

<b>COMPLAINT NUMBER</b>	15/463
<b>COMPLAINANT</b>	D. Ryan
<b>ADVERTISER</b>	Balanced Energy
<b>ADVERTISEMENT</b>	Balanced Energy Website
<b>DATE OF MEETING</b>	26 January 2016
<b>OUTCOME</b>	Upheld

## SUMMARY

The website advertisement by Balanced Energy ([www.balancedenergy.co.nz](http://www.balancedenergy.co.nz)) promoted Biopton Light Therapy under its section headed "healing treatments." The claims on the website included statements such as: "the Biopton polarized light machine has a profound effect on the hormonal and cellular processes of the body. The website also stated the polarised light from the device would "speed up healing time for injuries, ulcers, surgery, burns, skin problems, wounds and regenerating cells for anti-ageing."

The Complainant said there was no evidence to support the therapeutic claims made by Biopton.

The Complaints Board referred to Complaints Board Decision 15/370 and subsequent appeal (15/016). In both decisions the Complaints Board found the substantiation provided by the Manufacturer was not sufficient to support the efficacy of the device in treating the conditions stated in the advertisement.

The Complaints Board said the above Decisions were directly applicable to the complaint before it. Similarly, the Complaints Board found the substantiation provided by the Manufacturer was not sufficient to support the efficacy of the device in treating the conditions listed on the website. As such, the Complaints Board said the advertisement was likely to mislead and exploit the lack of knowledge of consumers.

Accordingly, the Complaints Board ruled to Uphold the complaint.

### **[Advertisement to be removed]**

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

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## COMPLAINTS BOARD DECISION

The Chairman directed the Complaints Board to consider the advertisement with reference to Principles 2 and 3 and Principle 3 Guideline 3(a) of the Therapeutic Services Advertising Code. This required the Complaints Board to consider whether the advertisement was likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear. The Complaints Board was also required to consider whether the claims made were factual and able to be proved and whether the advertisement observed a high standard of social responsibility particularly as consumers rely on therapeutic services for their health and well-being.

The Complainant said there was no evidence to support the therapeutic claims made by Biopton.

The Complaints Board turned to the response from the Advertiser and noted where it stated: "Balanced Energy advertise this type of treatment only on the website using information and material provided to us by Zepter International NZ Ltd which is a subsidiary of Zepter International, the manufacturer of the lamp ...Any treatment Balanced Energy choose to provide for clients is taken very seriously, and before taking it on there is usually several years studying researching and trialling any product or service before offering it on the Balanced Energy menu of treatments or for sale.

As Balanced Energy is an agent for Biopton here in New Zealand we have contacted Zepter International New Zealand, they have advised us on some changes we can make to the Balanced Energy website which will be actioned today and we believe that Zepter have provided the Advertising Standards Authority with a large amount of printed information in hard copy format regarding the research and evidence of the uses of the Biopton Lamp to review.

As a Biopton agent Balanced Energy will await further instruction from Zepter International New Zealand pending the results of the review of the information provided to the Advertising Standards Authority and will make any further changes to the website as is necessary according to their advice."

The Complaints Board then noted the response from the manufacturer, Zepter International which stated: "*For the necessary substantiation, please refer to the materials that we supplied as a part to the Appeal Process for the Complaints 15/353 and 15/370. Within these materials you'll find the information about the application and efficiency of the Biopton Light Therapy including hormonal and cellular process, immunity, fatigue, skin conditions, injuries, ulcers, surgery, burns, wounds and anti-ageing.*"

The Complaints Board noted Complaints Board Decision 15/370 was Upheld by the Complaints Board as it said the therapeutic claims made were not supported by the evidence provided by the Manufacturer. A subsequent appeal by the Manufacturer was Dismissed by the Complaints Board in Appeal Decision (15/016).

That Decision (15/016) stated, in part:

"... the Complaints Board noted that some of the studies provided did not relate to the Biopton light type, that is, they were not about polarised polychromatic incoherent low energy density light. It also said, of the evidence supplied to support the claims in the advertisement, the Distributer had not identified any specific studies or highlighted any areas which clearly referenced the claims made.

Where the evidence provided did relate to identifiable claims in the advertisement and concerned Biopton specifically, the Complaints Board said the nature of the evidence, including methodology, controls, sample sizes, age and lack of peer review, did not meet the level of substantiation expected by the Complaints Board ...

The Complaints Board also took into account the amendments to the advertisement including the removal of some claims and prefixing the list of conditions with the stipulation “can be used” to soften the claims, referred to the Biopton as a “complementary treatment” and included a disclaimer instructing consumers to consult their physician. However, in considering the varied list of indications in the advertisement subject to complaint, the Complaints Board said, overall, the likely consumer takeout was that Biopton Light therapy was effective in treating the multiple conditions identified.

As the substantiation provided was not sufficient to support the efficacy of the device in treating the conditions, the Complaints Board said the advertisement was likely to mislead and exploit the lack of knowledge of consumers.”

The Complaints Board said the above decision was directly applicable to the complaint before it insofar as the substantiation provided by the Manufacturer was not sufficient to support the efficacy of the device in treating the conditions advertised.

As such, the Complaints Board said the advertisement was likely to mislead and exploit the lack of knowledge of consumers.

Therefore, the Complaints Board found the advertisement did not observe the high standard of social responsibility to consumers and society and ruled the advertisement was in breach of Principles 2 and 3 and Guideline 3(a) of the Therapeutic Services Code.

