



Loretta Marron. Tuesday, 14 June 2011/ Australia

Public health advocate in court as SensaSlim flexes legal weight.

A company that is promoting a “revolutionary slimming product” has [issued](#) an \$800,000 damages claim against a prominent health marketing watchdog and public health advocate, [Dr Ken Harvey](#). The case is listed for hearing in the NSW Supreme Court today.

Many observers believe the case is an example of the tactic called ‘[Strategic lawsuit against public participation](#)’ (SLAPP), which aims to silence criticism because the defendant “succumbs to fear, intimidation, mounting legal costs or simple exhaustion and abandons the criticism.”

The [Australian Skeptics](#) has launched a campaign to raise funds to support Harvey, a retired academic with an honorary appointment at [La Trobe University](#).

However, the company involved, SensaSlim, says it is not trying to gag Harvey.

The suit is related to a complaint Harvey lodged with the Therapeutic Goods Advertising Complaints Resolution Panel about a complementary weight loss product called SensaSlim.

The Therapeutic Goods Advertising Complaints Resolution Panel has received a number of complaints about the product, including some from Dr Harvey, but under Therapeutic Goods Regulations these cannot be considered while legal action is underway.

The company says it has developed a product that can “desensitise taste buds and reduce hunger pains”. Widely advertised in the media as a “revolutionary slimming breakthrough”, [its website](#) states that a 20-year study involving 11,453 people substantiates the claims for its product.

The case is just the latest in a long history of legal attacks on public health advocates.

In the UK, Europe and the USA, healthcare professionals have been sued, sacked and slandered for going public about the false and misleading claims made by companies and others with deep pockets who put public health at risk for significant financial gain.

In 2008 the British Chiropractic Association sued science journalist Dr Simon Singh for defamation for publishing a comment that chiropractors were making some ‘bogus’ health claims. The case was [dismissed](#) in 2010, but by then it had cost Dr Singh £100,000 and two years of his career.

In 2006 medical researcher Pierre Méneton [claimed](#) that French consumers were being misinformed by salt industry advertising and so they sued him for defamation. In 2008 his case was dismissed because the court found that a critical opinion proposed by a scientist was not considered a libel.

In 2009 Dr Alain Braillon [became](#) France’s first public health expert to be [unfairly sacked](#) for challenging the safety of tobacco and for his fight against alcohol advertising on the internet. He had been the head of the regional body for the assessment of professional practice, but his position was unexpectedly abolished late one night in a vote held in an unscheduled agenda item at the end of one of his hospital’s board meetings. Also terminated were several of his regional programmes, including one dealing with smoking cessation in pregnancy.

That same year, Professor Gérard Dubois MD MPH, stated on French TV that “cigarettes kill two smokers a year for every tobacconist” and he was subsequently sued by the French tobacconists’ union. While he won the case it has now gone to appeal. In an article [published last year](#), Dubois wrote that the Elysée (the French White House) “consistently supports the tobacco, alcohol and online gambling industries but ignores the best evidence to reduce the health burden on the French people.”

[According](#) to US-based quack buster Dr Stephen Barrett, since 1999 “there has been an organized attempt to destroy my reputation” and this has led him to file [his own law suits](#).

In 2010 Doctor’s Data, a laboratory that performs tests for many chelation therapists, [filed a suit](#) against Dr. Barrett for more than \$10 million because it didn’t like what he wrote about them on his website [Quackwatch](#). Motions to dismiss have now been filed.

The wealth of large corporations and the keen behaviour of the law firms who protect their business have undoubtedly discouraged consumer advocates taking them on and has even seen some walk away from winnable battles because of the substantial time and cost involved.

Here in Australia in 2006, Harvey and his pharmacy colleagues [planned](#) to set up a website which analysed the evidence for new complementary medicines. The [first one selected was Tebonin](#), a herbal remedy that was advertised as being clinically proven to treat tinnitus.

When the sponsor was sent a copy of the analysis they took out a court injunction which eventually saw the team considerably out of pocket and also shut down their website. The testimonials and packaging [still make claims](#) that Tebonin is effective for the relief of the symptoms of tinnitus.

The increasing number of SLAPP writs represents a real and continuing threat to public debate. When outspoken community activists and those who participate in political protests face such litigation, they are usually unable to afford lengthy legal representation. The financial and emotional hardship involved effectively silences them.

In 2008 the first Anti-SLAPP [laws were passed](#) in the ACT Parliament which imposes civil penalties on companies engaged in lawsuits undertaken specifically to stop individuals and groups from voicing their opinions for fear of

being sued. Other jurisdictions have also been asked to consider anti-SLAPP laws and other relevant measures such as [Protective Costs Orders](#).

Those with a concern for public health — and effective regulation of the marketing and claims of health products — should follow the SensaSlim vs Harvey case closely.

<http://www.crikey.com.au/2011/06/14/public-health-advocate-in-court-as-sensaslim-flexes-legal-weight/>