Determining when news is subject to the therapeutic goods advertising rules

News reports about therapeutic goods may be regulated as advertising if they promote the use or supply of those goods.

Purpose

This guidance helps journalists and news organisations distinguish between news reporting and advertising of therapeutic goods. It explains when reporting on therapeutic goods may be considered advertising, the advertising requirements that may apply and the legal exceptions for broadcasters and publishers.

News reports about therapeutic goods, particularly new and innovative medicines and medical devices, can be of significant interest to the public. They can be important information sources for consumers making decisions about their health and can encourage useful discussion with health practitioners.

However, it is important for journalists and news organisations to clearly differentiate between genuine news about therapeutic goods and content that is advertising.

If content looks like news, but functions to promote a therapeutic good, it is likely to be regulated as advertising and must comply with the therapeutic goods advertising rules (see below). Criminal and civil penalties may apply if you do not meet these legal requirements.

Legislation

Therapeutic Goods Act 1989 (the Act)

Therapeutic Goods Regulations 1990 (the Regulations)

Therapeutic Goods (Therapeutic Goods Advertising Code) Instrument 2021 (the Code).

Differentiating between news and advertising

Not all information released to the public about therapeutic goods is considered advertising.

Under the Act, any statement, pictorial representation or design that is intended (whether directly or indirectly) to promote the use or supply of therapeutic goods is likely to be considered advertising.

Our guidance on Determining if your content is advertising explains how we assess whether content promotes the use or supply of therapeutic goods. These principles apply to all forms of communication, including print, broadcast and digital media.

In a news and media context, content can be considered advertising where, assessed objectively and as a whole, it appears to be designed or calculated to draw public attention to and to promote the supply or use of the identified goods.

This may be the case even where content is created for editorial, educational or public-interest purposes if it goes beyond informing the public and is presented in a way that promotes the use or supply of a therapeutic good.

Whether news content is advertising depends on its overall context, presentation and likely effect on the audience.

To understand how these principles apply in a news and media context, see:

- Genuine news about therapeutic goods and
- News does not include promotion information.

We have provided a section Applying the guidance: examples to demonstrate how similar content can be presented as either genuine news or advertising, depending on how it is framed and contextualised.

Genuine news about therapeutic goods

The TGA recognises the importance of independent reporting on therapeutic goods and does not seek to restrict genuine public-interest journalism.

Genuine news reporting may inform the public about new treatments, research findings and regulatory developments. This may increase awareness of, or interest in, a therapeutic good, but that alone does not make the content advertising.

Media reports about therapeutic goods are unlikely to be considered advertising where they:

- adhere to established journalistic standards, including accuracy, balance, impartiality and fairness
- are based on verifiable facts, credible evidence and editorial oversight
- are of genuine public interest
- are produced independently and are free from commercial influence
- do not promote the use or supply of a therapeutic good through their language, framing or presentation.

News content should be clearly distinguishable from promotional material and should not be presented in a way that obscures its purpose or commercial context.

For more information see News does not include promotional information below.

> When genuine news content is republished by parties other than news organisations, republishing does not, on its own, make content advertising. However, in certain contexts, it may be considered advertising where it is presented in a way that promotes the use or supply of a therapeutic good.
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> This may occur where captions, calls to action, or placement alongside advertising alter the overall impression of the content.

News does not include promotional information

While news can refer to therapeutic goods, treatment options and related health issues, content that promotes the use or supply of a therapeutic good is subject to the advertising requirements under the Act. In particular, if the information provided encourages consumers to seek to obtain a particular good, or seek a prescription for a particular medicine, then it is likely to be considered an advertisement.

Some of the factors that indicate a media article about therapeutic goods may be promotional are where it:

- mentions or provides detailed discussions to create a favourable impression about a particular product, class of goods or brand
- contains unbalanced information that over-emphasises the benefits of the goods (for example, 'life changing' or 'breakthrough'), and omits or downplays their risks, limitations or uncertainty
- is developed, commissioned, coordinated or materially influenced by entities that have a commercial interest in the sale of the goods
    - for example, a sponsor, retailer, marketer or public relations agency
- presents personal experiences, testimonials, endorsements or expert commentary in a way that encourages consumers to use or seek out a product
- presents the goods as the only or preferred treatment option where other therapies are available.

