CASE AUTH/3179/4/19

COMPLAINANT v GLAXOSMITHKLINE

Online promotion of Seretide

On being informed of the outcome of Case AUTH/3148/1/19, the complainant, who described him/herself as a concerned UK health professional, raised matters which had arisen from GlaxoSmithKline's response. It appeared that material that was not certified was used by an agency working for the company.

The material at issue in Case AUTH/3148/1/19 was a dynamic digital banner advertisement for Seretide Evohaler (fluticasone/salmeterol). The material was certified as a rotating four frame advertisement. However, unbeknown to GlaxoSmithKline, the third party agency which distributed the banner advertisement had arranged for frame 2 to be the static 'back-up' image that would be shown if there were problems with viewing the whole advertisement; such problems usually occurred when individuals used old browsers. The complainant had provided a screenshot of frame 2, although it was not clear as to whether he/she had only seen that frame or all four frames and only downloaded the second. The Panel had considered that the back-up frame (frame 2) was, in effect, a separate advertisement for some viewers and should be treated as such.

The detailed response from GlaxoSmithKline is given below.

The Panel noted GlaxoSmithKline's concerns and comments about the complaint in Case AUTH/3179/4/19.

GlaxoSmithKline submitted that the four frame advertisement was certified in accordance with the Code.

In considering Case AUTH/3179/4/19, the Panel noted its previous ruling and considered that although GlaxoSmithKline had not intended for frame 2 of the advertisement to be used on its own and did not know that was what its third party agency planned to do, GlaxoSmithKline did not, therefore, certify it for such use. GlaxoSmithKline had been let down by its agency which had planned for the use of the frame 2 advertisement in certain circumstances. The Panel considered that it had little option other than to rule a breach of Clause 14.1 of the 2016 Code as uncertified material had been used. The Panel decided that this ruling covered the alleged breaches of Clauses 14.5 and 14.6 of the Code which related to the content of a certificate and the need to preserve it.

On being informed of the outcome of Case AUTH/3148/1/19, the complainant, who described him/herself as a concerned UK health professional, raised matters which had arisen from GlaxoSmithKline's response and about which he/she had previously known nothing.

The material at issue in Case AUTH/3148/1/19 was a dynamic digital banner advertisement for Seretide Evohaler (fluticasone/salmeterol) (ref UK/SFC/0010/18b). The material was certified

as a rotating four frame advertisement. However, unbeknown to GlaxoSmithKline, the third party agency which distributed the banner advertisement had arranged for frame 2 to be the static 'back-up' image that would be shown if there were problems with viewing the whole advertisement; such problems usually occurred when individuals used old browsers. The complainant had provided a screenshot of frame 2, although it was not clear as to whether he/she had only seen that frame or all four frames and only downloaded the second. The Panel had considered that the back-up frame (frame 2) was, in effect, a separate advertisement for some viewers and should be treated as such.

COMPLAINT

The complainant noted that after reading GlaxoSmithKline's response, it appeared that there were factors which he/she, as an outsider, was unaware of, and thus did not know, when he/she initially complained ie that material that was not certified was used by an agency working for the company. The complainant referred to Clauses 14.1, 14.5 and 14.6.

RESPONSE

GlaxoSmithKline noted that the second complaint had arisen as a direct consequence of the Panel ruling in Case AUTH/3148/1/19 where the Panel separated the original, certified, four frame advertisement into two separate promotional items; the original job bag and a newly created promotional item, which had then been considered as a static digital banner advertisement comprised only of frame 2.

GlaxoSmithKline submitted that this second complaint from the original complainant was highly unusual due to:

- the nature of the review undertaken by the Panel regarding the first complaint
- the fact that the second complaint was based on the Panel ruling
- the nature of the alleged breaches for the concerned, anonymous health professional
- there being a question as to what was actually viewed by the complainant.

GlaxoSmithKline stated that, as submitted in its response to Case AUTH/3148/1/19, the original item was certified as a dynamic digital banner advertisement for Seretide. The advertisement was placed in the digital edition of Pulse in December 2018 to remind health professionals of the legacy of Seretide and to inform them of a 50% price reduction on the 25/250mcg Evohaler. The banner advertisement was comprised of four rotating frames which appeared in sequential order. The banner advertisement always started with the first frame, with each frame being visible for three seconds, making the whole advertisement twelve seconds in duration.

