

<b>COMPLAINT NUMBER</b>	20/367
<b>AWAP</b>	20/002
<b>COMPLAINANT</b>	AFT Pharmaceuticals Ltd
<b>ADVERTISER</b>	John Appleton Associates Ltd
<b>ADVERTISEMENTS</b>	Lypo-Spheric Vitamin C, Websites and Print
<b>DATE OF MEETING</b>	24 September 2020
<b>OUTCOME</b>	Upheld in part, Settled in part and Not Upheld in part

## ADVERTISING STANDARDS AUTHORITY (ASA) COMPETITOR COMPLAINT

### SUMMARY OF DECISION

#### Description of the Advertisements

There were eight website and newspaper advertisements included in this complaint. The advertisements were for Lypo-Spheric Vitamin C dietary supplement, a product distributed by John Appleton Associates Ltd. The advertisements were as follows:

#### John Appleton website

The John Appleton website:

- Included a link to an article called “Vitamin C: Evidence, application and commentary” which included the text “If cancer does become established, evidence suggests that Vitamin C may selectively kill cancer cells via production of hydrogen peroxide, encapsulate tumours with a collagen wall to prevent metastasis, promote macrophage function and removal of cancer cells, prevent or reduce side effects from conventional treatments, relieve pain and improve quality of life” and the Abstract that reads “...there is increasing evidence showing that vitamin C has a much greater role to play in human health, particularly when supra-physiological doses are administered either orally or intravenously for patients with a wide range of conditions, including infections, cancer, cardiovascular diseases, wounds, diabetes and anaemia...” and,
- Included a photo of Lypo-Spheric Vitamin C packaging with the text “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres.<sup>1</sup>”

#### Online Retailer Websites

The Unichem Papakura website:

- Included the text “Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C” and,

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<sup>1</sup> Lypo-Spheric is a registered trademark of LivOn Labs. Liposomal is a generic term related to the way that vitamin C is delivered into the human digestive system.

- “Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximized usability as well as maximized bio-availability” and
- Included an image of the packaging for Lypo-Spheric Vitamin C with the text: “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres”

Beauty Bible website:

- Included the text: “LivOn Laboratories LypoSpheric Vitamin C is an exciting new vitamin C supplement utilizing “Smart” Liposomal Encapsulation Technology for maximum Bio-Availability” and,
- “Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C” and,

Natural Chemistry website:

- Included the text: ““Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximized usability as well as maximized bio-availability” and,
- “Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C”

Wholefoods Health website:

- Included the text: “Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C”

Return2Health website:

- Included the text: “In a recent clinical trial, Liposomal vitamin C was found to provide blood levels of vitamin C almost double those theoretically thought possible with any oral vitamin C! In addition there is evidence that this lyposomal form also aids its entry inside the cells.”

Bargain Chemist website:

- Included the text: “Lypo-Spheric Vitamin C can be used by the whole family”

The Advertiser withdrew a complaint about the West Clinic Online website, which is based in the United States.

### **Newspaper advertisement**

The New Zealand Herald one-page advertisement for Lypo-Spheric Vitamin C had an image of a packet of Lypo-Spheric Vitamin C which included the text: “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres”. The text on the advertisement said “Lypo-Spheric Vitamin C has been a family favourite in New Zealand since 2006. Get yours today from a pharmacy or health store near you or order online from the many outlets throughout the country. Read the label, take as directed.”

### **Summary of the Written Complaint**

The Complainant, AFT Pharmaceuticals Ltd, referred to the previous decision (19/247 AWAP 19002) and said the advertisements were misleading and socially irresponsible and could be harmful to vulnerable consumers, such as pregnant women and children.

The Complainant said:

- The article titled “Vitamin C: Evidence, application and commentary” could mislead uninformed and potentially vulnerable people.
- The text “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres” is misleading and unsubstantiated
- The online retailer advertisements that claim the product provides blood levels of vitamin C almost double that of other oral vitamin C’s are not substantiated, as determined in the previous decision (19/247 AWAP 19/002).
- The newspaper advertisement claim that “Lypo-Spheric Vitamin C has been a family favourite in New Zealand since 2006” is misleading, potentially harmful to vulnerable consumers, and does not observe a high standard of social responsibility. This is because the advertisement implies the product is safe for use by the whole family, including children and potentially pregnant women. However, the alcohol content of the product is not included in the advertisement.

### **Summary of the Advertiser’s Written Response**

The Advertiser, John Appleton Associates Ltd, provided the following key points in response to the complaint:

- The article called “Vitamin C: Evidence, application and commentary” is not an advertisement and is included as a link on his website because it is of significant public interest.
- The use of the term “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres” is not new. There is no quantity associated with this claim and it is not a comparative statement.
- The Hickey Study, which was considered in the previous decision (19/247 AWAP 19/002) was correct. By using a liposomal form of vitamin C it is possible to achieve much higher plasma vitamin C levels, without causing gastric distress.
- As he sells mainly to pharmacy wholesalers, the Advertiser is not aware of all the stores and websites that purchase and resell the product. The Advertiser will make contact with all the mentioned online resellers and ask them to remove all existing copy relating to Lypo-Spheric Vitamin C and replace it with the TAPS (Therapeutic Advertising Pre-vetting Service) approved copy, that will be emailed to them.
- Westclinic Online is an American site and Natural Chemistry is no longer operating
- The statement “Lypo-Spheric Vitamin C has been a family favourite in New Zealand since 2006” is true. As at September 2020 it is the number one selling Vitamin C product in pharmacies.
- Alcohol is an essential ingredient in the product and it is present at a low level. The safety of this product has never been questioned before.
- The Lypo-Spheric Vitamin C box has the text “Keep out of reach of children. Consult a healthcare practitioner before using this product if you are pregnant or breastfeeding, have a medical condition or are taking any medication.” The LivOn packaging has the statement “This product is not intended to diagnose, treat, cure or prevent any disease.”

### **Oral submissions**

At the hearing both the Complainant and the Advertiser presented oral submissions.

#### The Complainant:

- Introduced and summarised the main aspects of the complaint, as outlined in their complaint document.
- Confirmed the reference to an American website for West Clinic Online, was no longer part of their complaint.
- Noted that where online retailers use high resolution images of advertisements for the product, they have usually obtained these from the Advertiser.
- Noted the Advertiser had agreed to comply with the findings of the Panel in the previous decision (19/247 AWAP 19/002), but did not consider this had happened.

#### The Advertiser:

- Introduced and summarised the main aspects of their response to the complaint, as outlined in their response document.
- Noted that the article “Vitamin C: Evidence, application and commentary” is written by Auckland-based doctors. Vitamin C infusions are used as a complementary therapy, and are not promoted as a miracle cure.
- Noted the statement “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres” has nothing to do with the Hickey study, which came out in 2008, three years after this wording was first used on the packaging. The statement refers to the fact that liposomal technology maximises absorption of vitamin C. That is undisputed. AFT Pharmaceuticals makes a higher absorption claim on its product.
- Agreed that online advertisers obtain advertisements from his website or from him directly (if they want high resolution images).
- Said children do use Lypo-Spheric Vitamin C, but it is administered to them by adults. The sachets are not easy to open and children can find the taste unpleasant. The volume of alcohol contained in each sachet is relatively low at 0.84 ml.

### Summary of the Panel Ruling

The Panel ruled the following in respect of each of the advertisements:

- 1 The John Appleton website: Link to an article called “Vitamin C: Evidence, application and commentary.”

The Panel ruled unanimously that this aspect of the complaint was **Upheld**.

- 2 The John Appleton website: Statement that “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres.”

The Panel ruled unanimously that this aspect of the complaint was **Not Upheld**.

- 3 Online Retailer website advertisements:

The Panel ruled unanimously that the complaint about references to recent clinical trials by pharmacologist Steve Hickey, showing that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C, would have been Upheld. However, given the self-regulatory action taken by the Advertisers in replacing these advertisements with an amended, TAPS approved version, this part of the complaint was **Settled**.

The Panel ruled unanimously that the statements about how the liposomal encapsulation technology provides maximum or maximised bio-availability, absorption or usability of Vitamin C were **Not Upheld**.

4 New Zealand Herald advertisement and Bargain Chemist website:

The Panel ruled unanimously that the complaint about the New Zealand Herald advertisement with the text “Lypo-Spheric Vitamin C has been a family favourite in New Zealand since 2006” and the Bargain Chemist website advertisement with the text: “Lypo-Spheric Vitamin C can be used by the whole family” were **Not Upheld**.

**[Online retailers advertisements already removed, link to Vitamin C article on John Appleton website to be removed]**

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

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## **PANEL HEARING**

### **PROCEDURE**

The Chair ruled to deal with the matter by “adjudication with attendance of the parties (AWAP)” pursuant to Rule 3 of the Complaints Procedures of the Advertising Standards Complaints Board. This system is designed to resolve disputes between competitors, and a Panel was appointed.

### **THE PANEL**

Chair – R Anderson, Chair of the Advertising Standards Complaints Board.  
Co-Panellists – C Magee (Public Member of the Advertising Standards Complaints Board) and N Keats (Industry Member of the Advertising Standards Complaints Appeal Board).

### **THE PARTIES**

**The Complainant, AFT Pharmaceuticals Ltd:** Hartley Atkinson, CEO, AFT Pharmaceuticals and Michael Sargent, International Business Alliance Associate, AFT Pharmaceuticals (Attended via video teleconference).

**The Advertiser, John Appleton Associates Ltd:** John Appleton and Patrick Fahy (Chair of Naturel Health Alliance) (Attended via video teleconference).

### **RELEVANT CODES OF PRACTICE**

The Chair directed the Panel to consider the advertisement with reference to the following codes:

## **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.

**Rule 1 (b) Safety and effectiveness**

Advertisements shall not contain any claim, statement or implication that the products, devices or services advertised:

- are safe or that their use cannot cause harm or that they have no side effects or risks.
- are effective in all cases
- are infallible, unfailing, magical, miraculous, or that it is a certain, guaranteed or sure cure
- are likely to lead persons to believe that;
  - they are suffering from a serious ailment, or
  - harmful consequences may result from the therapeutic or health product, device or service not being used.

**Rule 1(c) Vulnerable audiences**

Advertisements should not portray unrealistic outcomes or prey on or misrepresent vulnerable audiences (e.g. sick, elderly, pregnant women, overweight people).

**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) Truthful presentation:** 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).

The Chair noted the following definitions contained in the Therapeutic and Health Advertising Code:

‘Medicine’ – Medicines are any substance or article or active ingredient that is manufactured, imported, sold, or supplied wholly or principally for administering to one or more human beings for a therapeutic purpose (see definition below for therapeutic purpose). A medicine achieves, or is likely to achieve, the principal intended action in or on the human body by pharmacological, immunological, or metabolic means.

Only medicines that have been evaluated by Medsafe and have consent to distribute may be advertised in New Zealand. The medicine(s) advertised may be available on prescription or may be purchased ‘over-the-counter’.

A product can be a medicine in three ways.

1. It is, or contains, a scheduled ingredient
2. A therapeutic claim is made on the label or in advertisements
3. It is a product with consent to distribute

Advertisers should not rely on the medicines classification schedule to determine whether or not a product is a ‘medicine with consent to distribute’ and is therefore able to be advertised.

