

CONSULTANT IN ANAESTHESIA AND PAIN MANAGEMENT v GRÜNENTHAL

Versatis journal advertisement

A consultant in anaesthesia and pain management complained about an advertisement in the BMJ for Versatis (lidocaine medicated plaster) issued by Grünenthal.

The complainant alleged the advertisement was at best deliberately misleading, misrepresenting the product as it did, and at worst a deliberate attempt to influence prescribers to use the product off-licence. The clear and unambiguous message was that the product was for burning, shooting, stabbing (ie neuropathic) pains and that Versatis 'Works where it hurts'. The fact that Versatis was only licensed for post-herpetic neuralgia (PHN) was lost in the small print away from the main message. Additionally, the advertisement strongly suggested that the pain to be treated was one experienced by a young female which spread across a large area of both sides of the body. PHN was typically a unilateral single dermatomal pain in an elderly person.

The advertisement depicted a broad blue swathe running from the right shoulder to the bottom left-hand side of a young woman's back. The area of the right shoulder featured a fire apparently depicting pain, alongside the claim 'New for burning, shooting, stabbing pains' which was encased within a highlighted blue box. The licensed indication appeared in the bottom left-hand corner of the advertisement, beneath the blue swathe. The product logo appeared above the strapline 'Works where it hurts' in the bottom right-hand corner.

In the Panel's view any qualification required to ensure that a claim complied with the Code should appear in the same immediate visual field as the claim itself. The Panel considered that the prominent unqualified claim 'New for burning, shooting, stabbing pains' implied that Versatis was licensed to treat any such pain irrespective of its origin whereas it was only licensed to treat pain associated with post-herpetic neuralgia. Whilst the licensed indication appeared in the bottom left-hand corner the Panel considered that its size and location was such that it did not qualify the misleading impression given by the headline claim. The advertisement was inconsistent with the Versatis marketing authorization as alleged. A breach of the Code was ruled.

The Panel was concerned that the advertisement did not depict a typical patient with PHN. Whilst noting that it could potentially affect a patient of any age or either gender, PHN was much more likely to occur in the elderly rather than in the younger patient depicted. The Panel noted the company's submission

that the purpose of the blue swathe was to lead the reader's eye from the symptoms to the licensed indication but considered that it implied that the burning, shooting, stabbing pains to be treated were typically bilateral spread across a large area of the body and that was not so. The Panel considered that the advertisement, in its depiction of PHN, was misleading and thus did not encourage the rational use of Versatis. Breaches of the Code were ruled which were appealed by Grünenthal.

Upon the appeal, the Appeal Board noted that whilst the advertisement did not depict a typical patient with PHN, the patient shown was within the licensed indication for Versatis and therefore the image was acceptable in that regard. With regard to the blue swathe the Appeal Board noted from Grünenthal's representatives that it represented the potential spread of pain and sensitivity beyond the original rash. This differed from the company's response to the complaint when it stated that the purpose of the blue swathe was to lead the reader's eye from the symptoms to the licensed indication. In any event the Appeal Board considered that the spikes, flames and lightening graphics, shown on the 'patient's' right shoulder, clearly depicted PHN and the blue swathe did not mislead as alleged. The Appeal Board ruled no breach of the Code.

A consultant in anaesthesia and pain management complained about an advertisement in the BMJ (ref 042/GRTUK/VERS 12/06-12/08) for Versatis (lidocaine medicated plaster) issued by Grünenthal Ltd.

COMPLAINT

The complainant alleged the advertisement was at best deliberately misleading, misrepresenting the product as it did, and at worst a deliberate attempt to influence prescribers to use the product off-licence. The clear and unambiguous message was that the product was for burning, shooting, stabbing (ie neuropathic) pains and that Versatis 'Works where it hurts'. The fact that Versatis was only licensed for post-herpetic neuralgia (PHN) was lost in the small print away from the main message. Additionally, the advertisement strongly suggested that the pain to be treated was one experienced by a young female which spread across a large area of both sides of the body. PHN was typically a unilateral single dermatomal pain in an elderly person.

When writing to Grünenthal, the Authority asked it to respond in relation to Clauses 3.2, 7.2 and 7.10 of the Code.

