

COMPLAINT NUMBER	18/023
COMPLAINANT	R. Tomes
ADVERTISER	Body Magnetix
ADVERTISEMENT	Body Magnetix, Digital Marketing
DATE OF MEETING	27 March 2018
OUTCOME	Upheld

SUMMARY

The Body Magnetix website advertisement, www.bodymagnetix.co.nz, promotes a range of magnetic products including a Pure Copper Cuff Bracelet with magnets, a Cotton Quilted Magne-Sleep, Magne-Flex Bracelet, Magne-Dots and Biomagnetic shoe inserts. The website includes the benefits these products provide and a FAQ section which further explains the practice of Magnetic Therapy.

The Complainant quoted 10 examples of potential breaches of the Therapeutic and Health Advertising Code and said the advertisement made misleading and unsubstantiated efficacy, health and medical claims about the products promoted on the website.

The Advertiser said it had a 20 year history of manufacturing and marketing its products and takes an ethical approach, not making exaggerated claims to heal or cure. The Advertiser said the bulk of the wording had been vetted by TAPS and believes the website content to be truth, balanced and not misleading. The Advertiser referenced its document 'Healing With Magnets' which it said discounts the Complainant's concerns.

The Complaints Board confirmed a device must be a listed Medical Device on the Medsafe WAND database in order for the Advertiser to make therapeutic claims in an advertisement. It had not received any confirmation from the Advertiser its products were WAND listed. The Complaints Board said the advertisement made numerous therapeutic claims using absolute statements about a range of products throughout the website.

The Complaints Board agreed the Advertiser had not provided sufficient substantiation to support the claims made in the advertisement.

The Complaints Board ruled the website advertisement was in breach of Principles 1 and 2, and Guideline 2(a) of the Therapeutic and Health Advertising Code.

The Complaints Board ruled the complaint was Upheld.

[Advertisement to be removed]

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

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Principles 1 and 2 and Rule 2 (a) of the Therapeutic and Health Advertising Code. This required the Complaints Board to consider whether the advertisement was truthful, balanced, misleading or likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear, whether by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole. Statements and claims should be valid and able to be substantiated. Substantiation should exist prior to a claim being made and any therapeutic claims must be consistent with the listed intended purpose for medical devices. The Complaints Board was also required to consider whether the advertisement had been prepared with a high standard of social responsibility, particularly as consumers often rely on such products, devices and services for their health and wellbeing.

The Complaints Board ruled the complaint was Upheld.

The Complaint

The Complainant quoted 10 examples of potential breaches of the Therapeutic and Health Advertising Code stating the advertisement made misleading and unsubstantiated efficacy, health and medical claims about the products promoted on its website.

The Advertiser's Response

The Advertiser provided two responses to the complaint. The Advertiser said it had a 20 year history of manufacturing and marketing its products and takes an ethical approach, not making exaggerated claims to heal or cure. The Advertiser said it receives regular affirmations on its product's performance.

The Advertiser said the bulk of the wording had been vetted by the Therapeutic Advertising Pre-vetting Service (TAPS) and believes the website content to be truth, balanced and not misleading. The Advertiser referenced its document 'Healing With Magnets' which it said discounts the Complainant's concerns. The Advertiser said it does not make categoric claims.

The Complaints Board Discussion

The Complaints Board reviewed the advertisement, the complaint and the responses from the Advertiser.

Precedent

The Complaints Board noted a precedent Decision 15/173 which was not upheld by the Complaints Board. In the 2015 decision the Complaints Board agreed the claims made about the Magne-Sleep underlay by the same advertiser did not meet the threshold to breach the Therapeutic Products Advertising Code due to the fact it did not make absolute claims and said in part...

"The Complaints Board turned to the response from the Advertiser and noted its view that it contained "no direct claims, no cures, no exaggerations." It noted the Advertiser said the website uses careful wording such as "can help" rather than absolute claims. Further, the Advertiser said it believes "customer expectation is not compromised beyond what we suggest our products can deliver and our 90 Day Moneyback Guarantee, detailed on our website, is further assurance to that."

