

Therapeutic Products Advertising Complaints COMPLAINTS RESOLUTION PANEL

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Date: 25/11/10

Code: 2010-06-025 - 029 (5 complaints)

Product: Bribie Health advertisements

Complainant: Requested anonymity

Respondent: Bribie Natural Health Clinic

Finding: Justified

Sections Found Justified: Act section 42DL(1)(g); Code sections 4(1)(b), 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(7), 5

Sections Found Not Justified: Code sections 4(2)(g), 4(2)(h), 7(3)

Action: Publication of retraction, Withdraw advertisement; withdraw representations

Recommendation to the Secretary: Yes

Panel Determination: **COMPLAINTS RESOLUTION PANEL DETERMINATION
Complaint 2010-06-025 to -029 Bribie Health advertisements
Meeting held 25 November 2010**

Complaint summary

Complainant	Requested anonymity
Advertiser	Bribie Natural Health Clinic
Subject matter of complaint	Website advertisements
Type of determination	Final
Sections of the Code, Regulations or Act found to have been breached*	Act section 42DL(1)(g); Code sections 4(1)(b), 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(7), 5
Sections of the Code, Regulations or Act found <u>not</u> to have been breached*	Code sections 4(2)(g), 4(2)(h), 7(3)
Sanctions	Withdrawal of representations Withdrawal of advertisements Publication of a retraction

* 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. There were five complaints, each relating to different aspects of the website *www.bribiehealth.com.au*.
2. The first complaint related to material promoting "frequency specific microcurrent therapy" and "Biopton".
3. The second complaint related to material promoting "Hemaview" and "heavy metal testing".
4. The third complaint related to material promoting "frequency microcurrent therapy", the "EQ4 Listen System", "Acugraph Meridiacheck", and "EIS Body Scan".
5. The fourth complaint related to material promoting "Biopton Light Therapy".
6. The fifth complaint related to material promoting ear candles.
7. Excerpts of the material can be viewed in the relevant Appendix to this determination.

The product(s)

8. The advertisement promoted a "frequency specific microcurrent therapy" device, the "Biopton" device, "Hemaview", a "heavy metal testing" diagnostic device,

"Acugraph Meridiacheck", "EIS Body Scan", and ear candles.

The advertiser(s)

9. The advertiser was Bribie Natural Health Clinic.

The complaints

10. The complainant requested anonymity.

11. Taken together, the complaints raised concerns in relation to advertising material for seven products, as follows:

a) the complainant alleged that the Frequency Specific Microcurrent Therapy or Frequency Microcurrent Therapy material breached sections 4(1)(b), 4(2)(a), 4(2)(d), 4(2)(g), and 4(2)(h) of the Code, and (in a separate complaint) that the material breached sections 4(1)(b), 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(2)(g), 4(2)(h), and 4(7) of the Code;

b) the complainant alleged that the Biopton Light Therapy material breached sections 4(2)(d), 4(2)(g), and 4(2)(h) of the Code, and (in a separate complaint), alleged breaches of sections 4(1)(b), 4(2)(a), 4(2)(c), 4(2)(d), 4(2)(h), 4(7), and 7(3) of the Code, and section 41FN of the Act. The complainant also argued that "this device... has been cancelled by the TGA", which the Panel took to raise a possible breach of section 42DL(1)(g) of the Act;

c) the complainant alleged that the Hemaview material breached sections 4(1)(b), 4(2)(a), 4(2)(d), 4(2)(g), 4(2)(h), and 5 of the Code;

d) the complainant alleged that the Heavy Metal Testing material breached sections 4(1)(b), 4(2)(a), and 4(2)(d) of the Code;

e) the complainant alleged that the Acugraph Meridiacheck material breached sections 4(1)(b), 4(2)(a), 4(2)(b), and 4(2)(c) of the Code;

f) the complainant alleged that the EIS Body Scan material breached sections 4(1)(b), 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(2)(g), and 4(2)(h) of the Code; and,

g) the complainant alleged that the ear candles material breached sections 4(1)(b), 4(2)(a), 4(2)(c), and 4(2)(d) of the Code, and stated that "ear candles are not approved for congested ears or sinuses".

