
Feature Article

Advertising Standards For Aesthetics – Avoiding Common Mistakes When Promoting Your Clinic

Advertising...something of a dirty word in the aesthetic and cosmetic industry at the moment with various organisations seeking to outlaw advertising for all cosmetic interventions, be they surgical or non-surgical. There are those championing a full-on ban, and those advocating a more measured approach to avoid irresponsible advertising which trivialises the medical nature of treatment through time limited or discount deals.

Whatever your view, and Keogh is also looking into the options for this, every business will advertise and more importantly is likely to 'need' to advertise in order to recruit new clients to their services. No matter which method of advertising you use to promote your cosmetic treatments, rules do apply and it's important to know them, to try not to get caught by them and to realise that those policing it are not doing as effective a job as you might otherwise think!

Hopefully this article will give you a few tips on the dos and don'ts of advertising in aesthetics and an understanding of the rules. For those interested in a more in-depth overview of this subject, with an opportunity to discuss the complexities of it, please visit www.smartseminar.co.uk to book your place on our next event where I will be presenting this subject to delegates.

So, let's crack on with the basics. Advertising, put simply is a form of communication for marketing. It is used to encourage or persuade an audience to continue to 'take an action' or 'take a new action'. The audience can be viewers, readers or listeners or another specifically filtered and targeted group such as your existing client base. The goal as we all know is to drive consumer behaviour in relation to a commercial offering, in this case drive new clients and existing clients to seek first time or repeat treatment at your clinic.

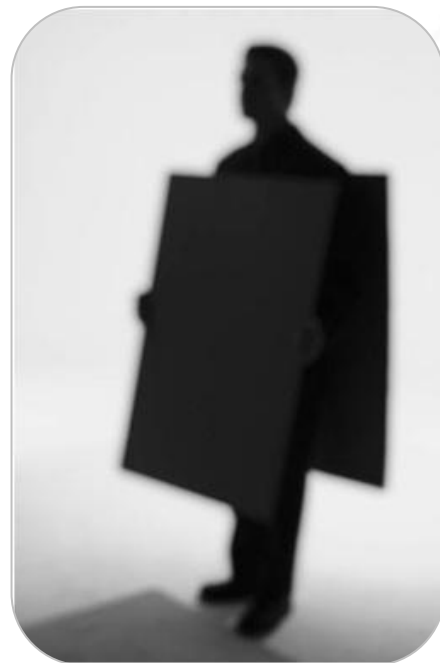
In terms of the media used for advertising, most of us don't have the deep pockets needed for broadcast adverts on television so we will focus on non-broadcast medium such as magazines, newspapers, billboards, posters, brochures, direct mail (including printed, email and SMS text messaging), as well as Internet based material such as web sites, blogs, social media (Facebook, Twitter etc) and banner or pay-per-click advertising.

The Police

In the UK, the **British Code of Advertising, Sales Promotion and Direct Marketing** (the Code) is the rule book for non-broadcast advertisements, sales promotions and direct marketing communications. The **Committee of Advertising Practice (CAP)** is the self-regulatory body that creates, revises and enforces the Code; and the **Advertising Standards Authority (ASA)** is the independent body set up by the advertising industry to police the rules laid down in it. The **Medicines and Healthcare products Regulatory Agency (MHRA)** also polices the advertising and promotion of licensed medicines, and has published guidance on the legal requirements for this in its **Blue Guide**.

Additionally, the UK legislative base for the control of advertising, particularly that of medicines, was contained in *The Medicines (Advertising) Regulations 1994* and *The Medicines (Monitoring of Advertising) Regulations 1994*, however from August 2012 this became *Part 14 of the Human Medicine Regulations 2012*.

As well as setting out basic and general rules governing all non-broadcast advertising, the CAP Code also details specific rules applicable to the advertising of health & beauty products and cosmetic therapies. In general these rules broadly state such things as; medical or scientific claims should be backed by evidence, marketing materials should not encourage public self-diagnosis, or imply a product is safe because it is 'natural', or use scientific words for common conditions to baffle consumers.



With respect to medicines, the Code states, in conjunction with the legislative acts, that prescription only medicines (such as botulinum toxin or Botox®) must not be advertised to the public; and that advertisers should not use health professionals or celebrities to endorse medicines.

The specific rules aimed at cosmetic treatments also state, more significantly, that references to the relief of symptoms or the superficial signs of ageing are acceptable if they can be substantiated; however, unqualified claims such as 'cure' and 'rejuvenation' are not generally acceptable. The general rules are not to mislead, make unrealistic claims or claim anything which you cannot substantiate if required. This also applies to the use of before and after photos, which should be genuine patients, with unadulterated images and be direct representations of a treatment being advertised. (Harley Medical Group, November 2010).

