

## Marketing claims

# Claiming efficacy – and proving it

Dr. Silke Granzow puts forward some different types of marketing claims and explains when, and how, a claim must be justified in line with the requirements of the cosmetics directive.



Foto: Tatiana Shebelova, flickr.com

Marketing claims based on the ingredients: what do consumers expect from a cosmetic product containing camomile?



Foto: Titanium 22, Flickr.com

Aloe vera is associated with a moisturising action

**C**osmetic product' means any substance or mixture intended to be placed in contact with the external parts of the human body ... with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours."

This very dry statement from the legislators should nevertheless awaken the emotions of consumers and, with the help of promotional activity, convince them to buy a product.

## Types of marketing claims

**Emotional appeal:** Here we distinguish between unambiguous claims and those where subjective sensitivity is directly addressed. Unambiguous claims are usually vague and obvious in what they say, for example a facial tonic that promises a wonderful refreshing action, or a cream that offers marvellous skin care. They make no promises of new user benefits. This is a category of advertisement that is almost no longer used in marketing because, given the huge range of products on the market, the promotions tend to sink without trace - simple and touching.

It is more interesting when the subjective sensitivities of the individual consumer are directly addressed: "You will feel uniquely refreshed", or "You too will be convinced of the unique skin care action". This personal approach is seen as interesting because the consumer engages in a dialogue with the product, or, in the ideal case, immediately buys it.

**Product-focussed marketing claims:** This type of claim refers to the general characteristics of the product which automatically ensue from the category

in which the product sits. A "refreshing facial tonic" works simply because the water in it evaporates on the skin. The deodorising action of a deo roller clearly works thanks to the aluminium chlorohydrate which it contains, and a sun protection product clearly is obliged to offer protection from the sun.

Special, product-focussed promotional messages describe those functions of a product that are unique and which are dependent on the specific formulation: the refreshing facial tonic may have a long-lasting moisturising action, the specific formulation of the deo roller promises a deodorising performance lasting over 48 hours, and the sun protection product is extremely waterproof and has an SPF of 30.

**Claims based on the active ingredient:** These claims refer to the special ingredients in the formulation that would differentiate it from other products on the market. In this case a reputedly interesting ingredient is given a high level of exposure in promotional activity, for example in "A hand cream with lotus blossom extract". Also a special role can be ascribed to the active ingredient, such as "With soothing camomile blossom extract". Or the formulation itself is given a specific property thanks to the use of the active ingredients in question, for instance: "Special anti-wrinkle complex Q10 reduces the first visible wrinkles within 10 days".

**Providing evidence to support claims:** Here too it is possible to differentiate marketing claims according to the category of those claims.

**Emotional claims:** Generally, for most valid promotional claims no proof is required. However claims that

promote the uniqueness of the product, and that appeal to the subjective sensitivity of the individual consumer, should in certain cases be backed up by consumer tests. This means that in particularly extreme claims, such as a guarantee of satisfaction, it can be in the interest of the product manufacturer to enlist the help of consumer testing.

**Product-focussed marketing claims:** Generally valid marketing claims that are self-evident from the product category do not have to be proven by way of special tests, because the product performance is obvious from the formulation.

Special product-focussed claims can as a rule only be evidenced by way of underlying test results. Apart from claims referring to time or percentage, such as the 48 hour action of the deo roller, key words in the claim such as “demonstrable”, “significant” or “visible”, should be used only with the greatest of care. Here too it is of fundamental interest to learn about the real product performance and to compare it with the previous product or with the competition. Depending on the claim, application tests and/or physical test procedures are thus necessary.

**Claims based on the active ingredient:** This is a relatively difficult subject which depends very much on the ingredient being promoted and the way the promotion is designed. If a specific ingredient is simply named, but no special action is attributed to it, there is no marketing claim to be proven.

With claims such as  
– “with extracts from cotton” for a shampoo  
– “with quince” or “lemon balm” for a skin cream  
– “Lotus blossom extract” in a nail polish remover

no specific action is indicated and it is not expressed in direct terms that the efficacy of the product is based on these ingredients. As a rule the consumer here can have no concrete perception of the actual role played by the ingredients mentioned.

It becomes more difficult when using well-known plants that, for exam-

ple, have been used as a home remedy for years, such as aniseed or fennel for stomach upsets, or camomile tea for a cold. Here it is considerably more difficult to estimate to what extent the user mentally transfers the traditional properties of these plants to a cosmetic product. Is, for instance, a hand cream with camomile expected to have a skin soothing effect? Even in recent times plants that are heavily promoted, such as aloe vera, are well-known to many. In this case it is known for its moisturising action. Several press articles even offer tips on how an aloe vera leaf can help soothe burns. So what does the consumer expect from a product that contains aloe vera?

It is easier when a direct effect can be attributed to the active ingredient, or it is even claimed to have a specific effect as part of a combination of actives that, thanks to these special ingredients, makes this a unique product. Here evidence is required that is either based on accepted literature, or on one's own tests with the formulation. In any case, with regard to data published in the literature, checks must always be carried out to ensure

that the data are in line with the most up-to-date science on the subject. It is a matter of deciding whether, for example, tests can realistically be carried out to provide statistical evidence on a brand new substance, whether this should be in vivo or in vitro, and at what concentration and using what type of matrix. It is also essential to ask oneself “How serious are the literature references?” and are these findings transferable to one's own in-house developments?