12. The complainant also made allegations relating to the "EQ4 Listen System", but did not provide copies of the advertising material that was complained about. The Panel therefore gave no consideration to this aspect of the complaint.

The advertiser's response to the complaints

13. The advertiser argued that the complaints were "mischievous" and that they "would really have appreciated a letter of caution so that [they] could have been given the opportunity to make changes to [their] website to meet regulations." The advertiser also expressed a view that the complaints had been made by a commercial competitor.

14. In relation to the Frequency Specific Microcurrent device, the advertiser provided a copy of a training manual received from the product sponsor, and stated that the relevant website material had been amended with the addition of "disclaimers".

15. In relation to the Biopton Light Therapy device, the advertiser stated that all of the material on the website "was from the manufacturers". They also stated that disclaimers had been added to the website "including the fact that Biopton Light is not TGA approved."

16. In relation to the Hemaview "blood analysis" device, the advertiser stated that they had been advised by the manufacturer that the product was TGA approved, but that after further inquiries, the manufacturer "admitted Hemaview is not listed as a diagnostic tool by the TGA".

17. In relation to the heavy metal testing kit, the advertiser stated that they had advertised it "according to the information supplied... by the manufacturers" but that "because [they were] now aware that there is no scientific evidence to support this test's efficacy, all information concerning the test procedure and reporting has also been removed from the website."

18. In relation to the Accugraph Meridiacheck device, the advertiser stated that it "remains on the site but [they] have removed some therapeutic claims that were included in the package when [they] purchased it from the US".

19. In relation to the EIS Body Scans, the advertiser stated that they "do not do the scans and the website information was supplied by the provider of the service." The advertiser stated that they had "deleted the diagnostic claims" from the website, but that they had been provided by the manufacturer of the device.

20. In relation to the Ear Candles material, the advertiser

stated that they did "not need to advertise this procedure and prefer not to do it due to the risks of fire and [because] it is very messy and smelly, so was happy to remove the modality from [the] site." The advertiser also supplied some information from the manufacturer of the ear candles.

21. In relation to most of the complaints, the advertiser also provided copies of testimonials from her customers.

Findings of the Panel

22. As a preliminary matter, the Panel noted that the complainant did not in fact appear to be a commercial competitor of the advertiser, as the advertiser suggested.

23. There was a considerable amount of material before the Panel in relation to the complaints, and this material was considered at some length. The material is summarised only briefly in this determination.

24. The Panel did not give consideration to the alleged breaches of section 41FN(5) of the Code, as the Bioptron product to which this allegation related is not included in the Register, and therefore does not fall within the scope of section 41FN(5)

Sections 4(1)(b), 4(2)(a), and 4(2)(c) of the Code

25. 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".

26. In relation to all of the advertised products, the Panel was satisfied that the material provided by the advertiser could not be regarded as capable of substantiating the claims made in the advertisements. The advertisements therefore breached sections 4(1)(b), 4(2)(a), and 4(2)(c) of the Code because of a wide range of representations, including the representations that:

a) the Frequency Specific Microcurrent device could have benefits in relation to skin toning, muscle toning, detoxification, skin rejuvenation, "face lifting", "increasing cellular oxidation or ATP by 500%", cell regeneration, repair of tissue inflammation and damage, healing, or pain reduction, or that "every tissue in within the body has its individual frequency or output and the practitioner is able to set the frequency of the device to match";

b) the Bioptron device had benefits in relation to eczema, acne, psoriasis, facial rejuvenation, cellulite treatment, acting as a local anaesthetic, reducing pain sensation, improving skin texture, or improving fine lines and scarring, increasing microcirculation, stimulating the immune system, wound healing, joint pain, chest infections, sinusitis, fungal infections, cataracts, conjunctivitis, or tear ducts;

