



Australian Government

Department of Health

Therapeutic Goods Administration

Testimonials and endorsements in advertising

Guidance on applying the Therapeutic Goods Advertising Code 2021

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TGA Health Safety
Regulation

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Testimonials and endorsements in advertising

Section 24 of the [Therapeutic Goods Advertising Code 2021](#) (Code) sets out the requirements for using endorsements and testimonials in advertisements about therapeutic goods. This guidance explains the requirements and provides examples.

Therapeutic goods are not ordinary consumer goods, with consumers of therapeutic goods a more vulnerable consumer cohort. It is appropriate and important that rules are in place surrounding the advertising of therapeutic goods to support informed consumer health care choices.

The Code prohibits certain individuals and organisations from endorsing therapeutic goods or making testimonials about them. This is to ensure consumers are not influenced excessively or inappropriately by endorsements and testimonials, and health care choices are made on the basis of an individual's personal circumstances rather than the experience of another.

While testimonials are a type of endorsement, an endorsement is not a testimonial:

- an endorsement is a form of support, approval or sanction
- a testimonial is a statement about a therapeutic good made by a person who claims to have used that good or to have used it while caring for someone else.

Examples

- Downtown Football Club recommends Beans Ease Muscle Rub – **ENDORSEMENT**
- Football takes a toll on my muscles. I rub Beans Ease Muscle Rub in after training and games and it really helps relieve muscle aches – **TESTIMONIAL**
- Beans make a muscle rub cream that can be used to ease aching muscles. It has been especially formulated to rub on easily and not be sticky – **ENDORSEMENT**
- I was really suffering with sore muscles after footy. My doctor recommended Beans Ease Muscle Rub. I tried it and it has eased the aching I was feeling - **TESTIMONIAL and Health Professional ENDORSEMENT**

There are some rules in the Code that apply to both endorsements and testimonials.

Endorsements and testimonials **MUST NOT**:

- ✘ contravene any relevant provision in the Code
 - they must comply with all relevant Code provisions, not just the section of the Code which relates specifically to endorsements and testimonials
- ✘ be inconsistent with any information provided with the goods including information on the label or instructions for use
- ✘ be inconsistent with the good's indication or intended purpose accepted in relation to the inclusion of the good on the [Australian Register of Therapeutic Goods](#) (ARTG)

- ✘ refer to health benefits other than health benefits that are typical of the benefit expected from the good when used properly in accordance with directions.

Examples

- ✘ I tried Beans Cough Relief and it gets rid of my headaches every time!
 - Beans Cough Relief does not have an indication on the ARTG about relieving headache. Relief of headaches is not typical of the expected benefit of Beans Cough Relief.
- ✘ I used Beans Cream for my daughter's mild eczema and it helps – I appreciate that every ingredient is safe.
 - Section 9(1)(a) of the Code prohibits advertisements from stating or implying that the advertised good is safe, or without harm or side effects.
- ✘ The Beans Institute of Health supports the use of Beans Omegas for acute pain and stiffness.
 - Beans Omegas is indicated for helping to maintain heart health not pain or stiffness.

Social media example

Beans Pty Ltd makes a post about its vitamin product on its social media page. The post contains all the required mandatory statements and a 'click to buy' link.

Beans Pty Ltd is responsible for monitoring comments on the post. Any comments that are not in compliance with the Code must be removed as soon as reasonably practicable.

Further information for social media influencers and alike can be found at the TGA's [Tips for social media influencers](#) webpage.

Testimonials

Consumers should be able to trust that testimonials used in advertisements for therapeutic goods are unbiased accounts of an ordinary consumer's use of the product and have not been incentivised.

Testimonials made by anyone engaged in the production, marketing or supply of the advertised therapeutic good, along with others as described in the Code, are not permitted.

Section 24(4) of the Code prohibits advertisements from containing testimonials from the following:

- ✘ A person who is engaged in the production, marketing or supply of the goods (a *relevant person*).
 - This could include:
 - the CEO of a pharmaceutical or medical device company
 - a paid influencer
 - a direct seller of the product

- any other person who has or will receive valuable consideration in exchange for making the testimonial.
- ✘ A member of a *relevant person's* immediate family unless that relationship is disclosed in the advertisement
 - for example, [name of testimonial provider] is the parent/grandparent/spouse/child of the CEO of Beans Pty Ltd
- ✘ a government or government authority
- ✘ a hospital or healthcare facility other than a community pharmacy
- ✘ an employee or contractor of a government, government authority, hospital, or health care facility
- ✘ a current or former health practitioner, health professional or medical researcher
- ✘ a person who represents themselves as being qualified or trained to diagnose, treat or prevent disease, ailment, defect or injury in persons
- ✘ a corporation.