The Complaints Board turned to consider the claims in the advertisement. It noted where it said Magne-Sleep "is all about helping you wake up to a painfree day. We'll

help you be at your best..." The Complaints Board was of the view the word "helping" worked to soften the claim and was of the view the likely consumer takeout was that the statement was aspirational in nature and referred to the aim of the Advertiser, not the efficacy of the product.

Therefore, the Complaints Board said the statement was unlikely to mislead consumers and did not unduly glamorise the product being advertised."

The Complaints Board confirmed that since the 2015 decision, a new Therapeutic and Health Advertising Code had been introduced and this code applied to the complaint before it. It also noted that the advertising subject to complaint included statements with absolute claims, which distinguished it from Decision 15/173.

Turning to the complaint before it, the Complaints Board began by discussing whether the products listed in the advertisement were medical devices. The Complaints Board confirmed a device must be a listed Medical Device on the Medsafe WAND database in order for the Advertiser to make therapeutic claims in an advertisement. As no response was received from the Advertiser to the question of whether the products featured in the advertisement were WAND listed, the Complaints Board continued its deliberation on the assumption the products were not listed on the database.

The Complaints Board agreed the advertisement made numerous therapeutic claims, for example:

"Magnetic Therapy is an alternative medical practice using Static – unmoving – magnets to ease pain and inflammation."

Magnets project warmth to our blood vessels causing them to dilate and improve blood flow to places of injury, disease and inflammation."

"The magnets will gently increase blood circulation around the neck and shoulders to help reduce stiffness and soreness for a better, restful sleep. Can also help ease migraine pain and tinnitus discomfort."

The Complaints Board said that unlike the precedent decision 15/173, the Advertiser was making absolute statements about a detailed range of products throughout the website. Examples of such absolute statements included:

"The magnets will gently increase blood circulation", "Biomagnetic Foot Strips greatly improve blood circulation and gently stimulate the many nerve endings on the soles of your feet." and "Effective, rapid relief from muscular, joint and systemic pain."

The Complaints Board noted the Advertiser had previously consulted with the Therapeutic Advertising Pre-vetting Service (TAPS), however there was no evidence provided that wording on the current website had been approved by TAPS.

Given the absolute claims being made in the advertisement, the Complaints Board said robust substantiation was required from the Advertiser to adequately support such claims.

However, the Complaints Board noted the paper the Advertiser referred the Complaints Board to for substantiation, 'Healing With Magnets', had been written and published by the Advertiser, which the Board said represented a bias which could not be considered as objective substantiation. The Complaints Board agreed the Advertiser had not provided sufficient substantiation to support the claims made in the advertisement.

The Complaints Board was unanimous in its view the advertisement was likely to mislead or confuse consumers and had not been prepared with the requisite sense of social

responsibility. The Complaints Board ruled the advertisement was in breach of Principles 1and 2, and Guideline 2(a) of the Therapeutic and Health Advertising Code.

Accordingly, the Complaints Board ruled the complaint was Upheld.

DESCRIPTION OF ADVERTISEMENT

The Body Magnetix website advertisement, www.bodymagnetix.co.nz, promotes a range of magnetic products including a Pure Copper Cuff Bracelet with magnets, a pure Cotton Quilted Magne-Sleep, Magne-Flex Braclet, Magne-Dots and Biomagnetic Shoe inserts. The website has descriptions on the benefits these products provide and a FAQ section further explaining about Magnetic Therapy.

COMPLAINT FROM R TOMES

I would like to lay a complaint against Nick Launder & Mary Launder, the advertisers and operators of the New Zealand website: <https://bodymagnetix.co.nz/>

Contrary to Therapeutic and Health Advertising Code Guideline 2(a), and Principle 2, the advertiser makes many unsubstantiated health and medical claims, and is misleading in their claims of efficacy.

