

# Appearance and Skin Health

## The do's and don'ts of advertising

Prepared for TAPS Webinar – October 2024

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# Appearance and Skin Health

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3. Advertising and mandatory information
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# Appearance and Skin Health | What is advertising and promotion

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Website, social media pages and posts are ALL regarded as **ADVERTISING** under the ASA definition of advertising and the Medicines Act.

This is also the view of MedSafe



# Appearance and Skin Health | What is advertising and promotion

The Advertising Standards Authority (ASA) has updated the definition of Advertising and Advertisement. It now states:

“Advertising and advertisement(s)” are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.”

The rapidly changing world of advertising, particularly the digital world, has provided an opportunity for the ASA to update its definitions to focus on the intent of the advertiser.

When an advertiser controls the content of a message – be that directly or indirectly – in order to influence choice, opinion or behaviour – then the published or broadcast activity is likely to be advertising.

Advertorials, advertiser websites, advertiser-controlled content within Influencers content e.g., blogs & vlogs and ‘native advertising’ are all considered advertising under this definition.

# Appearance and Skin Health | What is advertising and promotion

The definition of advertising in the Medicines Act 1981 is broad and Medsafe interprets the Medicines Act regarding advertising broadly:

- Publishing the availability, or future availability, of a medicine is advertising. This includes publication in newspapers, on websites, in social media, on TV or radio, in presentations and by word of mouth.
- Advertising covers both public and private communications and applies to communications to members of the public and to health care professionals.
- Personal representation is advertising. For example, product representatives visiting health care professional to promote a medicine is advertising.

# Appearance and Skin Health | What is advertising and promotion

## PROMOTING UNAPPROVED USES OF MEDICINES & MEDICAL DEVICES

When advertising services offered by your clinic on your website with respect to prescription medicines and medical devices **it is your responsible** to check that **your services match the approved indications** in the Data Sheet of a prescription medicine or **match the Intended Purpose** in the WAND of a medical device.



## APPROVED USED

The aesthetic / cosmetic indications for botulinum toxin products are (upper facial rhytids), **forehead lines, crow's feet and glabellar lines.**



## UNAPPROVED USES

Botulinum toxin injections are NOT approved for **injection into lips for fullness (lip flip) or gummy smile injection into neck and chin (Neck Lift) Bruxism or teeth grinding.**

# Appearance and Skin Health | What is advertising and promotion

**Advertising services not approved in a product's data sheet or WAND is a breach of section 20.2 of the Medicines Act ) A person who contravenes subsection (2) commits an offence, and is liable on conviction (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$20,000: (b) in the case of a body corporate, to a fine not exceeding \$100,000**



## UNAPPROVED USES

Botulinum toxin injections are NOT approved for  
**injection into lips for fullness (lip flip) or gummy smile**  
**injection into neck and chin (Neck Lift)**  
**Bruxism or teeth grinding.**



# Appearance and Skin Health | What is advertising and promotion

Advertising in New Zealand is run on a self-regulatory model whereby the industry which includes the advertiser, advertising / digital agencies and the media ensure that best practice is followed.

In New Zealand all parties involved with publishing an advertisement / promotional item including the media can be held liable if the advertisement is found not to adhere to the principles of best practice.

Best practice advertising adheres to the following principles

- advertisements must comply with the laws of New Zealand
- advertisements must be truthful, balanced and not misleading. Claims must be valid and have been substantiated
- advertisements must observe a high standard of social responsibility.

# Appearance and Skin Health | Products and what can be claimed

# Appearance and skin health | *Products and what can be claimed*

**Dysport**<sup>®</sup>  
BOTULINUM TOXIN TYPE A

**XEOMIN**<sup>®</sup>  
IncobotulinumtoxinA

**BOTOX**<sup>®</sup>  
Botulinum Toxin Type A

**Medicine**

**belkyra**<sup>®</sup>  
deoxycholic acid

**HYALASE**  
Hyaluronidase 1500 IU

**Juvéderm**<sup>®</sup>

**Restylane**<sup>®</sup>    **TEOSYAL**

**Medical Devices**

**PROFHILO**<sup>®</sup>

**BELOTERO**<sup>®</sup>

**SCULPTRA**<sup>®</sup>

**Dietary Supplements  
& Natural Health  
Products**

# Appearance and skin health | *Products and what can be claimed*



The claims that can be made by these products are set out in the data sheet of the medicines

Claims of soften forehead lines, crow's feet or frown lines, effectively reduce wrinkles, help to reduce the signs of ageing are acceptable for botulinum toxin injection. As is referring to them as anti-wrinkle therapy.

