

<b>COMPLAINT NUMBER</b>	19/167
<b>COMPLAINANT</b>	J Broadbent
<b>ADVERTISER</b>	Artemis
<b>ADVERTISEMENT</b>	Thyme Lemon Tonic, Flyer
<b>DATE OF MEETING</b>	11 June 2019
<b>OUTCOME</b>	Upheld Advertisement to be removed

### **Description of Advertisement**

The Artemis flyer advertisement promotes a thyme lemon tonic and says in part “a traditional plant powered tonic to support a healthy respiratory system. Artemis Thyme Lemon Tonic is based on a formulation that has a long history of protecting the respiratory tract, helping to clear chest and airways, and supporting immune health. The antiseptic and expectorant properties of thyme have been validated by over 50 scientific research studies.”

### **Summary of the Complaint from J Broadbent**

The Complainant said the advertisement was making an unsubstantiated claim about the existence of over 50 studies validating the antiseptic and expectorant properties of the Thyme Lemon Tonic.

### **Issues Raised**

- Social Responsibility
- Truthful Presentation
- Substantiation

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

The Advertiser confirmed it had received TAPS approval for the advertisement. The Advertiser said the claims made in the advertisement refer to the herb thyme and not the tonic preparation. The Advertiser said there are more than the 50 studies stated in the advertisement to validate the claim made, however they currently deemed the studies to be commercially sensitive.

### **Summary of the Complaints Board Decision**

The Complaints Board upheld the complaint about a flyer for Artemis Thyme Lemon Tonic which said: “the antiseptic and expectorant properties of thyme have been validated by over 50 scientific research studies.” The Complaints Board said the onus to substantiate claims in advertising was on the Advertiser. As substantiation for the claim was not provided, the advertisement was in breach of the Therapeutic and Health Advertising Code.

## Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following code:

### THERAPEUTIC AND HEALTH ADVERTISING CODE

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

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

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

### Complaints Board Discussion of Complaint 19/167

#### *Consumer Takeout*

The Complaints Board agreed the consumer takeout of the advertisement was the Advertiser is selling a tonic to support the respiratory system based on the antiseptic and expectorant properties of thyme validated by over 50 scientific studies.

#### *Has the claim made in the advertisement been substantiated?*

The Complaints Board said the wording of the advertisement was clear. The 50 studies referred to related to the herb thyme and not the Advertiser's tonic product. The Complaints Board noted the Advertiser's response stating the studies it had to validate the claim were currently commercially sensitive.

As in all cases, the Complaints Board said the onus to substantiate claims in advertising was the responsibility of the Advertiser. As substantiation for the claim that over 50 studies supported the antiseptic and expectorant properties of thyme was not provided, the advertisement was in breach of the Therapeutic and Health Advertising Code.

The Complaints Board also reiterated its stance that it was not an arbiter of scientific fact nor was it within its jurisdiction to verify the efficacy of a method of treatment. Instead, its focus was to consider the likely consumer take out of an advertisement rather than the absolute scientific legitimacy of a claim.

The Complaints Board said that Guideline 2(a) of the Therapeutic and Health Advertising Code states that claims made in an advertisement must be able to be substantiated. The Complaints Board said that in the absence of substantiation, the advertisement was in breach of Principle 1, Principle 2 and Guideline 2(a) of the Therapeutic and Health Advertising Code.

### Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement to be removed.

### APPEAL INFORMATION

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

## APPENDICES

1. Complaint
2. Response from Advertiser

### Appendix 1

#### COMPLAINT FROM J BROADBENT

This ad implies that this preparation has been validated in 50 studies as an antiseptic and expectorant. I doubt this.

*The ASA Secretariat asked the Complainant to clarify whether concerns were about whether there has been 50 studies on the usage of Thyme as an antiseptic or that there has been 50 studies in relation to the Artemis product?*

#### FURTHER RESPONSE FROM COMPLAINANT

Both. I would be surprised if there were 50 reputable studies in independent peer reviewed journals in humans taking oral thyme similar to this product, and very very surprised if there are 50 related to this product.

### Appendix 2

#### RESPONSE FROM ADVERTISER,

Thank you for the opportunity to respond to the complaint made in April 2019 by J Broadbent.

J Broadbent refers to the therapeutic claims being made about our Thyme Lemon Tonic preparation. They are specifically concerned about the following text:

“The antiseptic and expectorant properties of **thyme** have been validated in over 50 scientific research studies.”

The wording in this product advertisement has been approved for use by TAPS Adjudicator Peter Pratt. The TAPS approval number is PP3744.

In response to J Broadbent’s claims, we would firstly like to clarify that the claim is being made for Thyme (*Thymus vulgaris*), which is **one** of the ingredients in Artemis Thyme Lemon Tonic. We believe we have been clear in our wording that this statement refers to the herb

(Thyme) and not the whole preparation (Thyme Lemon Tonic), as they have stated in their complaint.

As an active herbal product, Thyme is a much-researched herb not only for its application in human health, but also for its antiseptic value in the food and agricultural industries. We stand by what we have claimed regarding the antiseptic and expectorant properties of thyme being validated by at least 50 scientific studies. In fact, there are many more than this if someone cared to look. However, this is a very time-consuming task and the list of references that we hold in our database for thyme represents a huge body of work that has been undertaken by Sandra Clair as part of her 10-year PhD project. As such, we consider this information to be valuable intellectual property.

We understand that the Advertising Standards Authority (ASA) is a public entity and must be seen to be fully transparent, and that if we release the list of references to the ASA, this information would then be released to the complainant and other members of the public, if requested. This is something we would like to avoid at this time.

If the ASA uphold the complainant's view that we have implied that our preparation has over 50 scientific research studies to validate its antiseptic and expectorant properties, then Artemis will commit not to rerun this advertisement.