The item was certified as a dynamic digital banner advertisement only, with the timings of each frame included in the gallery of the job bag as well as the landing page where the dynamic digital item could be viewed in its final form. In certifying the final item, the medical signatory specifically stated that he/she had viewed the final form when signing the second signature box of the certificate. None of the component four frames were certified as standalone items, ie as static digital banner advertisements.

In its review of the first complaint, the Panel decided to separate the original, certified promotional item – the dynamic digital banner advertisement into two separate promotional items – the original dynamic digital banner advertisement and a newly created promotional item

from frame 2 only. GlaxoSmithKline did not know of other cases where the PMCPA had separated one promotional item into its individual component parts and then considered each frame or indeed page as a single item, be it digital or hard copy.

If the same logic that the Panel had used regarding the review of this case was applied to this advertisement, it would mean that there would need to be five separate certificates – one for the dynamic version and four for the individual frames which made up the dynamic version, so as to allow for any potential technical difficulties when viewing the dynamic content. Extrapolating this same logic would mean that each individual frame of any dynamic item would need to be considered as an individual job bag and certified as such accordingly, which for, videos for example, would entail the individual certification of thousands of individual frames. Such logic would also need to be applied to hard copy materials as well, so, for example, the individual pages of a product formulary booklet would need to be certified, so as to allow for the rare situation where one page became dislodged from the whole booklet. Such an approach would result in considerable time, cost and resource, was not in line with the spirit of the Code, nor did it serve to ensure the safe and appropriate promotion of medicines.

GlaxoSmithKline therefore denied any breach of Clauses 14.1, 14.5 and 14.6 as the original digital dynamic banner advertisement item was certified in line with all the requirements of Clause 14.

GlaxoSmithKline noted that the second complaint was made immediately after the complainant received the Panel's ruling on Case AUTH/3148/1/19, and even before the Authority, or indeed the complainant, knew whether GlaxoSmithKline would accept the Panel's ruling or not. The second complaint was based purely on the nature of the Panel's review and GlaxoSmithKline did not know of other cases where this had occurred, but obviously did not have oversight of all the complaints received by the PMCPA. Nonetheless, GlaxoSmithKline was surprised that the complainant raised yet another complaint when, according to the Panel's ruling, the banner advertisement would need to be removed from circulation as it had been ruled in breach of the Code.

GlaxoSmithKline noted that the anonymous complainant described him/herself as concerned that Clauses 14.1, 14.5 and 14.6 had not been complied with. On both occasions, the complaints raised by the complainant had been of a technical nature relating to the Code and not to be the promotional content or claims about the product. Such action indicated that the complainant had a detailed knowledge and understanding of the Code which far surpassed that which was generally seen for health professionals in the NHS. In addition, the complainant had used terminology such as 'signed off', which was used by those working in the pharmaceutical industry rather than those in the NHS. GlaxoSmithKline was also puzzled why such a health professional showed such concern regarding these aspects, when other health professionals would tend to focus their complaints on what they considered to be inappropriate promotional claims about a medicine and particularly when the only promotional message on frame 2 was 'Seretide Evohaler 50/250mcg list price now 50% reduced', a message which was unlikely to concern someone working in the NHS, where such a reduction in the cost of a medicine would be welcomed.

GlaxoSmithKline stated that in its response to Case AUTH/3148/1/19, it had assumed that there was a technical issue which resulted in frame 2 of the digital dynamic banner advertisement being seen by the complainant. However, it was perfectly possible that a screenshot of frame 2 could also have been taken by the complainant, as each frame was clearly visible for three

seconds, and it was this which was then sent to the PMCPA as evidence. In view of the digital nature of the item, neither the PMCPA or GlaxoSmithKline could be 100% certain what was seen by the complainant nor what activities he/she undertook before submitting the complaint. As in previous cases precedents, and in accordance with the introductory section of the Constitution and Procedure relating to the Code as given on page 43, 'A complainant has the burden of proving their complaint on the balance of probabilities'. Page 46 also stated that 'Rulings are made on the basis that a complainant has the burden of proving their complaint on the balance of probabilities'. The probabilities as to whether there was a technical issue with the advertisement or not were not known, although the dynamic nature of the banner advertisement was checked and found to be fully functioning at certification. In addition to Pulse, the digital dynamic banner advertisement was submitted to twelve other digital journals and no technical problems regarding the advertisement had been noted.

