



COMPLAINT NUMBER	12/611
APPEAL NUMBER	13/005
APPLICANT	M. Hanna
ADVERTISER	U GO
ADVERTISEMENT	U GO Website
DATE	19 February 2013
OUTCOME	Declined

SUMMARY

The Complaints Board ruled on 30 January 2013 that the complaint made by the Applicant against U Go was settled as self-regulatory action had been taken by the Advertiser.

The Applicant appealed that Decision on grounds of natural justice, stating the advertisement about which the complaint was made had not been altered or removed, meaning the unsubstantiated therapeutic claims made in the advertisement remain published and continue to potentially mislead consumers.

The Chairman noted the product about which the claims were made was no longer available for purchase. The Chairman also noted the correspondence from the Advertiser that they would not be stocking the product again, and were in the process of removing the page from the website. In her view, the Advertiser had taken sufficient action to settle the complaint under the principles of self-regulation, and there were no ground on which to base an appeal. As such, the Chairman ruled to decline the appeal.

[No further action required]

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

CHAIRMAN'S RULING

The Chairman viewed the application for appeal. She noted that there were five grounds upon which an appeal was able to proceed. These were listed at Clause 6(c) of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and were as follows:

- (i) The proper procedures have not been followed.
- (ii) There is new evidence of sufficient substance to affect the decision.
- (iii) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (iv) The decision is against the weight of evidence.
- (v) It is in the interests of natural justice that the matter be reheard.

Turning to the appeal application, the Chairman carefully read the Applicant's appeal application and the relevant documentation regarding the original complaint. The Chairman noted the Applicant appealed the Complaints Board Decision on the ground of natural justice, and they were concerned that the claims on the website had not been changed.

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With regard to the grounds of appeal, the Chairman said that in her view the proper procedures had been followed, no new evidence of sufficient substance had been provided, the evidence provided had not been misinterpreted, the Decision was not against the weight of evidence and there were no grounds under natural justice to allow the appeal.

Accordingly, the Chairman ruled that there were no grounds on which the appeal should proceed and as such the application for appeal be declined.

Chairman's Ruling: Appeal application **Declined**

DESCRIPTION OF ADVERTISEMENT

The website advertisement for on U Go Products Limited featured amber teething necklaces for babies. The advertisement stated, in part:

"Genuine Baltic Amber Teething
Necklace

...

Considered a natural analgesic, Amber is reported to help calm a baby without resorting to drugs. .. Amber is a fossilize resin containing high levels of succinic acid, attributed for its pain relief and anti-anxiety properties."

APPEAL APPLICATION FROM M. HANNA

I would like to appeal the decision of complaint 12/611 on the basis that it is in the interests of natural justice that the matter be reheard.

While I appreciate that the advertiser apologised for the advertisement, the primary concern is that the therapeutic claims made in the advertisement are unsubstantiated and this still has not changed. If the advertiser is willing to admit that “had I seen this advertisement on our website I would have changed it immediately” then I expect they would not be opposed to changing it immediately now that it has been drawn to their attention.

I also appreciate the advertiser’s obvious wish to comply with the ASA’s standards, presumably as they have no wish to mislead consumers. However, leaving the advertisement unchanged until the product is made available again does nothing to address the concerns with unsubstantiated therapeutic claims. If they wish to make the product unavailable for any duration then that’s their prerogative, but regardless they should also remove the unsubstantiated therapeutic claims made about it.

The advertisement about which the complaint was made has not been altered or removed. This means that the unsubstantiated therapeutic claims made in the advertisement remain published and continue to potentially mislead consumers.

That the product being advertised is currently listed as “SOLD OUT” should have no effect on the decision made about this complaint. The issue at the heart of the complaint is the content of the advertisement, not the availability of the product. As that has not changed, the complaint should not be considered to be settled, in the same manner as a complaint made about the content of an advertisement for a product temporarily listed as “SOLD OUT” should not be dismissed as having no grounds to proceed.

If the content of the advertisement is to be changed in the future to comply with the ASA’s codes in that it will only make therapeutic claims if they have been substantiated then that is good, but in the meantime the unsubstantiated claims made in the current advertisement should not remain published. In lieu of being changed, the advertisement should be taken down so as not to mislead the public further.

By utilising the tactic used by U-GO in response to this complaint, it would be possible for any business to advertise a product with misleading information, potentially even intending to

defraud consumers, but escape regulation by listing the product as “SOLD OUT” for as long as such content remains published. This does not prevent consumers from being misled by such an advertisement, and they may be influenced to return to purchase the same product when it becomes available again in the future, or to purchase an identical or similar product elsewhere. This behaviour does not exhibit the high standard of social responsibility required by the ASA’s Therapeutic Products Advertising Code principle 3.

