

Guidelines for ASMI Members for the preparation of Complaints and Responses in proceedings before the ASMI Complaints Panel – June 2008

Although the Complaint and Response take the form of letters passing between the parties, adherence to the following guidelines will improve clarity, reduce unnecessary duplication and assist Panel members to understand the issues and readily to identify the relevant parts of accompanying evidence. These guidelines do not supersede the requirements of the ASMI Code of Practice insofar as they relate to the content of the Complaint and Response.

General provisions applicable to both Complaints and Responses

1. These guidelines apply to all copies of the Complaint and Response provided to ASMI. When forwarding the requisite copies to ASMI in order to initiate the Panel procedure, the Complainant should ensure that all copies conform to the originals, including highlighted passages.
2. An Index should precede the formal Complaint and Response, naming the various sections (starting with the Complaint and Response themselves).
3. The Complaint and Response and their attachments should be contained in sections separated by individually numbered or lettered tabs. Within each section, all page numbers should be legible. If page numbers are obscure after copying, the pages should be numbered by hand in the top right corner. The Index should identify each document and refer to its tab number or letter.
4. All documents, especially photocopies, should be easily legible in their entirety.
5. Soft copies in Word format of the Complaint and Response (excluding attachments) should be sent to ASMI by email by the Complainant and the Respondent respectively, once the formal Complaint has been lodged with ASMI, to assist the Panel in summarizing the submissions in its determination.

The Complaint

6. The Complaint should begin with a short, clear, narrative summary of the gist of the complaint.
7. The Complaint should set out, in relation to each impugned advertisement or promotional activity, the section of the Code said to be breached, the basis for contending there is a breach and, at the end of the Complaint, (a) the suggested classification of the breaches and the basis for the classification and (b) proposed sanctions and their rationale, including reference to the factors in section 9.1.3.

8. All material relied on, including clinical studies and other articles, should be provided in a complete form rather than as an extract, to ensure it may be viewed by the Panel in its appropriate context.
9. Where the Complaint refers to a passage of an accompanying document, the Complaint should identify the relevant tab and page. The passage should be highlighted on that page but not obscured.

The Response

10. The Response should begin with a short, clear, narrative summary of the gist of the response.
11. The Response should be presented in a format which, having regard to the way in which the Complaint is structured, is designed to enable the Panel readily to understand the Respondent's position on each of the alleged breaches. The Response should explain the basis for any contention that there is no breach. If remedial measures are proposed, they should be set out.
12. The Response should also address the issues of classification of breach and sanctions, in the event that the Panel finds in favour of the Complainant. This will not be taken by the Panel as a concession of breach unless the Response expressly admits breach. However, if the Panel does find breach, the Respondent's submissions on these issues will be taken into account.
13. All material relied on, including clinical studies and other articles, should be provided in a complete form rather than as an extract, to ensure it may be viewed in its appropriate context, unless it is already contained in the Complaint, in which case the Respondent is strongly encouraged to include only those pages containing passages relied on by the Respondent. The Response should identify the relevant pages by reference both to the tab and page in the Response and to the corresponding tab and page in the Complaint. The relevant passages should be highlighted but not obscured.