NOVARTIS v APOPHARMA and SWEDISH ORPHAN

Promotion of Ferriprox

Novartis complained about a Ferriprox (deferiprone) banner advertisement which appeared on the homepage of the electronic British Journal of Haematology and about an article on Ferriprox in the March edition of the UK Thalassaemia Society Patient Newsletter. Ferriprox was distributed by Swedish Orphan International (UK) and the marketing authorization was held by Apotex Europe. Novartis supplied Desferal (desferoxamine).

In response to a request by the Authority for clarification, it was informed that ApoPharma was the Innovative Drug Division of Apotex Inc. Apotex was a Canadian generic pharmaceutical company and relied on distributor agreements in markets around the world for its sales and marketing requirements. Swedish Orphan was the exclusive distributor of Ferriprox in many European markets, including the UK.

Case AUTH/1822/4/06 concerned the banner advertisement. Novartis alleged that the strapline 'Life is getting longer' was an exaggerated claim that the use of Ferriprox was associated with increased survival generally; no reference was cited to substantiate such a broad claim and it was a hanging comparative. In addition, the claim did not state the disease area in which the product was to be used and hence was inconsistent with the terms of the marketing authorization, which stated that Ferriprox was licensed for the 'treatment of iron overload in patients with thalassaemia major when deferoxamine therapy is contraindicated or inadequate'. Failing to include the indication whilst suggesting that use of the product prolonged life could be seen as promoting outside the product licence. Finally, no consideration had been given to the provision of the prescribing information.

ApoPharma responded in relation to these allegations.

The Panel considered that the banner advertisement in the British Journal of Haematology was an advertisement covered by the UK Code. The journal would be widely read round the world but, given its title, it was intended for, *inter alia*, a UK audience.

The Panel ruled the failure to include a direct link to the Ferriprox prescribing information in the banner advertisement in breach of the Code. The Panel did not accept that the failure to indicate the disease area meant that the claim was inconsistent with the summary of product characteristics (SPC) as alleged. No breach of the Code was ruled in that regard.

The Panel ruled a breach of the Code as the claim 'Life is getting longer' was a hanging comparison. Under the Code there was no need to reference all claims, only those that referred to published studies. ApoPharma had not provided any material to substantiate the claim. The Panel ruled a breach of the Code.

Case AUTH/1823/4/06 concerned the claim 'New Data Show Ferriprox Tablets are More Efficacious than Desferoxamine in Removing Iron from the Heart and in Preventing Early Death in Patients with Thalassaemia'. This was the title of an article in the UK Thalassaemia Society Patient Newsletter – March 2006.

Novartis alleged that this article, which appeared to have been written by Swedish Orphan, had a promotional tone and thus constituted clear advertising by the company of a prescription only medicine to the public.

In the second paragraph the article described 'a stunning report on the morbidity and mortality of thalassaemia patients…'. This information was not provided in a factual manner. Both the trials reported in the article included patients who were either randomised or switched to Ferriprox from Desferal. The information provided indicated that these patients were not within the licensed indication for Ferriprox which included the statement: 'when deferoxamine therapy is contraindicated or inadequate'. In addition, despite it being clearly stated that 'Full prescribing information is printed overleaf', this was not so and there was no prescribing information for Ferriprox in the entire newsletter. The inclusion of this statement suggested that the company recognised that this was a promotional item and that the original intention for this item was as a promotional item directed to health professionals rather than patients. Its inclusion in a patient group newsletter was therefore entirely inappropriate. The article also displayed the previously described advertisement 'Life is getting Longer'.

Swedish Orphan responded in relation to these allegations.

The Panel noted that the UK Code applied to press releases of corporate interest. The Code prohibited the advertising of prescription only medicines to the public. The Code permitted information to be made available if presented in a balanced way. It must not raise unfounded hopes of successful treatment and not be misleading with respect to the safety of the product. Statements must not be made for the purpose of encouraging a member of the public to ask their health professional to prescribe a specific prescription only medicine.