Example 1: <https://bodymagnetix.co.nz/frequently-asked-questions/>

“Magnetic Therapy is an alternative medical practice using Static – unmoving – magnets to ease pain and inflammation. Magnets improve circulation allowing blood vessels to dilate and bring better blood flow to the injured areas of your body. Better blood flow helps to bring in the natural healers and to remove the toxic by-products of inflammation. Thus pain and inflammation is diminished.”

Advertiser has made many unsubstantiated claims here, in particular: “Magnets improve circulation”. This is contrary to Therapeutic and Health Advertising Code Guideline 2(a).

Example 2: <https://bodymagnetix.co.nz/product/pure-cotton-quilted-magne-sleep/>

“Magnets project warmth to your blood vessels causing them to dilate and improve blood flow to places of injury, disease and inflammation.”

Advertiser has made many unsubstantiated claims here, in particular: “Magnets project warmth to your blood vessels”. This is contrary to Therapeutic and Health Advertising Code Guideline 2(a).

Example 3: <https://bodymagnetix.co.nz/product/lambswool-magnetic-pillow-covertravel-pad-large/>

“Magnets will gently increase blood flow to places of inflammation and injury and encourage healing to ease pain and joint stiffness.” and “The magnets will gently increase blood circulation around the neck and shoulders to help reduce stiffness and soreness for a better, restful, sleep. Can also help ease migraine pain and tinnitus discomfort.”

Advertiser has made multiple unsubstantiated factual and medical claims, in particular: “The magnets will gently increase blood circulation” and “Can also help ease migraine pain and tinnitus discomfort”. These are contrary to Therapeutic and Health Advertising Code Guideline 2(a).

Example 4: <https://bodymagnetix.co.nz/product/magnetic-cotton-quilted-pillow-pad-small/>

“Magne-Pad provides gentle magnetic therapy to ease stiffness and discomfort in your neck and shoulders while you sleep.”

Advertiser has made an unsubstantiated claim, in particular the claim that the device can “ease stiffness and discomfort” by means of “gentle magnetic therapy”. This is contrary to Therapeutic and Health Advertising Code Guideline 2(a).

Example 5: <https://bodymagnetix.co.nz/product/pure-lambswool-magne-sleep/>

“Magnets project warmth to the blood vessels causing them to dilate and deliver better blood flow to places of injury, disease and inflammation. Improved blood flow allows your natural

body healers to loosen and remove toxins and stimulate tissue healing. Pain and inflammation are then reduced so you can enjoy better, more restful, healing sleep.”

Advertiser has made unsubstantiated factual and medical claims, in particular, the same claim as earlier: “Magnets project warmth to the blood vessels”. This is contrary to Therapeutic and Health Advertising Code Guideline 2(a).

Example 6: <https://bodymagnetix.co.nz/product/magnetic-pet-beds/>

“Our Magnetic Pet Beds can bring rapid pain relief to your much-loved pet”

Advertiser has made an unsubstantiated claim. This is contrary to Therapeutic and Health Advertising Code Guideline 2(a).

Example 7: <https://bodymagnetix.co.nz/product/copper-cuff-bracelet/>

“The natural properties of Pure Copper can provide pain relief to joints and muscles by drawing toxins from your body.” and “The addition of powerful Neodymium magnets (2 per bracelet) can help enhance blood flow so Copper absorption into the body is accelerated.”

Advertiser has made multiple unsubstantiated factual and medical claims, in particular: “Copper can provide pain relief to joints and muscles by drawing toxins from your body”, and “magnets (2 per bracelet) can help enhance blood flow”. This is contrary to Therapeutic and Health Advertising Code Guideline 2(a).

Example 8: <https://bodymagnetix.co.nz/product/magne-flex-bracelet/>

“Wear your battery powered watch on the opposite wrist to Magne-Flex. The magnets may drain power from the watch battery.”

