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Please Quote: A10-139800

19 August 2011

Dear Mr Burnett

### **Your advertising and concerns about our investigation**

Thank you for your letter of 4 August 2011, received by us on 9 August.

I'm sorry that you don't feel that my previous letters have addressed your concerns.

As I've explained in my earlier correspondence, the nature of the investigative process is such that mistakes can be made; we can and do reach provisional views on the complaints at issue which require correction and refinement as the case progresses and more information comes into view. That is in the nature of the work and is why we have processes in place which allow you to see what our evolving position is and which allow you ample opportunity to comment on and seek to change our provisional position.

In this case, the issues have been complex and detailed and you have, as is your right, fought hard to defend your ad. It is therefore not surprising that the Draft Recommendation has evolved over time and that you take issue with aspects of the complaint in which we are in disagreement.

That, however, does not render the process of the investigation or our Draft Recommendation unsound or not fit for purpose. I'm afraid you are not the first advertiser who has been unable to agree with all of the recommendations that the Executive proposes to put to the ASA Council in respect of a complex complaint. Nor will you be the last.

The ASA Council's function is to act as an independent arbiter, with the duty to approach the Draft Recommendation with a critical eye. It can and it does take or leave the recommendations put to it by the ASA Executive. To that extent, you should not assume that because you are in disagreement with the Executive on some points, that the Council is bound to agree with the Executive and not you.

That is further enhanced by our outstanding offer to you that you should write your own two page submission to the ASA Council that will sit alongside the Draft Recommendation, which the Council will see when it considers the case. That will be at the next Council meeting, to be held in September.

Chairman Rt Hon Lord Smith of Finsbury • Chief Executive Guy Parker  
ASA Council (Non-broadcast) Louisa Bolch • Sally Cartwright • Rachel Childs • Elizabeth Fagan • David Harker • Gareth Jones • John Mayhead • Andrew Motion • Martin Narey • Hamish Pringle • Ruth Sawtell • Anthony Wilkes

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The ASA Council will, on considering the case, be able to request further information if it feels that it does not have sufficient information to hand to make a decision. If it requires further information, it will direct the ASA Executive, as is appropriate, to secure that information.

I'm not going to respond further to the points you raise under points one to four, as my answers to each lie in the response I have outlined above and are otherwise to be found in my previous letters to you.

You've asked me about the make-up of the Investigations department. I don't see that providing you with the staffing numbers of the department has any bearing on this investigation, but the department comprises four teams each containing one manager and four or five executives.

Our staff are appropriately trained and each has the relevant skills and competencies required to carry out their functions. We are a tried and tested regulator, with nearly 50 years experience in applying the Advertising Codes. We are capable of considering advertisements about alternative health therapies; indeed, we have been doing so for many years.

Finally, I simply disagree that "believe" is negatively slanted and "consider" or "conclude" positively slanted.

Yours sincerely



**Guy Parker**  
**Chief Executive**