

ANAESTHETIST v BAYER SCHERING PHARMA

Advertisement in The Economist

An anaesthetist alleged that an advertisement placed in The Economist by Bayer Schering Pharma promoted a medicine to the public, in breach of the Code.

The advertisement was headed 'Fighting Multiple Sclerosis' followed by the Bayer corporate logo which included the phrase 'Science For A Better Life', followed by 'Providing Hope'. The advertisement stated that in the fight against multiple sclerosis Bayer had brought to market the first therapy with long-term efficacy in significantly reducing the frequency of periods of exacerbation. It also stated that the company was continuing to investigate new therapies to give patients the most precious gift possible: a life full of hope for the future.

Bayer Schering's product Betaferon (interferon beta-1b) was indicated for treatment of certain types of multiple sclerosis (MS).

The complainant stated that the advertisement referred to a medicine marketed by Bayer to treat symptoms of MS. Although the name of the medicine was not given, there was enough information provided to allow a reader to request this medicine from a doctor.

The Panel noted Bayer Schering's submission that the advertisement was to show Bayer as an ethical company committed to scientific research and the provision of high quality healthcare. The advertisement, however, was clearly about MS and text referred to Bayer Schering's treatment for MS and included clinical claims for the product. Further the advertisement also hinted that something else would become available and this would give patients 'a life full of hope for the future'. It was not simply corporate promotion of the company as submitted. The Panel considered that the advertisement contained statements which would encourage patients to ask their doctor to prescribe the Bayer product which was a prescription only medicine. The mention of giving patients 'a life full of hope' raised unfounded hopes of successful treatment given that MS was an incurable disease. The Panel ruled a breach of the Code.

High standards had not been maintained and hence a further breach of the Code was ruled. Taking all the circumstances into account the Panel did not consider that the advertisement brought discredit on, or reduced confidence in, the pharmaceutical industry. This clause was used as a sign of particular censure and reserved for such use. Thus no breach of Clause 2 was ruled.

An anaesthetist complained about an advertisement placed in The Economist (week of 23 June) by Bayer Schering Pharma.

The advertisement was headed 'Fighting Multiple Sclerosis' followed by the Bayer corporate logo which included the phrase 'Science For A Better Life', followed by 'Providing Hope'. Text at the bottom of the advertisement stated that in the fight against multiple sclerosis Bayer had brought to market the first therapy with long-term efficacy in significantly reducing the frequency of periods of exacerbation. It also stated that the company was continuing to investigate new therapies to give patients the most precious gift possible: a life full of hope for the future.

Bayer Schering's product Betaferon (interferon beta-1b) was indicated for treatment of certain types of multiple sclerosis (MS).

COMPLAINT

The complainant stated that the advertisement referred to a medicine marketed by Bayer to treat symptoms of MS. Although the name of the medicine was not given, there was enough information provided to allow a reader to request this medicine from a doctor.

The complainant alleged that this was an example of promotion of a medicine to the public and therefore in breach of the Code.

When writing to Bayer Schering, the Authority asked it to respond in relation to Clauses 2, 9.1, 20.1 and 20.2.

RESPONSE

Bayer Schering stated that it did not consider it appropriate to encourage members of the public to ask their doctor to prescribe a specific medicine in any circumstances. It did not accept that the advertisement did this.

Bayer Schering had an internal local and global certification procedure for ensuring compliance of corporate activities with the Code.

The Economist was targeted at individuals with an interest in finance and politics, not the general public *per se*. The purpose of the advertisement was to show Bayer as an ethical company committed to science research and the provision of high quality healthcare. It was not intended to

highlight a specific medicine. The advertisement did not refer to any named medicine.

MS patients were an especially well-informed group. The MS Society stated that 'patients are entitled to participate in the decision making process'. MS decisions, an independent aid for patients funded by the Department of Health, provided information to 'crystallise your thinking and make a careful decision in the collaboration with your specialist'. Bayer Schering supported this view but it was inconceivable that the prescription of a disease modifying drug (DMD) would be made on the basis of a patient request. Furthermore the fact that one DMD was developed first did not mean it was superior to newer DMDs.

Treatment could only be initiated by a specialist and the Association of British Neurologists had agreed criteria for which patients were eligible. The supply of DMDs on the NHS was tightly regulated. It was administrated under a special scheme between the NHS, Bayer Schering Pharma and the other manufacturers. This was the Department of Health Risk Sharing Scheme. It was in no-one's interest to encourage patients to ask for a medicine which was inappropriate.

Bayer Schering did not accept that the advertisement was an example of promotion of a medicine to the public, it was a promotion of the company to the financial and political sectors.

PANEL RULING

The Panel noted that the advertisement did not mention any product by name, either brand or generic. However it was possible to promote a product without mentioning it by name.

The Panel considered that The Economist was a publication aimed at the public, albeit a readership that would have an interest in finance and politics. It was not a publication aimed at a health professional audience *per se*, such as the BMJ. The advertisement needed to comply with Clause 20.

The Panel noted Bayer Schering's submission that the advertisement was to show Bayer as an ethical company committed to scientific research and the provision of high quality healthcare. The advertisement, however, was clearly about MS and text referred to Bayer Schering's treatment for MS and included clinical claims for the product. Further the advertisement also hinted that something else would become available and this would give patients 'a life full of hope for the future'. It was not simply corporate promotion of the company as submitted. The Panel considered that the advertisement failed to meet the requirements of Clause 20.2. It contained statements which would encourage patients to ask their doctor to prescribe the Bayer product which was a prescription only medicine. Whether that product was subsequently prescribed or not was not relevant in this regard. The mention of giving patients 'a life full of hope' raised unfounded hopes of successful treatment given that MS was an incurable disease. The Panel ruled a breach of Clause 20.2.

The Panel noted Bayer Schering's submission that the supply of beta-interferon, like all prescription only medicines, was tightly regulated and that treatment could only be initiated by a specialist. It failed to see the relevance of this submission in relation to whether the advertisement constituted promotion of a prescription only medicine to the public. On balance the Panel considered that the advertisement in effect constituted an advertisement for Betaferon to the public. A breach of Clause 20.1 was ruled.

High standards had not been maintained and hence a breach of Clause 9.1 was ruled. Taking all the circumstances into account the Panel did not consider that the advertisement brought discredit on or reduced confidence in the pharmaceutical industry. This clause was used as a sign of particular censure and reserved for such use. Thus no breach of Clause 2 was ruled.

Complaint received **23 June 2008**

Case completed **4 August 2008**