Section 3 of the Medicines Act 1981 (Meaning of Medicine) is available here [www.legislation.govt.nz](http://www.legislation.govt.nz).

'Therapeutic Purpose'– The Medicines Act provides the following definition:

- (a) preventing, diagnosing, monitoring, alleviating, treating, curing, or compensating for, a disease, ailment, defect, or injury; or
- (b) influencing, inhibiting, or modifying a physiological process; or
- (c) testing the susceptibility of persons to a disease or ailment; or
- (d) influencing, controlling, or preventing conception; or
- (e) testing for pregnancy; or
- (f) investigating, replacing, or modifying parts of the human anatomy.

'Health Benefit'– Means any one of the following benefits:

- (a) the maintenance or promotion of health or wellness
- (b) nutritional support
- (c) vitamin or mineral supplementation
- (d) maintaining the normal structure or function of the body

According to the Code "Only medicines with consent to distribute in New Zealand and medical devices can claim to have a therapeutic purpose in advertisements".

#### **Relevant Precedent Decision**

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 19/247 AWAP 19/002, which was Settled in part and Upheld in part and Decision 20/147, which was Not Upheld.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

**Decision 19/247 AWAP 19/002** concerned a complaint about six advertisements for Lypo-Spheric Vitamin C, a product which is distributed by John Appleton Associates Ltd. The Complainant, AFT Pharmaceuticals Ltd, said the advertisements were misleading and socially irresponsible.

The Panel agreed the information in the linked website containing the Curing the Incurable by Thomas Levy MD JD book excerpt formed part of the John Appleton website advertisement because the Advertiser had control over the placement of that link. The Panel ruled the use of a healthcare professional endorsement in an advertisement did not comply with the Code. The Panel said the consumer takeout of the website advertisement was that the product was a miracle cure for serious illnesses such as polio, hepatitis, cancer and heart disease, and the Advertiser had not provided substantiation for these claims. The Panel agreed the advertisement portrayed unrealistic outcomes and preyed on vulnerable audiences, such as those suffering from cancer. The Panel also agreed that the claim that a study by S Hickey et al called "Pharmacokinetics of oral vitamin C" scientifically proved using liposome-encapsulated vitamin C could achieve plasma levels nearly twice the Vitamin C plasma levels previously thought possible, was not substantiated by the Advertiser.

A majority of the Panel agreed the television advertisement was misleading because it suggested other products were inferior imitations compared to Lypo-Spheric Vitamin C.

**Decision 20/147** concerned a newspaper advertisement for Tru Niagen dietary supplement. The Complaints Board said the advertisement was not misleading and the Advertiser had provided sufficient substantiation to support the health benefit claims made. The Complaints

Board agreed the advertisement did not make any therapeutic claims but did make a health benefit claim: that Tru Niagen supplementation supports healthy levels of NAD (nicotinamide adenine dinucleotide).

### **TAPS approval**

The Panel noted that while it is strongly recommended to Advertisers, TAPS approval is not mandatory. However, some media organisations may require TAPS approval prior to accepting an advertisement. The Panel noted that while TAPS approval will help minimise the risk of a code breach, it is not a guarantee that an advertisement will not be in breach of the ASA Codes. Substantiation of claims is the responsibility of the Advertiser and required under the relevant legislation and codes. TAPS does not independently verify the substantiation held by Advertisers and advises Advertisers that all evidence in support of any claims made in an advertisement must be held on file and be able to be produced in the event of a complaint.

## **PANEL DISCUSSION**

### **Confirmation of Complaints**

Before commencing the adjudication, the Chair confirmed that the Panel would not be considering a complaint about the West Clinic Online website, as this had been withdrawn by the Complainant. Neither would the Panel consider any complaints made by the Advertiser about the Complainant's advertisements or practises or any other Advertisers, as it did not form part of the complaint for adjudication.

### **ASA Jurisdiction on Labelling**

The Panel noted that it does not have jurisdiction to rule on labelling and packaging, except where it is visible as part of an advertisement, to the extent it may make that advertisement non-compliant with the ASA Codes.

### **Role of the Panel**

The Panel read all the relevant correspondence regarding the complaint, viewed copies of the advertisements and noted the Complainant's concerns the advertisements were misleading and socially irresponsible and could be harmful to vulnerable consumers, such as pregnant women and children.

The Panel confirmed its role was to consider the advertisements, and the claims made, from the perspective of their likely audience. In relation to any claim that required substantiation, the Panel then had to consider whether the information provided to it, when taken at face value, went far enough to substantiate the claims made in the advertisements. The Panel noted the onus to substantiate the claims in the advertisements falls on the Advertiser.

### **Advertising self-regulation**

The Panel noted that the ASA was a self-regulatory organisation funded by industry to set standards and support responsible advertising. This included codes of practice which set out standards in addition to the requirements set out in relevant legislation. The ASA Codes of Practice contain the principles by which advertisements are judged. In interpreting the Codes, emphasis is placed on the spirit and intention of the Codes.

In the spirit of self-regulation, where suitable changes to advertisements have been agreed by the Advertiser, after taking into consideration the views of the Complainant, the Panel can regard complaints as Settled. This occurs where the Advertiser has taken the equivalent action the Panel could require if the complaint was upheld.

## PANEL DECISION

The Panel considered each of the advertisements in turn, according to the relevant Codes, and made the following rulings:

### 1 The John Appleton website:

Link to an article called “Vitamin C: Evidence, application and commentary.”

#### *Preliminary Matter*

The Panel agreed the linked article was part of the advertisement and should be considered as part of this complaint. The Panel referred to precedent decision 19/247 AWAP 19/002. The following is an excerpt from that decision “The information in the linked website containing the book excerpt formed part of the advertisement because the Advertiser had control over the placement of that link.” The Panel agreed that the same reasoning applied to the linked article from the John Appleton website.

#### *Consumer Takeout*

The Panel agreed the likely consumer takeout of this part of the website advertisement was taking Vitamin C can assist with preventing and curing a number of different diseases including cancer and cardiovascular disease.

#### *Did the advertisement make any therapeutic claims?*

The Panel noted the definition of a ‘Therapeutic Purpose’ set out in the Therapeutic and Health Advertising Code. The Panel agreed the link to the article meant the advertisement did make therapeutic claims, as outlined in the consumer takeout.

#### *Did the advertisement observe a high standard of social responsibility?*

The Panel agreed the advertisement did not observe a high standard of social responsibility. This is because under the Therapeutic and Health Advertising Code only medicines with consent to distribute in New Zealand can claim to have a therapeutic purpose in advertisements. The Panel noted Lypo-Spheric Vitamin C is classified as a dietary supplement and the minimum substantiation required to support making a therapeutic claim had not been provided by the Advertiser.

The Panel noted that this part of the ruling was not intended to be an assessment of the research referred to in the article and, like the Complaints Board, the Panel is not an “arbiter of scientific fact”<sup>2</sup>.

### 2 The John Appleton website:

Photo of Lypo-Spheric Vitamin C packaging with the text “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres”

#### *Consumer Takeout*

The Panel agreed the likely consumer takeout of this part of the advertisement was liposomal technology maximises the absorption of oral Vitamin C. The Panel said the statement was not claiming the product was superior to other similar products using liposomal technology.

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<sup>2</sup> ASA Guidance Note on Responding to a Complaint about Misleading Claims, p.2

*Is the advertisement misleading?*

The Panel agreed the statement “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres” was not misleading because the Advertiser had provided sufficient substantiation to support the claim made in the advertisement.

The Panel said this claim was a lower level of claim than that made in precedent decision 19/247 AWAP 19/002, that “LivOn Labs liposome-encapsulated vitamin C “nearly doubled bioavailability” over that thought possible from studies published by the National Institutes of Health”. This meant that a lower level of substantiation was required. The Panel noted that sufficient evidence had been provided to indicate that liposomal technology generally maximised the absorption of vitamin C when compared to other oral methods of delivering vitamin C. That was not disputed by the Complainant.

3 Online Retailer website advertisements:

**Unichem Papakura website**

Statement 1:

“Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.”

*Consumer Takeout*

The Panel agreed the likely consumer takeout of this part of the advertisement was Lypo-Spheric Vitamin C makes available nearly double the amount of Vitamin C when compared to using other oral vitamin C products (the “Double Level” claim).

*Is this part of the advertisement misleading?*

The Panel agreed the Double Level claim was misleading. This is because it the Double Level claim has not been substantiated. This is the same claim that was held to be unsubstantiated in precedent decision 19/247 AWAP 19/002.

However, in light of the self-regulatory action taken by the Advertiser in requesting Unichem Papakura to remove this advertisement, and replace it with an amended, TAPS approved version, the Panel agreed this part of the complaint was Settled.

Statement 2:

“Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximized usability as well as maximized bio-availability.”

*Consumer Takeout*

The Panel agreed the likely consumer takeout of this part of the advertisement was the liposomal oral delivery system provides a high level of available Vitamin C than other oral delivery systems (the “Maximise” claim).

*Is this part of the advertisement misleading?*

The Panel agreed the Maximise claim in the advertisement was not misleading. This is because the statement refers to how liposomal technology maximises the absorption of oral Vitamin C, and this statement has been substantiated.

**Beauty Bible website:**

Statement 1:

“LivOn Laboratories LypoSpheric Vitamin C is an exciting new vitamin c supplement utilizing “Smart” Liposomal Encapsulation Technology for maximum Bio-Availability.”

*Is the advertisement misleading?*

The Panel agreed this part of the advertisement was not misleading. This is because the statement refers to the ‘Maximise’ claim, which has been substantiated.

Statement 2:

“Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.”

*Is the advertisement misleading?*

The Panel agreed this part of the advertisement was misleading. This is because the advertisement makes the ‘Double Level’ claim, which the Advertiser has not substantiated.

However, in light of the self-regulatory action taken by the Advertiser in persuading Unichem Papakura to remove this advertisement, and replace it with an amended, TAPS approved version, the Panel agreed this part of the complaint was Settled.

**Natural Chemistry website:**

Statement 1:

“Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximized usability as well as maximized bio-availability.”

*Is the advertisement misleading?*

The Panel agreed this part of the advertisement was not misleading. This is because the statement refers to the ‘Maximise’ claim, which has been substantiated.

Statement 2:

“Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.”

*Is the advertisement misleading?*

The Panel agreed this part of the advertisement was misleading. This is because it makes the ‘Double Level’ claim, which the Advertiser has not substantiated.

However, in light of the self-regulatory action taken by the Advertiser in persuading Unichem Papakura to remove this advertisement, and replace it with an amended, TAPS approved version, the Panel agreed this part of the complaint was Settled.

The Panel noted this website is not currently active.

**Wholefoods Health website:**

“Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of

Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.”

*Is the advertisement misleading?*

The Panel agreed the advertisement was misleading. This is because the advertisement makes claims the ‘Double Level’ claim, which the Advertiser has not substantiated.

However, in light of the self-regulatory action taken by the Advertiser in persuading Unichem Papakura to remove this advertisement, and replace it with an amended, TAPS-approved version, the Panel agreed this part of the complaint was Settled.

**Return2Health website:**

“In a recent clinical trial, Liposomal vitamin C was found to provide blood levels of vitamin C almost double those theoretically thought possible with any oral vitamin C! In addition there is evidence that this lyposomal form also aids its entry inside the cells.”