As written in the ASA’s constitution, the primary object of the ASA is:

“To seek to maintain at all times *proper and generally acceptable standards in advertising* and any other activity regulated by the Code of Practice” (emphasis mine).

Providing advertisers with a loophole such as this that they might be permitted to publish misleading and unacceptable advertisements free of industry regulation goes counter to this goal.

With regard to the advertiser’s claim that “The complaints raised by M. Hanna regarding strangulation and succinic acid are explained on the suppliers [sic] website”, upon reading the pages provided by the advertiser I am unconvinced. While my safety concerns are dealt

with to a small degree (despite existing safeguards a warning would still be pertinent) the issues of substantiation and the plausibility of the succinic acid hypothesis are not.

I realise that, not being a New Zealand website, the content of the Amberizon website does not fall under the ASA's jurisdiction, but for completeness' sake I will discuss this here.

On the "Healing properties of amber" page (http://www.amberizon.com/page/healing_properties_of_amber_healing_gemstone.html), the following is stated:

"Amber is a powerful chakra cleanser and healer. At a physical level, is [sic] imbues the body with vitality and has the power to draw disease out of the body. By absorbing pain and negative energy, amber allows the body to rebalance and heal itself. Amber alleviates stress.

"Amber provides decisiveness. It strengthens your memory and intellect and helps with emotional calming and centering. It is an excellent grounding crystal, and transmutes negative energy to positive. Amber radiates a warm and bright energy."

The vast majority of this content is meaningless pseudoscience. For example, there is no high-quality scientific evidence that "chackras" exist at all, let alone that they are relevant to health and can be affected by objects such as this.

"is [sic] imbues the body with vitality and has the power to draw disease out of the body" is similarly nebulous pseudoscientific nonsense, lacking both credibility and substantiation.

"By absorbing pain and negative energy" again is utter nonsense. Pain is not some substance that can be absorbed, and the phrase "negative energy" is inappropriate and, in this context, undefined.

I hope that it is absolutely clear to everyone that the second paragraph quoted above contains absolutely no sense or science. In fact this looks like a brilliant example of quackery, in which pseudoscientific nonsense is used to peddle a probably useless product. Although I am happy to note that U-GO has not quoted any of this nonsense in their own advertisement, that it considers this group "experts for this product" is concerning, to say the least.

That page also has this to say about amber teething necklaces:

"Wearing baltic amber close to the skin is a traditional European remedy for baby teething. A natural analgesic, amber will help calm a baby without resorting to drugs. Used for centuries in Europe, amber's natural anti-inflammatory [sic] and pain relieving properties are perfect to soothe teething babies. Amber is fossilized resin, which warms against the skin, releasing it's [sic] theraputic [sic] properties safely and naturally."

This paragraph is practically identical to the one currently used by U-GO in their advertisement, which I have already discussed in my original complaint.

The "Baby Teething Necklaces" page (http://www.amberizon.com/shop/amnber_teething_necklaces_baby_teething_necklace_teething_beads_babies.html) says this:

"As a safety feature there is a knot before and after each bead, so that even in the extremely unlikely event of the string being tom, no beads are lost and there is no risk of choking. Amber teething necklaces are secured with a traditional screw clasp, not a hook and ring!"

I am glad to hear that the products have these safeguards in place, but I also feel it is important to note that they do not entirely negate the significant risks of choking and strangulation. It would be pertinent to include a similar warning to the one issued by the Ministry of Consumer Affairs about amber teething necklaces (<http://www.consumeraffairs.govt.nz/for-consumers/goods/product-safety/keeping-kids-safe/amber-teethingnecklace>), namely that infants should be supervised at all times while wearing these necklaces.

It also seems relevant to point out that a consumer has previously complained about these necklaces (purchased from Amberizon) citing safety concerns despite the website's reassurances after testing the necklaces themselves: <http://www.scambook.com/report/view/36179/Amberizon-Complaint-36179-for-S113.15>

It seems relevant that the Therapeutic Products Advertising Code part B2 requirement 2(a) specifies that:
"If the medical device has... specific warnings that may affect the safe use of the device... an appropriate warning must be given."

I have not been able to find any information on those 2 pages of the Amberizon website that respond to my complaints regarding the succinic acid hypothesis. Since originally making this complaint and researching the issue further, I have uncovered several more serious issues with this hypothesis that I have not seen dealt with and would be happy to detail if necessary.

CORRESPONDANCE FROM ADVERTISER, U GO

... [T]he Baltic Amber Teething Necklaces have been withdrawn from sale. We will not be offering these for sale again.