

## COMPLAINTS RESOLUTION PANEL DETERMINATION

Complaint 2011-07-033 IHRB - Institute of Hair Regrowth and Beauty

Meeting held 15 September 2011

### Complaint summary

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Complainant	Jonar Nader
Advertiser	Institute of Hair Regrowth and Beauty Pty Ltd
Subject matter of complaint	Website and print advertisements
Type of determination	Final
Sections of the Code, Regulations or Act found to have been <u>breached</u> *	Act section 42C Code sections 4(1)(b), 4(2)(a), 4(2)(c), 4(2)(d), 4(2)(g), 4(2)(h), 4(2)(i), 4(4), 4(5), 4(7), 6(3)
Sections of the Code, Regulations or Act found <u>not to have been breached</u> *	Code section 4(2)(b), 4(2)(e), 4(2)(f), 4(2)(j), 5(2)
Sanctions	Publication of retractions Withdrawal of representations Withdrawal of advertisement

\* only sections of the Code, Act, or Regulations that were part of the complaint or were raised by the Panel are listed

## **Preliminary matters**

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1. It should be noted that both the complaint and the response were somewhat lengthy, and are necessarily summarised only briefly and with some degree of simplification in this determination.

## **The advertisement(s)**

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2. The complaint concerned an internet advertisement published at the website *www.ihrb.com*, together with “hundreds of printed ads”, including a print advertisement published in the 2 September 2010 edition of the *Daily Telegraph* newspaper, “nmags” (Negotiator magazine) and *nine to five* on 6 and 20 September 2010, 4 and 15 October 2010.
3. The print advertisements were said by the complainant to be representative samples of “hundreds of ads”.
4. The advertisements all contained a range of similar claims, although the internet advertisement was more extensive. They included words such as “Balding? Losing Hair? Thinning? This is a world’s first as we guarantee to regrow more of your own hair or your money back”, “men and women of all ages and children worry no more”, “we actually regrow your own natural hair”, “all others say ‘try ours, it may help’. No ‘ifs’ and buts’ with us.”, “why would you experiment with various other non-effective products”, “do lasers, high frequency machines, and massages block the balding gene (DHT)? No!”, “using prescribed topical and oral pharmaceutical products, natural extracts and herbal preparations, I have helped thousands of men, women, and children with ‘genetic baldness’ re-grow their own natural hair back”, and many other claims
5. The advertisements also contained extensive testimonial material and “before and after” photographs.
6. An excerpt of the advertisement can be viewed in the relevant Appendix to this determination.

## **The product(s)**

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7. The advertisement promoted “topical and oral pharmaceutical products, natural extracts, and herbal preparations”, “prescribed and/or non prescribed herbal tablets/capsules, minerals, and vitamins”, “Saw Palmetto Complex”, “Proscar tablets”, “Loniten tablets”, and “Prescribed Topical Hair Regrowth Formula”.

## **The advertiser(s)**

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8. The advertiser was the Institute of Hair Regrowth and Beauty Pty Ltd.

## **The complaint**

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9. The complainant was Jonar Nader.

10. The complainant alleged that the advertisements breached sections 4(1)(b), 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(2)(e), 4(2)(f), 4(2)(g), 4(2)(h), 4(2)(i), 4(2)(j), 4(4), 4(5), 4(7), 5(2), and 6(3) of the Code.
11. The complainant alleged that the advertisements were “not approved, as per Therapeutic Goods Act 1989, section 3(3)”. The complainant appeared to be conflating section 42C of the Act, which sets out certain requirements that advertisements be approved, and section 3(3) of the Code, which restates those requirements. It was clear that the substance of this aspect of the complaint was that the advertisements ought to have been approved and had not been so approved. The Panel therefore interpreted this aspect of the complaint as alleging possible breaches of section 42C of the Act.
12. The complainant provided evidence that the therapeutic goods referred to more generally in the advertisement included products called “Saw Palmetto Complex”, “Proscar tablets”, “Loniten tablets”, and “Prescribed Topical Hair Regrowth Formula”.
13. The complainant asserted that the advertiser had also ignored, or otherwise failed to comply with, previous determinations of the Panel. It was not clear to the Panel that this was the case, and in any case the Panel considered it more appropriate to consider the present complaint on its own merits. The Panel therefore gave no consideration to this aspect of the complaint.
14. The complainant also made allegations about product safety and risks of using the products. The Panel did not consider these aspects of the complaint as they did not fall within the scope of an advertising complaint.