c) the Hemaview Live Blood Analysis device could have benefits in relation to "enabling early detection of certain health problems", "show[ing] functional imbalances, degenerative changes, immune competence, and nutritional deficiencies", "uncover[ing] the causes of lethargy, allergies, and stomach dysfunctions", or diagnosing bacterial, viral, or fungal conditions;

d) the Heavy Metal Testing kit could have benefits in relation to testing for heavy metals, chemical exposure, arthritis, "Alzheimers and Parkinsons", fertility, or birth defects;

e) the Accugraph Meridiacheck device "works exceptionally well with childhood complaints, Parkinsonian tremor, mood imbalances, smoking addictions, and more";

f) the EIS Body Scan device had benefits in relation to diagnosing or analysing the effectiveness of medications, imbalances and pathologies, origins of pain, infections, the effects of diseases, brain chemicals, hormones, or other conditions or markers, or was "scientifically validated" to have such benefits; and that,

g) the ear candles products had benefits in relation to congested ears or sinuses.

27. The Panel was also satisfied that, in general, all of the claims that the advertised products had therapeutic benefits had not been verified, were misleading, and were likely to arouse unwarranted expectations in relation to those products.

28. These aspects of the complaint were therefore justified.

section 4(2)(d) of the Code

29. 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."

30. The Panel found that the representations that breached sections 4(1)(b), 4(2)(a), and 4(2)(c) of the Code were also likely to breach section 4(2)(d) of the Code, by abusing the trust or exploiting the lack of knowledge of consumers. The Panel therefore found this aspect of the complaint justified.

section 42DL(1)(g) of the Act

31. Section 42DL(1)(g) of the Act prohibits the publication of advertisements for therapeutic goods that are not included in the Register.

32. The complainant appeared to raise a possible breach of section 42DL(1)(g) of the Act in relation to the Bioptron product. This aspect of the complaint was, at the advertiser's admission, clearly justified.

33. The Panel noted, without making any formal finding, that it appeared likely that other products in the advertisements were also promoted in breach of section 42DL(1)(g) of the Act.

section 4(2)(b) of the Code

34. Section 4(2)(b) of the Code prohibits advertisements that are "likely to lead to consumers self-diagnosing or inappropriately treating potentially serious diseases".

35. The complainant alleged that the material related to the Frequency Specific Microcurrent device, Accugraph Meridiacheck device, and EIS Body Scan device breached section 4(2)(b) of the Code.

36. The Panel was satisfied that the material did breach this section of the Code, because of the following representations:

- a) representations relating to Parkinson's disease and addiction to cigarettes in the Acugraph Meridiacheck material; and,
- b) unqualified representations relating to potentially serious diseases in the EIS Body Scan material.

37. This aspect of the complaint was therefore justified.

38. The Panel also noted, without making any formal finding, that in many instances other material in the advertisements appeared likely to breach section 4(2)(b), although the complainant did not specifically raise this section in relation to the other material.

sections 4(2)(g) and 4(2)(h) of the Code

39. Section 4(2)(g) of the Code prohibits representations that therapeutic goods are "infallible, unailing, magical, miraculous", or that they are "a certain, guaranteed or sure cure". Section 4(2)(h) of the Code prohibits advertisements for therapeutic goods that "contain any claim, statement or implication that it is effective in all cases of a condition".

40. The complainant alleged that these sections of the Code were breached by the material relating to the Frequency Specific Microcurrent device, the Bioptron device, the Hemaview device, and the EIS Body Scan device.

41. The Panel was not satisfied that the relevant material did in fact breach these sections of the Code, because it found that while the material made strong (and indeed misleading) claims about the advertised products, it did not represent them to be magical, infallible, certain, guaranteed, etc, in the ways set out in sections 4(2)(g) and 4(2)(h) of the Code.

42. These aspects of the complaint were therefore not justified.

section 4(7) of the Code

43. Section 4(7) of the Code requires that testimonials included in advertisements for therapeutic goods "must be documented, genuine, not misleading and illustrate typical cases only." It also requires testimonials to comply with the Code in all other respects.

