

Health, beauty and slimming marketing communications that refer to medical conditions

Regular text CAP Help Notes offer guidance for non-broadcast marketing communications under the UK Code of Non-broadcast 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

Rule 1.10.1

“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.”

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:

Rule 12.1

“Objective claims must be backed by evidence, if relevant consisting of trials conducted on people. If relevant, the rules in this section apply to claims for products for animals. Substantiation will be assessed on the basis of the available scientific knowledge. Medicinal or medical claims and indications may be made for a medicinal product that is licensed by the MHRA or EMEA, or for a CE-marked medical device. A medicinal claim is a claim that a product or its constituent(s) can be used with a view to making a medical diagnosis or can treat or prevent disease, including an injury, ailment or adverse condition, whether of body or mind, in human beings.

Secondary medicinal claims made for cosmetic products as defined in the appropriate European legislation must be backed by evidence. These are limited to any preventative action of the product and may not include claims to treat disease.”;

Rule 12.2

“Marketers must not discourage essential treatment for conditions for which medical supervision should be sought. For example, they must not offer specific advice on, diagnosis of or treatment for such conditions unless that advice, diagnosis or treatment is conducted under the supervision of a suitably qualified health professional. Accurate and responsible general information about such conditions may, however, be offered.

Health professionals will be deemed suitably qualified only if they can provide suitable credentials, for example, evidence of: relevant professional expertise or qualifications; systems for regular review of members’ skills and competencies and suitable professional indemnity insurance covering all services provided; accreditation by a professional or regulatory body that has systems for dealing with complaints and taking disciplinary action and has registration based on minimum standards for training and qualifications.”;

Rule 12.11

“Medicines must have a licence from the MHRA before they are marketed. Marketing communications for medicines must conform with the licence and the product’s summary of product characteristics. For the avoidance of doubt, by conforming with the product’s indicated use, a marketing communication would not breach 12.2.

Marketing communications must not suggest that a product is “special” or “different” because it has been granted a licence by the MHRA.”

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 Rule 12.2, subject to them complying with all other appropriate Code Rules.

When referring to either list, please consider these points:

1. Rule 12.2, 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. Rules 12.1 and 12.2, 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. Rule 12.1 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.copyadvice.org.uk/Advice/Advice-Online-Database.aspx;

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
Alcoholism (Dependence)
Age related Macular Degeneration, AMD
Anaemia
Angina
Anorexia
Arthritis [c.f. Arthritic Pain (M)]
Asthma
Attention Deficit Hyperactivity Disorder, ADHD
Autism
Blood Pressure, High
Bronchitis
Bulimia
Cancer
Cataracts
Crohn's Disease
Circulation, Poor [c.f. Circulatory Problems]
Chronic Obstructive Airway Disease, COAD
Compulsions (P) Depression [c.f. Feeling Down or Feeling Blue] (P)
Diabetes

Diverticulitis
Dizziness
Drowsiness
Drug Addiction (Substance Abuse)
Ear Disorders, Serious
Eating Disorders
Emphysema
Epilepsy
Erection Problems or Erectile Dysfunction [c.f. Temporary Erection Problems, Temporary Erectile Dysfunction]
Erectile Dysfunction]
Eye Disorders, Serious
Fibroids
Fits
Frigidity (P)
Gall Bladder Disorder
Gall Stones
Genito-Urinary Disorders
Glaucoma
Gout
Hiatus Hernia
Heart Disease
Herpes Zoster (Shingles)
Human Immunodeficiency Virus, HIV
Hypertension Impotence [c.f. Temporary Erection Problems, Temporary Erectile Dysfunction]
Infectious diseases
Infertility [c.f. Sexual Counselling]
Insomnia, Chronic
Jaw Joint Dysfunction
Kidney Disorders
Learning Difficulties
Leukaemia
Malignant Diseases
Mania (P)
Multiple Sclerosis, MS
Malaria
Memory problems or Memory Lapses
Menopausal Symptoms
Menstruation, Regulation of
Metabolic Diseases
Migraine [c.f. Migraine Headaches]
Muscular Dystrophy
Myopathy
Obesity [c.f. Diet, Trouble Sticking to]
Obsessions (P)
Obsessive Compulsive Disorder, OCD (P)
Osteoporosis
Overdose
Pancreatitis

Paralysis
Parkinson's Disease
Prostate Problems
Psoriasis [c.f. Skin Problems]
Psychosis (P)
Polycystic Ovary Syndrome
Respiratory Diseases
Schizophrenia
'Senility'
Sexually Transmitted Diseases
Skin Disorders, Serious
Spinal Injuries
Stroke
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)
Acid Indigestion
Acidity, Stomach
Acne
Allergic Rhinitis
Alopecia (Hair Loss)
Anxiety (P)
Arthritic Pain (M)
Athlete's Foot
Backache (M, Ac)
Back Pain (M, Ac)
Bacterial Vaginosis, BV
Bedwetting (P)
Bronchial Congestion
Bunion
Calluses
Candida
Catarrh
Chilblains
Circulatory Problems, Local or Minor (M) [c.f. Poor Circulation]
Cold
Cholesterol, High
Chronic Fatigue Syndrome (Formerly ME) (P)
Colic
Concentration (P)

Confidence (P)
Constipation
Conjunctivitis
Cough
Cramp (M)
Cystitis
Dandruff
Dental Pain (Ac)
Dermatitis
Diarrhoea, Acute
Diet, Trouble Sticking to (P) [c.f. Obesity]
Digestion Problems (M)
Dyspepsia
Earache
Eczema
Eczema, Stress-related (P)
Emotional Problems (P)
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)
Flatulence
Fluid Retention
Foot Odour
Frozen Shoulder (M)
Gastric Reflux
Gastroenteritis
Gingivitis
Glue Ear
Grief (P)
Guilt (P)
Haematoma
Haemorrhoids
Halitosis
Hayfever
Headaches (P, Ac)
Heartburn
Herpes Simplex
Hoarseness
Impetigo
Indigestion
Indigestion, Nervous
Inflammation
Influenza

Insomnia
Irritable Bowel Syndrome, IBS (H)
Joint Pains (M)
Jumpy (P)
Lethargy (P)
Libido, Low (P)
Lumbago (M)
Menopause Menstrual Pain
Migraine Headache [c.f. Migraine]
Motion Sickness
Mouth Ulcers
Muscle Spasms (M)
Muscle Tension (M, P)
Nailbiting (P)
Nails, Fungal infections
Nappy Rash
Nausea (Ac)
Neck Ache (Ac)
Neuralgia (M)
Numbness
Panic Attack (P)
Period Pain
Phobias (P)
Piles
Pins and Needles
Pre-menstrual Tension or Pre-menstrual Syndrome (P)
Relationship Problems (P)
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

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 you can log a specific written enquiry via our online request form <http://www.copyadvice.org.uk/Ad-Advice/Bespoke-Copy-Advice.aspx>. The Copy Advice website at www.copyadvice.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

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