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COMMITTEE STAGE AMENDMENTS

UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENT)(NO. 2) BILL 2004

UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENT)
(NO. 2) BILL 2004

COMMITTEE STAGE

Amendments to be moved by the Secretary for Health,
Welfare and Food

Clause

Amendment Proposed

4(b)

By deleting the proposed definition of "orally consumed product" and substituting -

"orally consumed product" (口服產品) -

(a) means a product (whether or not it is a medicine) for human consumption which is intended to be taken orally and is in any of the following forms -

- (i) pill;
- (ii) capsule;
- (iii) tablet;
- (iv) granule;
- (v) powder;
- (vi) semi-solid;
- (vii) liquid; or
- (viii) a form similar to

any of the forms
mentioned in
subparagraphs (i),
(ii), (iii), (iv),
(v), (vi) and
(vii); and

(b) does not include a product
which is customarily
consumed only as food or
drink (that is to say, to
provide energy, nourishment
or hydration) or to satisfy
a desire for taste, texture
or flavour."

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In the proposed section 3B -

- (a) in subsection (1), by deleting
"specified in column 2 of that
Schedule, and any Note to that
Schedule, in relation to that claim"
and substituting "allowed under the
provisions in column 2 of that
Schedule (as read subject to the Note
in that Schedule)";
- (b) by adding -

"(1A) Where section 3(1) does not apply to an advertisement by virtue of section 3(2), in so far as the advertisement is also an advertisement for an orally consumed product, subsection (1) does not apply to the advertisement.";

(c) in subsection (2)(c), by deleting "效果" and substituting "意思".

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In the proposed Schedule 4 -

(a) in item 4, by deleting everything in column 2 and substituting -

"(a) Subject to paragraph (b), the following claims are allowed -

(i) "This product is suitable for people concerned about blood sugar.
此產品適合對血糖關注的人士服用。";

(ii) "This product may assist in

stabilizing blood
sugar. 此產品或有助
於穩定血糖。”;

(iii) “This product is
intended for
people concerned
about blood sugar.
此產品以對血糖關注的人
士為對象。”; and

(iv) “This product is
for the
consumption by
people concerned
about blood sugar.
此產品供對血糖關注的人
士服用。”.

(b) In relation to a product
which is not registered
under the Pharmacy and
Poisons Ordinance (Cap. 138)
or the Chinese Medicine
Ordinance (Cap. 549), the
claims referred to in
paragraph (a)(i), (ii),

(iii) and (iv) are allowed only if the advertisement clearly includes the following disclaimer -

"This product is not registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine Ordinance. Any claim made for it has not been subject to evaluation for such registration. This product is not intended to diagnose, treat or prevent any disease.

此產品沒有根據《藥劑業及毒藥條例》或《中醫藥條例》註冊。為此產品作出的任何聲稱亦沒有為進行該等註冊而接受評核。此產品並不供作診斷、治療或預防任何疾病之用。"

(See Note)";

(b) in item 5, by deleting everything in column 2 and substituting -

"(a) Subject to paragraph (b), the following claims are allowed -

(i) "This product is suitable for people concerned about blood pressure. 此產品適合對血壓關注的人士服用。";

(ii) "This product may assist in stabilizing blood pressure. 此產品或有助於穩定血壓。";

(iii) "This product is intended for people concerned about blood pressure. 此產品以對血壓關注的人士為對象。"; and

(iv) "This product is for the consumption by people concerned about blood pressure. 此產品供對血壓關注的人士服用。".

(b) In relation to a product which is not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549), the claims referred to in paragraph (a)(i), (ii), (iii) and (iv) are allowed only if the advertisement clearly includes the following disclaimer -

"This product is not registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine

Ordinance. Any claim made for it has not been subject to evaluation for such registration. This product is not intended to diagnose, treat or prevent any disease.

此產品沒有根據《藥劑業及毒藥條例》或《中醫藥條例》註冊。為此產品作出的任何聲稱亦沒有為進行該等註冊而接受評核。此產品並不供作診斷、治療或預防任何疾病之用。”。

(See Note)”;

(c) in item 6, by deleting everything in column 2 and substituting -

“(a) Subject to paragraph (b), the following claims are allowed -

(i) “This product is suitable for people concerned about blood

lipids/
cholesterol. 此產
品適合對血脂/膽固醇關
注的人士服用。”;

(ii) “This product may
assist in
stabilizing blood
lipids/
cholesterol. 此產
品或有助於穩定血脂/膽
固醇。”;

(iii) “This product is
intended for
people concerned
about blood
lipids/
cholesterol. 此產
品以對血脂/膽固醇關注
的人士為對象。”; and

(iv) “This product is
for the
consumption by
people concerned
about blood

lipids/
cholesterol. 此產
品供對血脂/膽固醇關注
的人士服用。”.