Verifying testimonials

Prior to including a testimonial in an advertisement about therapeutic goods an advertiser must confirm:

- the testimonial maker's identity, and that the testimonial maker is not someone whose testimonial must not be used in advertisements
- the content of the testimonial, for example:
 - that the testimonial is consistent with the proper use of the goods
 - that the testimonial does not include claims that are inconsistent with the ARTG entry for the advertised good
 - that the testimonial does not refer to health benefits other than health benefits that are typical of the expected benefit from the good when used properly and according to directions
 - that the testimonial does not contravene any relevant Code requirements.



Where an advertisement provides links to other websites or other information, the linked material is considered part of the advertisement and must comply with the Code.

Example

An advertisement provides a link to an international website that includes testimonials.

Those testimonials are required to comply with the Code including the requirement for the advertiser to verify the content of and identity of the person making the testimonial.

Example

Sally purchases a Beans Pty Ltd (Beans) product and provides a review of the product on a third-party review website.

Beans republishes Sally's positive review as a testimonial in its advertisement for the product.

Beans is obligated to verify the content of the review and the identity of the author before the testimonial can be used.

Beans must also ensure the review, if used as a testimonial, meets all the Code requirements.

Valuable consideration



Testimonials that are induced by payment of any kind (valuable consideration) are prohibited.

This is the case whether payment is disclosed or the testimonial is genuine.

What is valuable consideration?

Valuable consideration is what is given to a person in exchange for a testimonial or for them to otherwise advertise or market the good. That is, the testimonial maker agrees to provide a testimonial in exchange for compensation of some kind.

Example

Paula is approached by Beans Pty Ltd (Beans) to make a testimonial about their new vitamin supplement. Beans plans to use Paula's testimonials in their advertisements.

Paula accepts a \$20 voucher toward the purchase of Beans products in exchange for making a testimonial.

Beans must not use Paula's testimonials in their advertising. The voucher is 'valuable consideration' and Paula is now considered engaged in the marketing of the Beans products.

Examples of valuable consideration given in exchange for a testimonial can include:

- cash payment
- provision of services

- gifts
- discounts on product
- free product
- flights
- accommodation
- promise of future benefit.

Example

Beans Pty Ltd (Beans) provides products to a review company (third-party) to elicit testimonials about those products.

The review company gives those products to subscribers in exchange for a review to be published on its website.

Under the arrangement Beans can select from the range of reviews and republish them as testimonials on their website.

As the person providing the review on the third-party review site was given product in exchange for their review, the review would not comply with the Code if it was then used by Beans as a testimonial in their advertisement.

This is because the testimonial provider was incentivised and specifically engaged for the marketing of the goods. The testimonial was not freely given.



People who receive 'valuable consideration' for making a testimonial are considered to be engaged in the marketing or supply of the goods.

Such testimonials must not be used in advertisements.

Example

Jenny uses a therapeutic good and makes a comment that includes a testimonial on a Beans Pty Ltd (Beans) advertisement for the product that she sees in her social media feed.

Subject to meeting the requirements of the Code, this is a compliant testimonial.

Beans sees the testimonial and approaches Jenny to enter into a paid partnership to endorse the brand and product.

The original testimonial is now prohibited from being used as Jenny is now considered engaged in the marketing of the goods and her testimonial must be removed by Beans.

What is not valuable consideration?

Not everything given for free is 'valuable consideration'. Valuable consideration cements an agreement or arrangement that a testimonial will be provided. The following would not be considered valuable consideration:

- a sale or discount offered to all consumers equally that is not tied to the purchaser giving a testimonial
- product samples (listed in Annexure 2 of the Code) being given out at an event (for example a conference) or from a shopfront which are not given on the basis that the recipient will make a testimonial.



Only therapeutic products listed in Annexure 2 of the Code are permitted to be provided as samples.

Example

Beans Pty Ltd (Beans) is conducting market research and has set up a stand in a shopping centre.

