

SUMMARY OF THE MINUTES

On May fifteenth two thousand thirteen, the First Section of the Ethical Jury of ICAP (Civil Authority on Advertising Self-Regulation) had a meeting and assessed case number 9J/2013, deliberating as follows:

Case number 9J/2013

1. Subject of these proceedings

1.1. The Truth in Advertising Group, through a cross border participation provided by ASA, has filed a COMPLAINT against **ANEID PHARMACEUTICAL PRODUCTS**, based in Rua José Florindo, Qta da Pedra, Lote 440, R/Ch, Cascais, Portugal, concerning the marketing communication posted on its website and related to SPEECH NUTRIENTS.

The Complainant is of the opinion that the informative content violates the principles and standards of the ICAP Code of Conduct.

1.2. Notified of the regimental appeal to defend itself, ANEID responded according to the deadline in the terms described below.

1.3. The complaint, the response and the documents presented by the Parties, are attached.

2. Legal and ethical framework and reasoning

2.1 Summary of the complaint

The complainant bases its COMPLAINT on three aspects:

- a) It mentions that ANEID refers to a patented formula, when it does not hold any patent;
- b) It mentions that the nutrients in the product SPEECH improve the user, when there is no evidence of such;
- c) It mentions that the product contains high levels of vitamin E, which may cause health injuries to children, the product's target market.

2.2. Summary of the response

ANEID responded as follows:

- a) It has already removed/eliminated/changed the statement about the patent;
- b) It has already changed the statement regarding the nutrients improving the performance of the users of the product SPEECH;
- c) Nothing was mentioned regarding the existence of vitamin E, other than sending documentation and literature about vitamin E.

2.3. Ethical and advertising analysis

2.3.1. Claim about the patent

As far as ANEID's untruthful statement about the patent, it should not be the subject of marketing communications.

Article 4, number 1, of ICAP Code of Conduct, mentions that all marketing communications should be truthful.

Article 9, number 1, of ICAP Code of Conduct, mentions that all marketing communications should be truthful and not misleading.

In view of the fact that there is no patent, ANEID can not advertise the product as patented on its behalf. Indeed, paragraph e) of article 9, number 2, of ICAP

Code of Conduct forbids the use of statements within marketing communications that might mislead the consumer as to industrial property rights.

Therefore, the advertising message related to the patent, violated article 4, number 1, and article 9, number 1 and number 2, paragraph e) of the ICAP Code of Conduct and, having been eliminated, can not be reinstated, not even in a different support section of the website.

2.3.2. Claim about nutrients

On the other hand, regarding the message that the nutrients improve SPEECH' performance, article 7, number 1, of the Code of Conduct mentions that marketing communications should not be designed in order to exploit the consumers' lack of knowledge or experience.

Article 9, number 1, of the Code of Conduct mentions that marketing communications should be truthful and not misleading, and number 2 mentions that no statement should be used to exert influence over the choice of the consumer in a misleading way regarding the nature of the product's performance.

Article 12 of the Code of Conduct mentions that the descriptions and allegations related to verifiable facts should be supported by substantiation/evidence.

The message declaring that the nutrients "in SPEAK" have been shown to improve "SPEECH", is unproven, misleading, abuses the consumers' lack of knowledge and experience, thus violating the abovementioned rules.

Therefore, ANEID confirmed in its defense that it has already changed that message.

That message, which violates the Code of Conduct rules, as set out above, should not be reinstated, not even in any different support section of the website in question.

In the website "www.speechnutrients.eu", one can see that the message which replaced the original message has the following content: "The nutrients in SPEAK may improve: Speech".

As far as the replacement of the phrase "have been shown", based on the implication of the product's potential ("may improve"), ICAP can not assess its evidence. ICAP can not say that the statement is substantiated or needs to be substantiated.

However, it can be noted that the request for substantiation/evidence of the product' enhancement, may be provided, if such complaint is made. Then, ANEID may show, if it so desires, that such capability is substantiated.

2.3.3. Claim about vitamin E

As far as the use of vitamin E, which is harmful to children, ANEID does not contest its harmfulness, it just sends documentation.

Nevertheless, it is not up to ICAP to do a scientific inquiry of the documentation, looking for everything that might benefit ANEID's defense, considering that ANEID did not allege any documentation for its defense. That procedural action of ANEID, to enclose a scientific text in English without explaining or clarifying its content, may include the misuse of scientific works, such as indicated in article 10, number 1 of the Code of Conduct.

According to article 9, number 2, paragraph h) of ICAP Code of Conduct, a marketing communication should not mislead the consumer regarding the effects on his/her health.

As far as the fact that the product is intended to be used by children and young people, article 22, number 2, of the Code of Conduct demands special attention regarding marketing communications geared for children and young people.

Further, according to the same article 22, number 4, Point B, of the Code of Conduct, a marketing communication should not contain any misleading statement that may physically harm children and young people.

Article 22, number 4, point C, I, of the Code of Conduct, mentions that marketing communication should not exploit the idea that using the product will give children physical, psychological and social advantages.

These stricter rules regarding minors — children and young people — also correspond to what is requested in article 14, number 1, of the Code of Advertising.

The issue about the product containing high levels of vitamin E, which are harmful to children, should undergo a special evaluation, which ICAP can not do, despite the lack of product evaluation by ANEID.

This lack of evidence by ANEID, to counter the complaint, leads ICAP to give precedence to the complaint regarding that issue.

ANEID should not be able to advertise the efficacy of the product, because it has not claimed nor shown in its defense, through readily available means, the safety of the high levels of vitamin E in the product, as far as the health of children, and young people is concerned.

However, the product in question is a medication.

Based on article 163 of the Law-Decree 176/2006, from August 30th, within the National Authority for Medication – Infarmed –, the Conselho Nacional de Publicidade do Medicamento (National Council on Medication Advertising).

3. Decision

For the reasons stated above, the First Section of ICAP Ethical Jury determines that the messages in question violate the rules of article 4, number 1, article 7, number 1, article 9, number 1, paragraphs a) and h) of number 2, article 9, article 12, article 22, number 2, article 22, number 4, Points B and C I., of the Code of Conduct and article 14, number 1 of the Code of Advertising.

The messages removed should not be reinstated in any different type of support section of the ANEID website.

(illegible signature)

First Section of the Ethical Jury of ICAP

I, Isaura C. Arez, do hereby declare that I am fully acquainted with the Portuguese and the English languages and that this is a true and correct translation from Portuguese into English of the entire document attached hereto.