The ASA will reactively investigate complaints made about an advertisement and if your advert is judged to be in breach of the Code by them, then the likely request is that it must be withdrawn or amended. In general the vast majority of advertisers comply with this and the adjudication becomes a matter of public record, (opinions on the effect of this in terms of reputation are pretty subjective in terms of wide public knowledge of their existence). If the advertiser does not comply then the ASA does have effective sanctions which it can impose.

I think most would agree that it's perhaps in our best interests to avoid having to deal with a complaint, in terms of time, energy, financial implications and the stress, so getting it right is the best option, to be on the safe side.

The Nitty Gritty of The Code

Surgical, Non-Surgical, Minimally Invasive, Non-Invasive?

Words we are all familiar with when describing the myriad of treatments now available with the advancement of medical technologies. Sensibly it would be misleading to claim that invasive surgery was a 'minor procedure', and one must also not imply unrealistic claims in relation to the complexity or duration of the operation, the pain experienced either during or after the operation, the length of the recovery time or the potential side-effects, as well as the outcomes achievable.

Examples to illustrate would include that the permanent removal of localised areas of fat (through liposuction) will prevent subjects from gaining fat elsewhere, that tattoos can be removed 'without trace' or that surgically replaced hair will last permanently.

But can something be described as non-surgical? Well the simple answer is yes; if it is being used to distinguish between surgical and non-surgical procedures offered by a clinic, but treatments such as Laser Lipolysis for example, which is not, in itself, surgical cannot be described as 'non-surgical' or 'non-invasive'. (The Norton Clinic Ltd, 2008).

Bigging Up Your Status!

We all want to shout loudly about how good we are but when making claims about the status of your clinic or the skills of your practitioners, there are some fairly large pitfalls that you could fall into by using what seem like inconsequential statements.

Claims such as 'a/the leading clinic' are likely to be seen to refer to the clinic and not purely to the doctors/surgeons it uses. Therefore you should be able to demonstrate, if questioned, that the clinic has qualities, such as a proven track record, outstanding facilities and additional staff that would put it above most or all other clinics. The same goes for practitioners, be wary of terms such as 'qualified', 'highly qualified', 'fully qualified', 'experienced', 'skilled', 'leading', 'foremost', 'specialist', to name but a few, as all require demonstrable evidence which may be overlooked when writing your marketing copy!

Worth also noting is that surgeons may be described as 'cosmetic surgeons' if they have chosen to specialise, and have received training and gained experience, in plastic surgery; oral and maxillofacial surgery; ENT or ophthalmological surgery.

Another common pitfall would be linking oneself or ones business to renowned locations such as Harley Street; this is not acceptable unless you can show that you carry out consultations or treatments/procedures there. Equally when noting how many branches or clinic locations you have around the country, you should only include those premises where you carry out consultations or treat, and be wary of using 'nationwide' if you have only one clinic in Manchester and one in London!

Interestingly, the ASA also views that dentists referring to themselves using the title 'Doctor' or 'Dr' is misleading, unless they hold a medical qualification or a relevant PhD/doctorate, despite the GDC allowing this honorary title.

Several example adjudications have upheld complaints of this nature. (Woodvale Clinic, February 2009 and December 2012).

Cosmetic Injectables

Please note that for the purposes of ease in this section, and to avoid over use of the primary brand of botulinum toxin (namely Botox), I will use the terminology BoNTA to describe all the brands currently available in the UK, (Botox®, Vistabel®, Azzalure®, Dysport®, Bocouture® and Xeomin®).

According to the CAP, if you offer BoNTA and other injected treatments in your clinic you may advertise using the term 'cosmetic fillers' or 'injected fillers', however, you may not name a BoNTA brand directly or describe the treatment in any way that would imply BoNTA'.

But, and this is where it gets silly! If BoNTA is the only one you offer, (i.e. you do not carry out dermal fillers as well) then you should not advertise 'fillers' because that would be an indirect promotion of a prescription only medicine, namely the BoNTA! But as above, if you also offer dermal fillers, you may advertise 'fillers'. Thankfully, most clinics and practitioners would have both treatment options within their armament to offer clients so this small complexity is unlikely to trip most advertisers up.

In respect of dermal filler products, irrespective of composition, you may refer to them as being capable of 'temporarily reducing the appearance of fine lines and wrinkles' but you should not suggest either that treatment can 'cure' or 'rejuvenate skin' or that 'lines and wrinkles will be permanently eliminated'. Similarly, unqualified claims, such as 'wrinkle reduction', are likely to be unacceptable.