> These factors are not exhaustive. Other factors or circumstances will be considered when determining whether information is intended to promote the use or supply of a therapeutic good. For more information about the characteristics of promotional information, see our guidance, Determining if your content is advertising.

Requirements for advertising therapeutic goods

If you advertise therapeutic goods through a media report or article, you must comply with the requirements of the Act, Regulations and Code.

These requirements depend on the type of product being promoted, including its ingredients, how it works and the claims or representations made about it.

Some therapeutic goods, such as prescription medicines and biologicals, are prohibited from being advertised to the public, except in very limited circumstances.

Most medical devices and medicines available for over-the-counter sale (except for Schedule 3 Pharmacist only medicines) can be advertised to the public if the advertisement complies with the Act and Code.

For more information, see What can and cannot be advertised to the general public.

Exceptions for publishers and broadcasters

In limited circumstances, the advertising prohibitions in the Act and the Code may not apply to broadcasters, certain publishers of magazines and newspapers, and others who cause non-compliant advertising.

For example, there is an exception from the advertising prohibitions in the Act and the Code for the above persons where, as a result of steps taken by them, it was reasonable for them to assume that the advertisement complied with the Act.

Additionally, the Code does not apply to genuine news about therapeutic goods that is published or broadcast in any medium by:

- broadcasters, datacasters and the SBS (Special Broadcasting Service)
- publishers of a print edition of a newspaper or magazine that is or was available to the public by way of purchase in Australia.

For more information, see section 6 of the Code.

These exceptions do not apply uniformly in all circumstances. It is important that broadcasters and publishers familiarise themselves with the precise scope of each exception.

Applying the guidance: examples

The following examples show how the principles in this guidance apply in practice. They are not exhaustive and do not prescribe a definitive outcome. Instead, they show how content about therapeutic goods may be presented as genuine news or as advertising, depending on the overall context and presentation.

If you are unsure whether something constitutes advertising, particularly unlawful advertising, you may wish to seek independent regulatory or legal advice.

Example 1: News report on research findings that mention specific TGA-regulated products

A news report about fish oil discusses promising research about the use of fish oil in the management of attention deficit hyperactivity disorder in children and refers to a TGA regulated fish oil product. The report focuses on positive findings, uses strongly positive or persuasive language (for example, ‘breakthrough’, ‘game-changer’ or ‘life-changing’), includes interviews with health practitioners and patients in a way that endorses the therapeutic good, and provides limited or no discussion of negative findings or uncertainties.

Why this may be unlawful advertising

Taken together, these elements would be understood by a reasonable audience as promoting the use of the mentioned fish oil product, rather than providing balanced, newsworthy reporting.

While advertising fish oil is not prohibited, it may be unlawful if it suggests the goods can treat serious diseases, conditions, ailments, defects or disorders for the reasons

set out below (e.g. ADHD). Additionally, under the Code, advertising may be unlawful if certain statements expressly or impliedly, for example, exaggerate the efficacy of the goods or represent the goods to be magical or miraculous (by using phrases like 'breakthrough', 'game-changer' or 'life-changing').

How to reduce the risk

Where the report presents both benefits and limitations of the research, includes independent expert commentary, and avoids endorsement-style framing (expressly or by implication), it would more likely be understood as providing newsworthy information rather than promoting a therapeutic good.

Further, the article should not promote fish oil for the treatment of serious forms of diseases, conditions, ailments, defects or disorders. Such references are known as 'restricted' representations or 'prohibited' representations and are not permitted to be included in advertising for therapeutic goods unless an approval or permission is provided by the TGA.

Note: Although the above example is likely to be considered unlawful advertising, the advertising of fish oil is generally not prohibited as it is regulated as a listed complementary medicine (i.e. has low-risk ingredients), provided the advertisement complies with the Act, Regulations and Code.