RESPONSE

Grünenthal stated that the advertisement had appeared in a number of medical journals since the launch of Versatis. The company noted the complainant's statement that "The clear and unambiguous message is that the product is for burning, shooting, stabbing (ie neuropathic) pains and that Versatis 'Works where it hurts'".

These symptoms were routinely experienced by sufferers of PHN; market research had shown that these symptoms were common in PHN and this was supported by reports in the published literature eg Baron *et al*. As the licence for Versatis was for neuropathic pain associated with previous herpes zoster infection (PHN) it should not be surprising to see common symptoms featured in an advertisement for the product. The claim 'Works where it hurts' described how Versatis worked locally for patients with PHN.

This important licensed indication information was positioned deliberately adjacent to the brand name to minimise ambiguity. The blue swathe led the reader's eye from the 'burning, stabbing, shooting pains' through the dramatical representation of those expressions directly to the licensed indication.

PHN could affect people of almost any age or gender and could affect large areas of skin. The female image represented was within the licensed demographic group eligible for treatment (ie 18 years of age and over). The visual representation of the descriptive terms used by patients was relatively confined on the visual. The purpose of the blue swathe was to lead the reader directly from the symptoms to the licensed indication, the product name (to its right) and thereby the prescribing information immediately below. It was not meant to illustrate the spread or extent of affected area from the single dermatome concerned, but it did illustrate that the symptoms could be related to any one of a number of dermatomes (not exclusive, of course).

The advertisement was one of many promotional items used to communicate every aspect of Versatis to prescribers to ensure they were fully informed. The role of the Versatis advertisement was to raise awareness and create interest in the product and empathy for patients suffering with a very painful condition. The success in achieving these goals was confirmed by market research prior to launch. Grünenthal submitted that this creative approach in achieving these goals was not dissimilar to other medical advertisements, a selection of which were provided.

The Code did not state that advertisements should communicate precise patient types and conditions. In this situation it would be impossible because PHN patients presented at all ages, sexes and stages of illness. In addition there were differences in perception and understanding between GPs and hospital doctors. The Versatis advertisement aimed to create an emotional response from health

professionals of all types – especially empathy with their patients.

As stated previously, it was not intended that the advertisement would provide a text book representation of PHN nor did it attempt to specify one presentation of PHN, ie unilateral dermatomal pain in an elderly person. PHN could affect patients of any age, a variety of sites on the body and sometimes more than one dermatome. The advertisement was designed to communicate information about the product licence and engage stakeholders in an interesting manner, whilst providing these messages within the Code.

In conclusion, PHN presented as localised, burning, stabbing or shooting pain, and therefore the advertisement could not be said to influence the prescriber to use Versatis off-label. Rather than being deliberately misleading, the advertisement communicated what patients experienced with PHN, accurately and with emotion. Grünenthal refuted the accusation that the advertisement attempted to influence prescribers to use Versatis off-label and trusted that the Authority would concur.

PANEL RULING

The Panel noted that Versatis was licensed for the treatment of neuropathic pain associated with previous herpes zoster infection (post-herpetic neuralgia, PHN).

The advertisement depicted a broad blue swathe running from the right shoulder to the bottom left-hand side of a young woman's back. The area of the right shoulder featured a fire apparently depicting pain, alongside the claim 'New for burning, shooting, stabbing pains' which was encased within a highlighted blue box. The licensed indication appeared in the bottom left-hand corner of the advertisement, beneath the blue swathe. The product logo appeared above the strapline 'Works where it hurts' in the bottom right-hand corner.

The Panel noted that the supplementary information to Clause 7 stated that claims in promotional material must be capable of standing alone as regards accuracy etc. In general claims should not be qualified by footnotes and the like. In the Panel's view any qualification required to ensure that a claim complied with the Code should appear in the same immediate visual field as the claim itself. In the advertisement at issue readers were required to zigzag down the page in order to get all of the information needed to understand what Versatis was licensed for. The Panel considered that the prominent unqualified claim 'New for burning, shooting, stabbing pains' implied that Versatis was licensed to treat any such pain irrespective of its origin whereas it was only licensed to treat pain associated with post-herpetic neuralgia. Whilst the licensed indication appeared in the bottom left-hand corner in a white typeface against a dark background the Panel considered that its size and location was such that it did not qualify the

misleading impression given by the headline claim. The advertisement was inconsistent with the Versatis marketing authorization as alleged. A breach of Clause 3.2 was ruled. This ruling was accepted.