Claims around lip enhancement cannot be made as injections into the lips is not a registered indication

# Appearance and skin health | *Products and what can be claimed*



Claims for belkyra can only be made in line with its indication *improvement in the appearance of moderate to severe convexity or fullness associated with submental fat in adults.* i.e. double chin

The claims of being anti-ageing are not acceptable but reducing the signs of ageing is acceptable

# Appearance and skin health | *Products and what can be claimed*



The claims that can be made by these products are set the WAND of the medical devices, particularly the Intended Purpose

Claims associated with helping hydration, moisture, improving skin smoothness and fine lines are acceptable. Claims can be made to help restore volume, lost structure and shape

The claims of being anti-ageing are not acceptable but reducing the signs of ageing is acceptable

# Appearance and skin health | *Products and what can be claimed*



**Dietary  
Supplements  
& Natural Health  
Products**

The claims that can be made by these products are restricted by the Medicines Act's definition of Therapeutic Purpose in the act and the definition of a dietary supplement

Claims associated with skin, hair and nail health are acceptable. As are claims of supporting skin hydration, plumbness, elasticity, texture are acceptable.

Claims about fine lines, wrinkles are not acceptable

Claims of anti-ageing are not acceptable

Claims that include words such as reduce, enhance, improve are not acceptable

# Appearance and Skin Health | Advertising and mandatory information



# Appearance and Skin Health | Advertising and mandatory information

If you use the brand names of **Prescriptions Medicines** or **Medical Devices** in any form of advertising/promotional materials including social media posts targeting consumers, you must include the appropriate consumer mandatory information for that brand.

- TAPS is updating its Guidance on Advertising of Cosmetic Injections. This guidance is primarily for appearance clinics and injection nurses. It will contain the recommended minimum mandatory information needed on any advertisement/promotion for individual brands
- **Contact a TAPS Adjudicator for advice on what mandatory information is needed for what product**
- In New Zealand the mandatory information / statement **CANNOT** be substitute by a hyperlink or QR Code irrespective of the media channel.

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Using Brand names of prescription medicines and medical devices **without** consumer mandatory information on the webpage are NOT acceptable. It is a breach of the:

- **The Medicines Act 1981**
- **The ASA Therapeutic & Health Advertising Code**

# Appearance and Skin Health | Advertising and mandatory information

While substituting generic terms like *cosmetic injection, anti-wrinkle injection, dermal filler treatment* can avoid the need to have multiple mandatory statements for multiple products appearing on a social media post.

Principle 1 of the ASA Therapeutic and Health Advertising Code concerning a high level of social responsibility would argue that some form of “generic mandatory information” be included when using these terms

- Contact a TAPS Adjudicator for advice

# Appearance and Skin Health | Guidance on specific issues

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## BEFORE & AFTER IMAGES

Irrespective of whether *before and after* images/videos appear on your website or on social media platforms posts such as Instagram, Tik Tok etc. they need to be used with caution.

Videos and images showing the patient so that they could be identified cannot be used. If the person can be identified it is considered a testimonial which contravenes the Medicines Act.



# Appearance and Skin Health | Guidance on specific issues

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# Appearance and Skin Health | Guidance on specific issues

## COMPARATIVE ADVERTISING

Comparative advertising is not prohibited but needs to be very carefully considered and crafted.

**COST Advertising** - Needs some Terms & Conditions on it. A clear defining around what is the price that will be beat by a further 10%.

However, if the 10% discount covers not just the price of the product but also nurse time, equipment used etc then it is acceptable



Talk to us today if you are concerned about wrinkles and lines. We will beat any other price by 10%, this includes your personal consultation and the treatment that is right for you.





# Appearance and Skin Health | Guidance on specific issues

## COMPARATIVE ADVERTISING

Comparative advertising is not prohibited but needs to be very carefully considered and crafted.

**COST** - The advertising of discounts on prescription medicines and medical devices is not permitted.



### Exclusive Discounts

Enjoy 15% off all treatments, 5% off our special packages, and 5% off skincare products, offering you unmatched value.