Example 2: Sponsored content

A news organisation publishes an article by a sleep research scientist in a Q&A format, responding to a reader's question about the link between glucagon-like peptide-1 receptor agonists (GLP-1 RAs) and sleep apnoea. The article is sponsored by pharmaceutical company who markets a GLP-1 product, references a clinical trial sponsored by the company, with a disclaimer advising listeners to consult their doctor.

Why this may be advertising

Not all publicly available information about the link between GLP-1 and sleep apnoea would be considered advertising. However, where material is sponsored, commissioned or otherwise presented in a way that links it to a commercially interested party or emphasises the therapeutic benefits without presenting important limitations, uncertainties or other balancing information or otherwise encourages readers to seek access to the medicine, it is likely to promote the use or supply of the therapeutic good and therefore be advertising.

Additionally, this content may be in breach of multiple aspects of advertising legislation, including the prohibition on advertising prescription-only medicines, advertising the medicine for off-label uses, advertising a restricted representation (i.e. in an advertisement referencing a serious form of a disease, condition, ailment, or defect which may include sleep apnoea) and using non-compliant endorsements (in breach of the Code).

How to reduce the risk

Publishers and news organisations can ensure content is not advertising by ensuring content about therapeutic goods is accurate, balanced, independently produced and clearly presented as news or public-interest information. Content should avoid product promotion, endorsement-style language, unbalanced claims, calls to action, or links that direct audiences to buy, seek out or ask about a therapeutic good. The content should be carefully reviewed to ensure it ultimately does not promote the use or supply of a therapeutic good.

Example 3: News articles and reports about breakthrough treatments

A national newspaper publishes an article titled: “New hope for obesity: Weight loss injections approved by TGA now available across Australia”.

The article is presented in a journalistic format and includes quotes from industry, healthcare practitioners describing positive patient outcomes, personal accounts of significant weight loss, limited discussion of risks, side effects or eligibility criteria, and strongly positive language such as “transforming lives” or “game changer”.

Why this may be advertising

Although the article refers to a class of therapeutic goods (“weight loss injections”) rather than naming a specific product, the combination of strong positive framing, implied endorsements, reference to suppliers and lack of balanced information presents the ‘class’ of goods in a way that promotes their use. Taken together, these elements create a promotional impression and the content may therefore be considered advertising in relation to prescription-only weight loss injections.

This content may also be in breach of certain aspects of advertising legislation, including the prohibition on advertising prescription-only medicines, advertising the medicine for off-label uses and using non-compliant endorsements (in breach of the Code), subject to any exceptions.

How to reduce the risk

The article could be reframed so it clearly informs the public rather than promotes the use of weight loss injections. This could include, for example, explaining how the treatments work in general terms, providing balanced discussion of risks, side effects of these medicines, removing endorsement-style quotes and patient testimonials, and avoiding strongly positive or persuasive language, such as promotional headlines.

Example 4: Sponsored content

A medicine sponsor is identified in a byline or “brought to you by” statement for an article on healthy ageing. The article is framed around lifestyle factors such as hydration and gentle exercise. It does not refer to specific therapeutic goods or make claims about any products.

> ***Why this is likely to be considered genuine news***
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> Brand sponsorship does not necessarily make content advertising. Where an article does not expressly or impliedly reference any therapeutic goods, including those supplied by the sponsor, and the content is clearly educational in nature without a promotional tone or intent, it is unlikely to be considered advertising of a therapeutic good.
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> ***Where the risk increases***
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> However, content is more likely to be considered advertising if the article is reframed to align closely with the sponsor's commercial interests and promotes therapeutic goods directly or indirectly. This may occur where the article discusses health conditions or symptoms linked to a therapeutic good supplied by the sponsor, describes therapeutic benefits in a way that mirrors marketing claims of a specific product, uses endorsement-style language, or the overall framing of the article directs attention towards a form of treatment associated with the sponsor.
>
> 'Buy now' links, calls to action or prompts that encourage readers to seek information about the sponsor's products may also contribute to a promotional impression.