GENERAL PRACTITIONER v MERCK SHARP & DOHME

Packaging for a promotional aid

A general practitioner complained that although Arcoxia was printed on the packaging of an Arcoxia (etoricoxib) promotional aid (a USB flash drive) issued by Merck Sharp & Dohme, there was no mention of the approved name (etoricoxib).

The Panel considered that the USB flash drive, together with its packaging, comprised the promotional aid. With regard to the name of a medicine, the Code required that as long as promotional aids included no more than the brand name or the non-proprietary name, then prescribing information need not be included. It was, thus, acceptable on promotional aids to only include the brand name; to also include the non-proprietary name would trigger the requirement to include prescribing information. The Panel considered that the promotional aid met the requirements of the Code and no breach was ruled.

A general practitioner complained about the packaging of an Arcoxia (etoricoxib) promotional aid issued by Merck Sharp & Dohme Limited.

COMPLAINT

The complainant explained that he had recently responded to an invitation to request a USB flash drive from Merck Sharp & Dohme. The complainant noted that the packaging in which the gift arrived had Arcoxia printed on it in four places, however, there was no mention of the approved name (etoricoxib). The complainant considered that the packaging was clearly promotional and as such the most prominent occurrence of the name should be accompanied by the approved name.

When writing to Merck Sharp & Dohme, the Authority asked it to respond in relation to Clauses 4.3, 9.1 and 18.3 of the Code.

RESPONSE

Merck Sharp & Dohme submitted that in its view the item in question complied with the requirements for promotional aids, defined in the Code.

The company stated that it considered the promotional aid to be the USB flash drive together with its box. Merck Sharp & Dohme noted that the box had a window through which the USB key itself was clearly visible. The company believed therefore that the packaging was an integral part of the promotional aid, and was therefore subject to Clause 18.3. The box was intended to be disposed of once the USB stick was removed. Indeed, the complainant described the material as the packaging that the promotional aid was delivered in.

Clause 18.3 applied to the complete promotional aid, which as noted above comprised the USB key and its packaging. Clause 18.3 prohibited it from including both brand and non-proprietary names. Thus it disagreed with the complainant's assertion that the approved name should have been included.

Merck Sharp & Dohme believed that it always applied high standards through the application of its medico-legal approval process and denied a breach of Clause 9.1.

The company did not believe Clause 4.3 applied in this instance as Clause 18.3 specifically stated that the prescribing information required under Clause 4 did not have to be included on a promotional aid if the promotional aid included, *inter alia*, no more than the brand name of the medicine. Merck Sharp & Dohme did not accept that the box in question could reasonably be construed as anything other than the packaging of a promotional aid, and was intended to be disposed of once the memory stick had been removed.

In summary, Merck Sharp & Dohme did not believe that its actions had breached Clauses 4.3, 9.1 and/or 18.3 of the Code.

PANEL RULING

The Panel considered that the USB flash drive, together with its packaging, comprised the promotional aid. Clause 18.3 of the Code stated, with regard to the name of a medicine, that as long as promotional aids included no more than the brand name or the non-proprietary name, then prescribing information about the medicine need not be included. It was, thus, acceptable on promotional aids to only include the brand name; to also include the non-proprietary name would trigger the requirement to include prescribing information under Clause 4.1. The Panel considered that the promotional aid met the requirements of Clause 18.3 and no breach of that clause was ruled. There was no need to include prescribing information and so no breach of Clause 4.1 was ruled. The Panel considered that high standards had been maintained. No breach of Clause 9.1 was ruled.

Complaint received	**11 December 2007**
Case completed	**25 January 2008**