### **The advertiser’s response to the complaint**

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15. The advertiser responded through legal counsel.
16. The advertiser stated that, while some litigation was pending, it “should not prejudice the present proceedings.”
17. The advertiser noted that the complainant “has maintained a vigorous campaign against [the advertiser] for some years.”
18. The advertiser stated that they had previously complied promptly and fully with a previous determination of the Panel.
19. The advertiser stated that they did “not promise to regrow hair on bald heads” but rather offer “assistance in seeking to impact upon the conditions causing hair loss, the improvement of the scalp, and improvement of dying hair into better texture”. The advertiser stated that they did “not manufacture products and... such items as are provided by the chemist are provided according to a medical practitioner’s prescription”, and that “those labels which mention items being specially formulated by [the advertiser] refer to topical solutions which contain natural herbs and extracts”. The advertiser also stated that “of the products mentioned, most do not require a prescription. Both the non-prescription items and those which require a prescription are manufactured by the compounding chemist.” The advertiser also stated that “whilst IHRB charges for the items, the items are made up by the compounding chemist and provided to IHRB by the chemist according to the prescription. IHRB then charges the client.”

20. In relation to the alleged lack of a required approval, the advertiser responded that “presumably the Advertising Services Manager referred to is the manager of the body or entity which is carrying out the advertising. Accordingly this is not a matter within the responsibility of our client.”
21. In relation to the alleged breaches of section 4(1)(b) of the Code and the allegation that “the natural extracts and herbal preparations contain no therapeutic effect”, the advertiser responded that they had received “thousands of satisfied customers and at least 65 testimonials, including satisfactory and satisfied comments from doctors, a medical centre, a priest and numerous professional and non-professional people.” In relation to the claims that Mr Cohen is a “hairloss and replacement specialist for more than 36 years”, the advertiser argued that the claims were factually correct.
22. In relation to the alleged breaches of section 4(2)(a) of the Code, the advertiser argued that words such as “I have achieved unparalleled results in re-growth of hair to the utmost satisfaction of every person I have treated” were “not written by” the advertiser but that were “part of a commentary by another person”. The advertiser stated, however, that the words would be taken down from the website. In relation to the testimonial from Mr Steve James, the advertiser stated that “Mr James is an arms’ length client of our client who has provided his testimonials freely and voluntarily.” In relation to words such as “even doctors, who have achieved no success, are amazed”, the advertiser stated that “these are the words of... satisfied clients, not the words of” the advertiser.
23. In relation to the alleged breaches of section 4(2)(b) of the Code, the advertiser argued that while hair loss could be symptomatic of something serious, this was “a low probability”. The advertiser noted that an assessment of clients was conducted to ensure that treatment provided was appropriate.
24. In relation to the alleged breaches of section 4(2)(c) of the Code, the advertiser stated that they were honest about their inability to cause hair regrowth where hair follicles were dead. The advertiser also argued that the references to lasers and high frequency machines not blocking DHT were “a legitimate matter to make comment upon”, and denied that the testimonials were paid or drafted by the advertiser.
25. In relation to the alleged breaches of section 4(2)(d) of the Code, the advertiser argued that the “balding gene” can in fact be “blocked” through the use of Finasteride and Minoxidil.
26. In relation to the alleged breaches of section 4(2)(e) of the Code, the advertiser argued that “persons with healthy heads of hair are told not to use the product.”
27. In relation to the alleged breaches of section 4(2)(f) of the Code, the advertiser argued that the complainant had not stated how the use of the products was inappropriate or excessive, and denied making statements about the safety of Minoxidil for pregnant women or those with a heart condition.
28. In relation to the alleged breaches of section 4(2)(g) of the Code, the advertiser denied that they had represented the advertised products to be unfailing, and stated that they had not arranged or written the testimonials in the advertisements. In relation to testimonials that were said to breach this section, they argued that their “posting of such testimonials is not a breach of the code”.