Advertiser makes an unsubstantiated (and weird) claim that: “The magnets may drain power from the watch battery”. This is contrary to Therapeutic and Health Advertising Code Guideline 2(a).

Example 9: <https://bodymagnetix.co.nz/product/biomagnetic-shoe-inserts/>

“Biomagnetic Foot Strips greatly improve blood circulation and gently stimulate the many nerve endings on the soles of your feet. Ideal for sufferers from all kinds of foot and leg pain”, “Totally natural, drug-free pain relief – all day, every day”.

Advertiser has made multiple unsubstantiated factual and medical claims, in particular that the device will: “improve blood circulation” and that it will: “stimulate the many nerve endings on the soles of your feet”. This is contrary to Therapeutic and Health Advertising Code Guideline 2(a).

Example 10: <https://bodymagnetix.co.nz/product/magne-dots/>

“Effective, rapid relief from muscular, joint and systemic pain”, and: “Magne-Dots are specialised therapeutic magnets shown to be effective in promoting rapid relief from muscular and joint aches and pains. Magne-Dots are also widely used by sportspeople to optimise muscle power and performance.”

Advertiser has made unsubstantiated factual and medical claims, in particular a strong claim that the device is “effective”, and that the device is “effective in promoting rapid relief from muscular and joint aches and pains”. This is contrary to Therapeutic and Health Advertising Code Guideline 2(a).

Almost every page on the site is filled with these unsubstantiated claims.

The advertiser states very clearly and unambiguously that “Once in place your Magne-Flex will start working”. This is a strong claim of some real effect.

Where the advertiser states quite unambiguously: “magnets improve circulation”, I would maintain that this is factually incorrect. The iron in blood is non-ferromagnetic, and unaffected by magnets and magnetism. If the iron in blood was affected and drawn about the body, as the advertiser claims, we would be hearing everyday about patients exploding inside MRI scanners!

(“The iron in hemoglobin is not ferromagnetic”, Jun 29, 2011, ‘Magnets and Blood Flow – Science-Based Medicine’, article at <https://sciencebasedmedicine.org/magnets-and-blood-flow/>) (“Iron in your body is not ferromagnetic”, ‘Does MRI attract the iron in your blood?’, article at <http://www.revisemri.com/blog/2006/mri-blood-iron-attraction/>)

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.

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.

Rule 2(a): Advertisements shall be accurate. Statements and claims shall be valid and shall be able to be substantiated. Substantiation should exist prior to a claim being made. For medicines and medical devices, therapeutic claims must be consistent with the approved indication(s) (for medicines) or the listed intended purpose (for medical devices).

RESPONSE FROM THE ADVERTISER, BODY MAGNETIX

We do not intend to undertake a point-by-point of R Tome's long list of complaints re wording on our website.

...Through the 20 years that we have been manufacturing and marketing our magnetic products we have enjoyed many robust and rewarding discussions with people who share or disagree with our opinions on the potential benefits of magnetic therapy. Had R Tomes taken the time to contact us they would have quickly learned that we avoid – and have always avoided – hard-sell tactics and, in all instances, take considerable time discussing possible benefits and problems with enquirers and purchasers.

(We have, in that time, received only one claim that our products had caused harm – from an American gentleman who somehow, had purchased one of our underlays in Hawaii (although we have never sold to anyone in that State). The list of symptoms he claimed his wife exhibited as a result of sleeping on a Magne-Sleep magnetic underlay were, when referred to a doctor, aligned to those of menopause. When informed of this, the complainant was no longer heard from.)

At all times, we take an ethical approach to our products and the selling thereof. We do not make exaggerated claims to heal or cure and always take time to discuss such issues with all those who contact us. We regularly receive comments on our informed and realistic approach to marketing our products. We also regularly receive positive affirmation of product performance.

We acknowledge R Tomes' right to opinion, as we acknowledge his right to wear a colander on their head for their Drivers License photograph and to worship at a church with satirical pastafarian (their word) beliefs. As you will know, many therapeutic products and procedures are constantly being debated within and outside medical circles, and today's fact can sometimes become tomorrow's fallacy.

