

# Therapeutic Products Advertising Complaints COMPLAINTS RESOLUTION PANEL

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## Complaints Register

Date:	07/10/10								
Code:	2010-04-021								
Product:	Scenar 2								
Complainant:	Anonymous								
Respondent:	Scenar Health Pty Ltd								
Sections Found Justified:	Code sections 4(1)(b), 4(2)(a), 4(2)(c), 4(2)(d), 4(7), 5								
Sections Found Not Justified:	Justified								
Action:	Publication of retraction, Withdraw advertisement; withdraw representations								
Panel Determination:	<p><b>COMPLAINTS RESOLUTION PANEL DETERMINATION</b></p> <p><b>Complaint 2010-04-021 Scenar (2)</b></p> <p><b>Meeting held 7 October 2010</b></p> <p><b>Complaint summary</b></p> <hr/> <table> <tr> <td>Complainant</td> <td>Anonymous</td> </tr> <tr> <td>Advertiser</td> <td>Scenar Health Pty Ltd</td> </tr> <tr> <td>Subject matter of complaint</td> <td>Website advertisement</td> </tr> <tr> <td>Type of</td> <td>Final</td> </tr> </table>	Complainant	Anonymous	Advertiser	Scenar Health Pty Ltd	Subject matter of complaint	Website advertisement	Type of	Final
Complainant	Anonymous								
Advertiser	Scenar Health Pty Ltd								
Subject matter of complaint	Website advertisement								
Type of	Final								

determination

Sections of the Code, Regulations or Act found to have been breached\*

Code sections 4(1)(b), 4(2)(a), 4(2)(c), 4(2)(d), 4(7), 5

Sections of the Code, Regulations or Act found not to have been breached\*

Code sections 4(2)(g), 4(2)(h)

Sanctions

Withdrawal of representations

Withdrawal of advertisement

Publication of a retraction

\* 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)**

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1. The complaint concerned an internet advertisement published at the website *www.scenarhealth.com*
  2. The first part of the advertisement related to a Scenar device, and made representations to a very wide range of health concerns, including (in the context of testimonials), acute abdominal pain, “AspBergers Syndrome [sic]”, broken bones, “chronic hip injury”. Chronic neck pain, chronic shoulder pain, chronic pain, dysmenorrhoea, groin injury, injuries, “jumpers knee”, sprains and strains, knee damage, knee injury, neuropathic pain from cranioplasty, “pet trauma”, “pinched sciatic nerve”, severe hand injury, post-viral meningitis, headaches, allergies, scoliosis, kyphosis,

“kidney reflux”, shingles, “support through chemotherapy”, tinnitus, viral infection, and whiplash.

3. The advertisement also stated that “Scenar Health has initiated independent clinical trials [in] Australia and the US to prove its efficacy”.
4. A second part of the advertisement related to a “pain management therapy blanket”, and included claims related to improving metabolism, restoring energy balance, “redistribution of surface electric charge on the patient”, reducing pain sensitivity, “normalis[ing] energy exchange”, and boosting immunity.
5. An excerpt of the advertisement can be viewed in the relevant Appendix to this determination.

#### **The product(s)**

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6. The advertisement promoted a Scenar device and a Pain Management Therapy Blanket.

#### **The advertiser(s)**

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7. The advertiser was Scenar Health Pty Ltd.

#### **The complaint**

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8. The complainant requested anonymity.
9. In relation to the part of the advertisement promoting the Scenar device, the complainant alleged breaches of sections 4(1)(b), 4(2)(a), 4(2)(c), 4(2)(d), 4(2)(g), 4(2)(h), 4(7), and 5 of the Code.
10. In relation to the part of the advertisement promoting the “Pain Management Therapy Blanket”, the complainant alleged breaches of sections 4(1)(b), 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(2)(g), and 4(2)(h) of the Code.

#### **The advertiser’s response to the complaint**

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11. The advertiser stated that they had amended the website by removing or altering various parts of the advertisement that had been mentioned in the complaint. The advertiser did not provide a response to the particulars of the complaint. The advertiser provided copies of what appeared to be the amended text of the website and “preliminary results of SCENAR clinical trial in USA”.

12. The advertiser provided evidence that the Scenar product was included in the Register.

### **Findings of the Panel**

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13. As a preliminary matter, the Panel noted that its remit is to review complaints in relation to advertisements as they appeared at the time of the complaint. The Panel does not review proposed amendments to websites such as those put forward by the advertiser in the present matter.
14. 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”.
15. In the absence of any relevant submission from the advertiser, the Panel was satisfied that the advertisement breached these sections of the Code in relation to both the Scenar product and the blanket product, because of the representations relating to therapeutic benefits from both products. These aspects of the complaint were therefore justified.
16. Section 4(2)(d) of the Code prohibits advertisements which “abuse the trust or exploit the lack of knowledge of consumers or contain language which could bring about fear or distress.”
17. The Panel found that the advertisement breached section 4(2)(d) of the Code by abusing the trust and exploiting the lack of knowledge of consumers, because of the representations relating to therapeutic benefits from both products. This aspect of the complaint was therefore justified.
18. Section 4(2)(b) of the Code prohibits advertisements that are “likely to lead to consumers self-diagnosing or inappropriately treating potentially serious diseases”. The complainant alleged that the advertisement breached this section of the Code because of material promoting the blanket product (but not the Scenar product). The Panel did not find words in the advertisement that appeared to cause such a breach. This aspect of the complaint was therefore not justified.
19. Section 4(2)(g) of the Code prohibits representations that therapeutic goods are “infallible, unailing, magical,

