CASE AUTH/3148/1/19

COMPLAINANT v GLAXOSMITHKLINE

Online promotion of Seretide

A complainant who described him/herself as a concerned UK health professional, complained about a Seretide Evohaler (fluticasone/salmeterol) advertisement in Pulse, which he/she had accessed via an iPad and a laptop.

The complainant noted that he/she could not see the ingredients of Seretide at the top of the advertisement. He/she noted that it might be below the product logo at the bottom of the advertisement, but it was not legible; it was no better on a laptop screen.

The detailed response from GlaxoSmithKline is given below.

The Panel noted that the electronic advertisement consisted of four frames.

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 and thus the Panel ruled no breach of the Code.

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 the Code.

The Panel ruled no breach of the Code as GlaxoSmithKline had not failed to maintain high standards.

A complainant who described him/herself as a concerned UK health professional, complained about a Seretide Evohaler (fluticasone/salmeterol) advertisement in Pulse, which he/she had accessed via an iPad and a laptop.

Seretide was marketed by GlaxoSmithKline and indicated for use in the treatment of asthma. The advertisement at issue highlighted a 50% reduction in the list price.

COMPLAINT

The complainant noted that he/she could not see the ingredients of Seretide at the top of the advertisement. He/she noted that it might be below the product logo at the bottom of the advertisement, but it was not legible; it was no better on a laptop screen.

When writing to GlaxoSmithKline, the Authority asked it to consider the requirements of Clauses 4.3 and 9.1.

RESPONSE

GlaxoSmithKline noted that the complaint was about a dynamic digital banner advertisement for Seretide (ref UK/SFC/0010/18b), placed in the digital edition of Pulse, in December 2018. The purpose of the advertisement was to remind health professionals of the legacy of Seretide and to inform them of the 50% price reduction.

Seretide was the first inhaled corticosteroid/long-acting beta-agonist (ICS/LABA) available in the UK in February 1999, so its brand name and active ingredients were generally well known amongst health professionals.

The dynamic digital banner advertisement at issue was made up of four rotating frames which appeared in sequential order. The banner advertisement always started with the first frame. Each frame was visible for three seconds which made the whole advertisement twelve seconds long.

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, and the medical signatory specifically stated that he/she had viewed the final form item when signing the second signature box.

As per in-house guidance on banner advertisements, the size of the non-proprietary name was checked and was found to be legible. The unique job bag identifier was also checked and appeared on the fourth frame. Pdf copies for the digital advertisement as seen by the final signatory were provided.

GlaxoSmithKline stated that it was surprised to receive the complaint as the item had been certified in good faith and in accordance with internal

procedures, which were based on the Code as it related to digital materials.

GlaxoSmithKline submitted that it investigated where or how a single frame of the advertisement could appear in Pulse. This included discussion with its third party media planning and buying agency which was involved in the distribution of this item.

At a telephone conference in January 2019, the third party agency told GlaxoSmithKline that occasionally there might be issues with digital material when viewed by individuals using certain (generally old) browsers. To allow for this, its standard policy was to have a 'back-up' image that the reader viewed should this occur. The agency decided to use the second of the four frames as this 'back-up' frame, without informing GlaxoSmithKline. The job bag was, therefore, certified in the belief by both the originator and final signatory that it was a dynamic digital banner advertisement which always started with the first frame (with the larger non-proprietary name written on it) and which then continued in a sequential fashion through to the end, where the unique job bag identifier was located.

At the January telephone conference, the nature of the complaint was also discussed and how it could have occurred. It was thought that the complainant might have taken a screenshot of frame 2 as part of the dynamic banner advertisement as he/she was scrolling through the frames, or he/she might have just seen the static 'back-up' frame, (frame 2). Frame 2 had the much smaller non-proprietary name associated with the logo and no job bag identifier. The agency stated that it was impossible to know for certain which of these two options could have been the cause without further information on the complainant's browser capabilities when the screenshot was taken.

The agency acknowledged that the selection of the second frame, without any prior discussion or consultation with GlaxoSmithKline, was an error on its behalf and it had taken full responsibility. Further to this complaint, the agency had now changed its process such that all 'back-up' images were left blank, unless an approved static banner was provided.

GlaxoSmithKline stated that it had certified the dynamic digital banner advertisement in good faith and in line with the Code as it related to digital material. Those who developed and approved the item were unaware of the technical difficulties that might occur when dynamic digital materials were viewed by different browsers or what an agency might do to mitigate these. Neither the job bag originator nor the medical signatory had further qualifications in information technology and so it was not unreasonable for them to be unaware of these complexities.

The first frame of the certified item started with the words 'Remember your first success story with Seretide', had the non-proprietary names (salmeterol/fluticasone propionate) clearly written directly after this first mention of the brand name, in line with the supplementary information for Clause 4.1 relating to electronic journals. Clause 4.3 contained similar information but was less detailed as far as the guidance for digital materials was concerned. GlaxoSmithKline confirmed that the non-proprietary name was appropriately placed (on the first frame), was clearly readable and complied with the guidance given in Clause 4.3 relating to digital material. Furthermore, the size of the non-proprietary information complied with the general information given in Clause 4.3 which was originally devised for hard copy materials as the non-proprietary name of 32 characters occupied a total area which was similar in size to the brand name 'Seretide' which was only 8 characters as officially measured by Pulse.

The unique identifier for the job bag was include in frame 4.

GlaxoSmithKline therefore denied any breach of Clause 4.3.

GlaxoSmithKline noted that each of the 4 frames of the banner advertisement had, at the bottom of them, the same brand logo for Seretide. The brand logo had the accompanying non-proprietary name written directly below it. The constraints relating to the non-proprietary names did not apply to brand logos, as this was neither the first, nor the most prominent mention of the brand name. The Seretide dynamic digital banner advertisement mentioned the non-proprietary name four times, twice on the first frame and each time on frames 2, 3 and 4.

GlaxoSmithKline did not consider that it had failed to maintain high standards. The item in question was certified according to Clause 14 and there was clear communication between GlaxoSmithKline and the agency about the use of the dynamic digital banner advertisement. It was also unclear as to whether the complainant saw this as a frame of the dynamic digital banner advertisement or as a static digital banner advertisement which the agency had developed and which at the time of placement, had not been developed by the creative department within GlaxoSmithKline for certification. However, the non-proprietary name was present as part of the Seretide brand logo.

GlaxoSmithKline noted that there was no case precedent where an alleged breach of Clause 4.3 had by itself been associated with an alleged breach of Clause 9.1 and that failure to provide legible non-proprietary information and a unique job bag identifier under the circumstances outlined would reflect failure to maintain high standards. GlaxoSmithKline thus denied a breach of Clause 9.1.

PANEL RULING

The Panel noted that the electronic advertisement consisted of four frames.

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.

GlaxoSmithKline appealed the Panel's ruling of a breach of Clause 4.3 of the Code. This was withdrawn by GlaxoSmithKline prior to consideration by the Appeal Board.

Complaint received	**9 January 2019**
Case completed	**20 May 2019**