44. The complainant alleged that this section of the Code was breached by representations regarding Parkinson's disease in the material promoting the Frequency Specific Microcurrent product, and by the words "doctors were amazed when a series of seven treatments with Bioptron Light for a localised subcutaneous abscess produced a sterile pus culture when lanced" in the material promoting the Bioptron product.

45. The Panel was satisfied that these representations breached section 4(7) of the Code. These aspects of the complaint were therefore justified.

section 5 of the Code

46. 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 neoplastic diseases.

47. 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.

48. The complainant alleged that section 5 of the Code was breached by the material promoting the Hemaview product. The Panel was satisfied that this material clearly breached the section, because of numerous references to serious conditions such as cardiovascular disease.

49. This aspect of the complaint was therefore justified.

50. The Panel also noted, without making any formal finding, that many other representations in the advertisements also appeared likely to breach section 5 of the Code.

section 7(3) of the Code

51. Section 7(3) of the Code requires that advertisements making weight management claims must have an appropriate balance between those claims and references to healthy energy-controlled diet and physical activity.

52. The Panel did not find, in the material submitted by the complainant, words that appeared likely to breach this section of the Code. The Panel therefore found this aspect of the complaint not to be justified.

Sanctions

53. The Panel requests Bribie Natural Health Clinic, 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 products have benefits in relation to skin toning, muscle toning, detoxification, skin rejuvenation, "face lifting", increasing cellular oxidation or ATP, cell regeneration, repair of tissue inflammation and damage, healing, pain reduction, eczema, acne, psoriasis, facial rejuvenation, cellulite treatment, acting as a local anaesthetic, reducing pain sensation, improving skin texture, or improving fine lines and scarring, increasing microcirculation, stimulating the immune system, wound healing, joint pain, chest infections, sinusitis, fungal infections, cataracts, conjunctivitis, tear ducts, "enabling early detection of certain health problems", "show[ing] functional imbalances, degenerative changes, immune competence, and nutritional deficiencies", "uncover[ing] the causes of lethargy, allergies, and stomach dysfunctions", diagnosing bacterial, viral, or fungal conditions, testing for heavy metals, chemical exposure, arthritis, Alzheimer's disease, Parkinson's disease, fertility, or birth defects, childhood complaints, Parkinsonian tremor, mood imbalances, smoking addictions, congested ears or sinuses, or for diagnosing or analysing the effectiveness of medications, imbalances and pathologies, origins of pain, infections, the effects of diseases, brain chemicals, hormones, or other conditions or markers;
- c) not to use the representations in (b) above in any other advertisement*;
- 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.bribiehealth.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.

54. 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, including a recommendation that the inclusion of the goods on the Register be cancelled.

Dated 24 January 2011

For the Panel

Jason Korke
Chairman

Appendix A: Definitions and footnotes

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).

**Under regulation 42ZCAI of the Regulations, the Panel may request that a representation not be used in any other advertisement unless the advertiser 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. Under the Panel's procedures, the Panel will not ordinarily give additional consideration to such a matter unless significant new material that was not available at the time of the Panel's determination has become available, or until at least 12 months have passed since the Panel's request was made.*

Appendix B: Retraction

An advertisement is to appear on the website www.bribiehealth.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

Advertising material promoting a range of therapeutic and diagnostic devices, which we published on this website, should not have been published.

In the advertisements we unlawfully made claims that the advertised devices had an extensive range of therapeutic benefits, including treatment of skin and other conditions, and diagnosis or analysis of many diseases and risk factors.

A complaint about the advertisement was recently upheld by the Complaints Resolution Panel. We did not provide adequate 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 also found that the advertisements promoted illegal therapeutic goods in breach of section 42DL(1)(g) of the Therapeutic Goods Act.

The Panel therefore requested that Bribie Health publish this retraction.

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

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, per above 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:	120 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.

**Advertisement
Copy:**[Download](#)[Back...](#)