

VOLUNTARY ADMISSION BY GRÜNENTHAL

Breach of undertaking

Grünenthal voluntarily admitted that it had breached the undertaking and assurance in relation to a journal advertisement for Versatis (lidocaine medicated plaster) which it had given in Case AUTH/1960/2/07.

When Grünenthal undertook not to use the advertisement at issue in Case AUTH/1960/2/07 it so advised its advertising agency and asked it to put in place a number of actions. It instructed Pulse by email to destroy old electronic copies of the advertisement and replace them with a new version. The new pdf was attached to an email which stated 'The easiest way to confirm the new copy, is by its revised headline. This now says "New for the burning, shooting stabbing pains of post-herpetic neuralgia"'. This email was followed up by a hard copy in the post.

Following these procedures the correct advisement was run in the 26 April edition of Pulse and on three subsequent occasions.

Investigations showed that Pulse did not destroy the old pdf. It was the publisher's policy to check the content of the advertisement before sending it to print but on this occasion its internal procedures were not followed. This had been confirmed in writing by the head of client services at the publishers.

It therefore appeared that the undertaking had been breached because the publisher had not followed Grünenthal's explicit instructions to destroy the old material. Nor had it followed its own internal processes to check the print version was the correct one to use. It was difficult to assess how Grünenthal could have anticipated this outcome when Pulse had previously and regularly published the correct version of the advertisement. In support of its internal processes Grünenthal noted that several journals including the BMJ and Practitioner had correctly followed its procedures and published revised versions of the advertisement.

Paragraph 5.4 of the Authority's Constitution and Procedure provided that the Director should treat a voluntary admission as a complaint if it related to a potentially serious breach of the Code or if the company failed to take appropriate action to address the matter. A breach of undertaking was regarded as a serious matter and the admission was accordingly treated as a complaint.

The Panel considered that an undertaking was an important document. It included an assurance that all possible steps would be taken to avoid similar breaches of the Code in the future. It was very important for the reputation of the industry that

companies complied with undertakings.

The Panel noted that in Case AUTH/1960/2/07 it had ruled that an advertisement for Versatis was in breach of the Code. The advertisement had featured the claim 'New for burning, shooting, stabbing, pains'. Grünenthal provided the requisite undertaking on 3 April 2007. Pulse had published the updated advertisement in April and May but had reverted to the previous advertisement for its 13 and 20 September 2007 editions.

The Panel noted that correspondence from Grünenthal clearly instructed Pulse to destroy old versions of the Versatis advertisement. The company had explained that the way to differentiate the new advertisement from the old was that the new advertisement stated 'New for the burning, shooting, stabbing pains of post-herpetic neuralgia'. In that regard, given the similarity between the old and new claim, it might have been helpful to emphasize the need for 'post-herpetic neuralgia' to be included in the headline. There was no mention in the correspondence that the claim had had to be revised following a ruling of a breach of the Code and therefore the importance of complying with Grünenthal's instruction was not made clear to the publishers. Grünenthal had not asked the publishers to confirm that the old version of the advertisement had been destroyed. The Panel considered that Grünenthal had taken steps to comply with its undertaking and although its instructions to the publisher could have been more explicit it had, nonetheless, been very badly let down by Pulse. The Panel ruled a breach of the Code as Pulse's failure to comply with Grünenthal's instructions meant that Grünenthal had breached its undertaking. In the circumstances the Panel did not consider that Grünenthal had on balance failed to maintain high standards or that it had brought discredit upon, or reduced confidence in, the industry.

Grünenthal Ltd voluntarily admitted that it had breached the undertaking and assurance in relation to a journal advertisement for Versatis (lidocaine medicated plaster) which it had given in Case AUTH/1960/2/07.

COMPLAINT

Grünenthal explained that in March 2007 a Versatis advertisement was found in breach of Clause 3.2. In response to this Grünenthal provided an undertaking on 2 April and put a number of procedures in place to ensure the advertisement was withdrawn. Unfortunately Grünenthal noted that the advertisement had appeared in Pulse, 13 September. It

immediately notified the publisher to ensure no further prints would be made. However, it was too late to prevent Pulse from making the same mistake in the 20 September edition. Grünenthal regarded a breach of undertaking as a very serious matter and had dealt with this issue both promptly and rigorously to identify the causal factors.

Following Case AUTH/1960/2/07, Grünenthal undertook not to use the advertisement again. The advertising agency was so informed and asked to put in place a number of actions. It emailed Pulse with the instruction to destroy old copies of the advertisement (pdf version) and replace with a new pdf version. The new pdf was attached to the email and a clarifying statement was also given to ensure the publisher could identify the new advertisement. The statement was 'The easiest way to confirm the new copy, is by its revised headline. This now says "New for the burning, shooting stabbing pains of post-herpetic neuralgia"'. This email was followed up by a hard copy in the post.

Following these procedures the correct advisement was run in the 26 April edition of Pulse and on three subsequent occasions.