The Panel noted that the actual press release had not been supplied to it by Swedish Orphan. The company submitted that the UK Thalassaemia Society's patient newsletter had reproduced the UK press release including the prescribing information. This was unusual. Thus the Panel made its decision on the content of the patient newsletter which was in effect Swedish Orphan's press release.

The Panel did not consider that the article itself was an advertisement for a prescription only medicine to the public. No breach of the Code was ruled.

The article referred to the results of the study as being 'stunning' and 'exciting'. The Panel considered that in that regard the article was not balanced and would encourage readers to ask their

health professional to prescribe Ferriprox. A breach of the Code was ruled.

The Panel noted that the supplementary information to the Code stated that it was good practice to include the SPC with a press release. There was no prohibition in Clause 20 on including the prescribing information, which was different to the SPC, with a press release. The prescribing information was required when a product was promoted to health professionals for prescribing. A press release to the media must not constitute advertising of a prescription only medicine to the public.

The Panel considered that its rulings with regard to the claim 'Life is getting longer' in Case AUTH/1822/4/06, above applied here. The Panel ruled a breach as the advertisement was for a prescription only medicine to the public. The advertisement was not advertising to health professionals and prescribing information was thus not required and no breach was ruled in that regard.

Novartis Pharmaceuticals UK Ltd complained about a Ferriprox (deferiprone) banner which appeared in the electronic British Journal of Haematology homepage and about an article on Ferriprox in the March 2006 edition of the United Kingdom Thalassaemia Society Patient Newsletter. Ferriprox was distributed by Swedish Orphan International (UK) Ltd and the marketing authorization was held by Apotex Europe Ltd. Contact with Apotex had failed to resolve the matter. Novartis supplied Desferal (desferoxamine).

In response to a request from the Authority for clarification, it was informed that ApoPharma was the Innovative Drug Division of Apotex Inc. Apotex was a Canadian generic pharmaceutical company and relied on distributor agreements in markets around the world to satisfy its sales and marketing requirements. Swedish Orphan was the exclusive distributor of Ferriprox in many European markets, including the UK.

Case AUTH/1822/4/06 (ApoPharma)

Ferriprox banner advertisement 'Life is getting longer'

COMPLAINT

Novartis stated that the supplementary information to Clause 1.1 of the Code clearly stated that the Code applied to the advertising of medicines in professional journals which were produced in the UK and/or intended for a UK audience. This requirement included both print and electronic versions of such journals. Clearly the British Journal of Haematology fitted this definition and this advertising was therefore, Novartis believed, subject to the Code.

The strapline 'Life is getting longer' at the top of the menu page for the electronic journal was clearly visible to UK health professionals accessing the British Journal of Haematology via this route. In isolation the banner represented a clearly exaggerated claim that the use of Ferriprox was associated with increased survival generally with no reference source to substantiate such a broad claim and a hanging comparative.

In addition, the claim did not state the disease area in which the product was to be used and hence was inconsistent with the terms of the marketing authorization, which stated that Ferriprox was licensed for the 'treatment of iron overload in patients with thalassaemia major when deferoxamine therapy is contraindicted or inadequate'. It could be argued that failing to include the indication whilst at the same time suggesting that use of the product prolonged life could be seen as promoting the product outside of the licence.

Novartis alleged that the claim was misleading, exaggerated, unsubstantiable and a hanging comparison. Finally, no consideration had been given to the provision of the prescribing information with this banner advertisement. There was no weblink, nor any indication as to the location of the Ferriprox prescribing information on the banner itself. This banner advertisement was therefore in breach of Clauses 3.2, 4.1, 7.2 and 7.4 of the Code.

RESPONSE

ApoPharma stated that it had made the changes that Novartis requested to the banner advertisement on the British Journal of Haematology website, specifically, the disease area, thalassaemia major had been added. In addition, a link on the banner advertisement had been provided that would allow the user access to the prescribing information, or the reference sources that supported the claim of increased survival.