- (b) In relation to a product which is not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549), the claims referred to in paragraph (a)(i), (ii), (iii) and (iv) are allowed only if the advertisement clearly includes the following disclaimer -

“This product is not registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine Ordinance. Any claim made for it has not been subject to evaluation for such

registration. This product is not intended to diagnose, treat or prevent any disease.

此產品沒有根據《藥劑業及毒藥條例》或《中醫藥條例》註冊。為此產品作出的任何聲稱亦沒有為進行該等註冊而接受評核。此產品並不供作診斷、治療或預防任何疾病之用。”。

(See Note)”;

(d) in the Note -

(i) by deleting “both the product label and the advertisement are” and substituting “the advertisement is”;

(ii) by deleting “any claim or disclaimer” and substituting “a claim stated in column 2”;

(iii) by adding “, but where there is included in the same advertisement any other

claim or disclaimer that is stated in column 2, that other claim or disclaimer (as the case may be) shall also be limited to that language" before the full stop.

4. Interpretation

Section 2(1) is amended –

(a) in the definition of “medicine” by repealing the full stop at the end and substituting a semicolon;

(b) by adding –

““orally consumed product” (口服產品) –

(a) means a product (whether or not it is a medicine) for human consumption which is intended to be taken orally and is in any of the following forms –

(i) pill;

(ii) capsule;

(iii) tablet;

(iv) granule;

(v) powder;

(vi) semi-solid;

(vii) liquid; or

(viii) a form similar to any of the forms mentioned in subparagraphs (i), (ii), (iii), (iv), (v), (vi) and (vii); and

(b) does not include a product which is customarily consumed only as food or drink (that is to say, to provide energy, nourishment or hydration) or to satisfy a desire for taste, texture or flavour.”.

5. Section added

The following is added –

“3B. Prohibition of advertisements relating to certain orally consumed products; exceptions therefrom

(1) No person shall publish, or cause to be published, an advertisement for an orally consumed product which makes for the product a claim specified in column 1 of Schedule 4, or any similar claim, except as allowed under the provisions in column 2 of that Schedule (as read subject to the Note in that Schedule).

(1A) Where section 3(1) does not apply to an advertisement by virtue of section 3(2), in so far as the advertisement is also an advertisement for an orally consumed product, subsection (1) does not apply to the advertisement.

(2) For the purposes of this section –

- (a) the sale or supply, or offer or exposure for sale or supply, of an orally consumed product in a labelled container or package shall constitute the publication of an advertisement;
- (b) the supply, inside any container or package containing any orally consumed product, of information relating to that or any other product shall not constitute the publication of an advertisement;
- (c) “any similar claim” (任何類似的聲稱) means a claim that can reasonably be understood to be to the like effect as the specified claim, by reference to all the relevant circumstances.

(3) Where, in an advertisement for an orally consumed product published in contravention of subsection (1), a person named in that advertisement is held out as being a manufacturer or supplier of the

product, that person is presumed, until the contrary is proved, to have caused the advertisement to be published.

(4) Where an advertisement for an orally consumed product published in contravention of subsection (1) gives the name, address or telephone number of, or indicates some other means of contacting, a person, and that person manufactures or supplies the product, that person is presumed, until the contrary is proved, to have caused the advertisement to be published.”.

10. Schedule 4 added

The following is added –

“SCHEDULE 4

[s. 3B]

CLAIMS FOR ORALLY CONSUMED PRODUCTS
IN RESPECT OF WHICH ADVERTISEMENTS
ARE PROHIBITED OR RESTRICTED

Column 1	Column 2
Claim	Exemption
<p>1. Prevention, elimination or treatment of breast lumps, including eliminating the blockage of milk ducts of the breast, helping to eliminate disease-causing factors or lumps, relieving the associated discomfort symptoms, helping to improve the metabolism of breast tissue, effectively disintegrating and eliminating abnormal cell tissues and lumps.</p>	None.
<p>2. Regulation of the function of the genitourinary system and/or improvement of symptoms of genitourinary problems such as frequent urination, urgent urination, dripping urination, poor stream, difficulty in urination, urination at night, impeded prostatic function and</p>	None.

uncontrollable urinary discharge
or incontinence.