In summary, it was not known what the complainant saw, the complete (intact) digital dynamic banner advertisement for Seretide from which a screenshot of frame 2 was taken or frame 2 itself. GlaxoSmithKline contested the way in which the Panel had reviewed the promotional item was that certified by dividing the original job bag into two separate items, and the technical nature of the complaint, where the concern expressed, and action taken, by the complainant was disproportionate to the alleged breaches.

GlaxoSmithKline denied any breach of Clauses 14.1, 14.5 and 14.6.

PANEL RULING

The Panel noted in the previous case, Case AUTH/3148/1/19, it was not the Panel which separated the four frame advertisement into two separate promotional items it was GlaxoSmithKline's third party agency which had run the four frame advertisement as two separate advertisements; these being the four frame advertisement and frame 2 as a standalone advertisement in certain circumstances. It was a well-established principle that pharmaceutical companies were responsible for the acts and omissions of their third party agencies.

Panel ruling in previous case

The Panel noted its ruling in Case AUTH/3148/1/19 that it was not clear whether the complainant had viewed the four frames and taken a screen shot of frame 2 or had only seen frame 2 due to technical issues which came to GlaxoSmithKline's attention following the complaint. The third party agency, unbeknown to GlaxoSmithKline, had arranged for frame 2 to be the static 'back up' frame that would be shown if there were problems with digital material when viewed on certain browsers. The Panel considered that the 'back up' frame was in effect a separate advertisement for some viewers and thus should be treated as such. The Panel decided to rule on each advertisement separately.

The Panel noted that frame 1 of the four frame advertisement included the non-proprietary name immediately adjacent to the first appearance of the brand name and this was legible. Thus, the Panel ruled no breach of Clause 4.3 of the 2016 Code in relation to the four frame advertisement.

In relation to the advertisement which consisted solely of frame 2, the Panel noted that frame 2 included the product name twice, once as a heading and secondly as part of the brand logo at

the bottom of the frame. The non-proprietary name was given but it was not immediately adjacent to the first appearance of the brand name and its appearance as part of the brand logo was not readily readable. The Panel therefore ruled a breach of Clause 4.3 of the 2016 Code.

The Panel did not consider that the circumstances were such that GlaxoSmithKline had failed to maintain high standards and thus ruled no breach of Clause 9.1 of the 2016 Code.

Current case

Turning to the current case, Case AUTH/3179/4/19, the Panel noted GlaxoSmithKline's concerns and comments about the complaint and the reasons for it.

GlaxoSmithKline submitted that the four frame advertisement was certified in accordance with the Code. This complaint was about the advertisement which consisted solely of frame 2.

The Panel noted that there was no evidence as to what the complainant had seen; GlaxoSmithKline had already been ruled in breach of the Code in relation to the content of the frame 2 advertisement and had provided the requisite undertaking.

Unbeknown to GlaxoSmithKline its third party agency had made only frame 2 of the four frame advertisement available in some situations. It had not been certified for such use and therefore none of the requirements for certification in the 2016 Code had been met in relation to the frame 2 advertisement.

The Panel noted its previous ruling and considered that although GlaxoSmithKline had not intended for frame 2 of the advertisement be used on its own and did not know that was what its third party agency planned to do, GlaxoSmithKline did not, therefore, certify it for such use GlaxoSmithKline had been let down by its agency which had planned for the use of the frame 2 advertisement in certain circumstances. The Panel considered that it had little option other than to rule a breach of Clause 14.1 of the 2016 Code as uncertified material had been used. The Panel decided that this ruling covered the alleged breaches of Clauses 14.5 and 14.6 of the Code which related to the content of a certificate and the need to preserve it.

Complaint received **2 April 2019**

Case completed **16 September 2019**