

Interim Advertising Council

Meeting 16 May 2003

9.30 am – 5 pm

Stamford Hotel, Mascot

Minutes

1. Attendance

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| Mr Mike Codd (Chair) | |
| Mr Pio Cesarin | Therapeutic Goods Administration (TGA) |
| Ms Jean Drage | Consumer (NZ) |
| Dr Trevor Mudge | Medical profession (Aust. and NZ) |
| Ms Jenny Bergin | Pharmacy (Aust. and NZ) |
| Mr James Hart | Natural healthcare profession (Aust and NZ) |
| Mr Glen Wiggs | Advertising Standards Authority Inc. (NZ) |
| Mr Jeremy Irwin | Association of New Zealand Advertisers (NZ) |
| Mr Tony Miller | New Zealand Self-medication Industry (SMI) |
| Ms Juliet Seifert | Australian Self-medication Industry (ASMI) |
| Ms Val Johanson | Complementary Healthcare Council of Australia (CHC) |
| Mr Mike Cocks | Australian media/advertising industry |
| Mr Kieran Schneemann | Medicines Australia (Aust. and NZ) |
| Dr Fiona Cumming | IAC Executive Secretary |
| Ms Sharyn McGregor | IAC Senior Project Manager |
| Ms Judith Brimer | IAC Secretary |

2. Apologies

Mr Peter Kennerley Medsafe

The groups representing Australian consumers had advised that there had been insufficient time to go through their processes to nominate a representative for this meeting.

Four papers had been circulated for discussion at this meeting. Council members agreed that, in accordance with the outcome of these discussions, the documents would be revised and then redistributed to members and circulated to the broader group for consultation.

3. Agenda Paper 1

3.1 Item 1 Role and Operation of the interim Advertising Council (IAC)

(i) Representation

The CHC representative suggested that the NZ dietary supplements industry should be represented on this committee as one of the three NZ industry representatives.

The Chairman explained the importance of keeping the numbers down to a manageable level and noted that the numbers had been extended already by one to include complementary medicines health care professional representation.

He noted that because it is not possible to have everyone at the table, the opportunity of participation and engagement through the consultation process is very important.

The Australian media/advertising industry constituency, in noting that the Council's composition closely reflects the final representation of the Advertising Board, expressed the view that although there is acceptance of the constitution of the IAC for the consultation process at this stage, media should have direct representation on the final Board.

(ii) Risk-based system of approval

The possibility of separate regulations for complementary medicines because of the costs involved in the approval process was raised. It was noted that the dividing line for requirement of approval had been vigorously debated during the course of the Review, with the reduction of imposts on industry for relatively low risk products in mind. A paper on this issue is to be circulated for discussion at the next meeting.

Consideration will need to be given at the next IAC meeting to any information emerging from the recently announced review of complementary medicines in the health system in Australia and the outcomes of the current NZ Parliamentary Health Select Committee inquiry.

The ASA representative reported that in New Zealand there appears to be support from the Greens for a trans Tasman system of advertising controls. The significance of the support of the NZ Minister for Health for the pre-vetting system, self-regulation and trans Tasman proposals was noted.

The need for timeliness with the paper work for meetings and consultations, and the tight timeframes for legislative change, was noted. Concern was expressed by one member at the pace of the process, given the moving goal posts on both sides of the Tasman.

(iii) Purpose of the Council

The Chairman explained to the meeting that both governments have accepted the general direction of the Report but there is a considerable amount of unfinished business to be progressed. For example, the concept of having high-level principles in the Act has been accepted, and the role of the Council now is to debate and make recommendations on the wording of the principles. With respect to a risk-based approval system, the modus operandi has to be devised.

This Council will make more specific recommendations for consideration by both governments.

(iv) Legal implications

A paper on the legal implications of a joint advertising scheme is to be developed for consultation in Australia and New Zealand.

Item 1 was accepted.

3.2 Item 2 Relationship of the work of the Interim Advertising Council with the existing advertising arrangements in Australia and New Zealand.