With regard to Novartis' concerns regarding the *Ferriprox.com* website, ApoPharma did not agree with its assertion that the British Journal of Haematology was intended solely for a UK audience. The British Journal of Haematology might be published in the UK, but it was certainly promoted and sold on a global basis. For this reason ApoPharma felt that providing access to a website targeted to a population outside of the UK was not inappropriate if the proper disclaimer was provided.

PANEL RULING

The Panel considered that the banner advertisement in the British Journal of Haematology was an advertisement covered by the UK Code and noted that ApoPharma was responsible for the advertisement which appeared in a professional journal intended for a UK audience. The journal would be widely read round the world but, given its title, it was intended for, *inter alia*, a UK audience.

The Panel noted the supplementary information to Clause 4.1 of the Code, Electronic Journals. The Panel considered that the failure to include a direct link to the prescribing information for Ferriprox in the banner advertisement was a breach of Clause 4.1 of the Code and ruled accordingly.

The Panel did not accept that the failure to indicate the disease area meant that the claim in the banner advertisement was inconsistent with the summary of product characteristics (SPC) as alleged. No breach of Clause 3.2 was ruled.

The Panel considered that the claim 'Life is getting longer' was a hanging comparison; it was not clear with what Ferriprox was being compared. A breach of Clause 7.2 of the Code was ruled. Under the Code there was no need to reference all claims, only those that referred to published studies (Clause 7.6). ApoPharma had not provided any material to substantiate the claim. The Panel ruled a breach of Clause 7.4.

Case AUTH/1823/4/06 (Swedish Orphan)

Claim 'New Data Show Ferriprox Tablets are More Efficacious than Desferoxamine in Removing Iron from the Heart and in Preventing Early Death in Patients with Thalassaemia'

This was the title of an article in the UK Thalassaemia Society Patient Newsletter – March 2006.

COMPLAINT

Novartis alleged that this article, which appeared to have been written by Swedish Orphan had a promotional tone and thus constituted clear advertising by the company of a prescription medicine to the public in breach of Clause 20.1.

In the second paragraph the article described 'a stunning report on the morbidity and mortality of thalassaemia patients…'. This information was not provided in a factual manner and so a breach of Clause 20.2 was alleged.

Both the trials reported in the article included patients who were either randomised or switched to Ferriprox from Desferal. The information provided indicated that these patients were not within the licensed indication for Ferriprox which included the statement: 'when deferoxamine therapy is contraindicated or inadequate'.

In addition, despite it being clearly stated that 'Full prescribing information is printed overleaf', this was not the case and in fact there was no prescribing information for Ferriprox in the entire newsletter. The inclusion of this statement suggested that the company recognised that this was a promotional item and that the original intention for this item was as a promotional item directed to health professionals rather than patients. Its inclusion in a patient group newsletter was therefore entirely inappropriate.

The article also displayed the previously described advertisement 'Life is getting Longer' and so for the reasons given above, Case AUTH/1822/4/06, in breach of Clauses 3.2, 4.1, 7.2 and 7.4 as well as of Clause 20.1.

RESPONSE

Swedish Orphan stated that when new important data from two studies with Ferriprox became known a global press release was developed. The results from the two studies were regarded to be 'breakthrough data' and of high importance to patients (lifesaving), the medical community as well as for the corporations and the investor community.

In the UK the global press release was slightly adapted and the UK prescribing information for Ferriprox was added. This was common practice, not only at Swedish Orphan, but a practice applied by many if not most pharmaceutical companies and adding the SPC or local labelling was part of communicating balanced information on the product.

The global press release (with local adaptations) went out in many countries to the medical press and other relevant publications for a corporate announcement.

As far as Swedish Orphan could understand the codes for marketing (EFPIA, ABPI and others) did not apply to press releases of corporate interest.

