

COMPLAINTS RESOLUTION PANEL DETERMINATION

Complaint 2011-03-007 Negative Ion Necklace, Bracelets, and Bangles

Meeting held 2 June 2011

Complaint summary

Complainant	Requested anonymity
Advertiser(s)	Alpha Flight Services Pty Ltd Oregon Scientific Pty Ltd
Subject matter of complaint	Print and website advertisements
Type of determination	Final
Sections of the Code, Regulations or Act found to have been <u>breached</u> *	Act section 42DL(1)(g) Code sections 4(1)(b), 4(2)(a), 4(2)(c)
Sections of the Code, Regulations or Act found <u>not to have been breached</u> *	None
Sanctions	Withdrawal of representations Withdrawal of advertisements

* only sections of the Code, Act, or Regulations that were part of the complaint or were raised by the Panel are listed

The advertisement(s)

1. The complaint concerned print advertisements published in *In Sky Shopping* magazine, and internet advertisements published at the websites *www.inksyshopping.com* and *au.oregonscientific.com*.
2. The advertisements related to two brands of product.
3. Advertisements promoting “Artesian” brand products included claims such as “set with germanium for negative ions”, “a health improvement innovation designed to maintain the body’s natural balance”, “designed to improve metabolism, encourage blood circulation, expel toxins, reduce stress, and improve sleep”, “offer benefits to the user by using negative ions to lift alkaline levels, neutralise acidic toxins, and return the body to a natural state of balance”, “benefits claimed for the action of negative ions include improved circulation, improved metabolism, enhanced immune system, reduced stress levels, and soothed muscle fatigue”.
4. Advertisements promoting “Oregon Scientific” brand products included claims such as “designed to boost blood circulation and metabolism and maintain the body’s natural balance and wellbeing”, “to improve the quality of sleep and soothe muscle fatigue”, “offers health benefits of neutralising harmful acidic toxins to facilitate blood circulation, enhance metabolism, and soothe fatigued muscles”, “negative ions are seen as alkaline and positive ions as acidic”, “it is thought that stressful city living causes acidic toxins to accumulate in the body”, and “improved blood circulation, increased body temperature”.
5. Excerpts of the advertisements can be viewed in the relevant Appendix to this determination.

The product(s)

6. The advertisements promoted negative ion products such as bracelets and necklaces, of two brands: Artesian and Oregon Scientific.

The advertiser(s)

7. The advertiser in relation to the Artesian products and some of the material promoting the Oregon Scientific products was Alpha Flight Services Pty Ltd.
8. The advertiser in relation to the remaining Oregon Scientific material was Oregon Scientific Pty Ltd.

The publisher(s)

9. The publisher of the advertisements was Alpha Flight Services Pty Ltd.

The complaint

10. The complainant was Dr Ken Harvey.
11. The complainant alleged that the advertisement breached section 42DL(1)(g) of the Act, and sections 4(1)(b), 4(2)(a), and 4(2)(c) of the Code.

The advertiser’s response to the complaint

12. Alpha Flight Services Pty Ltd stated that they had relied upon advice from product suppliers that the representations used in the advertisements were compliant with all relevant law. Alpha Flight Services Pty Ltd also stated that, in response to the complaint, they had “acted promptly to withdraw all promotion of the products online” and had stopped selling the products.

13. Oregon Scientific Pty Ltd stated that some of the material promoting the Oregon Scientific brand products was not material that they had provided to the publisher. They also stressed that the “Artesian” brand products were not connected with their company.
14. Oregon Scientific Pty Ltd acknowledged responsibility for the claims “offers benefits to the wearer by using negative ions to lift alkaline levels, neutralise acidic toxins and return the body to a natural state of balance”, “offers health benefits of neutralising harmful acidic toxins to facilitate blood circulation, enhance metabolism and soothe fatigued muscles”, “negative ions encourage blood circulation and metabolism”, and “neutralises acids caused by stress and environmental pollution by increasing the alkaline level of your body”. They provided some documentary material said to relate to negative ions.