They ask shoppers to complete a questionnaire about a sample they provide. The samples are permitted in the specific jurisdiction (see also Annexure 2 of the Code). The questionnaire is a set of multiple-choice questions with an optional free text field at the end.

To encourage people to complete the questionnaire, Beans provides a free coffee voucher to a shop in the same location.

The intent of the activity is to gather data and information from consumers about the product.

The samples and coffee voucher were not provided as valuable consideration for a testimonial that will be used in advertising. Although there is a free text field in the questionnaire, Beans do not intend to use any person's individual comments about their use of the good as a testimonial in their advertising.

This activity is compliant with the Code.

Testimonials - social media influencers, bloggers and brand ambassadors

As outlined in this guidance, advertisements for therapeutic goods must not contain a testimonial from anyone who has received 'valuable consideration' for making the testimonial or for marketing the goods.

This includes social media influencers, bloggers and brand ambassadors.

Example

Sasha is a health and wellbeing Instagram influencer. Sasha is invited by Beans Pty Ltd (Beans) to travel to Brisbane, all expenses paid, to attend the launch of a new multivitamin product launch.

Beans make it clear that Sasha is receiving the trip on the basis that she actively support and promote their brand and products.

Sasha is now engaged in the marketing of the goods and advertisements must not contain her testimonial.

So long as Sasha is not otherwise excluded from endorsing therapeutic goods under the Code (for example she is not a health professional), Sasha can endorse Bean's products, and can advertise the goods.

Example

Sanjay is a men's health blogger. A company with a new training enhancement product offers Sanjay a free 6-month supply of product on the condition that he provide a testimonial about the product.

Sanjay is now engaged in the marketing of the product as he has received valuable consideration for making a testimonial.

His testimonial must not be used in advertisements for the product.

So long as Sanjay is not otherwise excluded from endorsing therapeutic goods under the Code (for example he is not a health professional), Sanjay can endorse Bean's products and can advertise the goods.

Endorsements

Endorsements about therapeutic goods can influence consumers' choices. Consumers may be inappropriately, excessively or unjustifiably influenced by the status or perceived expertise of the person or organisation endorsing a product.

This could happen, for example, if the endorser is a health professional, a hospital or government agency. The Code therefore restricts the types of individuals and organisations which can publicly endorse a therapeutic good in advertising.

Section 24(6) of the Code lists the organisations and individuals who **must not** endorse therapeutic goods, including:

- ✘ a government or government authority (unless legally permitted)
- ✘ a hospital or healthcare facility other than a community pharmacy
- ✘ employees or contractors of a government, government authority, hospital or health care facility
- ✘ a current or former health practitioner, health professional or medical researcher

- ✘ a person who represents themselves as being qualified or trained to diagnose, treat or prevent disease, ailment, defect or injury in persons.

An organisation that represents the interest of healthcare consumers or represents the interest of current or former health practitioners, health professionals or medical researchers can only endorse therapeutic goods if the advertisement discloses:

- the name of the organisation
- whether the organisation has received or will receive any valuable consideration for the endorsement.

Example

Heart and Lung Australia endorse Beans Pty Ltd's (Beans) spacer device. Beans uses the endorsement in an advertisement for their spacer device.

- ✓ Beans has not given valuable consideration for the endorsement. As such there is no disclosure requirement.
- ✓ A range of published studies support the use of the spacer device in lung conditions. This is consistent with the intended purpose of the good on the ARTG. Therefore, this endorsement will not mislead consumers in relation to the use of the device.
- ✓ The endorsement is permitted to be used in advertising as long as it complies with all relevant Code provisions.

Example

Cher is a famous surfer who posts about BeanScreen products, in compliance with the Code, after deciding BeanScreen was a product worth endorsing. She is approached to become a brand ambassador for BeanScreen this summer.

In her social media posts Cher declares she is in a paid partnership with BeanScreen.

- ✓ Cher's posts are compliant with the Code, including section 23 that prescribes the specific requirements relating to sunscreen, because she:
 - reiterates the importance of sun protection to prevent sunburn
 - explains how using BeanScreen minimises the long-term effects of sun damage
 - encourages wearing of clothing, sunglasses and hats to provide protection
 - encourages frequent use and re-application in accordance with the directions
 - discourages prolonged high-risk sun exposure
 - includes the relevant mandatory statements.

