

Summary of findings of Code of Practice Standing Committee findings – Complaint #138 under the Code of Practice (v.14)

GlaxoSmithKline New Zealand Limited and AstraZeneca New Zealand Limited

Code of Practice Standing Committee: John Cadenhead, Dr Richard Robson, Dr Jan White, Alan Carter, Dr Greg Evans.

Hearing: 17 December 2010.

Complaint: This is a complaint brought by GlaxoSmithKline against AstraZeneca Limited regarding direct to consumer advertising from the Symbicort SMART Family Health Diary television commercial, Family Health Diary website and the AstraZeneca smartasthma.co.nz website.

The relevant clauses from the Code of Practice were:

1. *“Comparisons must be made on a factual and fair basis and be capable of substantiation in accordance with the body of medical information. References, the source material either unpublished, used to support comparisons with competing products, (in the English language) must be made available within five working days of the request. In presenting a comparison, care must be taken to ensure that it does not mislead by distortion, by undue emphasis, or in any other way. “Hanging” comparatives – those which merely claim that a product is better, stronger, more widely prescribed etc. – must not be used.”*
2. *“Whilst the Commerce Act 1986 does not permit the prohibition of comparative advertising in any form, DTC advertisements should promote a product on its own merits and product profile and should not discredit, disparage or attack competitors or competing products. Thus, comparative claims within DTCA should be approached with extreme caution.”*

The Committee upheld this complaint. The defendant had used the words “more effective” in some of the advertising and this was indeed a hanging comparative; and an advertisement depicting Symbicort SMART MDIs was deceptive. The deception was that Symbicort SMART replaces all other existing MDIs.

Remedy: The Committee did not consider this to be a flagrant breach of the Code of Practice. AstraZeneca must withdraw the offending advertisements and pay cost of the proceedings.