Findings of the Panel

15. Under regulation 42ZCAA of the Regulations, the person apparently responsible for an advertisement is the person who, based on the particulars of a complaint and the assessment of the Panel, appears to be responsible for requesting the publication of the advertisement.
16. The Panel noted that the publisher of the advertisements, Alpha Flight Services Pty Ltd, had stated that the representations in the advertisements had been provided by the product suppliers.
17. Where an advertiser publishes information regarding a product in an advertisement, it is a *prima facie* presumption that the advertiser is the person responsible for publishing that information even where it has been copied from material published by the product sponsor. Material that has been compiled from sources such as product packaging, sponsor websites, or other material may not be current, may not have been provided with the intention that it be reproduced in advertising by others, or may in some other way be deficient. Such material may have been reproduced without the consent, control, or authorisation of the product sponsor.
18. If, therefore, the product sponsor or some other party is to be considered responsible for the information contained in the advertisement, rather than the advertiser, it would (at a minimum) be necessary for the advertiser to provide documentary evidence that the information was provided to the advertiser expressly for the purpose of advertising the product. This is not to say that retailers must hold evidence in the same way that product sponsors must. It is simply to say that if a retailer is in the business of advertising and selling therapeutic goods, it is not unreasonable to expect that retailer to take on the responsibility, at a minimum, of instituting a process whereby the accuracy of advertising claims is explicitly warranted by the product sponsor, and this warranty is documented.
19. Since no such documentary evidence was provided by Alpha Flight Services Pty Ltd, the Panel was satisfied that Alpha Flight Services Pty Ltd the person responsible for publication of the advertisements in the *In Sky* magazine and at the *inskyshopping.com.au*, with the exception of those representations for which Oregon Scientific Pty Ltd acknowledged responsibility, namely the representations that Oregon Scientific branded products use negative ions to lift alkaline levels, neutralise acidic toxins and return the body to a natural state of balance, offer health benefits of neutralising harmful acidic toxins to facilitate blood circulation, enhance metabolism and soothe fatigued muscles, encourage blood circulation and metabolism, and neutralise acids caused by stress and environmental pollution by increasing the alkaline level of the body. Additionally, for the advertisements published at *au.oregonscientific.com*, the Panel was satisfied that the person responsible for their publication was Oregon Scientific Pty Ltd.
20. Therapeutic goods are defined in the Act to include goods that are represented in any way to be for therapeutic use. Therapeutic use is defined to include use in or in connection with influencing, inhibiting, or modifying a physiological process in persons.

21. Section 42DL(1)(g) of the Act prohibits the publication of advertisements for therapeutic goods that are not included in the Register.
22. The advertised products were not included in the Register, but were clearly represented as being for therapeutic use as defined in the Act, because of claims of benefits such as improving metabolism and blood circulation, expelling toxins, reducing stress or stress levels, improving sleep, lifting alkaline levels in the body, neutralising toxins, enhancing the immune system, increasing body temperature, and soothing muscle fatigue. The advertisements therefore breached section 42DL(1)(g) of the Act. This aspect of the complaint was justified.
23. Section 4(1)(b) of the Code requires that advertisements for therapeutic goods “contain correct and balanced statements only and claims which the sponsor has already verified.” Section 4(2)(a) of the Code prohibits representations that are “likely to arouse unwarranted and unrealistic expectations of product effectiveness”. Section 4(2)(c) of the Code prohibits representations that “mislead directly or by implication or through emphasis, comparisons, contrasts or omissions”.
24. The Panel reviewed the material provided by the parties. The evidence in support of the representations made in the advertisements was primarily the material provided by Oregon Scientific Pty Ltd. The Panel was satisfied that this material was wholly inadequate to support the claims made in the advertisements.
25. The Panel was therefore satisfied that the advertisements contained many claims that had not been verified, were likely to arouse unwarranted expectations, and were misleading. These included the claims that the advertised products could improve health, improve metabolism, improve or encourage blood circulation, expel toxins, reduce stress, improve sleep, lift alkaline levels in the body, neutralise acidic toxins, return the body to a natural state of balance, enhanced the immune system, reduce stress levels, soothe muscle fatigue, or increase body temperature. The advertisements therefore breached sections 4(1)(b), 4(2)(a), and 4(2)(c) of the Code. These aspects of the complaint were therefore justified.

