

CASE AUTH/3749/3/23

COMPLAINANT v AGB-PHARMA

Promotion of Adaflex on company website

CASE SUMMARY

This case was in relation to a promotional webpage that was accessible to members of the public.

The outcome under the 2021 Code was:

Breach of Clause 16.1	Producing promotional material about prescription only medicines directed to a UK audience, provided on the internet, which did not comply with all the relevant requirements of the Code
Breach of Clause 26.1	Promoting a prescription only medicine to the public

**This summary is not intended to be read in isolation.
For full details, please see the full case report below.**

FULL CASE REPORT

A complaint was received from a contactable complainant about AGB-Pharma (“AGB”).

COMPLAINT

The complaint wording is reproduced below:

“I would like to bring to your attention a website that appears to be advertising a UK prescription product without any restriction and is freely available to members of the public

[website link provided]

I would be grateful if this could be investigated.”

When writing to AGB, the Authority asked it to consider the requirements of Clauses 16.1 and 26.1 of the Code.

AGB-PHARMA’S RESPONSE

The response from AGB is reproduced below:

“AGB did not intend to promote prescription medicines to the public and takes this complaint [sic] very seriously. The site was taken down within 2 hours of receipt of the

complaint and an investigation was initiated to determine the root cause and identification of corrective actions.

This complaint arises from a technical oversight with the Adaflex® branded website that we take responsibility and apologise for.

The link in question [website link provided] is a URL for the branded Adaflex® section on the AGB Pharma website. Its intended audience is HCPs (Healthcare Professionals) only. To protect this content, we have implemented a pop-up that prompts users to confirm whether they are an HCP or not. If they select “Yes” they are an HCP, they are taken to the Adaflex® content. If they select “No”, they are taken to the AGB corporate site that has no Adaflex® branding or content. The webpage has not been advertised anywhere. The intention was for HCPs to navigate to the webpage from the AGB corporate homepage [website address provided]. AGB has no search engine optimisation and does not use “pay per click” (either current or planned) or Google tools to encourage traffic to the AGB corporate homepage.

Our root cause analysis has determined that the issue occurred because the Adaflex® content page was “indexed” by Google for search purposes (e.g. if anyone searched “Adaflex”). The way that Google indexed the Adaflex® page created a direct link to the branded content from Google using this URL [website link provided]. We had not realised that a direct link had been indexed. The Google indexing meant that a member of the general public who searched “Adaflex” (or typed the exact URL [website link provided] into their browser) was taken to the Adaflex® branded content without being asked to confirm whether or not they were an HCP. This was not AGB’s design or intention.

The original site pages were approved by [a senior leader] and [a senior department lead]. Prior to our approval, all promotional materials are reviewed, for compliance with UK legislation, by [name of company] (a company based in the UK).

In terms of corrective actions, we have reviewed all possible entry/access roots to the Adaflex® branded content. Having identified them we have ensured that each access point has a pop-up implemented asking the user to confirm whether they are an HCP or not. We are now conducting rigorous testing to ensure each of these access points and associated pop-ups work on a range of different web-browsers (e.g. Safari and Chrome) and in different geographical locations. The website will not go live until we have completed this.”

PANEL RULING

The Panel noted that the webpage in question was headed with the Adaflex melatonin logo beneath which was a picture of a child sleeping in an adult’s arms and the phrase ‘Answers the call to sleep’. The webpage introduced Adaflex, discussed the relevant patient population, gave details of the NHS price and concluded with the prescribing information, adverse event reporting statement and references.

The complainant alleged that the website advertised a UK prescription product without any restriction and was freely available to members of the public and provided a link to the webpage described above. AGB was asked to respond to Clauses 16.1 and 26.1 of the Code.

The Panel noted AGB's explanation that its root cause analysis determined that the issue occurred because the Adaflex content page was 'indexed' by Google for search purposes (e.g. if anyone searched 'Adaflex'). The way that Google indexed the Adaflex page created a direct link to the branded content from Google using the URL. AGB submitted it had not realised that a direct link had been indexed; the Google indexing meant that a member of the general public who searched 'Adaflex' (or typed the exact URL into their browser) was taken to the Adaflex branded content without being asked to confirm whether or not they were an HCP. AGB stated this was not its design or intention.

The Panel noted that the supplementary information to Clause 16.1, Website Access, stated that 'Unless access to promotional material about prescription only medicines is limited to health professionals and other relevant decision makers, a pharmaceutical company website or a company sponsored website must provide information for the public as well as promotion to health professionals with the sections for each target audience clearly separated and the intended audience identified'. This was to avoid the public needing to access material for health professionals unless they chose to.

The Panel noted AGB's submission that the webpage in question was directed at health professionals and considered that the open access webpage failed to satisfy the requirements set out in the supplementary information to Clause 16.1 Website Access. **A breach of Clause 16.1 was ruled.**

The Panel noted that the webpage was clearly promotional and the failure to comply with Clause 16.1.

The Panel considered that the promotional webpage was accessible to members of the public without reference to the intended audience or alternatively any restriction for health professionals and ruled a **breach of Clause 26.1** accordingly.

Complaint received **2 March 2023**

Case completed **15 May 2024**