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Please Quote: A10-139800

14 June 2011

Dear Mr Burnett

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

Thank you for your letter of 8 June. I trust you have by now received my letter to you dated 10 June which had, in turn, been written in response to yours of 18 May.

I appreciate that you would not have had the benefit of seeing my letter to you when you wrote to me again on 8 June. I'm therefore sure that some points in your latest letter to me have been addressed by my earlier communication. I'm sorry about this but hope that my first letter has already helped to deal with many of your concerns.

I respond to your latest letter using your sub-headings as a reference:

#### **Lack of a timely response**

I've got no hesitation in agreeing with you that this case has taken longer than we would have liked to progress substantively. I've already acknowledged this in my last letter to you.

We agree that the case is large and complex and there have been detailed and finely argued evidence and submissions to consider. You will, I hope, agree with me when I say that these factors have had the effect of lengthening the process.

Having said this, I accept that we should have been quicker at times and our lack of timeliness on occasions has caused you inconvenience. I'm very sorry for this.

I hope that my first letter to you and this letter will provide responses to the concerns that you said needed consideration before the matter could progress to Council for a decision.

As Ms Newell has said in correspondence with you however, whilst we have agreed to delay the step of seeking Council's decision pending my response to your concerns,

we are unable to promise that further action will be delayed indefinitely. I don't hope for this but there may be some points on which we have to agree to disagree and these should not and cannot prevent the case from proceeding to a decision when the time is right.

#### **Errors in the summary of our responses**

I've asked Ms Newell to review the concerns you have raised in relation to errors of fact and respond to each example you have given in the same order of bullet points set out in your letter to me:

- Your responses have been very detailed and very complex and we have tried to summarise your arguments accurately. In your original response letter (23 pages not including the evidence itself) you stated, "According to the approach of EBM, evidence for efficacy is insufficient and must be assessed together with evidence of effectiveness to have any validity" and "Reliance on "evidence for the efficacy of homeopathy" is therefore unjustifiable within the EBM paradigm". We considered that this response was correct. We are however happy to amend that section of the Draft Recommendation if you consider that it does not accurately summarise your response.
- A typing error resulted in the Draft Recommendation stating "...demonstrated that 6,544 participants reported a decreased reliance on prescribed pharmaceutical medication" when it should have stated "...demonstrated that 70.7% of the 6,544 participants...". This is an error that should have been picked up and for this I apologise. It will be amended. However, the error does not affect the assessment of the evidence itself or the recommendation on that point.
- We believed, based on your response, that the budget spend figures we had presented were accurate. However, it is possible that we had not fully appreciated the arguments you have made on this point and we accept therefore that this sentence needs to be amended. However, again this does not affect the assessment of the evidence itself or the recommendation on that point.
- We have not read the book you refer to and we do not intend to read it. It is not the ASA's job to consider whether the content of your critique is accurate, but whether the statement in the ad makes clear that the comments you have made about *Trick or Treatment?* is the opinion of the author and one side of a complex argument (even if it is the case that scientists have agreed with the contents of the book). We had understood that the book in question was written by William Alderson, who had signed off his emails to us as Chair of H:MC21. In any event, this information is not included in the Draft Recommendation, but we note your comments.

- Again the statement in response 10 seems to have arisen from our summarisation of your lengthy responses. We consider that it is a fair summary of your response but we can amend it if you wish. You have not raised a concern about this particular statement before. However, this does not affect the assessment of the evidence itself or the recommendation on that point.
- Response 11 is again, we feel, a statement that has attempted to summarise your lengthy responses. We consider that it is a fair summary but we will amend it if you wish us to. However, this does not affect the assessment of the evidence itself or the recommendation on that point.
- The issue in response 12 is a one word error that we accept should have been spotted because of the impact on the meaning of the sentence. Rather than "they also supplied the formal minutes of the Science and Technology Committee hearing **which** stated that given the profound....." it should have read "they also supplied the formal minutes of the Science and Technology Committee hearings **and** stated that given the profound.....". However, the error does not affect the assessment of the evidence itself or the recommendation on that point.
- We regret that we cannot refer to all of the documentary evidence you have supplied.

I accept therefore that there have been some minor errors in the Draft Recommendation and we will amend them.

However I do not agree that those errors go so far as suggesting our drafting is based on ignorance, belief, false reasoning, poor arithmetical skills and lack of understanding, as you suggest. They were genuine errors and misunderstandings but we do not consider that they affect the soundness of the assessments of the responses and the evidence themselves. As I said in my last letter, the process of developing a Draft Recommendation necessitates the development of arguments and ideas and is a complex process. In complex cases, such as this, there is bound to be an element of correction and clarification to ensure that the Council has as complete a Recommendation to consider as possible.

I'm sorry therefore that you have identified further changes but I also hope you are reassured that we have listened to you in making changes that you say you want to see.



### **Errors in the assessment**

It's been explained previously to you that changes to assessment 8 occurred when the complainants explained that their concern about this claim in the ad was that the implied statement that Sense About Science were biased because they were funded by the pharmaceutical industry, and not simply a challenge about whether the claim that they are funded, could be substantiated.

We therefore changed the Draft Recommendation in response to this feedback. I understand that this is frustrating but changes of this nature are part and parcel of an investigation process.

### **Conclusion**

I appreciate that some errors and misinterpretations must have caused you concern. Please be re-assured however that we will correct what needs correcting.

Our assessment has been carried out based on the evidence that was presented and on the likely interpretation of the ad by the average reader and this is how the ASA Council will assess the issues.

I will now ask Ms Newell to write to you in order to set out her next steps in this investigation and to pick up with you on the points of concern that we have discussed above.

Yours sincerely



**Guy Parker**  
Chief Executive