*Is the advertisement misleading?*

The Panel agreed the advertisement was misleading. This is because the advertisement makes the ‘Double Level’ claim, which the Advertiser has not substantiated.

However, in light of the self-regulatory action taken by the Advertiser in persuading Unichem Papakura to remove this advertisement, and replace it with an amended, TAPS-approved version, the Panel agreed this part of the complaint was Settled.

**Bargain Chemist website:**

“Lypo-Spheric Vitamin C can be used by the whole family”

*Did the advertisement observe a high standard of social responsibility?*

The Panel noted that the amount of alcohol in the product appeared to be relatively low at 0.84ml, despite the percentage content being around 12%. The advertisement contained the warning “Read the label, take as directed”. The Panel agreed the advertisement did observe a high standard of social responsibility. This is because it did not include any misleading statements about its safety or effectiveness and encouraged purchasers to read the label before consuming the product.

*Does the advertisement portray unrealistic outcomes or prey on or misrepresent vulnerable audiences?*

The Panel agreed the advertisement did not portray unrealistic outcomes or prey on vulnerable audiences, such as children or pregnant women.

**New Zealand Herald Newspaper advertisement –**

Statement 1:

“Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres”

*Is the advertisement misleading?*

The Panel agreed the statement “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres” was not misleading and the Advertiser had provided sufficient substantiation to support the claim made in the advertisement. The Panel said the statement was not claiming the product was superior to other similar products.

The Panel said this claim was a lower level of claim than that made in precedent decision 19/247 AWAP 19/002, that “LivOn Labs liposome-encapsulated vitamin C nearly doubled bioavailability over that thought possible from studies published by the National Institutes of Health”.

Statement 2:

“Lypo-Spheric Vitamin C has been a family favourite in New Zealand since 2006. Get yours today from a pharmacy or health store near you or order online from the many outlets throughout the country. Read the label, take as directed.”

#### *Consumer Takeout*

The Panel agreed the likely consumer takeout of this advertisement was this product is popular in the New Zealand market and can be used by children as well as adults.

The Panel noted the Advertiser had provided substantiation for the claim that the product was popular, by providing evidence of recent market sales.

*Is the advertisement in breach of Rule 1(b)?*

*Does it contain anything that implies it is safe and cannot cause harm, it is effective in all cases, it is infallible or it is likely to lead people to believe they are suffering from a serious ailment or harmful consequences may result from not using the product?*

The Panel agreed the advertisement was not in breach of Rule 1(b). The Panel said the advertisement did not imply it is safe and cannot cause harm, it is effective in all cases, it is infallible or it is likely to lead people to believe they are suffering from a serious ailment or harmful consequences may result from not using the product.

The Panel said the term “family favourite” did not mean the product is universally suitable for everyone. The Panel said the Advertiser does not have to include in the advertisement a list of the ingredients or whether the product contains alcohol. The Panel said the amount of alcohol in the product appeared to be at a relatively low level, even though the percentage content was around 12%. The advertisement includes the advice to “Read the label, take as directed.” The Panel noted that on part of the packaging not seen in the advertisement alcohol is listed as one of the ingredients in the product.

*Does the advertisement portray unrealistic outcomes or prey on or misrepresent vulnerable audiences?*

The Panel agreed the advertisement did not portray unrealistic outcomes or prey on vulnerable audiences, such as children or pregnant women because of the mandatory warning.

*Did the advertisement observe a high standard of social responsibility?*

The Panel agreed the advertisement did observe a high standard of social responsibility. This is because it did not include any misleading statements about its safety or effectiveness and did not portray unrealistic outcomes or prey on or misrepresent vulnerable audiences.

## In Summary

The Panel ruled the following in respect of each of the eight advertisements:

- 1 John Appleton website: Link to an article called “Vitamin C: Evidence, application and commentary.”  
The Panel ruled unanimously that this aspect of the complaint was **Upheld**.

- 2 The John Appleton website: Photo of Lypo-Spheric Vitamin C packaging with the text “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres”  
The Panel ruled unanimously that this aspect of the complaint was **Not Upheld**.

- 3 Unichem Papakura website:  
“Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.”  
The Panel ruled unanimously that this aspect of the complaint was **Settled**.

“Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximized usability as well as maximized bio-availability. These vitamin C filled liposomes, because of their size and composition, provide the perfect transport system”.

The Panel ruled unanimously that this aspect of the complaint was **Not Upheld**.

- 4 Beauty Bible website:  
“LivOn Laboratories LypoSpheric Vitamin C is an exciting new vitamin C supplement utilizing “Smart” Liposomal Encapsulation Technology for maximum Bio-Availability.”  
The Panel ruled unanimously that this aspect of the complaint was **Not Upheld**.

“Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.”

The Panel ruled unanimously that this aspect of the complaint was **Settled**.

- 5 Natural Chemistry website:  
“Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximized usability as well as maximized bio-availability.”  
The Panel ruled unanimously that this aspect of the complaint was **Not Upheld**.

“Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.”

The Panel ruled unanimously that this aspect of the complaint was **Settled**.

- 6 Wholefoods Health website:  
“Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of

Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.”

The Panel ruled unanimously that this aspect of the complaint was **Settled**.

- 7 Return2Health website: “In a recent clinical trial, Liposomal vitamin C was found to provide blood levels of vitamin C almost double those theoretically thought possible with any oral vitamin C! In addition there is evidence that this lyposomal form also aids its entry inside the cells.”

The Panel ruled unanimously that this aspect of the complaint was **Settled**.

- 8 Bargain Chemist website: “Lypo-Spheric Vitamin C can be used by the whole family”  
The Panel ruled unanimously that this aspect of the complaint was **Not Upheld**.

- 9 New Zealand Herald Newspaper advertisement “Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres.”

The Panel ruled unanimously that this aspect of the complaint was **Not Upheld**.

- 10 New Zealand Herald Newspaper advertisement “Lypo-Spheric Vitamin C has been a family favourite in New Zealand since 2006. Get yours today from a pharmacy or health store near you or order online from the many outlets throughout the country. Read the label, take as directed.”

The Panel ruled unanimously that this aspect of the complaint was **Not Upheld**.

**Decision:** Complaint Upheld in part, Settled in part and Not Upheld in part.

## APPENDICES

1. Description of the Advertisements
2. Complaint from AFT Pharmaceuticals Ltd
3. Response from the Advertiser, John Appleton Associates Ltd
4. Responses from Online Shopping Stores
5. Response from the Media

The decision does not include the supplementary submissions made by both parties in these appendices because of the way they were formulated and the content that was not relevant to the adjudication.

The Panel did however consider any relevant submissions made in those supplementary submissions and that has been summarised in the decision.

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### Appendix 1

#### DESCRIPTION OF THE ADVERTISEMENTS

There were nine website and newspaper advertisements for Lypo-Sheric Vitamin C Dietary Supplement, a product distributed by John Appleton Associates Ltd, included in this complaint. The advertisements were as follows:

##### Website advertisements –

The John Appleton website:

- Included a link to an article called “Vitamin C: Evidence, application and commentary” which included the text “...there is increasing evidence showing that vitamin C has a much greater role to play in human health, particularly when supra-physiological doses are administered either orally or intravenously for patients with a wide range of conditions, including infections, cancer, cardiovascular diseases, wounds, diabetes and anaemia...” and,
- Had a photo of Lypo-Spheric Vitamin C packaging with the text “Maximised Absorption Delivered via “Smart” Liposomal Nano-Spheres”

Online Retailer advertisements:

The Unichem Papakura website:

- Included the text “... LivOn Laboratories LypoSpheric Vitamin C is an exciting new vitamin c supplement utilizing “Smart” Liposomal Encapsulation Technology for maximum Bio-Availability. Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C” and,
- “Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximized usability as well as maximized bio-availability.”

Beauty Bible website:

- Included the text: “LivOn Laboratories LypoSpheric Vitamin C is an exciting new vitamin c supplement utilizing “Smart” Liposomal Encapsulation Technology for maximum Bio-Availability” and,
- “Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C” and,

Natural Chemistry website:

- Included the text: ““Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximized usability as well as maximized bio-availability” and,
- “Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C”

Wholefoods Health website:

- Included the text: “Recent clinical trials by world renowned vitamin C expert and pharmacologist Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C”

Return2Health website:

- Included the text: “In a recent clinical trial, Liposomal vitamin C was found to provide blood levels of vitamin C almost double those theoretically thought possible with any oral vitamin C! In addition there is evidence that this liposomal form also aids its entry inside the cells.”

Bargain Chemist website:

- Included the text: “Lypo-Spheric Vitamin C can be used by the whole family”

The Advertiser withdrew a complaint about the West Clinic Online website, which is based in the United States.

#### **Newspaper advertisement –**

The New Zealand Herald one-page advertisement for Lypo-Spheric Vitamin C had an image of a packet of Lypo-Spheric Vitamin C which included the text: ‘Maximised Absorption Delivered via “Smart” Lyposomal Nano-Spheres’. The text on the advertisement said “Lypo-Spheric Vitamin C has been a family favourite in New Zealand since 2006. Get yours today from a pharmacy or health store near you or order online from the many outlets throughout the country. Read the label, take as directed.”

## Appendix 2

### COMPLAINT FROM AFT PHARMACEUTICALS LTD

In a letter dated the 18<sup>th</sup> of July 2019 AFT raised a number of complaints regarding LivOn Lab's Lypo-Spheric Vitamin C (hereinafter the "Product") sold and distributed in New Zealand by Mr. John Appleton / Appleton Associates Ltd (hereinafter the "Advertiser"), in relation to a number of advertisements which AFT believed to contravene the Therapeutic and Health Advertising Code (hereinafter referred to as the "Code").

In response to these concerns an ASA meeting was held on September 20<sup>th</sup> 2019 (complaint number 19/247). The outcome of this meeting found that the complaints were settled in part and upheld in part and that the advertisements were removed or to be removed by the advertiser. The findings of the panel meeting can be summarised as follows:

1. **Outdoor sandwich board**

The Panel agreed the advertisement was misleading and the use of a healthcare professional endorsement did not comply with the Code.

However, in light of the self-regulatory action taken by the Advertiser in agreeing to remove the complained about text from this advertisement by placing a sticker over it, the Panel agreed this part of the complaint was Settled.

The Panel ruled unanimously that this aspect of the complaint was Settled.

2. **Pamphlet**

The Panel agreed the advertisement was misleading and the use of a healthcare professional endorsement did not comply with the Code.

However, in light of the self-regulatory action taken by the Advertiser in agreeing to remove these advertisements including destroying the pamphlets, the Panel agreed this part of the complaint was Settled.

The Panel ruled unanimously that this aspect of the complaint was Settled.

3. **Website radio advertisement**

The Panel agreed the advertisement was misleading and the use of a healthcare professional endorsement did not comply with the Code.

The Panel agreed the advertisement did not observe a high standard of social responsibility because the advertisement was misleading, and the use of a healthcare professional endorsement, from Dr Thomas Levy, did not comply with the Code.

The Panel ruled unanimously that this aspect of the complaint was Upheld.

4. **Website advertisement:** Link to excerpt from "Curing the Incurable"

The Panel agreed the advertisement was misleading and the use of a healthcare professional endorsement did not comply with the Code.

