

## **SECTION 8: MEDICINES, TREATMENTS, HEALTH CLAIMS AND NUTRITION (November 2004 - 30 June 2007)**

### **Background:**

*The rules in this section are designed to ensure that advertising for medicines and other treatments receive the necessary high level of scrutiny. This section also covers claims relating to the nutritional, therapeutic or prophylactic effects of products, including food, toiletries and cosmetics. Independent expert advice will usually be needed in assessing advertising which is subject to this Section. (See 8.1.1 below.)*

### **Medical Advisory Panel**

*The Broadcast Advertising Clearance Centre (BACC) retains a panel of eminent consultants to advise it on health and medical aspects of advertising. Members are appointed after consultation with the leading medical professional bodies. Licensees may also consult the panel but will be responsible for the costs involved. Licensees should initially contact the BACC if they wish to make use of this facility. The ASA and BCAP may seek a further medical opinion if there is a significant challenge to an advertisement that has been accepted by a licensee on the advice of a member of the panel.*

## **8.1 GENERAL**

### **8.1.1 Assessment of claims**

Licensees must seek appropriate independent medical advice where this is necessary for a proper assessment of claims

### **8.1.2 Impressions of professional advice and support**

The following are not acceptable in advertisements for products or treatments within the remit of Section 8:

(a) presentations of doctors, dentists, veterinary surgeons, pharmaceutical chemists, nurses, midwives etc, which give the impression of professional advice or recommendations

(b) statements giving the impression of professional advice or recommendation by people who are presented, whether directly or by implication, as being qualified to give such advice or recommendation

#### **Note to 8.1.2(b):**

*In ambiguous cases, it may be necessary to make clear that the presenter is not a professionally qualified person.*

(c) references to approval, recommendation of, or preference for, any relevant product or its ingredients or their use by the professions referred to in (a) above

### **8.1.3 Medical or health advice given remotely**

(a) Licensees may only accept advertising for services offering remote personalised advice on medical or health matters where all staff who provide such advice are subject to regulation by a statutory or recognised medical or health professional body

(b) Services that offer to prescribe or treat remotely may not be advertised

**Notes to 8.1.3:**

(1) *'Remotely' includes by phone, post, internet, email and fax.*

(2) *This does not prevent advertising offering general information on health matters.*

(3) *The ASA and BCAP maintains a list of the statutory and professional bodies covered by this rule and will consider proposals for amendments or additions to the list.*

**8.1.4 Encouragement of excess**

No advertisement may encourage indiscriminate, unnecessary or excessive use of products within the remit of Section 8

**8.1.5 Tonic**

Unless authorised by its product licence, the word 'tonic' is not acceptable in advertisements for products making health claims. Claims must not suggest that a product has tonic properties

**Note:**

*This does not prevent the use of the word 'tonic' in the description 'Indian tonic water' or 'quinine tonic water'.*

**8.2 MEDICINAL PRODUCTS AND TREATMENTS**

**Notes:**

(1) *With the introduction of new or changed products, the diverse licensing requirements of the Medicines Act 1968 and changes in medical opinion on particular issues, this Code cannot provide a complete guide to required standards in relation to health claims or to the advertising of particular products or classes of medicines and treatments. The general principles governing the advertising of medicines, treatments and health claims are set out below. These also apply, where relevant, to veterinary products and services.*

(2) *EC Council Directive 92/28/EEC (codified under Title VIII of Directive 2001/83/EC)*

*The Directive concerns 'The Advertising of Medicinal Products for Human Use' and has been implemented in the UK by The Medicines (Advertising) Regulations 1994 and The Medicines (Monitoring of Advertising) Regulations 1994 (both as amended). The ASA is under an obligation to consider complaints about breaches of Regulation 9 of the Advertising Regulations, and these have been incorporated in the rules below.*

(3) *Medicines Act 1968*

*Advertisements for products subject to licensing under the Medicines Act 1968 must comply with the requirements of the Act, Regulations made under it and any conditions contained in the current marketing authorisation.*

(4) Directive 2001/82/EC as amended deals with veterinary medicinal products and its provisions have been implemented in the Veterinary Medicines Regulations 2005, which contain requirements for the advertising of such products.