miraculous”, or that they are “a certain, guaranteed or sure cure”. Section 4(2)(h) of the Code prohibits advertisements for therapeutic goods that “contain any claim, statement or implication that it is effective in all cases of a condition”. The Panel did not find that the advertisement breached these sections of the Code. This aspect of the complaint was therefore not justified.

20. Section 4(7) of the Code requires that testimonials included in advertisements for therapeutic goods “must be documented, genuine, not misleading and illustrate typical cases only.” The advertiser provided no evidence that the many testimonials in the advertisement satisfied the requirements of section 4(7) of the Code. This aspect of the complaint was therefore justified.
21. Section 5(1) of the Code prohibits advertisements that “contain, expressly or by implication, a representation specified in Part 1 of Appendix 6.” The representations specified in Part 1 of Appendix 6 of the Code include representations regarding the treatment, cure, or prevention of certain diseases.
22. Section 5(2) of the Code prohibits advertisements that “refer, expressly or by implication, to serious forms of diseases, conditions, ailments or defects specified in Part 2 of Appendix 6, unless prior approval is given under the Therapeutic Goods Act 1989.” The diseases and conditions specified in Part 2 of Appendix 6 of the Code include “serious forms of” a wide range of health concerns.
23. The advertisement contained many references to serious health concerns that breached section 5 of the Code. These included references to scoliosis, post-viral meningitis, Asperger syndrome, “severe hand injury”, and many others. This aspect of the complaint was therefore justified.
24. The Panel noted, without making any formal finding, that the advertisement appeared likely to breach section 4(6)(b) of the Code.

### Sanctions

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25. The Panel requests Scenar Health 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 have therapeutic benefits, or have benefits in relation to abdominal pain, Asperger syndrome, broken bones, hip injuries, neck pain, shoulder pain, chronic pain, dysmenorrhoea, groin injuries,

“jumper’s knee”, sprains, strains, knee damage, knee injury, neuropathic pain from cranioplasty, “pet trauma”, “pinched sciatic nerve”, sciatica, severe hand injury, post-viral meningitis, headaches, allergies, scoliosis, kyphosis, “kidney reflux”, shingles, “support through chemotherapy”, tinnitus, viral infection, whiplash, improving metabolism, restoring energy balance, “redistribution of surface electric charge on the patient”, reducing pain sensitivity, “normalis[ing] energy exchange”, or boosting immunity, together with any representations breaching section 5 of the Code;

- 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) to arrange for publication on the website *www.scenarhealth.com* of a retraction in the form of, and in accordance with, the conditions set out in the attachment to this determination; and,
- f) 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.

26. 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 15 November 2010

For the Panel

Jason Korke  
Chairman

#### **Appendix A: Definitions and footnotes**

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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).

*\*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: Retraction**

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An advertisement is to appear on the home page of the website *www.scenarhealth.com* at the earliest opportunity.

A copy of the retraction advertisement, and the page on which it will be published, is to be provided to the Complaints Resolution Panel for approval before publication.

**RETRACTION**

An advertisement for the **Scenar** device, which we published on this website, should not have been published.

In the advertisement we made a large number of misleading, unverified, and unlawful claims. These included unlawfully made claims that the Scenar device could have benefits in relation to abdominal pain, neck pain, shoulder pain, chronic pain, broken bones, dysmenorrhoea, groin injuries, knee damage, headaches, allergies, scoliosis, kyphosis, shingles, tinnitus, viral infections, whiplash, and many other health conditions.

A complaint about the advertisement was recently upheld by the Complaints Resolution Panel. We provided no evidence to support the claims we made, and the Panel found that the claims were unlawful, misleading, and unverified and breached the Therapeutic Goods Advertising Code.

The Panel therefore requested that Scenar Health Pty Ltd publish this retraction.

The full text of the Panel's determination can be found at: [www.tgacrp.com.au/complaints](http://www.tgacrp.com.au/complaints)

No other copy should be included in the advertisement.

Location:	website front page, so that it can be viewed without scrolling the page
Size:	No less than 500 pixels wide and 200 pixels high
Heading:	Arial or Helvetica



	Red on a white background The letters should be no less than 20 pixels in height, and should be no smaller than any other body text on the page Bold
Text:	Arial or Helvetica  Red, black and blue on a white background, per above The letters should be no less than 14 pixels in height, and should be no smaller than any other body text on the page Bold
Text Box:	

**Advertisement Copy:** [Download](#)

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