29. In relation to alleged breaches of sections 4(2)(h) of the Code, the advertiser argued that the advertisements did not state that the advertised products were effective in all cases, and that the money-back guarantee should be interpreted as saying, “I guarantee that if I am not successful I will give you your money back.”
30. In relation to the alleged breaches of section 4(2)(i) of the Code, the advertiser stated that the advertisements did not breach the provision. The advertiser noted that this section of the Code “does not require the advertisements to state that there may be possible side effects, just that they not claim to be free of side effects.”
31. In relation to the alleged breach of section 4(2)(j) of the Code, the advertiser stated that the advertisements had not been directed to minors.
32. In relation to the alleged breaches of section 4(4) of the Code, the advertiser argued that words such as “state of the art”, “innovated”, and “improved”, cited by the complainant, were “not scientific terms or the provision of scientific information”, and argued that in any case they were factually correct. The advertiser argued that the complainant provided “personal comments and conclusions” rather specific information as to possible breaches of this section.
33. In relation to section 4(5) of the Code, the advertiser argued that the advertisements did not make the claims suggested by the complainant.
34. In relation to the alleged breaches of section 4(7) of the Code, the advertiser argued that the complainant had not provided particulars, but rather that the allegations were “couched in general terms with no details provided”. The advertiser denied that any testimonials had been written by the advertiser.
35. In relation to alleged breaches of section 5(2) of the Code, the advertiser argued that it was “hard to follow the convoluted reasoning used by” the complainant, and noted that prescriptions were provided by their clients’ doctors.
36. In relation to the alleged breaches of section 6(3) of the Code, the advertiser stated that they denied the allegations, and also stated that “it needs greater consideration as to whether hair loss is and its treatment comes within the above definitions, being a condition”, but that in any case “those provisions are met by” the advertiser.
37. The advertiser also argued that, “unlike the topical solutions and items for which a prescription is required, items such as shampoos are not therapeutic goods.”

### **Findings of the Panel**

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38. As a preliminary matter, the Panel considered the argument of the advertiser that some of the words in the advertisements had been written by others, such as words found in testimonials and words found in “editorials” that were reproduced in the advertisements. The Panel noted that the original authorship of the words was not significant; to the extent that the words were reproduced in the advertisements, they were elements of the advertisements in the same way as words written by the advertiser.

39. An advertisement for therapeutic goods is defined in the Act to include “any statement, pictorial representation or design, however made, that is intended, whether directly or indirectly, to promote the use or supply of the goods.”
40. The Panel was satisfied that the advertisements that were the subject of the complaint were advertisements that promoted the use or supply of certain goods. The Panel noted that the advertisements referred explicitly to goods such as “topical and oral pharmaceutical products, natural extracts, and herbal preparations”, and “prescribed and/or non prescribed herbal tablets/capsules, minerals, and vitamins”. The Panel was also satisfied, based on the material before it, that, though it did not refer to them explicitly by name the advertisements were advertisements that promoted the use or supply of “Saw Palmetto Complex”, “Prozcar tablets”, “Loniten tablets”, and “Prescribed Topical Hair Regrowth Formula”.
41. The Panel noted that it was not relevant whether the advertiser was a sponsor of advertised therapeutic goods, or whether they manufactured those goods. The Panel considered whether or not the advertisements *promoted* the use or supply of the goods.
42. Therapeutic goods are defined in the Act to include goods that are represented in any way to be for therapeutic use. Therapeutic use is defined to include use in or in connection with influencing, inhibiting, or modifying a physiological process in persons.
43. The Panel was satisfied that the goods that were promoted by the advertisements were therapeutic goods. It is clear that hair loss or baldness of the kind referred to in the advertisements are physiological processes in persons, and that the advertised goods were represented to be for use in influencing, inhibiting, or modifying those physiological processes.
44. The Panel was therefore satisfied that the advertisements were advertisements for therapeutic goods.
45. The Panel noted that the advertiser had stated that the advertised goods (or at least some of them) were prepared by compounding chemists. The Panel noted that while goods so prepared are exempt from certain provisions of the Act and Regulations – primarily those relating to inclusion on the Register and to manufacturing, they are not exempt from the advertising provisions. The Panel was satisfied that the therapeutic goods promoted in the advertisements were either designated therapeutic goods or other therapeutic goods, so that the advertisements fell within the scope of regulation 42ZCAB of the Regulations. On this basis, the Panel was satisfied that the advertisements were advertisements about which complaints could properly be made to the Panel.
46. Section 42C of the Act makes it an offence to publish certain advertisements for therapeutic goods in specified media that does not have an approval number, or to publish an advertisement without its approval number, and through reference to the Regulations, applies to “advertisements for designated therapeutic goods published or inserted, or intended to be published or inserted, for valuable consideration, in specified media.” The Panel was satisfied that the print advertisements, but not the internet advertisement, were subject to section 42C of the Act and ought to have been approved and to have carried an approval number. The Panel noted that at least some of the therapeutic goods promoted in the print advertisements were designated therapeutic goods.