Endorsements - social media influencers, bloggers and brand ambassadors

Social media influencers, bloggers and brand ambassadors can endorse therapeutic goods even if they have received valuable consideration for the endorsement, so long as they are not specifically excluded from doing so (refer to the [list above](#) and in section 24(6) of the Code).

However, it could be misleading under the Code (section 8) if consumers were not informed that the person endorsing the advertised good had received valuable consideration in return for the endorsement. This type of arrangement is often disclosed in social media posts with words such as 'paid partnership'.

Additionally, under Australian Consumer Law, failing to disclose that an endorsement has been incentivised by payment is considered misleading and deceptive. Further information is available on the [Australian Competition and Consumer Commission](#) website.

What does an endorsement look like?

Endorsements in advertisements can be indicated in various ways including by:

- displaying an organisation's brand or logo
- using an image of the endorser holding the therapeutic good or using a therapeutic good (such as applying sunscreen) (without a corresponding testimonial in either text or audio)
- the endorser recommending the good for the indications and purposes consistent with the [ARTG](#) entry
- a statement made to the effect "[therapeutic goods company] proudly supports [patient health organisation]."

Endorsement examples

Compliant endorsement

Jane is a social media influencer with 100,000 followers. Beans Pty Ltd have engaged Jane to market their products which are complementary medicines.

Jane posts on her Instagram page:

[@JaneBeanAU](#)

Paid partnership 

Beans brand vitamin Z are water soluble. I recommend them to help ensure you have adequate vitamin Z intake in conjunction with a balanced diet.

Always read the label and follow the directions for use.

- ✓ Jane discloses that this is a “paid partnership” and includes the appropriate mandatory statements.
- ✓ This endorsement refers to the health benefits of using the advertised product. These are typical results expected from using the product and are consistent with the product’s indications as recorded on the ARTG.
- ✓ The endorsement is not a testimonial as it doesn’t talk about Jane’s personal use of the product.

Non-compliant endorsement

Jane is a social media influencer with 100,000 followers. Beans Pty Ltd have engaged Jane to market their products which are complementary medicines.

Jane posts on her Instagram page:

[@JaneBeanAU](#)

Paid partnership 

Beans brand vitamin Z are water soluble. I take them when I’m not eating very well. I feel secure knowing my vitamin requirements are covered.

- ✗ This endorsement includes a **testimonial** from a person engaged in the marketing of the advertised products
- ✗ This testimonial implies vitamins can be used to replace a balanced diet in breach of the [Therapeutic Goods Regulations 1990](#), Schedule 2.

Non-compliant endorsement

Jack is a blogger who is a well-known health guru. He claims on his website that he has treated and healed many people.

He posts a statement on his blog:

“Beans brand vitamin Z are water soluble. I recommend them to help address your vitamin Z needs when you are not eating well.”

- ✘ This is an endorsement about a therapeutic good from a person who represents themselves as being qualified or trained to diagnose, treat, or prevent disease, ailment, defect or injury in persons and is therefore not compliant with the [Code](#), section 24(6)
- ✘ The blog also implies vitamins can be used to replace a balanced diet in breach of the [Therapeutic Goods Regulations 1990](#), Schedule 2.

Further information relating to social media advertising can be found at the TGA's [Tips for social media influencers](#) webpage.

Additional testimonial examples

Scenario	Guide
<p>An actor portrays a testimonial that is perceived by the audience as the actor's own testimonial.</p>	<p>The testimonial was not made by the actor. Without a disclaimer explaining this, the advertisement would be misleading.</p> <p>It is also important that the audience does not perceive the testimonial to be from the actor as the actor has been paid and is involved in the marketing of the goods.</p> <p>Where a compliant testimonial is presented by an actor, the script must clearly communicate this fact.</p> <p>Example:</p> <p>“Kate from Broome says Beans Vitamins are...”</p>
<p>Roman, a dad, comments on an ARTG listed disinfectant wipe:</p> <p>“I love the fragrance, strength, and especially the ‘click’ re-sealable packet. The packets with the sticky tabs are annoying.”</p>	<p>This is a compliant testimonial.</p> <p>Beans Pty Ltd should verify the identity of the testimonial maker when deciding to leave it in the advertisement.</p>

