

# **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](http://www.clearcast.co.uk) for television advertisements or the Radio Advertising Clearance Centre [www.racc.co.uk](http://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

L Lifestyle weight loss programmes which comply with the criteria in CAP Code rule 13.2.1

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](http://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]  
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] (L)  
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](http://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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