47. The print advertisements had not been approved and did not have an approval number. This aspect of the complaint was therefore justified.
48. Section 4(1)(b) of the Code requires that advertisements for therapeutic goods “contain correct and balanced statements only and claims which the sponsor has already verified.”
49. The complainant alleged that “none of the claims about the benefits of Saw Palmetto have been verified”, and stated that “we know from his pharmacists that these [natural extracts and herbal preparations] contain no therapeutic effect and no active ingredients”. The complainant also argued that the words “I have helped thousands of men, women, and children with genetic baldness re-grow their own natural hair back” breached this section of the Code.
50. The Panel was satisfied that all of the advertisements conveyed that the saw palmetto, natural extract, and herbal preparation products had therapeutic effects or could help those “with genetic baldness re-grow their own natural hair back. The advertiser did not provide evidence to support these representations. The Panel was therefore satisfied that these representations had not been verified, and breached section 4(1)(b) of the Code. This aspect of the complaint was therefore justified.
51. The Panel did not consider whether or not the claim that Mr Cohen was “a hairloss and replacement specialist for 36 years” had been verified.
52. Section 4(2)(a) of the Code prohibits representations that are “likely to arouse unwarranted and unrealistic expectations of product effectiveness”.
53. The complainant alleged that the words “I have achieved unparalleled results in re-growth of hair to the utmost satisfaction of every person I have treated” (which were reproduced from material said to be “editorials from independent journals”) breached this section of the Code. The complainant argued that he himself had not been satisfied to the utmost level. The complainant also referred to a testimonial which included the words, “I have tried many ‘hair treatments’ over the last 3 years, including Minoxidil and Chinese herbal remedies. But none of these helped my hair loss”. The complainant argued that these words, found in the website advertisement, also aroused unwarranted expectations in breach of section 4(2)(a) of the Code, and reiterated the allegation that the advertised saw palmetto, natural extract, and herbal preparation products had no therapeutic effects. The complainant also noted other testimonial material that included words such as “amazed” and “bewildered”.
54. The Panel noted the argument of the advertiser that the words in the testimonials and “editorials” were “not written by” the advertiser but that were “part of a commentary by another person”, or were “provided... freely and voluntarily.” As noted above, this argument does not address the alleged breaches of section 4(2)(a) of the Code. The inclusion of the words in the advertisement is the responsibility of the advertiser, and regardless of their original authorship the words are part of the advertisements in which they appear.
55. In the absence of any evidence from the advertiser, the Panel was satisfied that the advertisements contained representations that were likely to arouse unwarranted and unrealistic expectations of the effectiveness of the advertised products. These included the representations that the advertised products could aid in the regrowth of natural hair for

those experiencing hair loss, could help with hair loss, or could be effective in cases where other therapeutic goods such as Minoxidil had not been effective. This aspect of the complaint was therefore justified.

56. Section 4(2)(b) of the Code prohibits advertisements that are “likely to lead to consumers self-diagnosing or inappropriately treating potentially serious diseases”. Section 5(2) of the Code prohibits advertisements that “refer, expressly or by implication, to serious forms of diseases, conditions, ailments or defects specified in Part 2 of Appendix 6, unless prior approval is given under the Therapeutic Goods Act 1989.” The diseases and conditions specified in Part 2 of Appendix 6 of the Code include “serious forms of” a wide range of health concerns.
57. The Panel did not agree with the complainant that references to hair loss were likely to lead to consumers self-diagnosing or inappropriately treating potentially serious diseases, or that references to DHT constituted references to serious forms of endocrine diseases. This aspect of the complaint was therefore not justified.
58. Section 4(2)(c) of the Code prohibits representations that “mislead directly or by implication or through emphasis, comparisons, contrasts or omissions”.
59. The complainant argued that the advertisements were misleading by omission because they did not disclose that key areas of the scalp where hair loss had occurred would not benefit from the use of the advertised product. The complainant argued that the advertisements implied that hair could be restored where “needed”, when this would not generally be the case.
60. The complainant also argued that words such as “do lasers, high frequency machines and massages block the balding gene (DHT)? No!” and “are lasers and high frequency machines medically approved as a DHT blocker?” were misleading because “no one said that they do block DHT”. The Panel took the complainant to be arguing that these words were misleading because, in referring irrelevantly to DHT blocking, they implied that lasers and high frequency machines could not aid with hair loss.
61. The complainant also argued that the advertisements were misleading because they implied that “treatment is not on-going, but does not mention that hair will fall out again if medications are stopped.”
62. The Panel was satisfied that the advertisements clearly conveyed a representation that consumers could expect hair regrowth in any part of the scalp where hair loss had occurred, and omitted the fact (acknowledged by the advertiser) that hair regrowth would not occur in areas where hair follicles had died.
63. The Panel was satisfied that words such as “do lasers, high frequency machines and massages block the balding gene (DHT)? No!” and “are lasers and high frequency machines medically approved as a DHT blocker?” were misleading because they were claims about the efficacy of those other treatments for which the advertiser provided no supporting evidence.
64. The Panel agreed with the complainant that the advertisements implied that “treatment is not on-going”, and that regrowth caused by the advertised products would be permanent



or at least long-lasting. The Panel was satisfied, based on the submission of the advertiser, that such an implication was misleading.