### Discounted Injectables

Get exclusive discounts on our range of cosmetic injectables and IV drip therapies.



### Regular Skin Analysis

Every 3 months, we'll assess your skin to track progress and adapt your treatment plan.

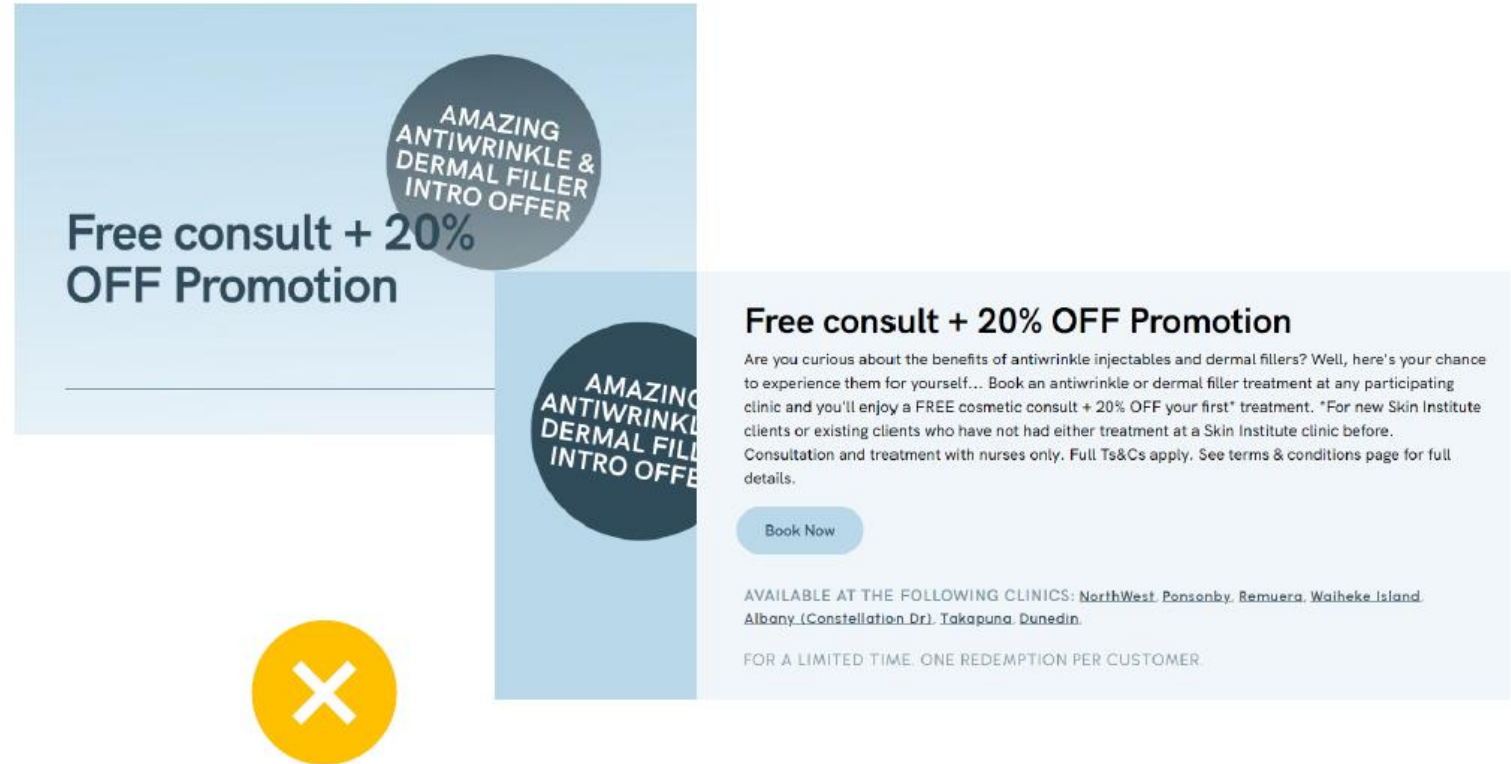


# Appearance and Skin Health | Guidance on specific issues

## COMPARATIVE ADVERTISING

Comparative advertising is not prohibited but needs to be very carefully considered and crafted.