Sanctions

26. The Panel requests Alpha Flight Services Pty Ltd and Oregon Scientific Pty Ltd, in accordance with subregulation 42ZCAI(1) of the *Therapeutic Goods Regulations 1990*:
 - a) to withdraw the advertisement from further publication;
 - b) to withdraw any representations that the advertised products can improve health, improve metabolism, improve or encourage blood circulation, expel toxins, reduce stress, improve sleep, lift alkaline levels in the body, neutralise acidic toxins, return the body to a natural state of balance, enhanced the immune system, reduce stress levels, soothe muscle fatigue, or increase body temperature, together with any other representations that they are for therapeutic use;
 - c) not to use the representations in (b) above in any other advertisement*;
 - d) where the representation has been provided to other parties such as retailers or website publishers, and where there is a reasonable likelihood that the representation has been published or is intended to be published by such parties, to advise those parties that the representation(s) should be withdrawn;
 - e) within 14 days of being notified of this request, to provide evidence to the Panel of its compliance, including a response in writing that they will comply with the Panel’s sanctions, and where appropriate, supporting material such as copies of instructions to advertising agents or publishers, or correspondence with retailers and other third party advertisers.

27. The advertiser's attention is drawn to the provisions of sub-regulations 42ZCAI(3) and (4) which permit the Panel to make recommendations to the Secretary in the event of non-compliance with this request.

Dated 30 June 2011

For the Panel

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Jason Korke
Chairman

Appendix A: Definitions and footnotes

In this determination, unless otherwise specified:

- a) “the Act” means the Therapeutic Goods Act 1989;
- b) “the Regulations” means the Therapeutic Goods Regulations 1990;
- c) “the Code” means the Therapeutic Goods Advertising Code;
- d) “the Register” means the Australian Register of Therapeutic Goods;
- e) “any other advertisement” appearing in sub-regulation 42ZCA1(1)(d) is not confined to advertisements in specified or broadcast media (in relation to which complaints may be made to the Panel under Regulation 42ZCAB). It should be noted that HTML metatags and other information which can be retrieved by internet search engines, whether or not it is ordinarily viewed directly by consumers, constitutes advertisement material.

**Under regulation 42ZCA1 of the Regulations, the Panel may request that a representation not be used in any other advertisement unless the advertiser satisfies the Panel that the use of the representation would not result in a contravention of the Therapeutic Goods Act 1989, the Therapeutic Goods Regulations 1990 or the Therapeutic Goods Advertising Code. Under the Panel’s procedures, the Panel will not ordinarily give additional consideration to such a matter unless significant new material that was not available at the time of the Panel’s determination has become available, or until at least 12 months have passed since the Panel’s request was made.*

Appendix B: Excerpt of the Advertisements

ARTESIAN

A\$180

CODE 1648

ARTESIAN GERMANIUM AND TITANIUM NEGATIVE ION MAGNETIC NECKLACE

Super lightweight 47cm titanium necklace set with germanium and magnet to release negative ions. Designed to improve metabolism, encourage blood circulation, expel toxins, reduce stress, and improve sleep.



TRAVEL RETAIL EXCLUSIVE



A\$100

CODE 1610

ARTESIAN GERMANIUM AND TITANIUM NEGATIVE ION MAGNETIC BRACELET

A super lightweight titanium bracelet. It's magnetic and set with germanium for negative ions. A health improvement innovation designed to maintain the body's natural balance. Unisex design. Max length 21cm adjustable.



TRAVEL RETAIL EXCLUSIVE



SEE IF IT WORKS FOR YOU

These products offer benefits to the wearer by using negative ions to lift alkaline levels, neutralise acidic toxins and return the body to a natural state of balance.

Benefits claimed for the action of negative ions include improved circulation, improved metabolism, enhanced immune system, reduced stress levels and soothed muscle fatigue.

A\$70

CODE 1641

**OREGON
I.BALANCE NEGATIVE ION
NECKLACE IN BLACK**

A smart, 50cm unisex necklace designed to boost blood circulation and metabolism and maintain the body's natural balance and wellbeing. To improve the quality of sleep and soothe muscle fatigue.



A\$110

CODE 1642

**OREGON
I.BALANCE NEGATIVE ION
BANGLE IN SILVER**

Stylish stainless steel, unisex 20cm clasp bangle. Looks great and offers health benefits of neutralising harmful acidic toxins to facilitate blood circulation, enhance metabolism and soothe fatigued muscles.

**A MODERN
APPROACH TO HEALTH AND**
negative ions

It is believed by many that there are two ions in nature and within our bodies that provide two balancing forces of life and contribute to our wellbeing.

Negative ions are seen as alkaline and positive ions as acidic.

It is thought that stressful city living causes acidic toxins to accumulate in the body.



*Slow blood
circulation, lower
body temperature*



*Improved blood
circulation, increased
body temperature*