Investigations showed that Pulse did not destroy the pdf. It was the publisher's policy to check the content of the advertisement before sending it to print but on this occasion its internal procedures were not followed. This had been confirmed in writing by the head of client services at the publishers.

It therefore appeared that the undertaking had been breached because the publisher had not followed Grünenthal's explicit instructions to destroy the old material. Nor had it followed its own internal processes to check the print version was the correct one to use. It was difficult to assess how Grünenthal could have anticipated this outcome when Pulse had previously and regularly published the correct version of the advertisement. In support of its internal processes Grünenthal noted that several journals including the BMJ and Practitioner had correctly followed its procedures and published revised versions of the advertisement.

Grünenthal was disappointed to have to make this voluntary admission believing that it had operated in every way to comply with the undertaking, demonstrated by the successful nature of its actions. Grünenthal had acted promptly regarding this issue, in a timely and professional manner, in keeping with its company ethos to uphold the industry's reputation at all times.

Paragraph 5.4 of the Authority's Constitution and Procedure provided that the Director should treat a voluntary admission as a complaint if it related to a potentially serious breach of the Code or if the company failed to take appropriate action to address the matter. A breach of undertaking was regarded as a serious matter and the admission was accordingly treated as a complaint.

When writing to Grünenthal, the Authority asked it to

respond in relation to Clauses 2, 9.1 and 22 of the Code.

RESPONSE

Grünenthal stated that having signed an undertaking and in order to ensure high standards were maintained at all times, it had in place a procedure which was implemented immediately to withdraw the Versatis advertisement at issue in Case AUTH/1960/2/07. The aim was to inform its agencies and provide clear instructions to ensure that it complied with its undertaking. In this case the objective was to ensure no further publication of the advertisement found to be in breach. The events following the undertaking relevant to this case were as follows:

Grünenthal informed agencies of undertaking (28 March 2007).

Creative agency sent revised advertisement (electronically and in hard copy) to publisher with instructions to destroy old advertisements (18 April 2007– copies provided).

Publisher printed new advertisement in Pulse (editions 26 April and 3, 17 and 24 May 2007).

Grünenthal received positive endorsement that the procedure had worked effectively when the correct advertisement was published in Pulse (and other journals) one week later.

As noted above it appeared that Pulse did not destroy the pdf and thus this breach of undertaking had arisen due to the publisher's failure to follow Grünenthal's explicit instructions to destroy the old material and to follow its own internal processes and check the print version was the correct one to use. In essence this was a result of human error on the part of an employee of Pulse for which the publishers took full responsibility.

It was difficult to assess how Grünenthal could have anticipated this outcome when Pulse had previously and regularly published the correct version of the advertisement. Grünenthal reiterated that several journals including the BMJ and Practitioner had correctly followed its procedures and published revised versions of the advertisement. Grünenthal believed it had good procedures in place which it had implemented correctly. It was difficult to see how they could be improved to completely avoid human error.

Grünenthal believed the facts of the case demonstrated that it had rigorous procedures in place to ensure it complied with the demands of the Code and had not brought discredit to the industry.

The advertisement in breach was effectively withdrawn. This was evidenced by the Versatis campaign running effectively and within the Code for five months from the ruling prior to the Pulse publication.

PANEL RULING

The Panel considered that an undertaking was an

important document. It included an assurance that all possible steps would be taken to avoid similar breaches of the Code in the future. It was very important for the reputation of the industry that companies complied with undertakings.

The Panel noted that in Case AUTH/1960/2/07 it had ruled that an advertisement for Versatis was in breach of the Code. The advertisement had featured the claim 'New for burning, shooting, stabbing, pains'. Grünenthal provided the requisite undertaking on 3 April 2007. Pulse had published the updated advertisement in April and May but had reverted to the previous advertisement for its 13 and 20 September 2007 editions.

The Panel noted that correspondence from Grünenthal clearly instructed Pulse to destroy old versions of the Versatis advertisement. The company had explained that the way to differentiate the new advertisement from the old was that the new advertisement stated 'New for the burning, shooting, stabbing pains of post-herpetic neuralgia'. In that regard, given the similarity between the old and new claim, it might have been helpful to emphasize the need for 'post-herpetic neuralgia' to be included in the headline. There was no mention in the correspondence that the claim had had

to be revised following a ruling of a breach of the Code and therefore the importance of complying with Grünenthal's instruction was not made clear to the publishers. Grünenthal had not asked the publishers to confirm that the old version of the advertisement had been destroyed.

The Panel considered that Grünenthal had taken steps to comply with its undertaking and although its instructions to the publisher could have been more explicit it had, nonetheless, been very badly let down by Pulse. The Panel ruled a breach of Clause 22 as Pulse's failure to comply with Grünenthal's instructions meant that Grünenthal had breached its undertaking. In the circumstances the Panel did not consider that Grünenthal had on balance failed to maintain high standards. No breach of Clause 9.1 was ruled. The Panel did not consider that Grünenthal had brought discredit upon, or reduced confidence in, the industry and thus no breach of Clause 2 was ruled.

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| Complaint received | 27 September 2007 |
| Case completed | 25 October 2007 |