However, in light of the self-regulatory action taken by the Advertiser in agreeing to remove this part of the advertisement, by removing the link, the Panel agreed this part of the complaint was Settled.

The Panel ruled unanimously that this aspect of the complaint was Settled.

5. **Television advertisement**

A majority of the Panel agreed the comparative advertising was misleading, or likely to be misleading.

The Panel ruled by majority that this aspect of the complaint was Upheld.

6. **Website advertisement:** Link to LivOn Labs website

The Panel agreed the advertisement was misleading.

However, in light of the self-regulatory action taken by the Advertiser in agreeing to remove this part of the advertisement, by removing the link, and agreeing not to link to

similar unsubstantiated material in future advertisements, the Panel agreed this part of the complaint was Settled.

The Panel ruled unanimously that this aspect of the complaint was Settled.

In a further follow up letter dated the 4<sup>th</sup> of March 2020, AFT wrote to the Chair of the Complaints board highlighting continued infringements on the rulings despite the Advertisers agreement to take self-regulatory actions, after such infringements were highlighted to AFT by a consumer from the general public.

In spite of the unanimous agreement that the Advertiser had distributed misleading advertising in five out of the six cases presented to the panel, the Advertiser appears to have continued to produce advertisements that fly in the face of the ASA panel's findings. As a result, AFT would like to raise further complaints regarding the continued publishing of advertising materials by the Advertiser which we believe contravene the Code and ignore the previous ruling of the ASA panel. Below we raise four complaints in relation to advertisements published by the Advertiser.

### **Item 1: Link to Vitamin C: Evidence, application and commentary on the John Appleton website.**

On the John Appleton website the Advertiser provides a link to an article titled *Vitamin C: Evidence, application and commentary*. This article details a number of supposed potential benefits of vitamin C including its implications in cancer, cardiovascular diseases, diabetes and wound healing. We believe that this violates **principle 1(b) and 1(c) of the Code** regarding an implication that the Product provides a miraculous cure to a potentially vulnerable audience. For example, one excerpt from this article reads as follows:

*If cancer does become established, evidence suggests that vitamin C may selectively kill cancer cells via production of hydrogen peroxide, encapsulate tumours with a collagen wall to prevent metastasis, promote macrophage function and removal of cancer cells, prevent or reduce side effects from conventional treatments, relieve pain and improve quality of life.*

While the Advertiser does not explicitly state that his Product will have therapeutic benefits for these diseases, by providing a link to the article on his website, specifically on the page selling the Lypo-Spheric Vitamin C, and referring to the article as being informative in relation to vitamin C, we believe that there is a strong likelihood that this will mislead uninformed and potentially vulnerable members of the public. This information has been placed immediately accessible to members of the public looking to buy the Product and as such is likely to influence buying behaviour, particularly in those desperate for solutions to the life-threatening diseases referenced in the article linked on the Advertisers website.

### **Item 2: Advertisements containing Lypo-Spheric Vitamin C new packaging**

On the home page of the John Appleton website an advertisement under the title "NOW IN A NEW BOX" depicts the new packaging material used for the Lypo-Spheric Vitamin C Product (shown in Annex II A., and can further be seen in the Newspaper advertisement in Annex IV A.). On the packaging depicted [in this ad](#) one of the claims reads as follows:

*Maximised Absorption Delivered via "Smart" Lyposomal Nano-Spheres*

During the 19/247 meeting the panel addressed an advertisement (titled the website advertisement) from the Advertiser which hosted a link to a study (the Hickey study) claiming that the Product resulted in double the bioavailability of Vitamin C. The conclusions drawn from the Hickey study were flawed for a number of reasons:

- The Hickey study had a total of two (2) subjects, which is an insufficient sample size to validate such a claim.
- The highest level attained by subjects in the study was with the single 36g dose of the liposomal vitamin C, it is not then valid to compare this dose to a dose of 18g in three separate doses of 6g of traditional vitamin C.
- The direct comparison between 5g of the Product and traditional vitamin C showed no significant difference.

The panel found the advertisement to be misleading as the claims made by the advertiser were unsubstantiated. Yet in spite of this finding and the Advertiser removing this material from their website, they continue to make unsubstantiated claims the use of the term “Maximised Absorption”.

We believe that the inclusion of “Maximised Absorption” in an advertisement constitutes a violation of the Code as stating that the Product has improved absorption is unsubstantiated. AFT notes that while the ASA does not have oversight over the information included on packaging, the inclusion of this packaging in an advertisement where it is part of the advertisement and visible to consumers places it firmly under the jurisdiction of the ASA. This much was confirmed in the previous panel discussion regarding complaint number 19/247 and outlined on the final results report on page 7. The depictions of this claim, along with wording of the same in text, can be further found on online retailers (depicted in Annex II B.). Such retailers rely on companies that import products, like the Advertiser, to provide information and operate within permissible guidelines according to the principles set out by the Code.

### **Item 3: Online retailer advertisements**

AFT notes that third party online stores continue to make the claim that the Product was found to provide blood levels of vitamin C of almost double that of other oral vitamin C’s. As was stated during the ASA meeting, these claims are thought to be unsubstantiated for the following reasons:

- The total number of subjects in this study is two (2), which is insufficient to make such an emphatic claim.
- The direct comparison between 5 g Lypo-Spheric® Vitamin C and 5 g traditional form of Vitamin C does not show any statistically significant difference.
- The highest level attained by the test subjects in the study was possible with the single 36 g dose of Lypo-Spheric Vitamin C. This is not a valid comparison to 18 g (3 g x 6 times) of a traditional form of Vitamin C. The treatment groups were not comparable and hence the suggestion that somehow Lypo-Spheric® Vitamin C doubles absorption is not substantiated.

In spite of the panel finding these particular claims to be unsubstantiated and the Advertiser agreeing to request that online stores remove the reference to these claims, said claims still appear to be prevalent on a number of online retailers (note that links to such online stores can be seen in Annex III). This is not consistent with the Advertiser undertaking his agreed actions.

AFT notes now as it did then that the process of informing the retailers should have been transparent and conducted or approved by an independent body as the retailers have the right to be informed of the circumstances and the reasons for the amendment such as for example breaches of the ASA Code. Such transparency is particularly important in light of the fact that a number of online retailers are still using the unsubstantiated claims. We persist in our belief that at a minimum any such notification text should have been pre-submitted to the ASA or

any appropriate body for approval together with proof that it was actually undertaken and to check the request was actioned would be a simple activity for the Advertiser.

**Item 4: Newspaper advertisement featuring Lypo-Spheric Vitamin C**

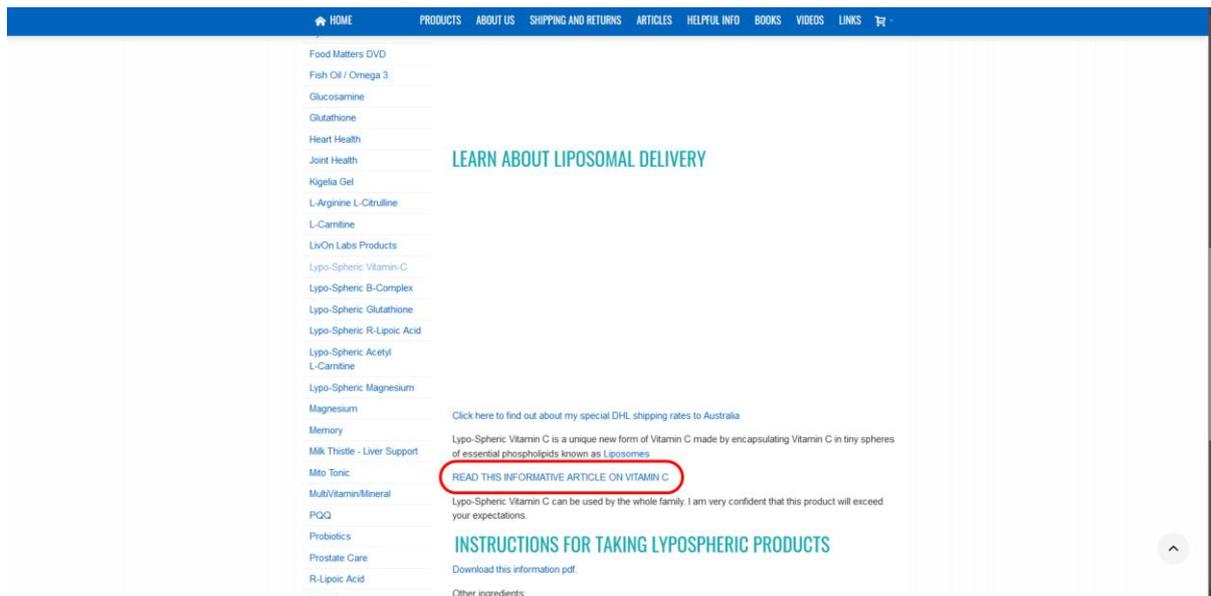
In an advertisement for the Product featured in the New Zealand herald on the 2<sup>nd</sup> of August, the advertisement contained the phrase “*Lypo-Spheric® Vitamin C has been a family favourite in New Zealand since 2006.*”. AFT believes that this advertisement (depicted in Annex IV A.) contravenes Principle 1 of the Code in that it does not observe a high standard of social responsibility as it offers the implication that the Product is safe for use by the whole family including children and potentially pregnant women.

Due to the product containing 12% v/v of alcohol, the use of this wording will mislead consumers who will believe that it is safe for use by their family, particularly in light of the removal of the level of the alcohol content from both the primary and secondary packaging (see Annex IV B.) and its absence in its entirety from this advertisement. The volume content of the Alcohol can instead only be found on the John Appleton website (Annex IV C.), and cannot be seen in the newspaper advertisement at all.

While it could be argued that the wording of the Product as a family favourite does not explicitly state that the product is safe for the whole family, additional similar claims are made on the Advertiser's website with the phrase “*Lypo-Spheric Vitamin C can be used by the whole family*”, a phrase that is further repeated on the website of online retailers (both depicted in Annex IV D.), would bolster this interpretation to any member of the public that would see it.

Furthermore, while the alcohol content is listed on the Appleton website, its absence from the Product packaging, the advertisement in question and from the advertisements of online retailers which mimic the phrasing employed by the Advertiser; demonstrates that the advertisement in question could mislead or be likely to mislead consumers due to the inclusion of this text as being a family favourite. As a result, consumers for which this Product may be potentially harmful may be misled into believing that the Product is safe for their consumption. This is particularly applicable to potentially vulnerable consumers such as pregnant women and children.

# Annex I:



Note that the above link which can be found at: <https://johnappleton.co.nz/lypo-spheric-vitamin-c-386>

Leads to the article titled *Vitamin C: Evidence, application and commentary*, which is also hosted on the John Appleton website at: [https://johnappleton.co.nz/media/wysiwyg/articles/EVIDENCE\\_APPLICATION\\_AND\\_COMMENTARY.pdf](https://johnappleton.co.nz/media/wysiwyg/articles/EVIDENCE_APPLICATION_AND_COMMENTARY.pdf)

# Annex II:

A.

NZ Free Phone 0800-754-673. Phone: +64-(0)9-489-9362. Welcome to johnappleton.co.nz Online Store.



Search entire store here...

