



Advertising Standards Authority of South Africa

Telephone 011 781 2006 Fax 011 781 1616 Email info@asasa.org.za Website www.asasa.org.za
Willowview Buraside Island Office Park (entrance off Athlete) 410 Jan Smuts Avenue Croighall Park PO Box 41555 Croighall 2024
Company Registration Number 1975/09784/03 Non-profit Registration Number 013-694-920

PRIVACY AND CONFIDENTIALITY

The information contained in this facsimile is intended for the named recipient/s only. It may contain privileged and confidential information and if you are not an intended recipient, you must not copy, distribute or take any action in reliance upon it. If you have received this facsimile in error, please notify us immediately on 27 11 781 2006 and destroy the facsimile.

To: Mr Marcus Low Email: Marcus.low@fac.org.za

From: Mr Mokgosi Rampa Email: mokgosi@asasa.org.za

Date: 5 January 2012

Reference: REVIVO TEA /M LOW / 18020

Dear Mr Low

We refer to the above matter and enclose herewith a copy of the ASA Directorate Ruling.

Yours sincerely

THE ADVERTISING STANDARDS AUTHORITY OF SOUTH AFRICA

MOKGOSI RAMPA

CONSULTANT: APPEALS AND COMPLIANCE

RM

Encl ASA ruling (4 pages)

President: Mervyn E. King SC
Directors: N Nkomo (Chairperson) KH Willenberg (Vice chairperson) TN Msibi (CEO)
DR Terblanche I Louw IRB Shepherd J Siney-Gould



Advertising Standards Authority of South Africa

Telephone 011 781 2006 Fax 011 781 1616 Email info@asasa.org.za Website www.asasa.org.za
Willowview Burnside Island Office Park (entrance off Athol) 410 Jan Smuts Avenue Craighall Park PO Box 41555 Craighall 2024
Company Registration Number 1975/00484/03 Non-profit Registration Number 013-094-060

MARCUS LOW

COMPLAINANT

and

ACONITE MEDICAL SUPPLIERS CC

RESPONDENT

5 January 2012

REVIVO TEA / M LOW / 18020

BACKGROUND

In Revivo Tea / M Low / 18020 (21 October 2011) the Directorate ruled that the respondent's website www.revivotea.com was in breach of earlier rulings against the respondent's advertising. The reason for this finding was largely because of claims and testimonials again making references to the product's effect on the user's HIV status, their CD4 count and their viral load.

Both parties were afforded an opportunity to comment on whether or not sanctions in terms of Clause 14 of the Procedural Guide were appropriate.

RELEVANT CLAUSE OF THE CODE OF ADVERTISING PRACTICE

In light of the breach ruling, Clause 14 of the Procedural Guide (Sanctions) was taken into account.

COMPLAINANT'S COMMENTS ON SANCTIONS

The complainant requested, *inter alia*, that pre-clearance sanctions be imposed for a minimum of six months as specified in clause 14.3 of the Procedural Guide. He added

that there have been at least four adverse rulings against the respondent in the past 12 months, including two breach rulings. The sanction may therefore be imposed.

The complainant submitted that the respondent has a history of not conforming to the ASA rulings and not taking sufficient action to conform to the Code.

RESPONDENT'S COMMENTS ON SANCTIONS

Mr Jean Baptista, a new representative for the respondent, submitted that before Dr Latib (the previous representative handling these disputes) resigned, he gave an opinion to terminate the Revivo tea website and start the marketing of the Revivo tea afresh to comply with all advertising law and policy. Mr Baptista submitted that the website will be shut down from the end of December 2011. All future advertising will be compliant with the law.

ASA DIRECTORATE RULING

The ASA Directorate considered all the relevant documentation submitted by the complainant.

The Directorate is only tasked with determining whether or not sanctions are appropriate at this stage and which sanction, if any, to impose against the respondent.

It should be noted that the respondent did not address the complainant's comments on sanctions, particularly the request for sanction to be imposed in terms of Clause 14.3 of the Procedural Guide.

In considering sanctions, the Directorate takes into account several factors; most notably the nature of the contravention, any history the respondent has with the ASA, as well as possible harm done to consumers or competitors as a result of non-compliance.

The complainant requested a sanction in terms of Clause 14.3 of the Procedural Guide. In terms of this sanction, the offending advertiser must pre-clear all advertising for a predetermined period (usually six months) at a cost before being allowed to publish such advertising.

The Directorate is mindful of the fact that the respondent has somewhat of a history with the ASA for non-compliance.

- In Revivo Tea / P Linzer / 13898 (20 August 2009), the Directorate upheld a complaint regarding unsubstantiated claims that appeared on the respondent's website and also accepted the voluntary undertaking to terminate the website.
- In Revivo Tea / P Linzer / 13898 (29 June 2011), the Directorate ruled that the respondent's Google advertisement was in breach of the 20 August 2009 ruling because of, *inter alia*, continued references to being able to treat HIV / AIDS.
- In Revivo Tea / M Low / 18020 (8 September 2011), the Directorate accepted the respondent's voluntary undertaking to remove testimonials complained of on condition that claims referring to Revivo Herbal Tea's ability to increase HIV positive people's CD4 count and decrease their viral load were not used again.
- In Revivo Tea / M Low / 18020 (21 October 2011), the Directorate again found the respondent in breach of its undertaking for failing to remove the testimonials from its website.

The ruling dated 21 October 2011 also pointed out the following:

"... In a ... ruling on this matter, dated 29 June 2011, the respondent was found in breach in relation to its 'Google ad' ... This ruling also specifically notes that the respondent sent an unsolicited email which referred to advice received from its legal counsel that '... the testimonials on our website and some other content may be in breach of the advertising code ...'

Despite this, however, such testimonials formed the subject of the Directorate's ruling on 8 September 2011 ... Now the respondent has again been found in breach because it continued to use similar claims in its advertising.

This appears to show a pattern of contravening the provisions of the Code and/or existing rulings".

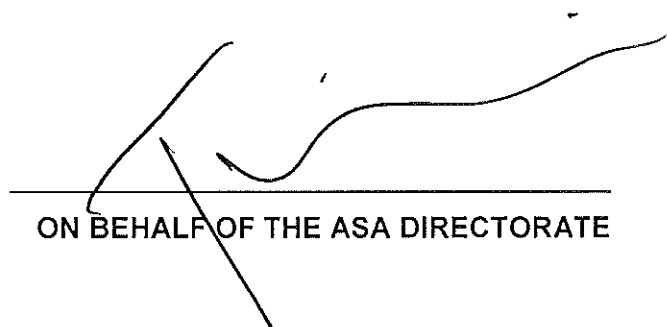
It appears that the respondent is now again simply tendering its intentions to comply with the Code and existing rulings. Given the pattern of disregard highlighted above, however, the Directorate has reservations about whether or not this would likely occur.

Accordingly, the Directorate believes a sufficient safeguard needs to be in place to ensure that similar unsubstantiated claims are not again made in a manner that exploits the consumer. A sanction in terms of Clause 14.3 of the Procedural Guide is clearly warranted.

The Directorate therefore imposes a sanction in terms of Clause 14.3 of the Procedural Guide on the respondent.

In terms of this sanction, the respondent is ordered to submit all future advertising material and all previous ASA rulings to the ACA Advisory Service for pre-publication advice for a period of six months from the date of this ruling.

An Ad Alert will also be issued to members informing them of this sanction, and requesting them not to accept any advertising from the respondent unless accompanied by written confirmation from the ACA that such advertising may be accepted.



ON BEHALF OF THE ASA DIRECTORATE