### 8.2.1 Unacceptable products and services

Advertisements for the following are not acceptable:

- (a) medicinal products or treatments available only on prescription (POM)
- (b) products for the treatment of alcohol and substance misuse or dependence

**Note to 8.2.1(b):**

*An exception is made for smoking deterrents.*

- (c) hypnosis-based procedures (including techniques commonly referred to as hypnotherapy), psychiatry, psychology, psychoanalysis and psychotherapy

**Note to 8.2.1(c):**

*An exception is made for clinics and institutions and certain types of publications, where these have been approved by BCAP after consulting its medical advisors.*

- (d) services that offer to prescribe or treat remotely (see 8.1.3(b))

Teleshopping for the following is not acceptable:

- (e) medicinal products for humans that are subject to a marketing authorisation within the meaning of Directive 2001/83/EC as amended by Directive 2004/27/EC and on the General Sale List (GSL), available as a pharmacy medicine (P) or as a prescription-only medicine (POM)
- (f) veterinary medicinal products that are subject to a marketing authorisation within the meaning of Directive 2001/82/EC as amended by Directive 2004/28/EC and are available as an authorised veterinary medicine on the General Sales List (AVMGSL), a non-food animal medicine from a veterinarian, pharmacist or suitably qualified person or as a prescription-only medicine from a veterinarian (POM-V) or from a veterinarian, pharmacist or suitably qualified person (POM-VPS)
- (g) medical treatments for humans or animals

### 8.2.2 Homeopathic medicinal products

- (a) Only homeopathic medicinal products which are registered in the UK may be advertised
- (b) The only information which may be included is that which is allowed to appear on product labelling. Advertisements may not, therefore, include medicinal or therapeutic claims or refer to a particular ailment

**Note to 8.2.2:**

*This rule incorporates the requirements of EC Directive 2001/83/EC (as amended by EC Directive 2004/27/EC) on Medicinal Products For Human Use.*

**8.2.3 Products without a marketing authorisation**

No medicinal claims may be made for products that do not hold a marketing authorisation under the Medicines Act 1968

(Registered homeopathic medicinal products are dealt with separately at 8.2.2 above)

**8.2.4 Mandatory information**

Advertisements for medicinal products must include the following information:

- (a) the name of the product
- (b) the name of the active ingredient, if it contains only one
- (c) the indication (ie what the product is for)
- (d) wording such as 'always read the label' or 'always read the leaflet' as appropriate

**8.2.5 Unacceptable references**

- (a) Advertisements must not suggest that a product is special or different because it has been granted a marketing authorisation. Nor may they contain any references to the European Commission or the Medicines and Healthcare Products Regulatory Agency (MHRA) unless the MHRA requires it
- (b) No advertisement may suggest that a medicinal product is a food, cosmetic or other consumer product
- (c) Advertisements for medicinal products must not offer to donate money to charity. (See 11.3.6(f))

**8.2.6 Conditions requiring medical attention**

No advertisement may give the impression that a medical consultation or surgical operation is not necessary for conditions for which qualified medical advice should be sought (either instead of self-treatment or prior to it), in particular by offering a diagnosis or by suggesting treatment by post, fax or telephone.

**Note:**

*This does not prevent advertising for spectacles and contact lenses.*

**8.2.7 Self diagnosis**

No advertisement for a medicinal product may contain any description or case history which could lead to a wrong self-diagnosis

### **8.2.8 Guarantee of efficacy**

No advertisement for a medicinal product may claim that its effects are guaranteed

**Note:**

*This does not prevent the offering of refunds, providing that there is no suggestion that efficacy is guaranteed.*

### **8.2.9 Cure**

Unless allowed by a marketing authorisation, words, phrases or illustrations that claim or imply the cure of any ailment, illness, disease or addiction, as distinct from the relief of its symptoms, are unacceptable

### **8.2.10 Claims of recovery**

No advertisement for a medicinal product may refer in improper, alarming or misleading terms to claims of recovery

### **8.2.11 Appeals to fear and exploitation of credulity**

(a) Advertisements must not, without good reason, make viewers anxious that they may be suffering from disease or ill-health or might do so if they do not respond to the advertising

