-off”, is “low cost” and has “no known side effects”. The website further provides contact details for people who are presumably interested in making use of this treatment.

At the least, it is clear from the above that the respondent’s website is aimed at promoting support for its cause, which is clearly to increase awareness and use of its “... electro-magnetic treatment which targets the proteins in viruses and bacteria, to render the virus or bacteria unable to infect other cells”. Given that the product is also touted as, inter alia, “... a remarkable treatment for patients with HIV”, the Directorate is satisfied that the material constitutes advertising within the parameters of the Code.

While perhaps true that the respondent’s website is hosted outside of South Africa, the respondent is, according to the correspondence received from its representative, a South African company, and clearly aims to have, inter alia, South Africans purchase and use its treatment.

Given the above, the Directorate is satisfied that the ASA has jurisdiction over the matter.

Undertaking offered

The ASA has a long standing principle which holds that where an advertiser provides an unequivocal undertaking to withdraw or amend its advertising in a manner that addresses the concerns raised, the undertaking can be accepted without considering the merits of the matter.

In its initial response, as well as subsequent correspondence, the respondent indicated that it has suspended the site for review to ensure compliance and to avoid any misunderstanding. Its final correspondence submitted towards the end of April 2011 again emphasised that “... the text which was the subject of TAC’s complaint was changed in January ...”. Attempts to access the website during this investigation were unsuccessful.

Given this, it appears that the respondent has amended its advertising with the aim of addressing the concerns raised by the complainant. The Directorate is therefore satisfied that this can be accepted as an undertaking to address the

concerns, which negates the need for considering the merits of the matter.

This undertaking is therefore accepted on condition that the advertising at issue is amended within the parameters and requirements of the Code.

For the respondent's guidance, the Directorate expressly draws attention to the requirements of the Clauses identified by the complainant, in terms of which, the respondent should ensure that it holds unequivocal, product specific substantiation for any efficacy claims made. Similarly, the provisions of Appendix F are crucial, given the respondent's references to HIV and AIDS. Insofar as testimonials are concerned, the Directorate has held on more than one occasion that when a testimonial creates the expectation of "if worked for them, it will work for you", such claims require substantiation in relation to the respondent's actual product (refer Organo Slim / A Blom / 16330 (16 November 2010) and Herbex Weight Loss / HA Steinman / 12944 (14 July 2009) for examples). In addition, the principle established is that the Directorate does not accept testimonials as proof of general efficacy claims.



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