My Account Log In 

[HOME](#) [PRODUCTS](#) [ABOUT US](#) [SHIPPING AND RETURNS](#) [ARTICLES](#) [HELPFUL INFO](#) [BOOKS](#) [VIDEOS](#) [LINKS](#)

“ The voyage of discovery is not in seeking new landscapes but in having new eyes. - Marcel Proust ”

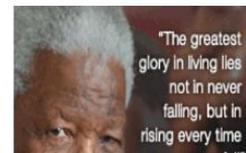
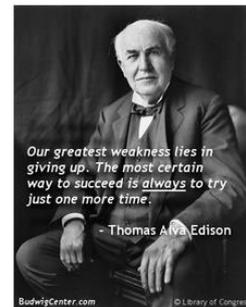
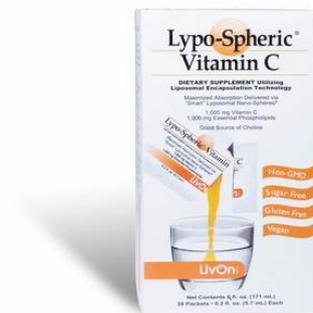
### Main Categories

- Ashwagandha for Anxiety & Stress
- Awesome Foursome
- Beta Glucan - Immune Support
- Black Seed Oil (Nigella Sativa)
- Bladder Support
- Blood Pressure
- Boswellia - Frankincense
- Brain
- CelluRex
- Coconut Oil

### LYPO-SPHERIC VITAMIN C - [Click here](#)

NOW IN A NEW BOX

CARTONS OF 12 BOXES AVAILABLE TOO



Home → Lypo-Spheric Vitamin-C → Lypo-Spheric Vitamin C

### Categories: Lypo-Spheric Vitamin-C

- Ashwagandha for Anxiety & Stress
- Awesome Foursome
- Beta Glucan - Immune Support
- Black Seed Oil (Nigella Sativa)
- Bladder Support
- Blood Pressure
- Boswellia - Frankincense
- Brain
- CelluRex
- Coconut Oil
- Coenzyme Q10
- Curcumin



Zoom

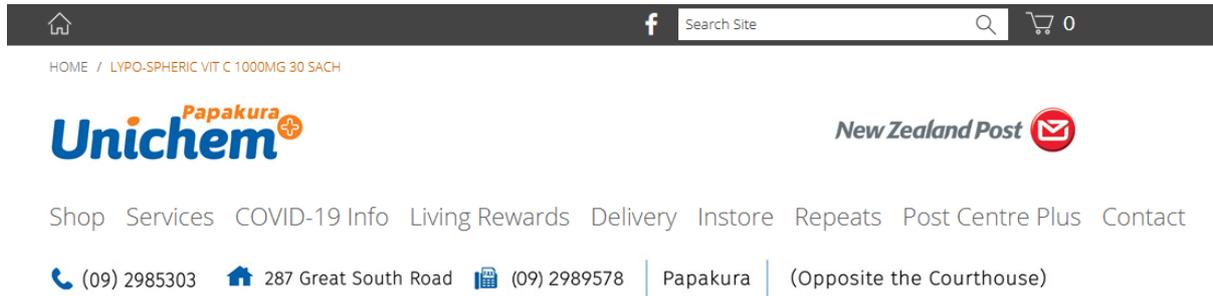


Product Description



<https://johnappleton.co.nz/> (as at 18<sup>th</sup> August 2020)

B.



## Lypo-Spheric Vit C 1000mg 30 Sach



**Lypo-Spheric Vitamin C** is many times more powerful than all other oral forms of Vitamin C. LivOn Laboratories LypoSpheric Vitamin C is an exciting new vitamin c supplement utilizing "Smart" Liposomal Encapsulation Technology for maximum Bio-Availability. Recent clinical trials by world-renowned Vitamin C expert and pharmacologist, Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.

**"Smart" Liposomal Nano-Spheres** - "Smart" Liposomal Nano-Spheres are sub-microscopic bubbles made from Essential Phospholipids and filled to the brim with liquid Vitamin C. They navigate through our digestive system and deliver a powerful load of Vitamin C straight to the parts of the body that need it most. This unique delivery system eliminates supplement degradation by free radicals, enzymes, digestive juices, bile salts, foods or other active substances. As a result, individuals may see a dramatic increase in the amount of the supplement actually usable by the body. Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximised usability as well as maximised bio-availability. These Vitamin C filled liposomes, because of their size and composition, provide the perfect transport system.

NZ\$64.99

**NZ\$59.99**

Quantity

1

ADD TO CART

ENQUIRE

<https://www.unichempapakura.co.nz/lypo-spheric-vit-c-1000mg-30-sach> (as at 18<sup>th</sup> August 2020)

## Annex III

<https://www.unichempapakura.co.nz/lypo-spheric-vit-c-1000mg-30-sach>

### Lypo-Spheric Vit C 1000mg 30 Sach



**Lypo-Spheric Vitamin C** is many times more powerful than all other oral forms of Vitamin C. LivOn Laboratories LypoSpheric Vitamin C is an exciting new vitamin c supplement utilizing "Smart" Liposomal Encapsulation Technology for maximum Bio-Availability. Recent clinical trials by world-renowned Vitamin C expert and pharmacologist, Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.

**"Smart" Liposomal Nano-Spheres** - "Smart" Liposomal Nano-Spheres are sub-microscopic bubbles made from Essential Phospholipids and filled to the brim with liquid Vitamin C. They navigate through our digestive system and deliver a powerful load of Vitamin C straight to the parts of the body that need it most. This unique delivery system eliminates supplement degradation by free radicals, enzymes, digestive juices, bile salts, foods or other active substances. As a result, individuals may see a dramatic increase in the amount of the supplement actually usable by the body. Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximised usability as well as maximised bio-availability. These Vitamin C filled liposomes, because of their size and composition, provide the perfect transport system.

NZ\$64.99

**NZ\$59.99**

Quantity

1 ▼ ▲

ADD TO CART

ENQUIRE

Note that featured on the next page is a zoomed in image of the package artwork which can be seen when a user clicks on the featured artwork above.





## Lypo-Spheric Vitamin C (Lypo C)

\$47.00



Most ordinary forms of oral Vitamin C – tablets, capsules, powders, liquids and even the Vitamin C from your diet – are not processed and absorbed efficiently by your body. As a result, much of this Vitamin C is never transferred into your bloodstream and even less of it makes it into your cells where it's needed most. In fact, when you take 1,000mg or more of regular oral Vitamin C, more than half of it is digested and passed as waste by your body.\*

Until now...

Further down the same webpage:

Description
<h3>Description</h3> <ul style="list-style-type: none"><li>• <b>Encapsulating Vitamin C in Essential Phospholipids Gives Your Body a Powerful 1 – 2 Punch.</b> You get the benefits of Vitamin C and help satisfy the body's ever-growing need for essential phospholipids including Phosphatidylcholine (PC). PC is one of the most important phospholipids required for many vital functions in maintaining a healthy cardiovascular, reproductive, immune, and nervous system.**These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.<sup>1</sup> A recent clinical trial by world-renowned vitamin C expert and pharmacologist, Steve Hickey, PhD, shows that Liposomal Vitamin C is able to produce serum levels of vitamin C nearly double those thought theoretically possible with any oral form of vitamin C. This astounding level of bioavailability not only dramatically increases the amount of vitamin C in the blood, but recent thermographic microscopy provides visible evidence that it also aids its entry into individual cells.</li></ul>



## Lypo-Spheric Vitamin C 30 Sachets

**\$59.99**

ADD TO CART

BUY IT NOW

*Lypo-Spheric Vitamin C is many times more powerful than all other oral forms of Vitamin C*

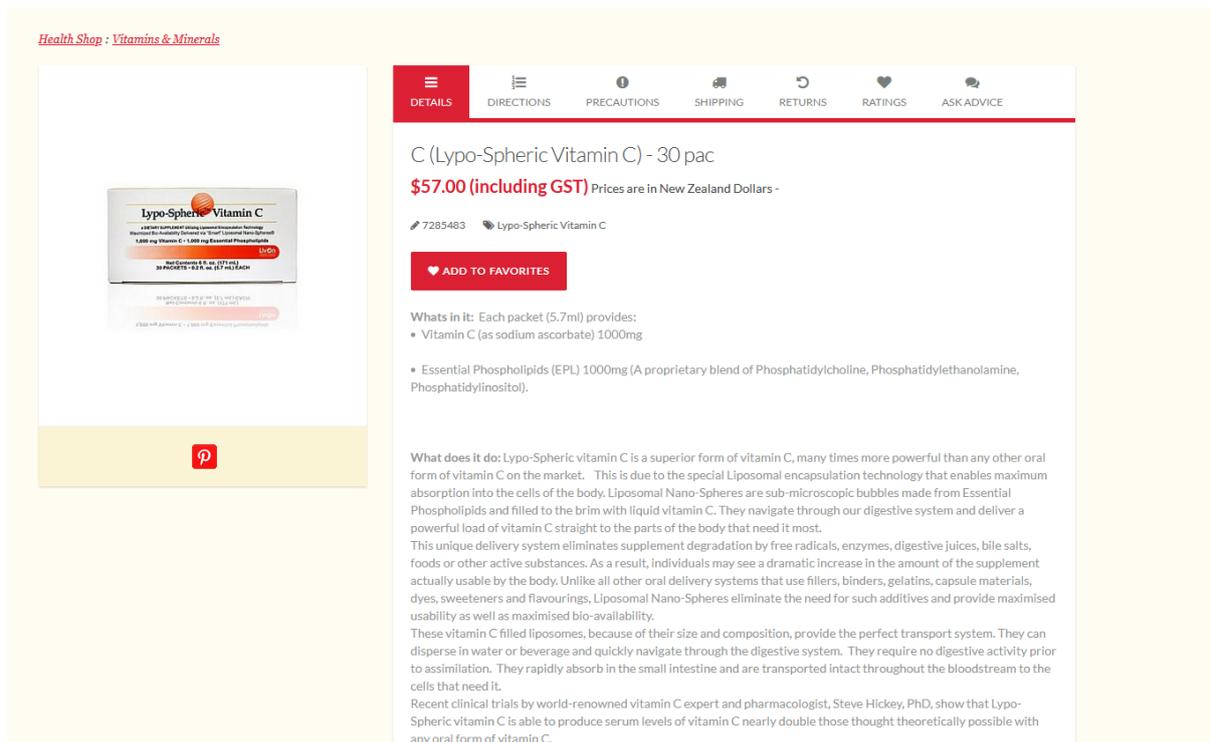
**LivOn Laboratories LypoSpheric Vitamin C** is an exciting new vitamin C supplement utilizing Smart Liposomal Encapsulation Technology for maximum Bio-Availability.

Recent clinical trials by world-renowned Vitamin C expert and pharmacologist, Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.

<http://www.naturalchemistry.co.nz/health-shop/vitamins-minerals/lypo-spheric-vitamin-c>

Since retrieval of this link on the 18<sup>th</sup> of August, the domain on which it existed (<http://www.naturalchemistry.co.nz>) appears to have gone down. However, using an internet archive (the waybackmachine) the previously featured advertisement has been included in here for the sake of completeness. It should be noted that this archival copy is dated the 29<sup>th</sup> of Jan 2020, and should be further noted that as of the 24<sup>th</sup> of August 2020 that the site in question (<http://www.naturalchemistry.co.nz>) is not currently active.