Accordingly, the Complaints Board ruled to Uphold the complaint.

*Finally, the Complaints Board noted that the Therapeutic Advertising Pre-Vetting Service (TAPS) was a user-pays service available to all advertisers making therapeutic claims to help minimise the risk of breaching the ASA Codes of Practice as well as other industry codes and relevant legislation. Information about TAPS is available at [www.anza.co.nz](http://www.anza.co.nz). It was recommended that therapeutic advertisements use the TAPS process to help with code compliance.*

## **DESCRIPTION OF ADVERTISEMENT**

The website advertisement by Balanced Energy ([www.balancedenergy.co.nz](http://www.balancedenergy.co.nz)) promoted Biopton Light Therapy under its section headed “healing treatments.” The claims on the website included statements such as: “the Biopton polarized light machine has a profound effect on the hormonal and cellular processes of the body. The website also stated the polarised light from the device would “speed up healing time for injuries, ulcers, surgery, burns, skin problems, wounds and regenerating cells for anti-ageing.”

## **COMPLAINT FROM D. RYAN**

Balanced Energy breaks Therapeutic Services Advertising Code Principle 3 a) - therapeutic claims should be factual and able to be proved.

On their "Healing Treatments" page (<http://www.balancedenergy.co.nz/clinic-studio/menu-of-services/healing/>): "Coloured light has a profound effect on the hormonal & cellular process in the body. Using coloured light, the Biopton polarized light machine has a variety of applications including: boosting immunity, beating fatigue, healing skin conditions and assisting with sleep disorders."

On their "Health Treatments" page (<http://www.balancedenergy.co.nz/clinic-studio/menu-of-services/health-treatments/>):

"Biopton 30 min \$35 10 visit \$200

This European registered medical device uses polarised light to create the ideal environment for your body to heal quickly and efficiently. Speeding up healing time for injuries, ulcers, surgery, burns, skin problems, wounds and regenerating cells for anti aging."

The scientific literature does not show any evidence that Biopton is effective for anything and it is not a plausible system of treatment. You can read more of the peer reviewed literature and experts quotes on complaint 15/352.

## **THERAPEUTIC SERVICES ADVERTISING CODE**

**Principle 2** - Advertisements should observe a high standard of social responsibility particularly as consumers rely on therapeutic services for their health and well-being.

**Principle 3** - Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

**Guideline 3(a)** - Therapeutic claims should be factual and able to be proved.

## **RESPONSE FROM ADVERTISER, BALANCED ENERGY**

I am writing in response to the complaint against Balanced Energy with a reference of 15/463, made by D. Ryan about information on the Balanced Energy website regarding treatments provided to clients in the Balanced Energy clinic.

With regards to this complaint Balanced Energy advertise this type of treatment only on the website using information and material provided to us by Zepter International NZ Ltd which is a subsidiary of Zepter International, the manufacturer of the lamp. The device in question here, the Biopton Lamp, we understand to be a registered medical device (to European Standards) which has been in use for around 30 years internationally in both private clinics and hospitals.

Any treatment Balanced Energy choose to provide for clients is taken very seriously, and before taking it on there is usually several years studying researching and trialling any product or service before offering it on the Balanced Energy menu of treatments or for sale. With this particular device I personally researched it for around 20 years before becoming an agent for Biopton and offering this treatment to clients.

We have read and been presented with much researched information to support the uses of this lamp and its applications and the information on our website is taken from this official information provided to us by Zepter International.

I am under the understanding that D. Ryan has made several complaints to the Advertising Standards Authority about this particular treatment device.

As Balanced Energy is an agent for Biopton here in New Zealand we have contacted Zepter International New Zealand, they have advised us on some changes we can make to the Balanced Energy website which will be actioned today and we believe that Zepter have provided the Advertising Standards Authority with a large amount of printed information in hard copy format regarding the research and evidence of the uses of the Biopton Lamp to review.

As a Biopton agent Balanced Energy will await further instruction from Zepter International New Zealand pending the results of the review of the information provided to the Advertising Standards Authority and will make any further changes to the website as is necessary according to their advice.

Please find below a copy of the response that Zepter International New Zealand has sent to the Advertising Standards Authority with regards to the complaint against this information on the website for Balanced Energy.

***“Dear Alison,***

***.....In response to the subject Complaint, I have read the Balanced Energy web pages and could not find anything that is breaking principles 2, 3 or guideline 3(a) of the Advertising Code of Practice. For the necessary substantiation, please refer to the materials that we supplied as a part to the Appeal Process for the Complaints 15/353 and 15/370. Within these materials you'll find the information about the application and efficiency of the Biopton Light Therapy including hormonal and cellular process, immunity, fatigue, skin conditions, injuries, ulcers, surgery, burns, wounds and anti-ageing.***

***As a general improvement of the information provided, I have recommended to Balanced Energy to introduce to the web page a visible statement “Consult your physician to find out if BLT is recommended for your intended treatment”***

***Please advise if there is anything else that you need from Zepter for the Complaint’s Board consideration.***

***Kind regards,  
George Kondic  
Zepter International NZ Ltd***

If there is anything else that the Advertising Standards Authority needs from Balanced Energy with regards to this matter please do not hesitate to contact us on the details below and we will be happy to provide anything necessary to speed this process up and resolve this complaint as soon as possible.