

<b>COMPLAINT NUMBER</b>	17/127
<b>COMPLAINANT</b>	B Rideout
<b>ADVERTISER</b>	Red Seal
<b>ADVERTISEMENT</b>	Red Seal, Digital Marketing
<b>DATE OF MEETING</b>	23 May 2017
<b>OUTCOME</b>	Not Upheld in part, No Jurisdiction in part

### **SUMMARY**

Red Seal's digital marketing of its Pharmacy Strength Cranberry 60,000mg product claims that it 'Supports Bladder health in men and women' and 'Supports urinary tract and bladder health'.

The Complainant said the claims were therapeutic and not substantiated by research. The Advertiser said use of the word 'supports' was not a therapeutic claim and provided research to substantiate its health benefit claims.

The Complaints Board ruled the health benefit claims had been substantiated and in accordance with the Therapeutic and Health Advertising Code Principles 1 and 2, the advertisement was not misleading and observed a high standard of social responsibility.

The Complaints Board ruled the complaint about the advertising claims was Not Upheld and that it had no jurisdiction over the name of the product.

### **[No further action required]**

Please note this headnote does not form part of the Decision.

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## **COMPLAINTS BOARD DECISION**

The Chair directed the Complaints Board to consider the Red Seal website advertisement with reference to the Therapeutic and Health Advertising Code Principles 1 and 2, which require that the advertisement is truthful, balanced and not misleading and observes a high standard of social responsibility.

### **Preliminary matter**

The Complaints Board discussed the use of "Pharmacy Strength" in the name of the product, Pharmacy Strength Cranberry 60,000mg. The Complaints Board noted the Advertiser response to the complaint about "pharmacy strength" said in part:

"By way of background, the Product is part of Red Seal's Pharmacy Strength range. The term Pharmacy Strength was chosen as the tagline for the range in order to invite consumers to draw the inference that its supplements are:

- comparable to supplements available in pharmacies on the basis of their potency/complexity;
- premium supplements (in comparison with competitors' supplements – as well as its own base range – available in supermarkets); and
- available at supermarket prices, as opposed to pharmacy prices.”

The Complaints Board confirmed it did not have jurisdiction over a product name or packaging but agreed care should be taken to ensure consumers understood the context of products marketed as pharmacy strength or similar.

**The Complaints Board ruled the complaint was Not Upheld in part.**

### **The Complaint**

The Complainant objected to ‘therapeutic claims’ made in the website advertisement for Red Seal’s Pharmacy Strength Cranberry 60,000 mg product. The advertisement claims the capsules ‘support healing and health of the urinary tract’ and ‘support bladder health in men and women’. The Complainant said Red Seal’s claims were not substantiated in quantitative research.

### **The Advertiser’s Response**

The Advertiser said no claim was made ‘regarding a therapeutic purpose’ for the cranberry capsules. The Advertiser noted that the word ‘supports’ was widely used by advertisers of dietary supplements and according to the Therapeutic Advertising Pre-Vetting Service (TAPS) Guidelines, did not constitute a ‘therapeutic purpose claim’.

### **The Complaints Board Discussion**

The Complaints Board reviewed the statements subject to complaint and the Advertiser’s response, including its position that the claims were not ‘therapeutic purpose claims’.

The Complaints Board agreed the claims made for Red Seal’s cranberry product were for low-level health benefits and did not constitute ‘therapeutic claims’.

In this context, the Complaints Board discussed the study referred to in the Advertiser’s response which reported some benefit from daily consumption of cranberry capsules in defined cases. In the Complaint Board’s view, this was acceptable substantiation given the low-level claims.

The Complaints Board ruled the health benefit claims had been substantiated and in accordance with the Therapeutic and Health Advertising Code Principles 1 and 2, the advertisement was not misleading and observed a high standard of social responsibility.

The Complaints Board ruled the complaint about the advertising claims was Not Upheld and that it had no jurisdiction over the name of the product.

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## **DESCRIPTION OF ADVERTISEMENT**

Red Seal’s website advertisement for its ‘Pharmacy Strength Cranberry 60,000mg – New!’ promoted the product and said it ‘Supports Bladder health in men and women’ and ‘Supports urinary tract and bladder health’. The advertisement included details about the composition of the product and its price.

## COMPLAINT FROM B. RIDEOUT

Red Seal's product listing for Pharmacy Strength Cranberry 60,000 mg contains therapeutic claims about the ability of its capsules in supporting the healing and health of the urinary tract. In bullet-point format on their website, Red Seal lists the following benefits:

"Supports Bladder health in men and women

1-A-Day high strength does.

