

## **Fines imposed by the GVH for unlawful drug advertisements**

**The Hungarian Competition Authority (Gazdasági Versenyhivatal, GVH) established that the advertisements of SANDOZ Hungária Kereskedelmi Kft. (SANDOZ) related to ACC OTC products were unlawful as they were not in accordance with the summary of product characteristics (SmPCs) and instead went beyond them. The advertisements promised a quick effect concerning the overall mechanism of action of the medicinal products, when according to the SmPCs the quick effect only concerned the absorption rate. The GVH imposed a fine of HUF 105 million on the undertaking for the infringement.**

The GVH investigated a number of statements that appeared in advertisements relating to the quick effect mechanism of ACC products. The following slogans, among others, were examined.

- *Quick solution to rheumatic coughing*
- *Quickly clears respiratory tract*
- *ACC, it acts quickly*

The above-listed slogans appeared in press advertisements, on posters on the walls of medical offices and drugstores, in TV advertisements and on drugstore promotional flyers.

The marketing authorisation of ACC medicines was issued by the National Institute of Pharmacy and Nutrition (OGYÉI).

In order to assess the claims in question, the GVH sought the professional opinion of the OGYÉI. According to the OGYÉI, the SmPCs of the medical products under investigation did not support the quick effect of the drugs; in other words, the claims were not in compliance with the SmPCs.

According to the decision of the GVH, between October 2015 and April 2016 SANDOZ was engaged in an infringing advertising activity and unfair commercial practice. Through its behaviour, it violated the legal provisions related to unfair commercial practices, as its advertisements concerning a number of ACC products were not in line with their authorised SmPCs by emphasising the quick effect and in general the quick mechanism of the products.

The GVH determined the amount of the fine on the basis of the costs of the communication tools.

The GVH considered, as aggravating factors, that the investigated commercial practice reached a wide range of consumers, and it was extended in time covering the whole commercial season.

The GVH considered, as mitigating factors, that the undertaking under investigation

- based on the documented decision of the management – within the framework of its compliance programme – put an end to the unlawful commercial practice as a result of the initiation of the competition supervision proceedings and
- had also made substantive compliance efforts prior to the investigation in order to avoid possible infringements, and within the framework of this mechanism, it also modified the commercial practice investigated.

Once again the GVH would like to draw attention to the fact that advertisements related to OTC medicinal products (available in pharmacies) that are not reimbursed by the social reimbursement system are only lawful if the advertisements are in line with their SmPCs.

According to the case-law of the GVH, not only those commercial practices are considered as unlawful which contradict and which are not in accordance for any reason with the SmPCs, but also those claims, the contents of which, go far beyond the indications, effects and mode of action set forth in the SmPCs. A commercial practice raises competition concerns and requires competition supervision intervention if it contains statements that go beyond the indications, effects or the absorption parameters described in the SmPCs, and that exaggerate and generalise, hereby making consumer understanding (eventually objective consumer choice) more difficult.

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#### Hungarian Competition Authority

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