The Panel was concerned that the advertisement did not depict a typical patient with PHN. Whilst noting that it could potentially affect a patient of any age or either gender, PHN was much more likely to occur in the elderly rather than in the younger patient depicted. The Panel noted the company's submission that the purpose of the blue swathe was to lead the reader's eye from the symptoms to the licensed indication but considered that it implied that the burning, shooting, stabbing pains to be treated were typically bilateral spread across a large area of the body and that was not so. The Panel considered that the advertisement, in its depiction of PHN, was misleading and thus did not encourage the rational use of Versatis. Breaches of Clauses 7.2 and 7.10 were ruled. This ruling was appealed by Grünenthal.

APPEAL BY GRÜNENTHAL

Grünenthal submitted that the advertisement at issue was one of a series planned for the launch of Versatis which would show a variety of appropriate patient types. The patient shown was clearly within the licensed indication for Versatis (18 years and over). Future advertisements would include elderly and male patients.

Market research confirmed that the vast majority of customers understood that the Versatis promotional campaign (of which the advertisement was the key component) communicated that the product should be used for neuropathic pain associated with PHN.

There was no intention to mislead the reader as the advertisement depicted a patient for which Versatis was licensed (female over 18 years of age); therefore it was not a breach of Clause 7.2. Moreover, the advertisement did not breach Clause 7.10 as it did not exaggerate the patient type or encourage irrational use of Versatis.

Grünenthal submitted that the typical rash of shingles with its distribution over a single dermatome underestimated the extent of the neurological symptoms of PHN. A symptom such as allodynia was not confined to the distribution of the rash but was more widespread; Watson *et al* (2001) and the review by Gilron *et al* (2006) showed allodynia to be extensive. Thus allodynia could appear to merge over several dermatomes (as more or less depicted by the blue swathe in the advertisement).

Hope-Simpson (2001) reported that herpes zoster and PHN could appear almost anywhere on the body, but mainly on the torso. Grünenthal stated that it considered it appropriate to show the posterior aspect of the torso in its advertisement.

In summary, the advertisement showed a common area for PHN and thus Grünenthal did not consider

that it breached Clause 7.2. Therefore as the advertisement did not mislead customers to use Versatis outside of its labelled indication, the company did not consider that it breached Clause 7.10.

COMMENTS FROM THE COMPLAINANT

The complainant initially responded to the emailed appeal and response to the complaint without their enclosures as he was unable to receive them.

The complainant did not question that the product was an effective topical application for neuropathic pain which 'works where it hurts', the issue was the separation of this (correct) statement (in the advertisement) from that of the only licensed indication for the product. PHN could affect any age group but, except in the immunocompromised patient it would be restricted to one dermatome on one side of the body which might be a 'large area of skin' but hardly akin to the blue swathe; even though allodynia often extended beyond the confines of the rash it did not cross the midline.

The complainant alleged that if the advertisement was truly one of a series then why did the first one feature one of the most unlikely sufferers and where were the details of the planned series with irrefutable evidence (timeline) that this was in place before the complaint was lodged?

The complainant noted a reference text (Waldman 2007) dealt with PHN in volume 1; it stated 'Post herpetic neuralgia ... along a single dermatome. Pain develops along the same dermatome as the rash'. '... generally localised to the segmental distribution of the posterior spinal ganglion affected ... 52% thoracic This most common and feared complication of herpes zoster is called postherpetic neuralgia, and the elderly are affected at a higher rate than the general population ...'. At 1 year only 8% of those aged <20 would have postherpetic neuralgia compared with 92% of those >70 who had survived'.

Upon receipt of the enclosures to the appeal the complainant alleged that Grünenthal's response did not answer the concerns raised. The advertising schedule was extensive and just that; no indication of a previously planned series of different approaches. Most common symptoms in PHN based upon 883 GPs were as known/expected. The advertisements for other medicines included by Grünenthal in its response, had not raised any concerns equivalent to those for Versatis.

The complainant stated that Baron *et al* confirmed the expected efficacy for a '... chronic pain syndrome that disproportionately affects the elderly' which '... showed a favourable safety profile ... in this predominantly elderly population'.

The complainant submitted that Hope-Simpson *et al* neither supported nor contradicted Grünenthal's position. Gilron *et al* clearly confirmed PHN as