BoNTA is a prescription only medicine which cannot be advertised to the public, so the promotion of BoNTA, whether direct or indirect is likely to breach both Code and MHRA (legislation) rules. Being 'sneaky' and thinking that you're not 'really' mentioning it won't work either as an advert on the daily deal site Groupon proved which tried to claim that the advert related to a dermal filler treatment when the terminology used in the advert stated, "facial injection treatments on one, two or three areas" and "choice of crow's feet, between the eyebrows and forehead area". Needless to say the ASA did not buy that argument and deemed it to be indirect promotion of BoNTA. (MyCityDeal Ltd t/a Groupon (Bath Facial Aesthetics advert), March 2012).

The MHRA has issued a [document](#) entitled, 'Advertising of Medicines: Guidance for consumer websites offering medicinal treatment services', which highlights its advice for those wishing to include information about POMs, such as BoNTA on their website. They request that there be no reference to named POMs on your home page, no hover text (tool tips), small print, hidden text or icons/logos naming a POM and that links from the home page may refer to conditions but not to the POM itself. Additionally, the website URL itself should not include the POM name, e.g. www.wesellbotox.com. However they are not interested in the meta tag information for a website, used to assist in Search Engine Optimisation (SEO) such as keywords, titles and descriptions as they are deemed to be not public facing, thus these elements may name a POM.

As you will have noted, the MHRA is only interested in policing the home page of a website, which they put down to resource difficulties but this naive view leaves them wide open to not effectively policing non-compliant content on other pages within a site which have been SEOed to appear higher in Google™ rankings than the home page! Although, the MHRA are proactively checking sites on a region by region basis and writing to clinics about their website if it is deemed to be in breach. Offenders are also named and shamed in quarterly reports on their website.

It is true though that the ASA takes a harder line than the MHRA on the advertising of BoNTA and will for example look at a website as a whole, but there may be limited exceptions for clinics offering consultations for treating specific conditions for which BoNTA brands may be used.

In looking at a particular complaint against a clinic, the ASA considered that it was acceptable for a website to make **balanced and factual references to BoNTA as a treatment option** IF the advertisers **emphasised the promotion of the consultation** rather than any associated POM **AND**, during that consultation, **a range of therapeutic options would be discussed**; that consultation may or may not lead to the provision of BoNTA. But, if the context or content of claims in the advert go beyond balanced and factual references to BoNTA as one of several treatment options likely to be discussed during a consultation, the ASA is likely to consider the advert promotes the use of a POM to the public. (Anesis Spa, July 2012). (Skinboost, February 2012).

You may therefore refer to a consultation for lines and wrinkles (or for hyperhidrosis/excessive sweating) on your website and include a price list with a range of treatments available but the price list should not include product claims or actively encourage viewers to choose a product based on the price.

CAP recommend that advertisers who wish to refer to BoNTA on websites keep their wording as close as possible to the information provided in the summary of product characteristics or patient information leaflet.

This is of course the most controversial aspect of advertising standards in relation to aesthetics and one which everyone knows is flouted daily, particularly with the advent of social media.

Hair Removal – Permanent or Not?

Many of you will have come up against the two phrases 'permanent removal' and 'permanent reduction' when describing treatment options for hair removal. In terms of the types of devices used, we are referring to electrolysis and laser/IPL.

Electrolysis is the only one which can make the claim for permanent removal of hair, but it cannot make claims for being painless. With light emitting devices, the Code takes its lead from the US FDA who have given market clearance for some devices to claim 'permanent hair reduction' but not 'permanent hair removal', thus this applies when the ASA investigate complaints here.

Additionally the efficacy of laser treatments can vary depending on a person's skin type (colour), as well as their hair colour, therefore it is important to avoid giving the impression that laser or IPL hair reduction will be effective or is suitable for all consumers. Similarly the ASA has upheld complaints against advertisers for failing to prove claims they made that their laser treatments were 'painless', substantiation and evidence is key.

Lasers and Light For Skin Treatments

As mentioned above, the ASA does not like unqualified claims such as 'rejuvenation' or 'rejuvenate', yet this is often the terminology used to describe treatments to improve the appearance of the skin using ablative and non-ablative laser and light treatments. They do however accept that skin can be 'resurfaced', but urge the use of phrases such as 'temporarily rejuvenate the skin's appearance' when promoting laser treatments.

Similarly Intense Pulsed Light (IPL) treatments are often marketed as 'photo-rejuvenation', so you could be asked to disclaim or delete the name if you use it to advertise your treatment.

