



THERAPEUTIC ADVERTISING PREVETTING SYSTEM



TAPS

The fun part of advertising compliance! ☺

I hear you saying.....



But we are here to help!

New Zealand

- ▶ NZ has a system of Self Regulation (adopted by industry) rather than a Regulator to ensure all advertising and promotion is compliant and legal
- ▶ All people involved in producing advertising material are responsible. That includes the company that owns the product, the media, and any distributors
- ▶ All can be liable for prosecution
- ▶ You own responsibility for the ad and content, TAPS is only part of self regulation – you are the other part
- ▶ Companies should keep a centralised database of TAPS Comments/Approvals – important part of your responsibility as advertisers

How can TAPS help, Reminders and TAPS Approvals

- ▶ We aim to help minimise risk of complaints and breaches of legislation
- ▶ Ads in the media require it and it's good assurance for everything else
- ▶ We interact with Medsafe and seek clarification when needed
- ▶ We can help differentiate between therapeutic and health claims and recommend alternative wording
- ▶ TAPS approvals are made at a 'point in time' – Any changes that have not been approved just render the approval null and void, important point re websites
- ▶ Remember to get the approval updated if you make changes.

Words and trouble spots for NHP copy and labels

- ▶ Promotes, relieves, maintains, assists, aids, contributes, reduces, improves, targets, boosts, increase, accelerates, inhibits, treats, stimulates
- ▶ Naming of diseases and medical conditions
- ▶ Anti-inflammatory, pain, ache, sore, diuretic, anxiety, colds & flu, viruses, arthritis, osteoporosis, cancer, sensitive.....
- ▶ Direct or indirect comparison with medicine
- ▶ Words that overpromise an outcome: longer, faster, quicker, better
- ▶ Mentioning symptoms of disease
- ▶ Testimonials that make therapeutic claims
- ▶ Imagery used in ads – e.g. eczema, b&a pictures, red inflamed joints
- ▶ Thinking the advertising rules don't apply to social media

So what can I say??



Health Claims

- ▶ Support for the normal operation of a physiological process
- ▶ Support for normal health
- ▶ Nutritional support where ingredients may be lacking in a diet
- ▶ Support for the normal operation of body parts and processes.
- ▶ Words to use; support, normal, soothe, calm, regular, nourish
- ▶ Write copy in positive tense
- ▶ Check copy received from other countries first to save TAPS pain later
- ▶ Are you making any claim to prevent, alleviate, cure any disease, reduce or terminate any physiological function – if not then you're good to go!!

Some definitions clarified and tips

- ▶ Interpretation of disease in Act is extremely broad: **disease includes any injury, ailment, deformity, disorder, or adverse condition, whether of body or mind**
- ▶ Nearly 60 specified “disease states” or “medical conditions” are outlined in the First Schedule Parts 1 & 2 of the Medicines Act.
- ▶ **Therapeutic purpose in the Dietary Supplements Regulations states:** No dietary supplement or package or container containing a dietary supplement shall be advertised or labelled with a statement relating to any of the following matters:
 - ▶ (a) treating or preventing disease:
 - ▶ (b) diagnosing disease or ascertaining the existence, degree, or extent of a physiological condition:
 - ▶ (c) altering the shape, structure, size, or weight of the human body:
 - ▶ (d) **otherwise preventing or interfering with the normal operation of a physiological function, whether permanently or temporarily, and whether by way of terminating or reducing or postponing, or increasing or accelerating, the operation of that function, or in any other way.**
- ▶ **Stages of life wording requires care not to imply therapeutic purpose**
 - Menopause ok but cannot describe symptoms of this life stage, i.e. flushing, moods. Can only make health claim of supporting the normal process and use copy like supports normal temperature balance, balances the body's natural response to hormonal changes, useful for the support of the premenstrual period, supports calm mood, supports the body at times of hormonal change, etc.

Recent judicial view on ‘what is a medicine’ – useful to bear in mind

- ▶ Recent interim judgement out of High Court hearing on Health Trust/Promisia challenge to the classification of artemisia annua extract
- ▶ Judge provided some useful comments around what is a medicine “there is a strongly arguable case that Arthrem is a medicine and Medsafe were within their statutory power to deem it so”
- ▶ Ailment, defect or injury – stiff joints, worn joints, damaged joints, joint health and mobility, support normal function, support normal flexibility, support normal motion, support normal healthy function, flexibility and mobility
- ▶ Preventing, alleviating, treating, curing or compensating for – maintain healthy joint and mobility, support healthy joints, supporting the maintenance of
- ▶ Medicine implications – clinically tested, trialed or proven, use with other ‘medications’, when taken with other concomitant medications
- ▶ Important considerations by Judge re advertising and consumer take out re dietary supplement/medicine, possible influence of Medsafe and the challenges we face.

A word on Covid-19

- ▶ No changes to legislation or codes that advertisers of NHP are expected to adhere to with the exception of test kits
- ▶ First stop Medsafe – dietarysupplements@health.govt.nz
- ▶ Second stop ASA Adhelp Information
 - <https://www.asa.co.nz/resources/updated-covid-19-advertising-health-products/>
- ▶ Third stop TAPS
 - Cannot raise unrealistic expectations or outcomes
 - Cannot make any direct or implied anti-viral claims
 - NHP unable to claim or give perception that products can relieve or treat symptoms of cold and/or flu
 - Medsafe very clear opinion that showing images of people with colds, coughing for NHP need to be removed
 - Wording must be around supporting normal immune system defences, supporting immune health, antioxidants providing support for recovery from ills and chills
 - Watch any encouragement of going back to work – this is in direct conflict with Govt's instructions.
- ▶ Check recent ASCB decisions wrt Covid-19 complaints

Hemp Seed Oil and Colostrum

▶ Hemp Seed Oil

- Medsafe:
 - Don't include imagery of Hemp leaf on labels and copy
 - 'No THC' does not counteract the inclusion of the picture of the leaf and should not be used. Misleading and implies whilst no THC it may contain other cannabis compounds that could have therapeutic effect

▶ Colostrum/Immunoglobulins

- Currently classified as prescription medicines. Advice sought from Medsafe for NHP. Confirmed classification applies to both human and animal derived immunoglobulins, therefore claims to supporting immunity appear to be associated with the presence of them. If no evidence for bovine in regard to immunity in humans, then ad is in breach of Principle 2 of the ASA Code, truthful presentation
- TAPS recommend no mention of Immunoglobulins by name or individual names, IgF, IgG, IgA etc in any material for NHP, including labels.
- Suggested alternative wording; supports immune health and intestinal health, supports general health and wellbeing, supports athletic performance, nutritious source of antibodies, natures superfood, sourced from pasture fed cow, immune factors from cows, bovine source

Social Media and Influencers

- ▶ Social media ads are subject to ASA codes just like any other form of ad - remember advertiser control and intent are key in determining if its an advertisement
- ▶ Have robust monitoring processes in place for all social media platforms - remove comments regarded as testimonial and which contain therapeutic claims = breach of legislation and high risk of complaint.
- ▶ ASA has useful guidance for identification of advertisements and influencers
<https://www.asa.co.nz/>



Together
WE GET IT DONE!

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