CASE AUTH/2215/3/09

MERZ PHARMA v ALLERGAN

Promotion of Botox

Merz Pharma complained about a Botox (botulinum neurotoxin) product monograph and an objection handler issued by Allergan. Merz marketed Xeomin (botulinum neurotoxin). Allergan stated that both items had been withdrawn following Case AUTH/2183/11/08.

The product monograph contained the claim that Botox was '… approved in over 70 countries, with 20 licensed indications …'. The objection handler contained the claim 'Worldwide, Botox currently has 20 licensed indications, whilst Xeomin has only 2 licensed indications'.

Merz submitted that whilst Botox might be approved in 70 countries with an extensive range of indications there were only 7 on the UK summary of product characteristics (SPC). To imply that there were 20 in the UK was untrue and misleading. To advertise that there were 20 indications worldwide was an attempt to solicit questions about the other, currently unauthorized indications, thus constituting promotion inconsistent with the SPC.

The Panel considered that although both the product monograph and the objection handler listed the six indications approved in the UK for Botox, reference to the 20 licensed indications worldwide in both documents might solicit questions about indications not licensed in the UK. No details of these indications were given in the documents. Nonetheless, the Panel considered that claims about the number of worldwide indications for Botox were inconsistent with the UK SPC and misleading and thus represented promotion which was not consistent with the particulars listed in the Botox SPC. Breaches of the Code were ruled.

In relation to the product monograph, the Panel noted that there were 20 licensed indications and thus this claim could be substantiated; no breach of the Code was ruled in that regard.

Merz noted that the headline on the front cover of the objection handler was 'A BIG difference' with the Botox product logo in the bottom right hand corner. The claim was not referenced but was clearly intended to position Botox as having a 'big difference' over its competitors and implied that there was some special merit to Botox. Clinically there was no difference in efficacy and safety between Botox and Xeomin (Benecke *et al* 2005, Roggenkamper 2006). The claim was therefore inaccurate and incapable of substantiation.

The Panel noted that all claims in promotional material were assumed to relate to the clinical situation unless otherwise specified. The Panel noted Allergan's submission that Botox differed from Xeomin in terms of the quantity and quality of clinical data. There appeared to be no clinical data, however, to suggest that Botox was a clearly 'different' botulinum neurotoxin. The Panel thus considered that the claim 'A BIG difference' for Botox was misleading and exaggerated and implied a special merit for Botox which could not be substantiated. Breaches of the Code were ruled.

Merz Pharma UK Ltd complained about the promotion of Botox (botulinum neurotoxin) by Allergan Ltd. The materials at issue were a product monograph (ref ACA/0343/2007/UK) and an objection handler ref ACA/1303/2006). Merz marketed Xeomin (botulinum neurotoxin).

Allergan stated that both items had been withdrawn as a result of rulings made in Case AUTH/2183/11/08. Given that both pieces had thus been in use until at least November 2008 this case was considered under the 2008 Code.

On examining the response from Allergan the Director decided that a number of allegations had been successfully addressed in inter-company dialogue and these matters were not dealt with as part of the complaint.

1 Claims about the number of Botox indications

Page 22 of the product monograph contained the claim that Botox was '… approved in over 70 countries, with 20 licensed indications …'.

Page 10 of the objection handler contained the claim 'Worldwide, Botox currently has 20 licensed indications, whilst Xeomin has only 2 licensed indications'.

COMPLAINT

Merz submitted that whilst Botox might be approved in 70 countries with an extensive range of indications there were only 7 on the UK summary of product characteristics (SPC). To imply that there were 20 in the UK was untrue and misleading. To advertise that there were 20 indications worldwide could only be considered an attempt to solicit a question about the other, currently unauthorized indications, thus constituting promotion inconsistent with the SPC. Merz alleged breaches of Clauses 3.2, 7.2 and 7.4 of the Code with regard to the product monograph.

With regard to the claim in the objection handler Merz repeated its allegation of a breach of Clause 3.2.