Swedish Orphan could not confirm if the publisher of the UK Thalassaemia Society Newsletter received the press release directly from its local office or if it was picked up from somewhere else. There was a press conference at a congress in Dubai (The Thalasaemia International Federation Congress 2006) shortly before the press release was distributed in UK. The UK Thalassaemia Society was represented at the congress.

As was noted by Novartis it was an article in the newsletter – not an advertisement. Swedish Orphan International had obviously not written the article. It was simply an article which was based on the press release. What was a bit unusual was that the article included most of the press release, which also explained why there was a reference to prescribing information and contact details if further information was wanted. It was common practice to provide contact details and attach the SPC/labelling in a press release.

In summary: Novartis' conclusion that the article represented an 'advertisement by the company' was false. It was an article based on a well justified press release as the study results had a corporate (public) interest. Also, this meant Novartis was implying that the UK Thalassaemia Society, a well respected patient organisation, would allow Swedish Orphan to write articles containing product promotion in its newsletter. This was a serious allegation against the society.

Novartis' conclusion that the reference to the prescribing information '… suggested that the company recognized that this was a promotional item…' was false. Swedish Orphan, as well as other pharmaceutical companies, commonly attached prescribing information (SPC or local labelling) to press releases concerning products in order to provide balanced information and to name a company contact person.

PANEL RULING

The Panel noted that the UK Code did apply to press releases of corporate interest. Clause 20.1 prohibited the advertising of prescription only medicines to the public. Clause 20.2 permitted information to be made available if presented in a balanced way. It must not raise unfounded hopes of successful treatment and not be misleading with respect to the safety of the product. Statements must not be made for the purpose of encouraging a member of the public to ask their health professional to prescribe a specific prescription only medicine.

The supplementary information to Clause 20.2, Financial Information, referred to information made available to inform shareholders, the stock exchange and the like. The press material at issue in this case did not appear to be a business press release as set out in this supplementary information.

The Panel noted that the actual press release had not been supplied to it by Swedish Orphan. The company submitted that the UK Thalassaemia Society's patient newsletter had reproduced the UK press release including the prescribing information. This was unusual. Thus the Panel made its decision on the content of the patient newsletter which was in effect Swedish Orphan's press release.

The Panel did not consider that the article itself was an advertisement for a prescription only medicine to the public. No breach of Clause 20.1 of the Code was ruled.

The article referred to the results of the study as being 'stunning' and 'exciting'. The Panel considered that in that regard the article was not balanced and would encourage readers to ask their health professional to prescribe Ferriprox. A breach of Clause 20.2 of the Code was ruled.

The Panel noted that the supplementary information to Clause 20.2 of the Code stated that it was good practice to include the SPC with a press release. There was no prohibition in Clause 20 on including the prescribing information, which was different to the SPC, with a press release. The prescribing information was required by Clause 4.1 of the Code when a product was promoted to health professionals for prescribing. A press release to the media must not constitute advertising a prescription only medicine to the general public.

The Panel noted that an advertisement issued by Swedish Orphan appeared immediately following the article in the newsletter. The advertisement stated 'With licensed oral iron chelation life is getting longer' and included the Swedish Orphan International mission statement. Novartis had complained about this advertisement.

The Panel considered that its rulings with regard to the claim 'Life is getting longer' in Case AUTH/1822/4/06, above, applied here. Thus breaches of Clauses 7.2 and 7.4 of the Code were ruled and no breach of Clause 3.2 was ruled. The Panel ruled a breach of Clause 20.1 as the advertisement was for a prescription only medicine to the general public. The Panel ruled no breach of Clause 4.1 as the advertisement was not advertising to health professionals and prescribing information was thus not required.

Case AUTH/1822/4/06	
Complaint received	**4 April 2006**
Company agreed to comply with the Code and accept the Authority's jurisdiction	**5 July 2006**
Case completed	**23 August 2006**

Case AUTH/1823/4/06	
Complaint received	**4 April 2006**
Company agreed to comply with the Code and accept the Authority's jurisdiction	**14 July 2006**
Case completed	**18 August 2006**