<https://web.archive.org/web/20200129170153/http://www.naturalchemistry.co.nz/health-shop/vitamins-minerals/lypo-spheric-vitamin-c>



*Health Shop : Vitamins & Minerals*

**C (Lypo-Spheric Vitamin C) - 30 pac**  
**\$57.00 (including GST)** Prices are in New Zealand Dollars -

7285483 Lypo-Spheric Vitamin C

**ADD TO FAVORITES**

**Whats in it:** Each packet (5.7ml) provides:

- Vitamin C (as sodium ascorbate) 1000mg
- Essential Phospholipids (EPL) 1000mg (A proprietary blend of Phosphatidylcholine, Phosphatidylethanolamine, Phosphatidylinositol).

**What does it do:** Lypo-Spheric vitamin C is a superior form of vitamin C, many times more powerful than any other oral form of vitamin C on the market. This is due to the special Liposomal encapsulation technology that enables maximum absorption into the cells of the body. Liposomal Nano-Spheres are sub-microscopic bubbles made from Essential Phospholipids and filled to the brim with liquid vitamin C. They navigate through our digestive system and deliver a powerful load of vitamin C straight to the parts of the body that need it most.

This unique delivery system eliminates supplement degradation by free radicals, enzymes, digestive juices, bile salts, foods or other active substances. As a result, individuals may see a dramatic increase in the amount of the supplement actually usable by the body. Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximised usability as well as maximised bio-availability.

These vitamin C filled liposomes, because of their size and composition, provide the perfect transport system. They can disperse in water or beverage and quickly navigate through the digestive system. They require no digestive activity prior to assimilation. They rapidly absorb in the small intestine and are transported intact throughout the bloodstream to the cells that need it.

Recent clinical trials by world-renowned vitamin C expert and pharmacologist, Steve Hickey, PhD, show that Lyo-Spheric vitamin C is able to produce serum levels of vitamin C nearly double those thought theoretically possible with any oral form of vitamin C.

Note that below presents an enlarged representation of the above advertisement

**What does it do:** Lypo-Spheric vitamin C is a superior form of vitamin C, many times more powerful than any other oral form of vitamin C on the market. This is due to the special Liposomal encapsulation technology that enables maximum absorption into the cells of the body. Liposomal Nano-Spheres are sub-microscopic bubbles made from Essential Phospholipids and filled to the brim with liquid vitamin C. They navigate through our digestive system and deliver a powerful load of vitamin C straight to the parts of the body that need it most.

This unique delivery system eliminates supplement degradation by free radicals, enzymes, digestive juices, bile salts, foods or other active substances. As a result, individuals may see a dramatic increase in the amount of the supplement actually usable by the body. Unlike all other oral delivery systems that use fillers, binders, gelatins, capsule materials, dyes, sweeteners and flavourings, Liposomal Nano-Spheres eliminate the need for such additives and provide maximised usability as well as maximised bio-availability.

These vitamin C filled liposomes, because of their size and composition, provide the perfect transport system. They can disperse in water or beverage and quickly navigate through the digestive system. They require no digestive activity prior to assimilation. They rapidly absorb in the small intestine and are transported intact throughout the bloodstream to the cells that need it.

Recent clinical trials by world-renowned vitamin C expert and pharmacologist, Steve Hickey, PhD, show that Lyo-Spheric vitamin C is able to produce serum levels of vitamin C nearly double those thought theoretically possible with any oral form of vitamin C.



LiveOn Labs

### Lypo-Spheric Vit C 1000mg 30 pack

\$56.95

Qty

— 1 — +

Add to Cart

- **Lypo-Spheric Vitamin C** is many times more powerful than all other oral forms of Vitamin C. LivOn Laboratories Lypospheric Vitamin C is an exciting new vitamin c supplement utilizing "Smart" Liposomal Encapsulation Technology for maximum Bio-Availability. Recent clinical trials by world-renowned Vitamin C expert and pharmacologist, Steve Hickey, PhD, show that Lypo-Spheric Vitamin C is able to produce serum levels of Vitamin C nearly double those thought theoretically possible with any oral form of Vitamin C.

**"Smart" Liposomal Nano-Spheres** - "Smart" Liposomal Nano-Spheres are sub-microscopic bubbles made from Essential Phospholipids and filled to the brim with liquid Vitamin C. They navigate through our digestive system and deliver a powerful load of Vitamin C straight to the parts of the body that need it most. This unique delivery system eliminates supplement degradation by free radicals, enzymes, digestive juices, bile salts, foods or other active substances. As a result, individuals may see a dramatic increase in the amount of the supplement actually usable by the body. Unlike all other oral delivery systems that

**return2health**  
brands and people you can trust

Search entire store here...

Cart

Home / Supplements / Liposomal Products / Lypo-Spheric Vitamin C

## Lypo-Spheric Vitamin C

by Livon Labs

77 Review(s)

Lypo-Spheric Vitamin C maximises the bioavailability and delivery of vitamin C to the bloodstream and inside each and every cell in the body.

*In a recent clinical trial, **Liposomal Vitamin C** was found to provide blood levels of vitamin C almost **double** those theoretically thought possible with any oral vitamin C! In addition there is evidence that this **liposomal form also aids its entry inside the cells.***

Ask a question

Availability: **IN STOCK**

Product Name	Price	Qty
30 Sachets	<del>NZ\$67.25</del> <b>Special Price NZ\$58.05</b> Buy 4 for NZ\$55.20 each and save 5%	0

Add to Cart

[Add to Wishlist](#)
[Add to Compare](#)
[Email to a Friend](#)

### Related Categories

- Antioxidants (96)
- Immunity (122)
- Liposomal Products (19)
- Liposomal Vitamin C (3)
- Phospholipids (26)
- Vitamins (148)
- Vitamin C (21)

Note that below presents an enlarged representation of the above advertisement

Lypo-Spheric Vitamin C maximises the bioavailability and delivery of vitamin C to the bloodstream and inside each and every cell in the body.

*In a recent clinical trial, **Liposomal Vitamin C** was found to provide blood levels of vitamin C almost **double** those theoretically thought possible with any oral vitamin C! In addition there is evidence that this **liposomal form also aids its entry inside the cells.***

## Annex IV

A.

# LYPO-SPHERIC® VITAMIN C

It's winter in  
New Zealand and  
we all know what  
that means.

During the cooler  
months it's more  
important than ever  
that we look after  
ourselves.

Lypo-Spheric®  
Vitamin C has been a  
family favourite in New  
Zealand since 2006.

Get yours today from  
a pharmacy or health  
store near you or order  
online from the many  
outlets throughout the  
country



Read the label,  
take as directed.



Now  
available at



Appleton Associates Limited Auckland - Enquiries 0800-754-673

B.

### Supplement Facts

Serving Size: 1 Packet (5.7 mL)  
Servings Per Container: 30

Amount Per Serving	% Daily Value*
<b>Calories 10</b> Calories from Fat 10	
<b>Fat</b> 1 gram	1.5%
Saturated Fat 0 grams	0%
Trans Fat 0 grams	†
Vitamin C (as sodium ascorbate) 1,000 mg	1,666%
Sodium (as sodium ascorbate) 120 mg	5%
Essential Phospholipids 1,000 mg (from soy lecithin)	†
Phosphatidylcholine (PC) 500 mg	†

\*Percent Daily Values are based on a 2,000 calorie diet.  
† Daily Value not established.

Other ingredients: Deionized Water, Alcohol 12% v/v (as a natural preservative), Xanthan Gum, Citric Acid (for pH adjustment)

This product formulation contains no genetically modified organisms (GMOs), no sugar, no starch, no artificial flavors, no artificial colors, no meat products, no dairy products, no wheat, no gluten, and no yeast.

**Distributed by**  
**LivOn Laboratories**  
2654 W. Horizon Ridge Pkwy • Suite B5-108  
Henderson, NV 89052  
**Phone: 1-866-790-2107**  
[www.LivOnLabs.com](http://www.LivOnLabs.com)

Made in the USA

**Keep out of Reach of Children. If you are pregnant or breastfeeding, consult a healthcare practitioner before using this product.**

**Store in a cool, dry place.** Do not freeze or place the product in direct sunlight for extended periods of time.

**Note:** Packets may expand as latent air from the filling process tends to expand over time. This does not affect the quality of the product.

ii) Product 2017 Packaging

### Supplement Facts

Serving Size 1 Packet (5.7 mL)  
Servings Per Container 30

	Amount Per Serving	% Daily Value
<b>Calories</b>	15	
Total Fat	1 g	1%*
Total Carbohydrate	1 g	<1%*
Vitamin C (as sodium ascorbate)	1,000 mg	1,111%
Sodium (as sodium ascorbate)	160 mg	7%
Essential Phospholipids (from soy lecithin)	1,000 mg	†
Phosphatidylcholine (PC)	500 mg	†

\* Percent Daily Values are based on a 2,000 calorie diet.  
† Daily Value not established.

Other Ingredients: Purified Water, Alcohol (preservative), Citric Acid.

**CONTAINS PHOSPHOLIPIDS DERIVED FROM SOY**

**Distributed by**  
**LivOn Laboratories**  
2654 W. Horizon Ridge Pkwy. • Suite B5-108  
Henderson, NV 89052  
**Phone: 1-866-790-2107**  
[www.LivOnLabs.com](http://www.LivOnLabs.com)

**Keep out of Reach of Children. Consult a healthcare practitioner before using this product if you are pregnant or breastfeeding, have a medical condition, or are taking any medication.**

**Store at room temperature.** Do not freeze or place the product in direct sunlight for extended periods of time.

**Note:** Packets may expand as latent air from the filling process tends to expand over time. This does not affect the quality of the product.

Product formulation contains no starch, no yeast, no hexane, no artificial colors or flavors.

Not a low calorie supplement.

i) Product 2018 Packaging

HOME
PRODUCTS
ABOUT US
SHIPPING AND RETURNS
ARTICLES
HELPFUL INFO
BOOKS
VIDEOS
LINKS
🛒

- [Lypo-Spheric Acetyl L-Carnitine](#)
- [Lypo-Spheric Magnesium](#)
- [Magnesium](#)
- [Memory](#)
- [Milk Thistle - Liver Support](#)
- [Mito Tonic](#)
- [MultiVitamin/Mineral](#)
- [PQQ](#)
- [Probiotics](#)
- [Prostate Care](#)
- [R-Lipoic Acid](#)
- [Skin Care](#)
- [Urinary Tract Infections - The Ultimate Combo](#)
- [Vitamin C](#)
- [Vitamin D](#)
- [Vitamin K2](#)
- [Vitamin E](#)
- [Zinc](#)

[Click here to find out about my special DHL shipping rates to Australia](#)

Lypo-Spheric Vitamin C is a unique new form of Vitamin C made by encapsulating Vitamin C in tiny spheres of essential phospholipids known as [Liposomes](#)

[READ THIS INFORMATIVE ARTICLE ON VITAMIN C](#)

Lypo-Spheric Vitamin C can be used by the whole family. I am very confident that this product will exceed your expectations.

## INSTRUCTIONS FOR TAKING LYPOSPHERIC PRODUCTS

Download this information pdf.