RESPONSE

Allergan submitted that the exact sentence at issue in the conclusion of the product monograph, 'It is approved in 70 countries, with 20 licensed indications and is approved for use by many hospital formularies.' summarised the data presented. The adjacent page contained the prescribing information for Botox, detailing the licensed indications. Earlier in the monograph the development of Botox had been covered. The specific UK licensed indications for Botox were detailed in a table and associated text.

Allergan submitted that it had not implied there were 20 indications for Botox in the UK.

Similarly, on an earlier page of the objection handler the specific UK licensed indications for Botox were detailed in a table and associated text.

The statement at issue clearly referred to worldwide indications. Allergan had not implied there were 20 indications for Botox in the UK and the company thus denied a breach of Clause 3.2.

PANEL RULING

The Panel noted both the product monograph (page 2) and the objection handler (page 4) listed the six indications approved in the UK for Botox. The Panel considered that to refer to the 20 licensed indications worldwide in both documents might solicit questions about indications not licensed in the UK but licensed elsewhere. No details of these indications were given in the documents. Clause 3.2 required that promotion of a medicine had to be in accordance with its marketing authorization and not be inconsistent with the SPC. The Panel considered that the claims at issue with regard to the number of worldwide indications for Botox were inconsistent with the UK SPC and misleading and thus represented promotion which was not consistent with the particulars listed in the Botox SPC. Breaches of Clause 3.2 were ruled with regard to both the product monograph and the objection handler. Additionally the product monograph was also ruled in breach of Clause 7.2.

With regard to the alleged breach of Clause 7.4 in relation to the product monograph, the Panel noted that there were 20 licensed indications and thus this claim could be substantiated and thus no breach of Clause 7.4 was ruled.

2 Claim 'A BIG difference'

COMPLAINT

Merz noted that the headline on the front cover of the objection handler was 'A BIG difference' with the Botox product logo in the bottom right hand corner. 'Big' was capitalised which gave it increased emphasis. The claim was not referenced but was clearly intended to position Botox as having a 'big difference' over its competitors in the botulinum toxin market. This implied that there was some special merit to Botox which was unclear and unreferenced. Clinically it had been demonstrated that there was no difference in efficacy and safety between Botox and Xeomin (Benecke *et al* 2005, Roggenkamper 2006). The claim was therefore inaccurate, incapable of substantiation and suggested that Botox had special merit which could not be substantiated. Breaches of Clauses 7.2, 7.4 and 7.10 were alleged.

RESPONSE

Allergan submitted that in the context of the now withdrawn objection handler, 'A BIG difference' was qualified within the piece with:

- The wealth and breadth of studies for Botox vs Xeomin, including the largest meta-analysis in the botulinum toxin therapy field (Allergan Data on File; Naumann and Jankovic, 2004).
- The length of studies with Botox vs Xeomin (Mejia *et al*, 2005; Benecke *et al*, 2005).
- The clinical evidence with Botox supporting a very low incidence of neutralising antibodies (Jankovic *et al*, 2003; Naumann *et al*, 2005; Yablon *et al*, 2005) whilst no such data currently existed for Xeomin (Xeomin SPC).

Allergan noted that Merz had stated that 'clinically it had been demonstrated that there was no difference in efficacy between Botox and Xeomin'. This was not the case. The two cited non-inferiority studies (Benecke *et al*, Roggenkamper *et al*) demonstrated similar efficacy and safety profiles; they did not demonstrate equivalence.

Allergan denied breaches of Clauses 7.2, 7.4 or 7.10.

PANEL RULING

The Panel noted that all claims in promotional material were assumed to relate to the clinical situation unless otherwise specified. The Panel noted Allergan's submission that Botox differed from Xeomin in terms of the quantity and quality of clinical data. There appeared to be no clinical data, however, to suggest that Botox was a clearly 'different' botulinum neurotoxin. The Panel thus considered that the claim 'A BIG difference' for Botox was misleading and exaggerated and implied a special merit for Botox which could not be substantiated. Breaches of Clauses 7.2, 7.4 and 7.10 were ruled.

Complaint received **12 March 2009**

Case completed **7 May 2009**