(i) Interim Advertising Council Support Group members

The IAC will be serviced by a small Australian/New Zealand support group. Details of the support group are provided in Attachment 1. It is essential that Medsafe and NZ stakeholders be fully informed throughout the process, and it was noted that Medsafe had been asked to provide a person for the Interim Advertising Council Support Group. The ANZA and ASA representatives intend to approach Medsafe to discuss the nomination of a suitable person.

It was noted that meetings of the Council are to alternate between Sydney and Auckland.

(ii) Cost of participation in the IAC.

Some members requested consideration of reimbursement by government for the cost of participation on the IAC based on the following considerations:

- the organizations represented are without, or have limited, commercial resources;
- the IAC is a forum for developing public interest policy; and
- Council members will be required to undertake interstate and international travel.

However, other members considered funding by the government inappropriate for any member, with the possible exception of consumer members.

The ASMI representative noted that, in the recent budget announcements, money has been set aside for the establishment of the joint agency between Australia and New Zealand. There is an expectation of 100% cost recovery from industry which industry

regards as inappropriate because of possible perceptions of conflict of interest for the TGA. Industry bodies will be taking up this issue outside of this forum.

(iii) Proposed work plan and timetable

It is envisaged that the work plan table, provided at Attachment 2, will be a ‘work in progress’, with issues to be built in as needed and dates to be amended if required.

It was clarified that the term “sign off” with respect to the IAC refers to the acceptance of the Council members of discussion papers, as amended at their meetings, that will be released for broad consultation and does not imply that all IAC members are in agreement with all aspects of the papers.

Item 2 was accepted.

4. Agenda Paper 2 - Processes for consultation by the IAC

The extent of consultation was clarified as follows:

- Those listed in Appendix A have participated in the Review and/or have made submissions and will be included directly in the consultation process. It is anticipated that those listed in Appendix A will consult with their constituents before providing feedback to the Council.
- Consultation will extend to others who express a wish to be involved.

Additions to Appendix A

Some omissions were noted by members and added to the list as per the attached revised draft (Attachment 3).

- Members were asked to notify the Support Group of any further additions to the list.

Nomination form for alternative representatives for IAC meetings

- Members agreed to identify an alternative representative, complete and return the form.

Agenda paper 2 was accepted as amended.

5. Agenda Paper 3 – Key Principles

The draft Key Principles were amended as per the attached revised draft (Attachment 4).

Points of discussion included:

- It is intended that the preamble be included in the Act.
- The concept of ‘social responsibility’ should be included as a Key Principle.

- The Key Principles will be expanded in the Code and detail provided in the Guidelines.
- The difference needs to be acknowledged between the evidence requirements for a therapeutic claim to be valid and have been substantiated, and the evidence requirements necessary to demonstrate that a claim is not false and misleading.
- The preamble should focus on the consumer and the protection of public health.
- The Act is likely to contain an overarching principle requiring safety, quality and efficacy which will provide a context for the Key Principles.

Agenda paper 3 was accepted as amended.

6. Agenda Paper 4 – draft Advertising Code and draft Guidelines

6.1 Draft Advertising Code

The draft Advertising Code was amended as per the attached revised draft (Attachment 5).

In the discussion, the following points were made:

- There will be cascading levels of legal status. It is intended that the Key Principles be in the Act and the Advertising Code in the Rules and therefore capable of more speedy amendment through Ministerial approval. The Guidelines will be referred to in the Code and is intended that the Guidelines should be capable of amendment by the Advertising Board without reference to Ministers.
- The Code needs to be responsive and relevant; it needs to be simple, a ‘one stop shop’ containing the essentials for compliance to ensure safety, responsible use of product and responsible provision of services.

6.1(a) Principles

It was agreed that the Key Principles should be repeated in the Code followed by expanded principles or objective criteria called advertising ‘rules’, established to ensure that the Key Principles are met.

It was agreed that the advertising rules should be simply expressed, with any further requirement, explanation or expansion to be located in the Guidelines.