Scenario	Guide
<p>Sally, a skincare blogger, comments on a BeanScreen social media post:</p> <p>“BeanScreen never ceases to amaze me with their product. It’s magical how it protects my skin from the sun all day long. It is in recyclable packaging, is water resistant, is for all skin types and non-comedogenic. Am so in love!”</p>	<p>This is a non-compliant testimonial.</p> <p>The Code prohibits:</p> <ul style="list-style-type: none"> statements implying a product is ‘infallible, unfailing, magical or miraculous’ implying that sunscreen does not need frequent reapplication. <p>BeanScreen would need to remove the comment.</p>
<p>Bob, a cleaner vlogger, posts about an ARTG listed disinfectant spray:</p> <p>“Beans Disinfectant spray has an awesome trigger nozzle. Never blocks up and creates a good, even spray – love it!”</p>	<p>This is a compliant testimonial.</p>
<p>Khloe, a cosmetic nurse, posts:</p> <p>“I was never very keen to try tinted sunscreen before. But somehow the tint looks great! It blended into my skin and gave me a nice glow. It is also a very fluid formula so it wears well under everything like foundation, powder, primer, etc. After using this I am a big fan of tinted sunscreens and will definitely repurchase this product.”</p>	<p>If this product is a primary sunscreen then as a health professional Khloe cannot provide a testimonial or endorse the goods.</p>
<p>A social media influencer is paid to advertise therapeutic goods using testimonials other people who were permitted to make testimonials have provided.</p> <p>The people making those testimonials did not receive valuable consideration for their testimonial.</p> <p>The identity of the person making the testimonial and the content of the testimonial has been verified.</p>	<p>These can be published by the influencer if the testimonials are not portrayed as their own.</p> <p>This would require being clear about who provided the testimonial and that it is someone else’s testimonial.</p> <p>All other Code provisions must also be met.</p>

Additional endorsement examples

Scenario	Guide
<p>A famous sports person appears in an advertisement and they are seen with a product or using the product consistent with the instructions for use.</p> <p>Importantly, there is no audio or text in relation to the person's individual use of the product.</p>	<p>This is an endorsement.</p>
<p>An image or video of a famous sports person applying sunscreen.</p> <p>Importantly, there is no audio or text in relation to the person's individual use of the product.</p>	<p>This is an endorsement.</p>
<p>An NBL athlete is shown using a ARTG listed disinfectant in their home.</p> <p>Importantly, there is no audio or text in relation to the person's individual use of the product.</p>	<p>This is an endorsement.</p>
<p>A celebrity pulling sunscreen out of their beach bag.</p> <p>Importantly, there is no audio or text in relation to the person's individual use of the product.</p>	<p>This is an endorsement.</p>
<p>Matt is a personal trainer who posts an advertisement for a BeansTens machine. In the advertisement he claims to treat people with injuries or health conditions.</p>	<p>Matt is representing himself as a health professional and can neither endorse nor provide a testimonial about the BeansTens machine.</p>

Additional examples regarding valuable consideration

Scenario	Comment
<p>A well-known sports star has an endorsement deal with Beans Pty Ltd and the company asks them to appear in a TV commercial (TVC).</p> <p>A script is developed in consultation with the sportsperson to reflect their own positive experience of using Beans Pty Ltd products.</p> <p>The advertisement features a prominent disclaimer to the effect that that the sportsperson has a paid endorsement deal.</p>	<p>The sportsperson could endorse the goods.</p> <p>The testimonial (the script reflecting the sportsperson’s own positive experience using the goods) could not be used in the TVC.</p>
<p>Mark purchases a magazine and inside is a sample that is permitted under Annexure 2 of the Code. He decides to comment online about it.</p>	<p>This sample is not considered valuable consideration as it was not provided in exchange for or as incentive for the testimonial.</p>
<p>Xander receives a sample from a store and then writes about it.</p>	<p>If the sample is given in exchange for Xander’s testimonial, then this would be valuable consideration.</p> <p>If the sample was given to all shoppers without a condition to provide a testimonial, then this would not be valuable consideration.</p>
<p>Han’s company has consumers use their product for market research purposes. The resulting information is then used in advertising:</p> <p>“80% of consumers we asked like our product”</p>	<p>This is not a testimonial or endorsement.</p> <p>This is an acceptable advertising claim if it is accurate and substantiated.</p> <p>The TGA may ask for evidence to support the claim to assess whether it is misleading or inaccurate.</p>

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