The claim that lasers can 'reduce the superficial appearance of wrinkles' is generally accepted, but claims that the treatment can 'remove wrinkles or the signs of ageing' are not. This was highlighted in a complaint where the phrase 'remove fine facial lines and wrinkles permanently' was used as a claim for CO2 laser resurfacing. Although the advertiser submitted evidence which showed that CO2 laser resurfacing could improve the appearance of static facial lines, the studies showed those lines could return within a year, especially if the lines were caused by the movement of underlying muscles so 'permanent' removal could not be substantiated and was thus misleading. (West of England Laser Centre, 2004).

Other Aesthetic Treatments

The ASA and CAP accepts that cellulite exists but does not accept that it is a distinct type of body fat; therefore you cannot claim that a treatment can specifically target "cellulite", nor can you claim that treatments, such as Endermologie™ can 'remove' or 'eliminate' cellulite, claims must be limited to 'temporarily reduce the appearance of cellulite'.

CACI (Computer Aided Cosmetology Instrument) is a popular micro-current treatment for the face and body, but claims such as 'non-surgical face lift' are considered unacceptable because they imply the product is equivalent to surgery, and has immediate and permanent results which it does not, so claims should go no further than 'temporarily tones and tightens the skin' and should make it apparent that repeat and maintenance treatments are needed.

The ASA accepts that microdermabrasion can slough off the dead layer on the skin's surface, to reveal younger looking or smoother skin but will not accept claims which go deeper such as that it can stimulate collagen production. Interestingly this view also applies to chemical peels, irrespective of depth of penetration.

CAP note that they have seen no evidence that the technique of mesotherapy (using multiple injections of vitamins and homeopathic medicines) can work and thus advises that it should be advertised only as the fact that it is available from a clinic. (A.Y. Eternal Youth, 2008)

Conclusion

It is very clear that although there are many guidelines laid down and enforced by the ASA, CAP and MHRA regarding appropriate advertising of cosmetic surgery, aesthetic treatments and prescription only medicines used

for cosmetic purposes there are literally hundreds of examples of clinics and practitioners currently breaking these rules and guidelines.

When asked about this during past presentations that I have given on this topic, the audience have always been quick to point out that they know of local competitors who are 'breaking the rules' so wonder what incentive they have to stick to them themselves!

Most 'offences' are partly due to a lack of knowledge regarding the specific CAP guidelines, but many clinics flout the rules in the knowledge that policing of these guidelines is currently ineffective and with the simple hope that none of their 'enemies' in this cut-throat industry will shop them to the regulators, which most frankly won't for fear of 'what goes around comes around'. Clinics wishing to market their aesthetic services within current guidelines often complain that they are operating at a disadvantage to local competition that don't, and can be tempted to follow suit if they think they are losing customers.

Press and media coverage certainly appear to pay no heed to MHRA guidelines with regard to prescription medicines, with BoNTA in the form of Botox® being featured in virtually every television programme covering aesthetic procedures or make-overs.

Representative industry bodies, such as doctor and nurse associations appear to do little to help reinforce appropriate advertising guidelines amongst membership, although recognition of that is occurring and some, such as BAAPS are quite outspoken on their views on advertising regulations and best practice.

Regulatory bodies such as the MHRA are taking a more proactive stance, but openly admit to not having the resources to really investigate to any great depth, leading to many loopholes being wide open to their 'policing'. Most regulation of advertising compliance is therefore reactive which, although makes examples of a few offenders, does little as a deterrent when most think that they simply won't get caught, or that "everyone else is doing it too so why shouldn't I, and there are no 'real' penalties if I do get investigated and found to be in breach".

Even if the Keogh report does provide recommendations in terms of advertising and clamps down on certain practices, there is still likely to be a question of whether it will have any teeth if it simply gets included in the current self-regulatory arrangements of the ASA which relies on reactive policing. Perhaps sanctions ought to be elevated (even for first offenders) to deter more from the simple 'slapped wrist' approach doled out to offenders currently.

For advice and guidance, direct from CAP, please visit their [Advice Online Database](#) and look under anti-ageing, before and after photos, breast enhancing, cosmetic surgery, hair, hyperhidrosis, lasers, mesotherapy, microsclerotherapy and teeth whitening.



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Lorna has been Editor of The Consulting Room™, the UK's largest aesthetic information website, for over nine years. She has become an industry commentator on a number of different areas related to the aesthetic industry, collating and evaluating statistics and writing feature articles, blogs, newsletters and reports for The Consulting Room™ and various consumer and trade publications, including *Aesthetic Medicine*, *Cosmetic News* and *Aesthetic Dentistry Today*.