65. The advertisements therefore breached section 4(2)(c) of the Code. This aspect of the complaint was justified.
66. The Panel did not consider the aspect of the complaint relating to a failure to disclose “significant additional expenses” as it was not clear that this related to the promotion of therapeutic goods in the advertisements.
67. Section 4(2)(d) of the Code prohibits advertisements which “abuse the trust or exploit the lack of knowledge of consumers or contain language which could bring about fear or distress.”
68. The complainant alleged that the advertisements breached this section of the Code because of references to “the balding gene”, “blocking the balding gene (DHT)”, and “blocking DHT”. The Panel noted that, to the extent that there could be a “balding gene”, it is clearly not DHT or dihydrotestosterone, since DHT is a hormone and not a gene.
69. The Panel was satisfied that in referring to “blocking the balding gene”, and equating the “balding gene” with DHT, the advertisement abused the trust and exploited the lack of knowledge of consumers. This aspect of the complaint was therefore justified.
70. Section 4(2)(e) of the Code prohibits representations that are likely to lead persons to believe that they are suffering from a serious ailment or that harmful consequences may result from advertised products not being used. The Panel did not find that the advertisements breached this section of the Code. This aspect of the complaint was therefore not justified.
71. Section 4(2)(f) of the Code prohibits representations that “encourage inappropriate or excessive use” of therapeutic goods. The Panel did not find that the advertisements breached this section of the Code. This aspect of the complaint was therefore not justified.
72. Section 4(2)(g) of the Code prohibits representations that therapeutic goods are “infallible, unailing, magical, miraculous”, or that they are “a certain, guaranteed or sure cure”. Section 4(2)(h) of the Code prohibits advertisements for therapeutic goods that “contain any claim, statement or implication that it is effective in all cases of a condition”.
73. The Panel noted that several testimonials in the advertisements explicitly alluded to “performing miracles”. Moreover, the Panel noted that the advertisements included words such as “all others say ‘try ours, it may help’. No ‘ifs’ and ‘buts’ with us.” The Panel was of the view that such representations conveyed a clear implication that the advertised products would always be effective.
74. The Panel also noted that the website advertisement included words such as “he has since dealt with thousands of men, women, and children with every type of hair-loss problem”.
75. The Panel was satisfied that the advertisements overwhelmingly represented the advertised products to be unailing and to be a certain, guaranteed, and sure cure for hair loss or baldness. The Panel was also satisfied that they represented the advertised

products to be effective in all cases of hair loss. These aspects of the complaint were therefore justified.

76. Section 4(2)(i) of the Code prohibits representations that the goods advertised are completely safe, harmless, or free of side-effects. The Panel noted that the website advertisement included, as part of a testimonial, the words “all I did was use IHRB's hygiene products and apply their prescribed ‘Topical Solution’ take their prescription and herb tablets and no side affects which is fantastic.” The Panel was satisfied that this advertisement therefore breached section 4(2)(i) of the Code. This aspect of the complaint was therefore justified.
77. Section 4(2)(j) of the Code prohibits advertisements for therapeutic goods that are directed to minors. While the advertisements referred to minors, they did not appear to the Panel to be directed to minors. This aspect of the complaint was therefore not justified.
78. Section 4(4) of the Code requires scientific information to be “presented in a manner that is accurate, balanced and not misleading”, and requires that publication of scientific research results should “identify the researcher and financial sponsor of the research.” The Panel was satisfied that representations in the advertisements about “blocking the balding gene (DHT)”, and similar representations, amounted to scientific information. As already noted, the Panel was satisfied that to the extent that there could be a “balding gene”, it is clearly not DHT or dihydrotestosterone, since DHT is a hormone and not a gene.
79. The Panel was satisfied that in referring to “blocking the balding gene”, and equating the “balding gene” with DHT, the advertisement presented scientific information in manner that was not accurate and was misleading. This aspect of the complaint was therefore justified.
80. Section 4(5) of the Code requires that comparisons made in advertisements must be balanced and must not be misleading or likely to be misleading, and prohibits the inclusion in advertisements of comparisons that “imply that the therapeutic goods, or classes of therapeutic goods, with which comparison is made, are harmful or ineffectual.” The Panel was satisfied that the advertisements made clear comparisons with other therapeutic goods or classes of therapeutic goods, and represented the advertised products to be capable of working in cases where all other therapeutic goods or classes of therapeutic goods had failed. The Panel was satisfied that the advertisements also represented other therapeutic goods to be ineffectual. The Panel therefore found this aspect of the complaint justified.
81. Section 4(7) of the Code requires that testimonials included in advertisements for therapeutic goods “must be documented, genuine, not misleading and illustrate typical cases only.” On the basis of the material before it, the Panel was satisfied that the advertisements contained testimonials that could not be considered typical, including testimonials showing dramatic results in very short periods of time. Moreover, the advertiser provided no evidence, that the testimonials in the advertisement were all documented, genuine, and illustrative typical cases only. This aspect of the complaint was therefore found to be justified.
82. Section 5(2) of the Code precludes any reference to serious forms of diseases, conditions, ailments or defect specified in Part 2 of Appendix 6 of the Code, unless prior approval is