Other ingredients:  
Deionized water, Alcohol 12% v/v. (as a natural preservative), Xanthan Gum, Citric Acid (for PH adjustment),

This product formulation contains no sugar, no starch, no artificial flavors, no artificial colors, no meat products, no dairy products, no wheat, no gluten, and no yeast.

## HOMEMADE LIPOSOMAL VITAMIN C - is it possible?

If it were possible to make a true Liposomal product at home why would Livon Labs invest large amounts of money in R&D to ensure that their customers purchase a product that is true to label.?

<https://johnappleton.co.nz/lypo-spheric-vitamin-c/lypo-spheric-vitamin-c> (as at 18<sup>th</sup> August 2020)

D.

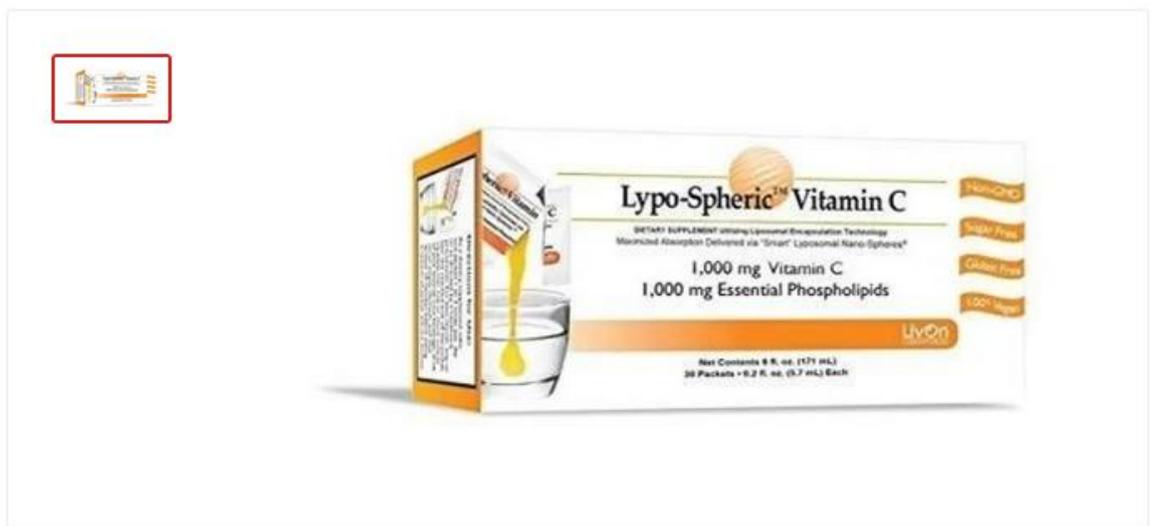
[READ THIS INFORMATIVE ARTICLE ON VITAMIN C](#)

Lypo-Spheric Vitamin C can be used by the whole family. I am very confident that this product will exceed your expectations.

<https://johnappleton.co.nz/vitamin-c/lypo-spheric-vitamin-c>

☰ Menu **BARGAIN CHEMIST**  Search...

Home > All products > Lypo-Spheric Vitamin C 1000mg 30 Sachets



## Description

Lypo-Spheric Vitamin C is a unique new form of Vitamin C made by encapsulating Vitamin C in tiny spheres of essential phospholipids known as Liposomes

Lypo-Spheric Vitamin C can be used by the whole family. I am very confident that this product will exceed your expectations.

[https://www.bargainchemist.co.nz/products/lypo-spheric-vitamin-c-1000mg-30-sachets?\\_pos=1&\\_sid=ce3a9ddf2&\\_ss=r](https://www.bargainchemist.co.nz/products/lypo-spheric-vitamin-c-1000mg-30-sachets?_pos=1&_sid=ce3a9ddf2&_ss=r)

## Appendix 3

### RESPONSE FROM ADVERTISER, JOHN APPLETON ASSOCIATES LTD

#### AFT Pharmaceuticals Limited Complaint 20/367

##### Introduction

I find it very difficult to believe that the complaints filed by AFT Pharmaceuticals Limited (hereinafter referred to as AFT) in relation to Lypo-Spheric Vitamin C are due to genuine concerns for public safety. This is the second time AFT have filed a 'competitor' complaint and as I noted last time, it seems to me that the motivation behind the AFT complaints is to harass and discredit the LivOn brand in order to achieve commercial benefit. As I see it, a publicly listed pharmaceutical company is once again using their perceived 'muscle' against a much smaller business. Last time I made mention of "corporate bullying".

It may be helpful for the 'panel' members to be aware of the fact that Lypo-Spheric Vitamin C is sold in 88 countries and in the 18 years since the product was first launched, AFT have the distinction of being the first and only competitor to respond to LivOn Labs in this way. In the U.S. where litigation is almost a way of life, LivOn work alongside approximately 70 competitors promoting products similar to the AFT product.

During my two decades in the natural health industry I have got to know many of the key players and over the years we have met regularly to discuss industry issues. It has never occurred to me that any one of these businesses would not ring to arrange a meeting to address any matters of concern. Vitaco Health Ltd, distributors of Ester C have a major stake in the industry in New Zealand. They compete alongside the LivOn brand and our relationship is mutually respectful.

Lypo-Spheric Vitamin C is a significant multinational brand. The product has been sold in New Zealand since 2006 and prior to Covid-19 it was not only the number one selling vitamin C product in New Zealand, but it was also the number one selling natural health product. I suspect that it's a concern to AFT that their product has not been able to gain the level of 'traction' in this country that they anticipated.

According to IRI pharmacy data obtained in February 2020, Lypo-Spheric Vitamin C sold 183,000 units with revenue recorded at \$6,552,178 and AFT Lipo-Sachets sold 46,891 units with revenue recorded as \$854,761. Vitaco Health Limited's Nutralife Ester C sold 124,550 units with revenue recorded at \$3,185,940. I understand that Lypo-Spheric Vitamin C as at Sept 2020 is the number one selling Vitamin C product in pharmacies.

Instead of looking inwardly and asking the question, why do New Zealanders appear to walk over broken glass to purchase the LivOn product, AFT seem to focus on harassing the opposition in the hope that this may achieve their sales objectives. That they only focus on the market leader is highly relevant.

- **Item 1: Link to Vitamin C: Evidence, application and commentary on the John Appleton website.**

I strongly disagree with the AFT allegation that this article which has been on my website for some time violates principle 1(b) and 1(c) of the code. **Vitamin C: Evidence, application and commentary** is an Original Scientific Paper published in New Zealand Family Physician.  
**ANNEX 1:**

The paper is written by a group of New Zealand General Practitioners who set out to inform their colleagues and others about the relevance of vitamin C. This paper is very much in the

public interest as it concerns the welfare and well-being of the general public. The paper is very well referenced and contains the best scientific evidence available. Many New Zealanders would not normally know where to look in order to obtain this important information. My intention with everything I do in the natural health industry is to inform and educate the New Zealand public and this is why I have included the paper on my website. I do not agree with any assertion that this paper is an advertisement.

It's important for 'panel' members to know that approx 95% of the sales of Lypo-Spheric Vitamin C in New Zealand are made through pharmacies and health stores either in store or online. This means that very few people may have an opportunity to view this important paper on vitamin C. My website is focused on a wide range of products one of which is Lypo-Spheric Vitamin C. Anyone 'landing' in the vitamin C page on my website would almost certainly be there because they had already made a decision to purchase.

- **Item 2: Advertisements containing Lypo-Spheric Vitamin C new packaging.**

There is much one could say about the AFT complaint re the packaging of Lypo-Spheric Vitamin C.

The use of the *“Maximised Absorption Delivered via ‘Smart’ Liposomal Nano-Spheres”* is not new. Clearly it has escaped the scrutiny of the AFT staff that this term has been used on packaging of Lypo-Spheric Vitamin C since the product was first launched.

There is no quantity associated with this claim and it is not a comparative statement. LivOn are not guaranteeing an absorption amount and they are not saying that they offer better absorption than other liposomal products, standard oral products, or IV administration. **ANNEX 2:**

Lypo-Spheric Vitamin C was the first Liposomal Vitamin C product to be sold commercially in the U.S. (2004). It was 2009 before another competing product was released. In order to manufacture their product, LivOn invested heavily in R&D and they employed the most senior liposome scientists in the U.S. to assist with formulation and production. For a competitor such as AFT to make the spurious claim that LivOn should not be entitled to make such a statement on their packaging is absurd and arrogant.

Liposomal delivery has been studied extensively over many years and it is widely accepted in the scientific community that liposomal encapsulation of 'actives' (e.g. vitamin C) significantly improves absorption. For AFT to say that the LivOn product is promoting an unsubstantiated claim is nonsense. LivOn in the U.S. are required to comply with strict FDA labelling regulations, and they employ senior FDA regulatory attorneys to review all of their packaging.

#### **Another competing Liposomal Vitamin C product**

I draw the attention of the 'panel' to the packaging of another product (**Lippomix**) sold widely in the New Zealand market alongside Lypo-Spheric Vitamin C and the AFT product.

#### **“Pharmaceutical Grade Liposomal**

**Pharmaceutical Grade Delivery For Optimal Absorption and Immune System Support Maximum Nutritional Delivery Through Advanced Technology”.**

This is a very significant claim.

With AFT seemingly so concerned about labelling on Lypo-Spheric Vitamin C, why are they not making a competitor complaint re this product? **ANNEX 3:**

#### **Ongoing reference to Hickey Study**

AFT persist in making reference to the so called 'Hickey' Study. The first AFT competitor complaint focused heavily on this. At the time I chose not to 'engage' re this matter because it is totally irrelevant. The Hickey Study demonstrated the US National Institutes of Health assertion that the blood plasma level of vitamin C from oral intake is limited to 220umol/L is not applicable to liposomal vitamin C.

Hickey believed that by using a liposomal form of vitamin C it would be possible to achieve much higher plasma vitamin C levels, without causing gastric distress. He was correct and his research showed that with an oral dose of 36 grams, a level of 417 umol/L could be achieved. Subjects who took a 20 gram single dose did not experience side effects such as loose stools.

I was very disappointed that the panel chose to uphold the AFT allegations re the so called 'Hickey' Study. If I had realized the extent that AFT would go to use this study to discredit Lypo-Spheric Vitamin C, I would have put a lot of energy into clarifying the science and the findings of the study.

### **AFT absorption claim**

AFT make a very significant and bold claim with their advertising. They claim that their product **Vitamin C Lipo Sachets** provides **80% higher absorption than standard vitamin C**. It's very unusual for a dietary supplement to be actively promoted with such a significant claim. I understand that three of the authors of the study referred to in support of the AFT claim are employed by the manufacturer of the AFT product. This claim has not yet been the subject of a legal challenge. **ANNEX 4:**

- **Item 3: Online retailer advertisements**

I am pleased that AFT have drawn my attention to the online retailers as listed in their complaint. I wonder why AFT included a U.S. online store in this list - **West Clinic Online?**. As noted earlier, most of the Lypo-Spheric Vitamin C sold in New Zealand is sold either in pharmacies, health food stores or their online websites. As I sell mainly to pharmacy wholesalers, I am not aware of all of the stores and online stores that purchase the product.