Triple strength formula

Supports urinary tract and bladder health

Cranberry can be taken ongoing as a maintenance dose to support healing and health of the urinary tract "

<http://www.redseal.co.nz/product/pharmacy-strength-cranberry-60000mg/> (Under "About")

These claims bring the advert under the ASA's Therapeutic and Health Advertising Code under the definitions of "Therapeutic Purpose" under the Medicines Act 1981, specifically preventing, diagnosing, monitoring, alleviating, treating, curing, or compensating for, a disease, ailment, defect, or injury; or influencing, inhibiting, or modifying a physiological process.

As per the ASA's definition for "Health Benefit", natural health products and dietary supplements must be supported by scientific or traditional substantiation. Red Seal's claims about its pharmacy strength cranberry capsules are not substantiated in quantitative research nor does Red Seal direct customers to peer-reviewed research

For this advert, Red Seal is in breach of Principle 1, Rule 1(d) and Principle 2 in general. Specifically, the use of the word "Pharmacy Strength".

The purported "pharmacy strength" cranberry dose is listed as follows:

"Cranberry (Equiv. to Vaccinium macrocarpon fruit 60,000mg): 600mg

<http://www.redseal.co.nz/product/pharmacy-strength-cranberry-60000mg/> (Under "Ingredients")

Bob Buckman, the Chief Pharmacist Advisor of the Pharmaceutical Society, stated the following in his letter to the Ministry of Health:

"In addition to the described labeling requirements, the Society strongly recommends that labels for natural health products be prohibited from references to pharmacy, pharmaceuticals or registered medicines. We are currently aware of a product in the market that refers to "Pharmacy Strength" dietary supplements which we strongly oppose, as this suggests a level of strength, or quality that is equivalent to pharmacy-medicines. Natural health products must not be able to draw comparisons to medicines in their claims."

[https://www.psnz.org.nz/Folder?Action=View%20File&Folder\\_id=101&File=2016-3%20NaturalHealthProductsRegulationsConsultation\\_PSNZ.pdf](https://www.psnz.org.nz/Folder?Action=View%20File&Folder_id=101&File=2016-3%20NaturalHealthProductsRegulationsConsultation_PSNZ.pdf)

Mr. Buckman highlights a significant point of misunderstanding that can arise with the use of "Pharmacy Strength" and may mislead consumers from pursuing medical advice for urinary problems by implying that a comparison to an equivalent pharmaceutical product exists. Further, it exploits folk-knowledge regarding the effectiveness of cranberry juice for preventing and treating urinary tract infections. A Cochrane review on the effectiveness of cranberries in preventing urinary tract infections found that several studies on the topic had

methodological issues and that the optimal dosage and method of administration of cranberries was unclear

(<http://dspace.stir.ac.uk/bitstream/1893/2460/1/Cochrane%20cranberry%20prevention.pdf>).

Ultimately, Red Seal's claims are erroneous and not supported by either research or actual pharmaceutical practice.

## THERAPEUTIC AND HEALTH ADVERTISING CODE

**Principle 1:** Therapeutic and Health advertisements shall observe a high standard of social responsibility particularly as consumers often rely on such products, devices and services for their health and wellbeing.

**Guideline 1(d):** The use of scientific language in advertisements is acceptable providing that it is appropriate to, and readily understood by, the audience to whom it is directed.

**Principle 2:** Advertisements shall be truthful, balanced and not misleading. Advertisements shall not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear. This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

## RESPONSE FROM ADVERTISER: RED SEAL

Endeavour Consumer Health Limited is the owner of the Red Seal business. We refer to the complaint made by B Rideout (Complaint 17/127) (Complaint) regarding claims regarding Red Seal's Pharmacy Strength Cranberry 60,000mg product (Product).

The Complaint appears to have three components:

1. A complaint in relation to the following statements regarding the Product:
  - 'Supports bladder health in men and women'
  - 'Supports urinary tract and bladder health'.
2. A complaint in relation to the use of the phrase 'Pharmacy Strength'.
3. A complaint in relation to exploiting 'folk-knowledge' in relation to the effectiveness of cranberry juice for preventing and treating urinary tract infections.

We have addressed each of these points below.

1. Complaint in relation certain statements regarding the Product

Red Seal is of the view that the statements referred to in the Complaint are not claims regarding a 'therapeutic purpose' for the Products. The statements do not refer to a particular 'disease, ailment, defect or injury'. In addition, the statements do not refer to 'influencing, inhibiting or modifying' a particular physiological process.