The following items were identified as appropriate for inclusion in the Guidelines:

- The need for ‘balanced information’;
- How to avoid inappropriate targeting of particular audiences, e.g. the aged, minors;
- An explanation of ‘government agency’ in Australia and New Zealand;
- How the concept of social responsibility incorporates taste and decency needs to be incorporated;
- How to avoid the inappropriate conduct of offering of incentives to pharmacy assistants and retail sales persons to influence sales;
- An explanation of the term ‘promote’;
- A section on representations requiring approval before use; and
- The exclusion of CMI.

6.1(b) Social responsibility in advertising

The ASA representative presented examples of advertisements considered in New Zealand following complaints about their appropriateness.

The New Zealand view was that ‘medicines advertisements’ should have a higher level of ‘good taste’, i.e. social responsibility, than other advertisements.

A draft Guideline on taste and decency needs to include guidance on how to avoid over-glamorizing and take into account the vulnerability of target audiences.

6.1(c) Prohibitions

It was agreed that there should be reference in the Code to prohibited representations, including the prohibition on advertising of prescription medicines to consumers in Australia and prohibitions that are common to both Australia and New Zealand.

6.1(d) Definitions

(i) The definition of ‘advertisement’.

It was noted that this was a preliminary discussion on the definition of ‘advertisement’ and that this issue would be addressed at a subsequent meeting. One view, put forward by the Australian media/advertising industries representative, was that the concept of valuable consideration should form part of the definition.

There was some support by some members for the separation of the requirements for ‘a label’ from ‘an advertisement’, with the view expressed that labelling requirements are part of the regulator’s role.

In the ensuing discussion on the implication of the inclusion of labels as advertisements, the following issues were raised:

- The level playing field issue with respect to the claims made on the labels of food products (legally or illegally) which are not allowed for medicines labels.

- Even if a label is defined as an advertisement, the regulator could control labelling through the pre market assessment process.

(ii) The definition of ‘label’

The meeting was advised that a definition of ‘label’ will be developed for inclusion within the Act for the joint agency and will be relevant for all forms of approval for market entry. When ‘label’ has been defined in the overall joint agency context, that definition will be included in the Code.

(iii) The definition of ‘healthcare professional’

Members were of the view that, for the purpose of defining who practitioner-only advertising should be permitted to be directed to, the definition should refer only to those people listed in a schedule to the Rules to be developed jointly by Australia and New Zealand as part of the trans Tasman joint agency process.

(iv) The definition of ‘therapeutic product’ and ‘therapeutic use’

These definitions are being negotiated under the trans Tasman joint agency process. The latest version of the definition will be included in the draft Code for consultation purposes.

6.1(e) Application of the Code

(i) Advertising to healthcare professionals

The understanding from the Review process is that advertising to healthcare professionals would be required to meet the standards of the Code. The oversight of the application of the Code will reside primarily with industry associations.

The authorization of industry codes by the Advertising Board will ensure that the complaints mechanisms are deemed appropriate to handle any complaints arising out of advertising to healthcare professionals.

(ii) Bona fide news

After some discussion on whether or not editorials should be noted as an exclusion from the requirements of the Code, it was decided that the exclusion should be limited to bona fide news. The Australian media/advertising industries representative disagreed with this view.

(iii) Endorsements

The different level of judgement applied by consumers to a recommendation by a trained healthcare professional and a celebrity endorsement was discussed.

How advertisements by healthcare professionals should be specifically covered by the Code is to be discussed at the next meeting.

The draft Advertising Code was accepted as amended.

6.2 Draft Advertising Guidelines

The draft Advertising Guidelines were amended as per the attached document (Attachment 6).

The revised draft Advertising Guidelines document is to include the additional material as noted in 6.1(a).

The inconsistency of the exclusion of 15-second radio commercials from the minimum requirements that apply to all other advertising was noted. The possibility of permitting “reminder” advertisements, which, under certain circumstances may not require all of the required information to be published or broadcast, was raised.

These issues are to be addressed at the next meeting.

The draft Advertising Guidelines document was accepted as amended, including the additional items listed at 6.1(a).

7. Date of the next meeting

The next meeting is to be held in Auckland, New Zealand on Monday 4 August 2003 at a location to be determined.