3. Regulation of the endocrine system and/or maintenance or alteration of hormonal secretions, including helping to maintain hormones at optimal level, stimulating the hypothalamus, increasing secretion of oestrogen, promoting normal secretion of the female hormone, regulating the female endocrine function, improving imbalance of male hormone secretion, helping to maintain balance of hormonal secretions in men and women, stimulating hormonal secretions, regulating endocrine secretion, balancing endocrine secretion, increasing secretion of growth hormone, stimulating the thyroid gland. None.
4. Regulation of body sugar or glucose and/or alteration of the function of the pancreas, including regulating blood sugar, suppressing or reducing the absorption of glucose, reducing the blood sugar level, increasing
- (a) Subject to paragraph (b), the following claims are allowed –
- (i) “This product is suitable for people

the metabolism of body sugar, being suitable for diabetic patients, being against blood sugar, being suitable for people with high blood sugar, improving the function of the pancreas, stimulating the secretion of insulin.

concerned about blood sugar. 此產品適合對血糖關注的人士服用。”;

(ii) “This product may assist in stabilizing blood sugar. 此產品或有助於穩定血糖。”;

(iii) “This product is intended for people concerned about blood sugar. 此產品以對血糖關注的人士為對象。”; and

(iv) “This product is for the consumption by people concerned about blood sugar. 此產品供對血糖關注的人士服用。”.

(b) In relation to a product which is not registered

under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549), the claims referred to in paragraph (a)(i), (ii), (iii) and (iv) are allowed only if the advertisement clearly includes the following disclaimer -

“This product is not registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine Ordinance. Any claim made for it has not been subject to evaluation for such registration. This product is not intended to diagnose, treat or prevent any disease. 此產品沒有根據《藥劑業及

毒藥條例》或《中醫藥條例》註冊。為此產品作出的任何聲稱亦沒有為進行該等註冊而接受評核。此產品並不供作診斷、治療或預防任何疾病之用。”。

(See Note)

5. Regulation of blood pressure, including regulating blood pressure, controlling blood pressure, reducing blood pressure, being suitable for people with high blood pressure.
- (a) Subject to paragraph (b), the following claims are allowed –
- (i) “This product is suitable for people concerned about blood pressure. 此產品適合對血壓關注的人士服用。”;
- (ii) “This product may assist in stabilizing blood pressure. 此產品或有助於穩定血壓。”;
- (iii) “This product is intended for

people
concerned about
blood pressure.
此產品以對血壓
關注的人士為對
象。”; and

(iv) “This product is
for the
consumption by
people
concerned about
blood pressure.
此產品供對血壓
關注的人士服
用。”.

(b) In relation to a product
which is not registered
under the Pharmacy and
Poisons Ordinance
(Cap. 138) or the
Chinese Medicine
Ordinance (Cap. 549),
the claims referred to in
paragraph (a)(i), (ii),
(iii) and (iv) are
allowed only if the
advertisement clearly
includes the following
disclaimer -

“This product is not

registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine Ordinance. Any claim made for it has not been subject to evaluation for such registration. This product is not intended to diagnose, treat or prevent any disease. 此產品沒有根據《藥劑業及毒藥條例》或《中醫藥條例》註冊。為此產品作出的任何聲稱亦沒有為進行該等註冊而接受評核。此產品並不供作診斷、治療或預防任何疾病之用。”.

(See Note)

6. Regulation of blood lipids or cholesterol, including preventing (a) Subject to paragraph (b), the following

high blood lipids, helping to maintain normal blood lipids, lowering blood lipids, reducing or regulating cholesterol, balancing blood cholesterol, excreting cholesterol in the blood vessel outside the body, being suitable for people with high blood lipids or high cholesterol.

claims are allowed –

- (i) “This product is suitable for people concerned about blood lipids/cholesterol. 此產品適合對血脂 / 膽固醇關注的人士服用。”;
- (ii) “This product may assist in stabilizing blood lipids/cholesterol. 此產品或有助於穩定血脂 / 膽固醇。”;
- (iii) “This product is intended for people concerned about blood lipids/cholesterol. 此產品以對血脂 / 膽固醇關注的人士為對象。”;
and
- (iv) “This product is for the

consumption by
people
concerned about
blood lipids/
cholesterol. 此
產品供對血脂/
膽固醇關注的人
士服用。”.