Clearly the easiest, and also most expensive, route here is to test one's own new formulations. But how are efficacy tests to be carried out to ensure a reliable result?

### Avoid fraudulent claims

§ 27 of the relevant German legislation (the LFGB) contains the regulations regarding protection from fraud or deceit: “It is forbidden to offer for sale cosmetic products based on a misleading description, declaration or design, or to promote cosmetic products in general, or in specific instances, using a misleading description or other claims. A misleading situation is particularly noted where a ▶

## TEST METHODS FOR MARKETING CLAIMS

Claim	Test
<b>HAIR CARE</b>	
Good combability	Tests on wet and dry combing
Gloss and volume	Measurement of gloss and volume
Resilience and hold	Curl retention test
Softness and suppleness	Resistance to pulling
Anti-dandruff action	Adherent scalp flaking grading methods

Claim	Test
<b>SKIN CARE</b>	
Skin feels firmer	Elasticity Cutometer
Skin regulating, sebum check	Sebum metrology
Adequate moisturisation	Corneometry, TEWL
Visibly smoother skin	Depth of wrinkles
Visual reduction in age	spots Colorimetry

cosmetic product is claimed to have an action that is not in accord with scientific knowledge or where the scientific basis is inadequately supported”.

#### Legal decisions as guidance

But when is the efficacy of a cosmetic product scientifically supported?

Of course it is really a matter here of reviewing the position case by case. But one must always consider in particular the importance of the cosmetic action being claimed, the number of currently available scientific papers on the subject, and the scientific significance of the papers, as well as their current relevance.

There are in fact various legal decisions which help to clarify the position. The problem becomes clear when we closely examine two specific legal cases that placed very specific demands on the level of scientific support.

The case of **LG Düsseldorf** on May 30<sup>th</sup>, 2007, stated that: “Promises of efficacy must be based on findings that have been obtained by **medicopharmacological** research, that clinical tests have been conducted on the composition of the individual active substances, and experiments and research using volunteers carried out over a long period of time ... There has to have been a clinical trial based on scientifically accepted methods of control that would enable the level of efficacy of the product being promoted to be demonstrated empirically ...”

The very different judgement by the **LG Berlin** on November 11<sup>th</sup>, 2008, took the following view: “The key to adequate scientific support is the dominant and firm view of the experts in the business, and one which has achieved wide recognition ... To demonstrate scientific support and assurance a randomised placebo-controlled double-blind study with pre-defined end

points relevant to the question about which information is being sought, and an adequate statistical evaluation which by being published will involve the general expertise in the business”.

Since the **Alpecin judgement** of January 1<sup>st</sup>, 2010, and the views expressed by the BGH, the differentiated requirements are no longer valid: “The adequate scientific support for the claimed action of a cosmetic product can be achieved via a single study (therefore does not need to be involved in a discussion process by the experts of the industry) in so far as this work is based on convincing methods and levels of confirmation”. Where, nevertheless, a study “is based on convincing methods and levels of confirmation” is not specified by the BGH.

Where there is a strong difference of opinion the responsibility to prove the case lies with the company or person planning to market the product. Test

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results should be studied as closely as possible and checked for the claims made, as well as how far the science is up to date. Queries are permitted for studies on brand new ingredients as well as about dermatological tests results.

**Plan marketing claims before finishing product development**

How are test procedures classified, and which are the usual tests? It is often helpful to discuss directly with specialists, such as market researchers or dermatologists, ahead of development work, to identify the required test procedures. Subjective and product specific properties can be confirmed and reinforced with the help of consumer studies or application tests.

When interviewing test volunteers the following aspects should always be taken into account:

- Adequate number of volunteers

- The effects of the method and type of questions asked on the achievability and relevance of the required results

- Any requirement for a controlled test design such as with the use of placebos, randomisation, positive/negative control etc.

Application tests can be used to identify the product performance in actual use, as can technical measurements and visual evaluation (see table).

Another possible option is to carry out a clinical study if one of the claims will be that the product is "clinically tested". This is often the case in tooth care, as is "recommended by dentists" for mouth wash products. When conducting clinical studies care should be taken to ensure that the tests are as near as possible to actual application, i.e. tests should be carried out on the target consumer group and be in line with the Helsinki Declaration<sup>2</sup>. Obvi-

ously they should be carried out in line with GCP standards (Good Clinical Practice) and by properly qualified staff.

The fact is that the matter of marketing claims, and the required studies and expert support, depending on the product category, is a very complex matter. On this basis the development of marketing claims should not be left entirely to advertising and promotions staff, but should always be carried out in close collaboration with the different areas with responsibility, or with service providers.

<sup>1</sup> EU Cosmetics Directive No. 1223/2009 dated 30.11.2009

<sup>2</sup> Declaration of the World Medical Association on the ethical basis for medical research on humans

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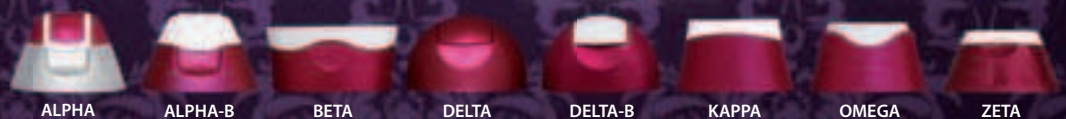
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Dr. Silke Granzow of Mann & Schröder explains how marketing claims can be properly supported