given under the *Therapeutic Goods Act 1989*. The Panel was satisfied that this section of the Code had not been breached in the advertising and so found this aspect of the complaint not justified.

83. The advertisements ought to have included the words “always read the label” (section 6(3)(c) of the Code), and the words “use only as directed” and “if symptoms persist see your doctor/healthcare professional” (section 6(3)(d) of the Code). The advertisements did not include an approval number or these mandatory statements. These aspects of the complaint were therefore justified.

## **Sanctions**

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84. The Panel requests Institute of Hair Regrowth and Beauty Pty Ltd, in accordance with subregulation 42ZCAI(1) of the *Therapeutic Goods Regulations 1990*:

- a) to withdraw the advertisement from further publication;
- b) to withdraw any representations, including representations that are implied because of a lack of qualifying information, that the advertised products are free of side effects, that they are effective in all cases of hair loss or for all sufferers of hair loss, that they can aid in hair regrowth on all parts of the scalp, that they can aid in the regrowth of natural hair for those experiencing hair loss, or could be effective in cases where other therapeutic goods such as Minoxidil had not been effective, together with any representations that DHT is “the balding gene” or that the advertised products block the balding gene;
- c) to withdraw any representations that the advertised natural and herbal products can help people with genetic baldness regrow their own natural hair;
- d) not to use the representations in (b) and (c) above in any other advertisement\*;
- e) where the representation has been provided to other parties such as retailers or website publishers, and where there is a reasonable likelihood that the representation has been published or is intended to be published by such parties, to advise those parties that the representation(s) should be withdrawn;
- f) to arrange for publication in all publications where the print advertisements were published of retractions in the form of, and in accordance with, the conditions set out in the attachment to this determination;
- g) to arrange for publication on the website *www.ihrb.com.au* of a retraction in the form of, and in accordance with, the conditions set out in the attachment to this determination; and,
- h) within 14 days of being notified of this request, to provide evidence to the Panel of its compliance, including a response in writing that they will comply with the Panel’s sanctions, and where appropriate, supporting material such as copies of instructions to advertising agents or publishers, or correspondence with retailers and other third party advertisers.

85. The advertiser's attention is drawn to the provisions of sub-regulations 42ZCAI(3) and (4) which permit the Panel to make recommendations to the Secretary in the event of non-compliance with this request.

Dated 16 November 2011

For the Panel

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Jason Korke  
Chairman

## **Appendix A: Definitions and footnotes**

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In this determination, unless otherwise specified:

- a) “the Act” means the Therapeutic Goods Act 1989;
- b) “the Regulations” means the Therapeutic Goods Regulations 1990;
- c) “the Code” means the Therapeutic Goods Advertising Code;
- d) “the Register” means the Australian Register of Therapeutic Goods;
- e) “any other advertisement” appearing in sub-regulation 42ZCA1(1)(d) is not confined to advertisements in specified or broadcast media (in relation to which complaints may be made to the Panel under Regulation 42ZCAB). It should be noted that HTML metatags and other information which can be retrieved by internet search engines, whether or not it is ordinarily viewed directly by consumers, constitutes advertisement material.