- (b) In relation to a product which is not registered under the Pharmacy and Poisons Ordinance (Cap. 138) or the Chinese Medicine Ordinance (Cap. 549), the claims referred to in paragraph (a)(i), (ii), (iii) and (iv) are allowed only if the advertisement clearly includes the following disclaimer -

“This product is not registered under the Pharmacy and Poisons Ordinance or the Chinese Medicine Ordinance. Any claim made for it

has not been subject to evaluation for such registration. This product is not intended to diagnose, treat or prevent any disease. 此產品沒有根據《藥劑業及毒藥條例》或《中醫藥條例》註冊。為此產品作出的任何聲稱亦沒有為進行該等註冊而接受評核。此產品並不供作診斷、治療或預防任何疾病之用。”.

(See Note)

Note: If the advertisement is wholly or mainly in the English or Chinese language, a claim stated in column 2 may be limited to that language, but where there is included in the same advertisement any other claim or disclaimer that is stated in column 2, that other claim or disclaimer (as the case may be) shall also be limited to that language.”.

Drafter: Ms Frances Hui

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DRAFTING HISTORY TABLE

Draft no.	Release date	Doc. no. & version
1 st working draft	31.5.2005	#123828 v2

COMMITTEE STAGE AMENDMENTS

UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENT)(NO. 2) BILL 2004

UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENT)
(NO. 2) BILL 2004

COMMITTEE STAGE

Amendments to be moved by the Secretary for Health,
Welfare and Food

Clause

Amendment Proposed

8

In the proposed section 8(2) -

- (a) in paragraph (b), by deleting "or on";
- (b) in paragraph (c), by deleting "samples of packaging and labels and".

8. Section added

The following is added –

“8. Enforcement provisions

(1) The Director of Health may in writing authorize any public officer to be an inspector for the purposes of this Ordinance.

(2) For the purpose of ascertaining whether the provisions of this Ordinance are being complied with, an inspector may –

- (a) at any reasonable time enter –
 - (i) any premises at which any medicine, surgical appliance or orally consumed product is manufactured, stored or sold;
 - (ii) any premises at which any treatment is provided;
- (b) require any person found in the premises and whom the inspector reasonably suspects to have committed an offence under section 3, 3B or 4, to give to the inspector the person’s name and address and evidence of identity;
- (c) in the premises make such examination and inquiry and do such other things, including the taking of copies of advertisements, as are reasonably necessary for the purposes of the inspection.

(3) If a magistrate is satisfied by information upon oath that there are reasonable grounds for believing that –

- (a) an offence against section 3, 3B or 4 is being or has been committed in any premises; or
- (b) there is or may be in any premises anything which is or contains, or which is likely to be or to contain, evidence of the commission of an offence against any of those sections,

the magistrate may issue a warrant authorizing any inspector to enter and search the premises.

(4) If a warrant has been issued under subsection (3) in respect of any premises, an inspector may –

- (a) at any time, using such force as is necessary, enter and search the premises;
- (b) remove anything which obstructs such entry and search;
- (c) detain any person found in the premises, for such period as is reasonably required to permit the search to be carried out, if the person might prejudice the search if not so detained; and
- (d) inspect, seize and detain anything which is or contains, or which appears to the inspector to be or to contain, evidence of the commission of an offence against section 3, 3B or 4.

(5) An inspector may in relation to premises other than domestic premises exercise any of the powers mentioned in subsection (4), without a warrant having been issued under subsection (3), if -

- (a) the inspector has reason to believe that –
 - (i) an offence against section 3, 3B or 4 is being or has been committed in the premises; or
 - (ii) there is or may be in the premises anything which is or contains, or which is likely to be or to contain, evidence of the commission of an offence against any of those sections; and
- (b) it is not reasonably practicable to obtain a warrant in respect of the premises before exercising those powers.

(6) When exercising any of the powers conferred by subsection (2) or (4), an inspector must, if so requested by any person,

produce for inspection by that person written evidence of the inspector's authority.

- (7) A person who –
 - (a) wilfully delays or obstructs an inspector in the exercise of the powers conferred by subsection (2) or (4); or
 - (b) fails without reasonable excuse to give any information which the inspector reasonably requires the person to give under subsection (2),

commits an offence and is liable on conviction to a fine at level 3.”.