Comments on Draft Report of Consumer Law Enforcement and Administration Arrangements

Swisse Wellness

JANUARY 2017

SWISSE WELLNESS COMMENTS ON DRAFT REPORT OF CONSUMER LAW ENFORCEMENT AND ADMINISTRATION ARRANGEMENTS

September 2016

Swisse Wellness (Swisse) welcomes the opportunity to provide some brief comment's on the Productivity Commission's draft report of Consumer Law Enforcement and Administration arrangements, released in December, 2016.

Established over 40 years ago in Melbourne, Swisse is Australia's number one natural vitamin, herbal and mineral supplement company, and with rapidly growing exports is quickly becoming a global success. Recent expansion into sports nutrition, skincare and functional foods has also been met with promising demand. With a significant and growing market penetration across Australia, the Asia Pacific, China and Europe, we are strong believers in selling locally-manufactured products of the highest quality, safety and efficacy.

Regulation of the Complementary Medicines industry is overseen by the Therapeutic Goods Administration (TGA). The TGA refers to legislative instruments (for example, the Therapeutic Goods Act) and regulatory instruments (Therapeutic Goods Advertising Code) to maintain compliance, issue punitive measures and protect consumers. Swisse's commentary concerns the overlap between the ACL and TGA, and provides a solution to regulatory deficiencies that minimises consumer protection in our industry.

For your reference, a copy of Swisse's original submission to this review is attached.

Bridging the Gap: A new framework for regulating the Therapeutic Goods Industry

There is no longer a need for the TGA to oversee advertising claims when there a mature consumer protection system in place, overseen by the Australian Competition and Consumer Commission and the potential for efficient self-regulatory systems overseen by the Advertising Standards Bureau for advertising claims, compliance and complaints.

The 'novel foods' category of FSANZ carries a potentially similar consumer risk profile to complimentary medicines and yet is not subject to an additional layer of advertising regulation beyond the regulations of the ACCC and the self-regulatory systems overseen by the Advertising Standards Bureau.

The TGA risk-management approach that is appropriate for the public health risks associated with pharmaceuticals is not consistent with the public health risks associated with complementary medicines.

Swisse Wellness remains of the view that the requirement to undergo pre-market advertisement assessment and the existence of a complex, obscure and insufficient complaints resolution process is not best practice. It has had a stifling impact on competition and productivity within the complementary medicines industry.

Swisse was pleased to see the Government accept Recommendation 56 of the Sansom Review, that current mechanisms for managing complaints are disbanded and a new mechanism is established.

While called for by some within the complementary medicines industry, Swisse is not supportive of maintaining an option for voluntary pre-market advertising approval regime as this would add unnecessary cost and complexity to the system, and likely provide unintended consequences of consumer confusion as to the approvals and complaints handling.

The Australian Consumer Law, and regulations administered by the ACCC, should be recognised as the first and foremost set of consumer protection guidelines.

Negligent practice and non-compliance by companies in the complementary medicines sector falls under the 'misleading conduct' provisions of the Australian Consumer Law as outlined in Schedule Two of the Competition and Consumer Act 2010.

The regulatory framework governing therapeutic goods would best serve consumers, manufacturers and businesses if the regulation and appropriate penalties deferred to, or reflected the Australian Consumer Law.

This measure would save on a significant regulatory burden through the elimination of duplicated systems, a burden that is ultimately funded by industry through cost recovery measures. The current system simply detracts from further investment and innovation by industry, and does not provide an independent, transparent process satisfying neither consumers, industry, regulators or Government.

Should the commission require further information or clarification, please do not hesitate to contact us.