(b) No advertisement may falsely suggest that any product is necessary for the maintenance of physical or mental health, whether by people in general or by particular groups, or that health could be enhanced by taking the product or affected by not taking the product

### **8.2.12 Side effects**

No advertisement for a medicinal product may suggest that it has no side effects

**Note:**

*It is acceptable to refer to the likely absence of a specific side effect eg 'unlikely to cause drowsiness'.*

### **8.2.13 Comparisons**

No advertisement for a medicinal product may suggest that its effects are better than, or equivalent to, those of another identifiable medicinal product or treatment

### **8.2.14 'Natural' products**

No advertisement for a medicinal product may suggest that its safety or efficacy are due to it being 'natural'

#### **8.2.15 Medicines and children**

No advertisement for a medicinal product or treatment may be directed at people under the age of 16

**Note:**

*See also Section 7 for additional rules about advertising for products or services likely to interest children and BCAP's Rules on the Scheduling of Advertising for scheduling restrictions.*

#### **8.2.16 Unacceptable images**

No advertisement for a medicinal product may use in improper, alarming or misleading terms images of changes in the human body caused by disease, injury or a medicinal product

#### **8.2.17 Celebrity testimonials and presentations**

No advertisement for a medicinal product or treatment may include a testimonial by a person well known in public life, sport, entertainment etc, or be presented by such a person

#### **8.2.18 Analgesics**

A 'tension headache' is a recognised medical condition and analgesics may be advertised for the relief of pain associated with this condition. However, no simple or compound analgesic may be advertised for the direct relief of tension. There must be no references to depression

#### **8.2.19 Smoking deterrents**

Advertisements for smoking deterrents:

(a) must make clear that the indispensable factor in giving up smoking is will-power and that the products are no more than an aid to breaking the habit

(b) must not claim that smoking is made safer whilst the habit is being reduced

**Note to 8.2.19:**

*Advertisements for smoking deterrents must be approved by the BACC's Medical Advisory Panel who will only give clearance to products that appear to offer genuine assistance in giving up smoking.*

### **8.3 FOOD AND DIETARY SUPPLEMENTS**

**Notes:**

*(1) The rules in 8.3 must be read in conjunction with the relevant legislation including the Food Labelling Regulations 1996 (as amended) and especially Schedule 6. They apply to all advertising for food products. Where advertising is addressed to children, Section 7 of this Code also applies.*

*(2) Public health policy increasingly emphasises good dietary behaviour as a means of promoting health. Commercial product advertising cannot reasonably be expected to perform the same role as education and public information in promoting a varied and balanced diet but should not undermine progress towards national dietary improvement by misleading or confusing consumers or by setting bad examples, particularly to children.*

### **8.3.1 Accuracy in food advertising**

Nutrition claims (eg 'full of the goodness of vitamin C') or health claims (eg 'aids a healthy digestion') must be supported by sound scientific evidence. Advertising must not give a misleading impression of the nutritional or health benefits of the product as a whole

#### **Notes:**

*(1) Claims of nutritional or health benefits must be assessed by reference to the concept of a balanced diet.*

*(2) A wide range of guidelines that offers best-practice advice for nutritional claims and healthy eating is available. For example, The Food Standards Agency's Guidelines for the Use of Certain Nutrition Claims in Food Labelling and Advertising include a recommendation to avoid "% fat free" claims (issued November 1999). Appropriate consideration and uniform application of such guidelines is needed from the relevant pre-clearance and adjudicatory bodies*

### **8.3.2 Excessive consumption**

Advertisements must not encourage or condone excessive consumption of any food

#### **Note:**

*Interpretation of this rule should be by reference to current generally accepted nutritional advice. It would clearly not be inconsistent with shots of someone enjoying a chocolate bar; it would, however, preclude someone being shown eating whole boxes of chocolates in one sitting.*

### **8.3.3 Comparisons and good dietary practice**

Advertisements must not disparage good dietary practice. Comparisons between products must not discourage the selection of options such as fresh fruit and vegetables which accepted dietary opinion recommends should form a greater part of the average diet

### **8.3.4 Oral health**

Advertisements must not encourage or condone damaging oral health care practices

**Note:**

*For instance, advertisements must not encourage frequent consumption throughout the day, particularly of potentially cariogenic products such as those containing sugar. This rule has children's dental health particularly in mind.*