*\*Under regulation 42ZCA1 of the Regulations, the Panel may request that a representation not be used in any other advertisement unless the advertiser satisfies the Panel that the use of the representation would not result in a contravention of the Therapeutic Goods Act 1989, the Therapeutic Goods Regulations 1990 or the Therapeutic Goods Advertising Code. Under the Panel’s procedures, the Panel will not ordinarily give additional consideration to such a matter unless significant new material that was not available at the time of the Panel’s determination has become available, or until at least 12 months have passed since the Panel’s request was made.*

## Appendix B: Retraction (print)

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An advertisement to appear in all publications where the print advertisements were published at the earliest booking opportunity.

A copy of the retraction advertisement, and the page on which it will be published, is to be provided to the Complaints Resolution Panel for approval before publication.

# RETRACTION

An advertisement for **Institute of Hair Regrowth and Beauty products**, which we published in this newspaper/magazine, should not have been published.

In the advertisement **we unlawfully made claims that the advertised products could aid in hair regrowth and “block the balding gene”, that they would be effective on all parts of the scalp and for all consumers, and that they would be effective even where other products had failed.**

A complaint about the advertisement was recently upheld by the Complaints Resolution Panel. **We provided no evidence to support the claims we made, and the Panel found that the claims were unlawful, misleading, and unverified and breached the Therapeutic Goods Advertising Code.**

The Panel therefore requested that Institute of Hair Regrowth and Beauty publish this retraction.

The full text of the Panel’s determination can be found at: [www.tgacrp.com.au/complaints](http://www.tgacrp.com.au/complaints)

No other copy should be included in the advertisement.

Location:	Early RHS
Size:	The same as the advertisement
Heading:	Arial or Helvetica font size 20 Red on a white background Bold
Text:	Arial or Helvetica font size 12 Red, black and blue on a white background, per above Bold
Text Box:	Red on a white background

## Appendix C: Retraction (website)

An advertisement is to appear on the homepage of the website *www.ihrb.com.au* at the earliest booking opportunity.

A copy of the retraction advertisement, and the page on which it will be published, is to be provided to the Complaints Resolution Panel for approval before publication.

# RETRACTION

An advertisement for **Institute of Hair Regrowth and Beauty products**, which we published on this website, should not have been published.

In the advertisement **we unlawfully made claims that the products could aid in hair regrowth and “block the balding gene”, that they would be effective on all parts of the scalp and for all consumers, and that they would be effective even where other products had failed.**

A complaint about the advertisement was recently upheld by the Complaints Resolution Panel. **We provided no evidence to support the claims we made, and the Panel found that the claims were unlawful, misleading, and unverified and breached the Therapeutic Goods Advertising Code.**

The Panel therefore requested that Institute of Hair Regrowth and Beauty publish this retraction.

The full text of the Panel’s determination can be found at: [www.tgacrp.com.au/complaints](http://www.tgacrp.com.au/complaints)

No other copy should be included in the advertisement.

Location:	website front page, so that it can be viewed without scrolling the page
Size:	No less than 500 pixels wide and 200 pixels high
Heading:	Arial or Helvetica Red on a white background The letters should be no less than 20 pixels in height, and should be no smaller than any other body text on the page Bold
Text:	Arial or Helvetica Red, black and blue on a white background, per above. The letters should be no less than 14 pixels in height, and should be no smaller than any other body text on the page Bold
Text Box:	Red on a white background
Duration:	180 days
HTML	In the case of website retractions, the retraction is to be presented in ordinary and valid HTML 4 in the body of the page. Pop-ups, Flash objects, or images are not acceptable formats for website retractions.

## Appendix D: Excerpt of the Advertisement



SAM COHEN

# REGROW MORE OF YOUR OWN HAIR OR YOUR MONEY BACK... GUARANTEED

**WE DON'T STICK WIGS LIKE OTHERS DO TO SHOW A FULL HEAD OF HAIR! BE VERY WARY ABOUT WHAT YOU HEAR AND SEE!**

**ALL OTHERS SAY "TRY OURS, IT MAY HELP". NO 'IFS' AND 'BUTS' WITH US - WE GUARANTEE TO REGROW MORE OF YOUR OWN HAIR OR YOUR MONEY BACK. PLEASE REMEMBER, THE DHT AFFECTED HAIR ROOTS COULD DIE WITHIN 4 YEARS. THEREFORE, WHEN YOU ARE OFFERED A 'MONEY BACK GUARANTEED HAIR REGROWTH PROGRAM', WHY WOULD YOU EXPERIMENT WITH VARIOUS OTHER PRODUCTS? DEAD HAIR ROOTS CAN NOT BE REGROWN.**

**SOME SO CALLED 'HAIR TREATMENT' ORGANISATIONS HAVE PROMOTIONS SHOWING 'A BALDING HEAD' CONVERTED TO 'A FULL HEAD OF HAIR.' THESE ARE ACTUAL WIGS OR HAIRPIECES AND HAS BEEN DOCUMENTED ON TODAY TONIGHT, A CURRENT AFFAIR AND IN NEWSPAPERS!**

### Do lasers, high frequency machines and massages block the balding gene (DHT)? NO!

'Wigs' are a 'last resort' for very bald people with no hope of re-growth &/or transplants.