**COST** - However, discounts as a percentage reduction of the overall cost of treatment is acceptable. Any advertisement needs to clearly state this fact



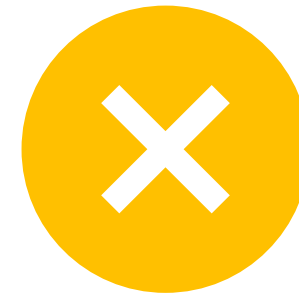
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**SERVICES** – While it is Ok to advertising the quality of the service your clinic provides, e.g. friendly staff, types of services / machinery offered is acceptable. To imply that these of your clinic are better than competitors is not acceptable.



**It is an offence under the Fair Trading Act to make a claim in an advertisement that cannot be substantiated. Advertisers must be able to back up a claim before the claim is made in an advertisement.**

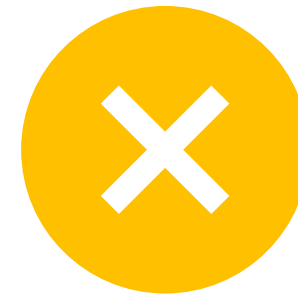
# Appearance and Skin Health | Guidance on specific issues

## COMPARATIVE ADVERTISING

Comparative advertising is not prohibited but needs to be very carefully considered and crafted.

PRODUCTS – Whilst comparing the performance of products is allowed the level of proof required needs to be very high and held on file by your clinic.

Advertising material from a manufacturer or supplier is not really sufficient proof.



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# Appearance and Skin Health | Guidance on specific issues

## TESTIMONIALS

Customer feedback and influencer posts and videos on your clinic via Instagram, tik tok, facebook etc. need to be considered carefully and well crafted.

**CUSTOMER FEEDBACK** – Any feedback posts or videos by customers must be restricted to comments on the friendliness of staff, the way they made the customer feel about the time at your clinic.



**Customer feedback posts and videos must not cover any information about their treatment with a medicine / medical device or their assessment of the performance of any treatment. Testimonials of any kind for prescription medicines and medical devices are not allowed in the Medicines Act 1981.**

# Appearance and Skin Health | Guidance on specific issues

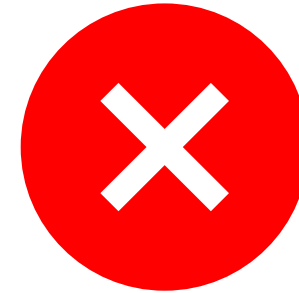
## TESTIMONIALS

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INFLUENCES (CONTENT DEVELOPERS) –  
Advertisements by influencers need to follow the same guidance as for customer feedback.

In addition, the nature of the agreement between the influencer and advertiser needs to also be declared on the advertisement.

- The ASA recommends the labels “Ad”, “Advert” or “Advertisement” with or without hashtags, as the clearest way of labelling ad content.



**Influencers posts and videos must not cover any information about their treatment with a medicine / medical device or their assessment of the performance of any treatment. Testimonials of any kind for prescription medicines and medical devices are not allowed in the Medicines Act 1981.**

# Appearance and Skin Health | Guidance on specific issues

## TESTIMONIALS

Customer feedback and influencer posts and videos on your clinic via Instagram, tik tok, facebook etc. need to be considered carefully and well crafted.

You or your clinic are regarded by the law as the owners of all the content on your website or social media pages.

Under the self regulatory model of advertising run in New Zealand you are responsible for removing all comments on your website or posted / reported on social media page/s that are in breach of either the Medicines Act or the ASA Therapeutic and Health Advertising code or the Fair Trading Act. **If not removed you are liable.**



# Appearance and Skin Health | Guidance on specific issues

## HASHTAGS

Hashtag wording and where they link to need to be carefully considered and managed

### Hashtag Links

All links on any advertisement including social media post are considered part of the advertisement and must also comply with the laws and regulations of New Zealand.

### Hashtag Words

The word/s associated with a #-hashtag also need to comply with the laws and regulations



#anti-ageing



#anti-wrinkle treatment

A “clever” hashtag can make an advertisement/post non-compliant.



Please make sure you approach a TAPS Adjudicator for advice during concept development.



# Appearance and Skin Health | The do's and don'ts of advertising

# Thank you

The sooner you approach TAPS the easier it is to ensure that your communication concepts and implementations activities are within the laws, regulations and guidelines in New Zealand

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