**8.3.5 Dietary supplements**

(a) There must be no suggestion that it is necessary or therapeutic for the average person to augment their diet or that dietary supplements can enhance normal good physical or mental condition

(b) Advertisements must clearly establish which groups of people are likely to benefit from a particular form of supplement

**Note to 8.3.5(b):**

*Only certain groups are likely to benefit from particular vitamin or mineral supplements. These might include people on a restricted dietary regimen, those eating unsupplemented, low-energy diets, women of child-bearing age (particularly if they are planning to have a baby, are pregnant or lactating), growing children and some individuals over 50.*

**8.4 SLIMMING REGIMES & WEIGHT CONTROL PRODUCTS****8.4.1 People under 18**

Advertisements for products or services which are subject to 8.4 must not:

(a) be addressed to people under 18

(b) use creative treatments likely to appeal particularly to people under 18

(c) feature any personality who has a particular appeal to those under 18, or whose example they are likely to follow

**Note to 8.4.1:**

*Please refer to Section 7 for additional rules about products or services likely to be of interest to children and to BCAP's Rules on the Scheduling of Advertising for scheduling restrictions. (The latter, however, do not apply to advertisements for calorie/energy-reduced foods and drinks, provided they are not presented as part of a slimming regime and provided the advertisements do not use the theme of slimming or weight control.)*

**8.4.2 Requirement for medical advice**

Licensees must obtain suitably qualified independent medical advice on the safety and efficacy of products or services which are subject to 8.4. This advice must take into account:

- (a) whether there is reputable scientific evidence to support any claims
- (b) whether clinics and other establishments offering medically supervised treatment are run in accordance with General Medical Council guidelines

**Note to 8.4.2:**

*This rule applies to slimming aids (including exercise products that make weight-loss or slimming claims), clinics and other establishments, diets, medicines etc.*

### **8.4.3 Predictions of weight loss**

Advertisements must not promise or predict specific weight loss for products or services in this category. Advertisements which refer to specific amounts of weight that have been lost by individuals must also state the period over which that loss was achieved. The rate and amount of weight loss must be compatible with accepted good medical and dietary practice and must be representative of the capabilities of the product or service

### **8.4.4 Low-calorie foods**

In the following circumstances, advertisements for low-calorie foods and drinks must make it clear that the products only assist weight loss as part of a calorie/energy controlled diet:

- (a) if the products are presented as part of a slimming regime or
- (b) if the advertising uses a slimming or weight control theme

### **8.4.5 Obesity**

Advertisements for products and services in this category, other than those for clinics and other establishments offering treatment under medical supervision, must not be directed at the obese or use testimonials or case histories referring to subjects who were or appeared to be obese before using the product or service advertised

**Note:**

*Obese, for the purposes of this rule, means a Body Mass Index of 30 or above.*

### **8.4.6 Underweight**

Advertisements for products and services in this category must not suggest that to be underweight is acceptable or desirable. Where testimonials or case histories are used, they must not refer to subjects who are or appear to be underweight

**Notes:**

(1) *Underweight, for the purposes of this rule, means a Body Mass Index of below 20.*

(2) *Licensees should also be aware that The Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997 may apply to some*

*products. Where products do fall within the remit of the regulations, a number of provisions apply including:*

*(a) such foods may not be offered under any name other than*

*- 'total diet replacement for weight control' or*

*- 'meal replacement for weight control',*

*(b) advertisements for such foods may not refer to the rate or amount of weight loss that may result*

*from the use of the product, or to a reduction in the sense of hunger or an increase in the sense*

*of satiety.*

*(3) Advertisements for Very Low Calorie Diets, those where daily kilo-calorie intake falls below 800, must also comply with the following conditions:*

*(a) they must advise users to 'consult your doctor' before embarking on the diet*

*(b) they must position the diet as a short-term measure only*

*(c) they must not use testimonials or specific case histories.*

*(4) In addition, licensees must seek independent medical advice on whether the proposed advertisement complies with the recommendations of the Government COMA Report No. 31, The Use of Very Low Calorie Diets.*