For Lypo-Spheric Vitamin C, I have TAPS approved 'copy' for online stores and I will be making contact with the outlets noted by AFT that are currently selling Lypo-Spheric Vitamin C, to ensure that what they are stating re the product is correct and approved. This will also provide an opportunity to provide specific training re Lypo-Spheric Vitamin C.

There is nothing more I need to add re this. It's a very simple 'fix'.

- **Item 4: Newspaper advertisement featuring Lypo-Spheric Vitamin C**

The reason for the statement in the ad is because the statement is true. The product has been a family favourite in New Zealand since 2006. **Family** is defined as a specific group of people that may be made up of partners, children, parents, aunts, uncles, cousins and grandparents. In other words, a group of people who share common ancestors.

Lypo-Spheric Vitamin C has been widely used by New Zealand families for 14 years. It's used by mothers and fathers, grandparents and aunts and uncles. Thousands of parents have given it to their children in the same way they would any other supplement or medicine i.e. under supervision. I have included two emails from customers and two emails from pharmacies. If necessary, I could obtain many more from customers and pharmacies if necessary. **ANNEX 5:**

Lypo-Spheric Vitamin C has an impeccable safety record. The product is sold in 88 countries and since it was launched in New Zealand (2006) the safety of this product has never been questioned.

Lypo-Spheric Vitamin C is sold mainly in pharmacies where advice is always available. It is not sold in supermarkets where products such as Acetaminophen can easily be purchased by young children. Lypo-Spheric Vitamin C is sold in 5.7 ml sachets which even for adults are sometimes a challenge to open.

### **Alcohol in Lypo-Spheric Vitamin C**

Alcohol is an essential ingredient in the LivOn manufacturing process in order to encapsulate vitamin C in liposomes made from essential phospholipids. Without the alcohol, the product could not be made. 12% alcohol in each sachet is equal to **0.684 of 1 ml of alcohol**. In a 5 ml teaspoon of alcohol, if **88%** of the contents were removed what is left would be approx 0.684 ml of alcohol

For a bit of context, one would have to consume 30 sachets of Lypo-Spheric Vitamin C, in order to consume the amount of alcohol in a 150 ml glass of wine. Liposomal encapsulation technology was first used by the Pharmaceutical industry in the middle of last century. This technology used alcohol to create liposomal products.

In the U.S. there is a requirement to have a '**SUPPLEMENT FACTS**' panel on product labelling and the active ingredients are listed with their amount and applicable % daily value. **Other ingredients** are not required to be listed with their amounts. Alcohol is one of the "other ingredients" in Lypo-Spheric Vitamin C because it is used in the production process in an amount that is sufficient for its dual purpose as a solvent and a preservative. **ANNEX 6:**

I have an important question that I would like to put to AFT. *If Lypo-Spheric Vitamin C, a product that has been sold in New Zealand since 2006 can rise to become the number one selling vitamin C in the country and one of the best-selling natural health products in recent pharmacy history, does AFT think that the public would continue to purchase it or thousands of pharmacy staff would continue selling it, if they had any concerns about the safety of the product?*

AFT say they have issues with the LivOn product labelling yet they haven't considered it necessary to include an industry standard **SUPPLEMENT FACTS** panel on their labelling. Apart from Vitamin C which they list as 889 mgs (111 mgs less vitamin C than in the LivOn product) there is no mention of the amount of Glycerol, or Rapeseed Lecithin or Soya Lecithin. These are important ingredients in their product as are the phospholipids in the LivOn product. **ANNEX 7:**

AFT may have overlooked some of the wording on the Lypo-Spheric Vitamin C box which is surprising because, it says (in bold font) '**Keep out of reach of children. Consult a healthcare practitioner before using this product if you are pregnant or breastfeeding, have a medical condition or are taking any medication**'. *The Livon packaging also has the statement – "This product is not intended to diagnose, treat, cure or prevent any disease"*. With all our advertising we include **Read the label take as directed**. **ANNEX 8 and 8 (b):**

### **TAPS approval**

The NZ Herald ad referred to in the AFT competitor complaint has TAPS approval and as such it should be acceptable for publication. AFT's first competitor complaint referred to a TV ad for Lypo-Spheric Vitamin C. This ad also had TAPS approval and I was extremely disappointed and concerned that ASA upheld the AFT complaint by overruling TAPS. The industry accepted standard is TAPS and all published advertising should be TAPs approved. Companies submitting advertising for TAPS approval pay a fee (usually \$150.00) and they expect that any advertising that is approved by TAPS will not be challenged.

If ASA can overrule the TAPS process, it's not helpful for the industry or TAPS and it will almost certainly create uncertainties and a reluctance to use TAPS services. If ASA has concerns about any advertising approved by TAPS, it seems to me that ASA should in the first instance take the matter up with TAPS and if necessary give them guidance on the matter in question so that future advertising can be modified. Complainants should not be able to 'score' points against a competitor with regard to TAPS approved advertising. I have a high regard for the role of ASA in the industry and I would like to see ASA work directly with TAPs so that advertisers can retain confidence in the process.

I would like to draw the attention of the panel to the fact that AFT for some reason overlooked including in their submission, a full-page Chemist Warehouse advertisement in the NZ Herald that featured the same statement. "**Lypo-Spheric Vitamin C has been a family favourite in New Zealand since 2006**". This ad also had TAPS approval.

It seems really odd to me that when AFT staff have 'trolled' the internet searching for material that they could use to discredit the LivOn product, they missed two full page Chemist Warehouse ads in the NZ Herald. I can only presume that they didn't wish to offend a very important customer? **ANNEX 9:**

### **Conclusion**

As stated in my response, I am firmly of the view that the AFT competitor complaint has little to do with concerns about public safety but a lot to do with a self-serving agenda which involves doing their utmost to improve their commercial opportunities.

- The scientific paper on my website that is referred to in the AFT complaint, is I believe of significant public interest and it has nothing at all to do with selling my product. There is no mention of my product in this paper and I do not agree that by having this article on my website that I am in breach of the Code.
- The newspaper ad featuring the statement "**Lypo-Spheric Vitamin C has been a family favourite since 2006**" is perfectly true. The product is indeed a favourite for thousands of New Zealand families. This ad has TAPS approval.
- The complaint about various websites making unacceptable advertising statements is easy to correct and I plan to do this.
- The LivOn packaging is reviewed by an FDA regulatory attorney in the US to ensure that it meets the regulatory requirements for dietary supplements.
- I have covered the matter of the alcohol in the product in detail. It's an essential part of the manufacturing process. It's worth repeating that without the alcohol, the LivOn product could not be made.

It concerns me that AFT seem to have a 'holier-than-thou' attitude to competitors and that AFT has all their 'ducks in a row'. I draw the attention of the 'panel' to the Commerce Commission warning letter of 16<sup>th</sup> August 2017 which relates to a possible breach of the 'Fair Trading Act' 1986. **ANNEX 10:**

I note that the AFT complaint letter has once again not been signed by anyone from the company. This seems to me to be very unprofessional.

## **Appendix 4**

### **RESPONSES FROM ONLINE SHOPPING STORES**

Responses were received from Return 2 Health and Unichem Papakura. (See below). West Clinic was removed from the list of online retailers by AFT Pharmaceuticals. No other responses were received.

#### **Response from Return 2 Health**

I assume they have an issue with the reference to the study.

I have removed <https://return2health.nz/liposomal-products/livon-labs-lypo-spheric-vitamin-c>

I guess the management / dispute of this is up to John appleton.

#### **Response from Unichem Papakura**

Thank you for your letter of 3 September 2020 regarding complaint 20/367 AWAP 20/002.

I confirm that:

1. On receipt of your letter Unichem Papakura immediately removed the advertising referred to in the complainant's letter of 18 August 2020, Annex III, from its website ([www.unichempapakura.co.nz](http://www.unichempapakura.co.nz) <<http://www.unichempapakura.co.nz>> );
2. Given the confirmation in para 1 Unichem Papakura will not participate in the hearing and assumes that the complaint against it will be determined and recorded as settled without any issue as to costs.

For and on behalf of Papakura Pharmacy Ltd trading as Unichem Papakura.

## Appendix 5

### RESPONSE FROM MEDIA, NZMA

#### **Re: Complaint 20/367 AWAP 20/002 – John Appleton website and newspaper advertisements**

This submission is made on behalf of NZME Publishing Limited, owner of the New Zealand Herald, in respect of LivOn Labs Lypo-Spheric Vitamin C advertisement published in the New Zealand Herald on 2 August 2020 (item 4 of the complaint, also attached as **Appendix A** for ease of reference) (the **advertisement**).

This advertisement was accepted for publication by NZME, as we did not consider the advertisement breached the ASA Codes.

As to the ASA's concerns regarding the advertisement, we note the below:

#### **1. Statement: "Lypo-Spheric Vitamin C has been a family favourite in New Zealand since 2006"**

The ASA has identified Principle 1 of the Therapeutic and Health Advertising Code (specifically Rule 1(b) Safety and Effectiveness, and Rule 1(c) Vulnerable Audiences) as potentially being relevant.

The ASA noted the potential of the above statement to be potentially misleading, unsafe, and could cause harm to vulnerable people (such as pregnant women or children).

NZME does not consider this statement implies that the product is safe for the whole family. The complaint is correct that the advertisement does not state that Lypo-Spheric is safe for the whole family. The phrase "family favourite" is quite far from "safe for the whole family", or even "can be used by the whole family".

Instead, we consider that consumer takeout is that the product has been popular in the New Zealand market since its launch in 2006. The advertisement also clearly directs the reader's attention to the words "read the label; take as directed", by placing the statement partially over the product in an orange circle. We consider that the prominence of this statement (and colours used) should bring the consumer's attention to the need to ensure that the product is suitable for them. As such, vulnerable audiences should be alerted to further check suitability of the product for them.

More widely, we note the following information (while not present in the advertisement) may form part of the consumer takeout:

- a) The product packaging notes that the product should be kept out of reach of children, and to consult a healthcare practitioner prior to using if pregnant or breastfeeding (see **Appendix B**).
- b) Further, LivOn's website (which consumers may reasonably consult, as the producer of the product) also contains a comprehensive "frequently asked questions" section. This section contains information on product safety (including information on possible interference with other dietary supplements or medications). It also expressly states the following:

Are the products safe for pregnant and/or breastfeeding women?  
While the Lypo-Spheric® products contain nutrients that are vital to a healthy mother and baby, we recommend consulting with your healthcare practitioner before consuming any Lypo-Spheric® supplements while pregnant or breastfeeding.

Are the products safe for children?

The Lypo-Spheric® products are formulated for adults. Please consult your child's physician before giving your child any Lypo-Spheric® product.

Taken together, NZME's view is that the statement that Lypo-Spheric is a "family favourite" does not imply product safety for people of all ages and circumstances.

**2. Statement: "Maximized absorption delivered via 'Smart' Liposomal Nano-Spheres"**

The ASA has identified Principle 2, Rule 2(a) (Truthful Presentation) as potentially being relevant.

ASA guidelines make clear that advertisers must hold evidence to substantiate all claims made in an advertisement.

NZME cannot speak to the research substantiating the claim as to absorption through "Liposomal Nano-Spheres". Advertisers are required to ensure they can substantiate such claims when placing advertisements with NZME. We understand the advertiser will be providing further information as to substantiating this claim.