We believe our communication to interested parties is fair, balanced and free of exaggeration.

FURTHER RESPONSE FROM THE ADVERTISER, BODY MAGNETIX

We have received your letter re the complaints lodged by R Tomes and our initial response. Firstly, while we acknowledge your requirement to consider any complaint you need we reiterate our earlier opinion that, in this instance, evaluation of the complainant's character

and beliefs necessarily impacts upon our response.

Before moving to specific issues, we trust that you have reviewed our website and formed an informed view as to its overall tone and the cross-referenced content therein. The great bulk of wording has been vetted by TAPS consultants (we first established our website some 20 years and undertook much discussion and development with the then TAPS adviser, Peter Pratt). At all times we have sought to achieve considered communication without resort to "hard sell" tactics or exaggerated claims. We believe our website, when all elements are taken into context, meets the requirement to be "truthful, balanced and not misleading". Of course, some people will interpret statements and explanations as they wish and wilfully state their opinions as indisputable facts. This is a perceived "right" of all, not merely Pastafarians.

A central point of our website, in its entirety, is our document "Healing With Magnets". A study of this – and it is promoted on many pages of our website - discounts most of R Tomes' concerns as it presents an informative overview of how magnetic therapy has developed, and how many studies have provided balance to discussions as to its relevance.

The point we make here is, simply, one cannot judge a book by its cover but should read it in totality to gain an informed viewpoint. "Healing With Magnets" provides this opportunity and we suggest all concerned with R Tomes' complaints should read it and see how it reinforces, expands and verifies our website messages.

We, as counselled by Peter Pratt, attempt to avoid making categoric claims and use the word "can" (as your own organisation does on its website) to emphasise qualification and an aspect of possibility. As stated in the Merriam Webster Dictionary "can" is interchangeable with "may" and/or "could". Semantics, perhaps, but very relevant when addressing R Tomes' complaints. Most importantly, we avoid the word "will" (as in "will help/cure/benefit") because we consider it too specific, too much of an over-claim.

(To take but one of R Tomes' complaints, Example 3: "can also help ease migraine pain and tinnitus ..." is, we believe, a very qualified comment and far from an exaggerated claim.)

R Tomes, we understand, holds a Bachelor of Science degree and will be well aware of the scientific world's constant evolution, along with the individual needs of many in its community to foist "proven" theories on those who hold equally "proven" but contradictory beliefs. Magnetic therapy has an established place amid alternative therapies and has many adherents around the world. The many studies we have read and the many endorsements our products have received from our customers permit us to hold the belief that, for some, magnetic therapy can/may/could be beneficial.

(On our website we publish a number of unsolicited testimonials from people in New Zealand who believe they have gained relief from use of our products. In many instances, their claims far exceed any we make ourselves on our website). Most significantly, we have found no verifiable reports of any person suffering harm from correct application (as constantly stressed on our website) of magnetic therapy.

There is little point in debating conflicting studies as this would become an endless and inconclusive chore.

We consider that any selected wording from our website must be taken within context. We acknowledge that it is our responsibility to be aware of – and work within – guidelines set by self-regulatory bodies such as yours. At the same time, we ask that complaints such as R Tomes' be considered within this overall context. A fair review may discover minor grammatical errors on our part but, overall, we believe you will find that our approach is

responsible, neither exaggerated nor misleading and generally offers a far more balanced viewpoint than any other in our sector.

As stated in our earlier response, we openly invite enquiry and comment from those who visit our website. It would have saved us all a considerable amount of time if R Tomes had taken this opportunity as we believe, if a rational discussion could ensure, that their concerns would be quickly brought to mutually accepted settlement.

We hoped the above addresses our ethical approach to our business and our long-held commitment to working within reasonable guidelines. Please contact us if you would require further information.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.