Before signing contracts, ask a lot of questions and ensure that:

- You take home copies of photographs of all the bald or balding areas of your scalp to make progressive comparisons
- Are you consulting a doctor at your initial visit to so called Medical Hair Centers?
- Are Lasers and High Frequency machines medically approved as a DHT blocker?
- Ask for proof of accuracy of Mineral Hair Analysis and are they medically approved? (To check their authenticity, do not forget to provide them with 2 sets of samples of your own hair with 2 different names- the results will amaze you)
- Are frequent visits, enabling them to keep a grip on you and your money necessary? Though cosmetic products are useless and unnecessary and not treatments for 'Hair Regrowth', is the ongoing recurring expenditure necessary?
- Obtain a 'Full Money back Guarantee' in writing, in case of failure
- At your initial consultation, they must specify exact period of the treatment, all the associated products and total cost of the program.
- Is it a life time commitment? And if so, what is the approximate future expenditure?

As a 'precaution' and with the intention of helping you, the above is for your information and necessary action.

My Name is Sam Cohen, hair loss and hair replacement specialist for more than 36 years. Using prescribed topical and oral pharmaceutical products, natural extracts and herbal preparations, I have helped thousands of men, women and children with "genetic baldness" re-grow their own natural hair back. I have solved many hair and scalp problems, such as, itchy scalp, dry or oily hair, innovated and custom designed the most versatile and natural looking hairpieces, improved hair

implantation procedures and advised and consulted on all types of hair transplants.

With my knowledge and practical experience, I can also achieve great results for you, provided you act soon. An important part of their guarantee is that you attend their premises on a regular basis to enable them to keep a grip on you and your money. Not so with HRRB, you pay far less and it can be conducted in the privacy, convenience and comfort of your own home. Further, those who do not or are not able to visit our clinic, need not worry. We will send you a questionnaire with all the relevant information and instructions explaining the cause and how the treatment works for you to do it at home.

Free ongoing advice for 25 years is also included with all our programs.

**Wigs, Hairpieces, Toupees:** is seen and considered to be a big turnoff, therefore, most organisations confuse prospective clients by disguising them with various names, such as, "Non Surgical Hair Replacements", "Medic Hair", "Hair Again", "Derma Hair" etc.

**Hair Analysis:** Please be informed that the majority of baldness occurs "Genetically", yet some clinics will claim that if a persons minerals, toxicity, stress factors, etc, can be corrected and balanced, hair regrowth will take place and charge considerable sums for an analysis, enabling them to sell minerals and vitamins.

There is NO CURE for "genetic baldness". The "balding Gene" (DHT) can be blocked with a combination of our various "state of the art" prescribed medications and topical solutions, herbs, natural extracts, good hygiene products, etc, enabling regrowth to re-commence and continue with a little "maintenance".

**Cost:** Try to enquire prices of programs from most organisations on the telephone? You will rarely receive a direct reply. If you have tried or are currently trying treatments without success or feel you are paying too much, then you MUST check out our hair treatment program that offers "guaranteed results or your money back".

If you are interested in "Hair Regrowth", "Hair Transplants", "Hair Implants" or "Hairpieces", you will certainly benefit by talking to us. We look forward to speaking to you soon.



Dear Sam Cohen,

In October 2002, after informing me that I was going 'bald', immediately I took your advice. I myself was noticing that I was going 'bald', but was too embarrassed to do anything about it. Since using your amazing product, my family and friends have noticed my hair becoming denser, allowing me to grow my hair longer. My girlfriend is really impressed with the results. Sam, I am so happy to have met you and you helping me. You are 'MAGIC'. I will continue to send my friends to you to help them also. Thank you very much Sam and your 'MAGIC'. As a follow up I am proud to 'endorse' your product and let the know that with a little maintenance, after all these years, I have kept all my re-grown hair to date and would recommend your 'money back guarantee hair re-growth program' to every male or female with 'balding hair' or 'alopecia'.