

TAPS | therapeutic advertising pre-vetting service

GUIDELINE 4 HHPaDS	Guideline for Claims Relating to the Brain for Natural Health Products and Dietary Supplements
Last Updated	March 2021
What kind of product is this guideline for?	Natural Health Products and Dietary Supplements
What is the purpose of this guideline?	To provide background and guidance on claims that are likely to be acceptable in relation to a health benefit for the brain.

BACKGROUND

The mental and physical health of the brain is a particularly difficult area with regard to therapeutic and health benefit claims in advertisements. In order to claim to treat or improve any aspect of brain health or symptom or condition, the product will need to be an approved medicine or a listed Medical Device. Advertisements for Natural Health Products and Dietary Supplements must therefore limit claims to supporting the good health of the brain and its functions and must avoid actual or implied therapeutic claims. See Guidelines 1 & 2 in the Natural Health Products and Dietary Supplements section of the TAPS Guidelines Page for more detailed information on Therapeutic Purpose Claims and Disease.

The ASA Therapeutic and Health Advertising Code has the following definitions:

Natural Health Products and Dietary Supplements – Products for the primary purpose of bringing about a health benefit (see definition below for health benefit) to the person who uses the product. May include Natural Health Products, Dietary Supplements, Herbal Preparations and products used in Traditional Practice.

‘Health Benefit’ – Means any one of the following benefits:

- a) the maintenance or promotion of health or wellness
- b) nutritional support

- c) vitamin or mineral supplementation
- d) maintaining the normal structure or function of the body

Health Benefit claims in advertisements for a Natural Health Product and Dietary Supplement must be supported by scientific or traditional substantiation. Only products that meet the definition in this Code of a Natural Health Product or Dietary Supplement may claim a health benefit in advertisements.

The full Code and Guidance Notes should be read in addition to this guideline prior to developing advertisements for these products:

<http://www.asa.co.nz/codes/codes/therapeutic-health-advertising-code/>

GUIDANCE

As a practical guide the following points are useful. TAPS has developed alternative wording for claims and this wording tries to retain the impact of the claims without the implication of a therapeutic claim.

Claims to support ***“alertness”, “mental clarity”, “focus”, “brain function”, “nutrition for the brain” and “balanced mood”*** would be regarded as OK and on the right side of the boundary line and not implying any therapeutic purpose. They are more general and more consistent with a health claim.

Medsafe in New Zealand is currently responsible for the Dietary Supplement Regulations. Therapeutic claims and implied therapeutic claims that do not have Ministerial Consent under the Medicines Act would be a breach of the Medicines Act and the Dietary Supplement Regulations. In addition The Food Code and FSANZ likewise would prohibit any implied therapeutic claim for what could be classified as a food. This is apart from those claims allowed in food standard 1.2.7 The Ministry of Primary Industries, responsible for food legislation and standards in New Zealand would likewise regard any therapeutic claims for food as being a breach of the Act, Regulations and Standards.

It is a moot point as to where products such as Omega 3 would be classified but it may depend on whether they are packed as capsules and thus be likely to be dietary supplements at present or whether they are presented in liquid form where they might be classified as foods. The general guideline is that a dietary supplement must be presented in a controlled dosage form such as a capsule or tablet.. It is important to point out that both Medsafe and the Ministry of Primary Industries have expressed concerns and recommended caution in the advertising of Fish Oil, Omega 3 and Krill Oil products.

Claims to support, improve or enhance ***“concentration”, “memory”, “recall” “learning”, “behaviour” and “cognitive function”*** are **not OK** and would be regarded as crossing the boundary line and would imply a therapeutic purpose. In addition the claims for these particular more specific functions would be difficult to substantiate scientifically.

TAPS has tried to be consistent in the review and approval of such advertising as a guide for advertisers in a very difficult area, which is clearly not black and white. This guidance is also designed to avoid parents having expectations of an unrealistic outcome from the product and reliance solely on a product for these attributes. This would also be consistent with the high standard of social responsibility required by Principle 1 of the ASA’s Therapeutic and Health

Advertising Code where a high standard is required for e.g. substantiation of claims and for disclosure of key consumer information.

Claims that are likely to be acceptable

- Nutrition / Support / for normal:
 - Brain function / activity
 - Circulation in the brain
 - Alertness
 - Mental Clarity & Focus
- Support for the brain
- Food for thought
- Supports normal mood balance
- Supports the body with mood balance

Claims that are likely to unacceptable

- Support for memory, concentration or cognitive function.
- Improve / enhance
 - brain function
 - memory/recall/cognitive function
 - cognitive function
- Improve / enhance / prolong concentration
- Treats / Delays onset / Slows deterioration of
 - Alzheimer's Disease
 - Dementia
 - Senility
- Treats / Improves / Useful for
 - ADHD
 - Asperger's
 - Learning Disorders
 - Behaviour issues
- Treats / Relieves / Improves / Useful for Depression or Mood
- Historically used to (do any of the above)

Note: Some Natural Health Products and Dietary Supplements contain ingredients that may interfere with some prescription medicines (e.g. anticoagulants). Appropriate warning statements should be included in advertisements to alert consumers to this possibility. See Guideline 3 in the 'Natural Health Products and Dietary Supplements' section of the TAPS Guidelines Page for more detailed information.