The ASA Therapeutic and Health Advertising Code and Guidance Notes (Code) states:

*'A 'therapeutic purpose claim' may be accompanied by words such as enhance, improve, prevent, interfere with, terminate, reduce, increase, accelerate, inhibit, boost, treat, relieve and stimulate.'*

It is noted that the word 'supports' is not set out in the paragraph above. Indeed, commentary from the Association of New Zealand Advertisers (ANZCA) Therapeutic Advertising Pre-Vetting Service (TAPS) Guidelines specifies that the term 'supports' does not constitute a 'therapeutic purpose claim':<sup>1</sup>

*...there is leeway for certain health or nutritional claims or statements relating to the normal physiological or biochemical function. This is covered generally by such statements as "supports the normal physiological function"... For example, a statement such as "provides nutritional support for a healthy immune system" escapes therapeutic specificity...*

Further, we note that the use of the term 'supports' is an industry standard across dietary supplement suppliers in the market. Below we provide a sample of the use of this term in the context of cranberry supplements supplied in the New Zealand market:

Supplier	Product	Statements
<b>Blackmores</b>	Cranberry 15000	"Cranberries contain active constituents called proanthocyanidins, which support the health of the bladder and urinary tract"; "It also contains vitamin C to support the healthy functioning of the immune system and help maintain resistance to infection"; "Supports bladder and urinary tract health"
<b>Nutra-Life</b>	Cranberry 50,000	"Supports urinary tract health and comfort"
<b>Thompson's</b>	One-A-Day Ultra Cranberry 60000	"Helps support a healthy urinary tract naturally"
<b>Go Healthy</b>	GO Cranberry 60,000+	"Soothe and support the health of the urinary tract and bladder"; "GO Cranberry 60,000+ can be taken ongoing to support the healing and health of the urinary tract"
<b>Healtheries</b>	Healtheries Cranberry 50,000mg	"Healtheries Cranberry 50,000mg provides a high strength source of Cranberry, traditionally used to support a healthy urinary tract"

In relation to the reference to 'Health Benefit', the Code notes that dietary supplements must be supported by scientific or traditional substantiation. We draw your attention to the following publically available medical trial studying the effectiveness of cranberry capsules in the prevention of urinary tract infections (UTI) in older persons: <https://www.ncbi.nlm.nih.gov/pubmed/25180378>\*\* One conclusion of this study was that taking cranberry capsules twice daily reduces the incidence of clinically defined UTI.

(\*\* abstract attached)

Other studies in relation to cranberry related products can be provided if of interest to the Complaints Board.

## 2. Complaint regarding the use of the words 'Pharmacy Strength'

<sup>1</sup> ANZCA, TAPS Guidelines (July 2016) at p 3.

We do not agree that the use of the words 'Pharmacy Strength' breaches the Code and do not think that the Complaint has provided sufficient grounds or information to suggest otherwise. This is clearly a different view to that expressed in some of the materials attached to the Complaint however we consider that it is just that – a difference of opinion – and not a breach of the Code.

By way of background, the Product is part of Red Seal's Pharmacy Strength range. The term Pharmacy Strength was chosen as the tagline for the range in order to invite consumers to draw the inference that its supplements are:

- comparable to supplements available in pharmacies on the basis of their potency/complexity;
- premium supplements (in comparison with competitors' supplements – as well as its own base range – available in supermarkets); and
- available at supermarket prices, as opposed to pharmacy prices.

With respect to any concerns that Pharmacy Strength could be read by consumers to imply that these supplements are a pharmacy-only medicines or that they have a potency equivalent with prescription products, we do not believe that "reasonably careful consumers"<sup>2</sup> of dietary supplements would reach such conclusions. Indeed, if customers are misled by this statement, it must also be the case that customers are misled by any dietary supplement stocked in a pharmacy as customers may not appreciate that such products are not medicines. This is plainly not the case.

### 3. 'Folk knowledge'

In our view, the Complaint has not set out how any wording on the Product exploits the 'folk-knowledge' referred to – we also note that the report attached is regarding cranberry fruit and cranberry juice (not cranberry products such as the Product in question). We are happy to address this matter further should the ASA wish to pursue this.

We trust this is satisfactory to the Complaints Board. Please let us know if you require any further information.

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<sup>2</sup> *Godfrey Hirst NZ Limited v Cavalier Bremworth Limited* CA564/2013 [2014] NZCA 418 (27 August 2014), at [53].