Minutes

Medicines and Devices Advertising Liaison Group

2 November 2020 via teleconference

Attendees

Celia Mortimer, Devices Regulatory Group, MHRA

Beryl Keeley, Group Manager, Access and Information Medicines and Standards, MHRA (Chair)

Claire Tilstone, Advertising Standards Unit, MHRA (minutes)

Jinal Patel, Advertising Standards Unit, MHRA

Raquel Lopez Robledo, Advertising Standards Unit, MHRA

Etta Logan, Prescription Medicines Code of Practice Authority

Laura Kelly, Proprietary Association of Great Britain

Janet Taylor, Committee of Advertising Practice

Cherie Leung, Committee of Advertising Practice

Al Damon, Radiocentre

Meghna Nanda Dasgupta, Health Foods Manufacturers Association

Phil Brown, Association of British HealthTech Industries

Apologies

Christina Gkouva, Proprietary Association of Great Britain

Niamh McGuiness, Clearcast

1 Welcome and agreement of the agenda

1.1 MHRA welcomed those attending and introduced Raquel Lopez Robledo who had joined the team as an advertising assessor. Introductions were made around the virtual table.

1.2 The agenda was agreed.

2 Minutes of last meeting 21 October 2019

2.1 The finalised minutes of the last meeting had been circulated and agreed after the last meeting. They were subsequently published on gov.uk.

2.2 There were no matters arising, not covered in the agenda.

3 Medical Devices – update on regulation of medical devices from 1 January 2021

3.1 A member of MHRA Devices Regulatory Group outlined key changes to the regulation of medical devices from 1 January 2021. This was based on guidance available on gov.uk here.

4 Covid-19

4.1 Attendees shared brief details of actions taken in relation to claims made for devices and other products in context of the Covid-19 pandemic. ASA action has included products such as face coverings, hand sanitisers, cleaning products, CBD, homeopathy, sunbeds. Wide-ranging advice and rulings have been published on ASA's website following discussions with MHRA colleagues. ASA reported 1000 complaints for covid products and services in relation to claims and responsible images. ASA had also issued guidance on vitamin products (discussed later).

4.2 MHRA talked about complaints received regarding claims to treat or protect against covid-19 – for example claims to boost the immune system, free B12 injections, and free paracetamol offers. There was also a complaint about a veterinary homeopathic covid-19 product that was not upheld.

4.3 The Advertising Standards Unit has worked closely with MHRA's Borderline Unit to establish the status of various products.

4.4 PAGB said they have given advice to their members on promotion of pain-relief products (paracetamol, ibuprofen) and food supplements, with a focus on taking care over references to immunity. They have also done work on visual images in marketing (eg, social distancing, masks) so as to aid accuracy in advertising in a way that does not mislead.

4.5 HFMA said they have a Q&A document for food supplement advertising in the context of Covid-19.

4.6 Covid-19 policy work:

4.6.1 MHRA outlined work on Regulation 174 of the Human Medicines Regulations and legislative changes to support the use of vaccines for covid-19 and flu in a pandemic or similar situation. MHRA outlined that in these circumstances, an unlicensed product may be approved for temporary sale or supply. If the manufacturer is required to support vaccine rollout there needs to be a legal mechanism to enable this and so changes have therefore been made to the advertising provisions. There is an existing exemption in the Regulations for prescription medicines to be advertised to the public for government-approved vaccination campaigns. Regulation 174 builds on this to say there is an exemption for the prohibitions around advertising to the public and healthcare professionals for (unlicensed) prescription medicines if approved by health ministers in these limited circumstances. This would enable companies to put out relevant information. An update to the MHRA Blue Guide is in progress and MHRA is discussing with PMCPA about amending their guidance accordingly for this provision.

4.6.2 CAP copy advice has received flu adverts aimed at professionals and the public. MHRA said incentives for a medicine or vaccination should be approached with caution due to the need to present the product objectively without exaggerating its properties. MHRA said most flu ads are not regarded as an advert for a medicine as they refer to 'vaccination'.

4.6.3 Radiocentre had received an advert for a vaccination against pneumonia.

4.6.4 MHRA advised that advertisers should refer to ‘vaccination’ to stay outside the advertising Regulations.

4.6.5 PMCPA said they are working to amend the Code to be in line with the new legislation.

5 ASA enforcement

5.1 ASA and MHRA have worked together in a really positive and productive way in 2020 to help safeguard public health. ASA have a wider remit to look at all aspects of advertisements against the CAP code for appropriateness of an advert overall, rather than just the aspects relating to medicines that are within the remit of MHRA. This is a good model for joined-up regulation.

5.2 CAP said 3 projects have been initiated: Botox advertising on social media – 12,000 irresponsible posts removed in a quarter year. Adverts are automatically removed from Facebook or Instagram. In May a similar notice was issued for clinics advertising vitamin shots. ASA continues to monitor for adverts on social media; overall numbers of problem posts seems to be decreasing. CAP is currently considering enforcement approaches for weight-loss advertising compliance in association with MHRA. Taking proactive action with social media platforms and other commerce platforms is welcome.

5.3 MHRA said the initiatives have helped raise awareness of medicines regulations among third parties such as clinics.

5.4 PMCPA asked how long it takes for social media to remove the problematic adverts. CAP said that they would check.

6 EU exit

6.1 Advertising regulation is a national responsibility but is impacted by amendments to the Human Medicines Regulations as part of preparations for the end of the transition period after EU exit.

6.2 There will be new routes to market. There will be accelerated access for new products in Great Britain (GB) and separate GB and Northern Ireland (NI) licences in certain circumstances.

6.3 Where a product has separate GB and NI licences, prescribing information for healthcare professionals will need to include marketing authorisation (MA) details for both GB and NI products.

6.4 Over-the-counter (OTC) products may be less impacted, but innovative reclassifications in GB only will need to reflect that the product is not available (without prescription) in NI.

6.5 MHRA would expect companies to take reasonable steps to ensure that the advert is not available in a territory where it is not licensed. The above statement for OTC products is a second safeguard but reasonable steps are also needed to prevent advertising in the unlicensed territory.

6.6 The Blue Guide is being updated to reflect these changes and will be shared with the group in due course.

6.7 MHRA and PMCPA and PAGB will work together to ensure appropriate guidance for companies, including a grace period to update their advertising in line with the new requirements.

6.8 MHRA said that all advertising regulators will need to have awareness of what MAs lie behind an advertisement.

7 Guidance

7.1 PAGB is working on social media guidance for medicines, devices and food supplements. It is also developing guidance for: companies on how/where to complain about adverts; top parity claims; e-commerce materials; and real-world evidence.

7.2 PMCPA are working on a new version of the ABPI Code due to be launched in 2021 following a public consultation. PMCPA highlighted international guidance on running virtual meetings.

7.3 The ABHI Code is undergoing routine review.

7.4 CAP/BCAP is reviewing their Codes in relation to EU exit. Copy advice looking at updated guidance in current areas of casework interest (e.g., Covid, AB testing kits, weight loss).

8 Tour de table

8.1 MHRA has conducted investigations of advertising by hair-loss clinics. This is a growing area in advertising on social media and website homepages, and are assessed against appendix 6 of the Blue Guide. Action has been taken in relation to advertising the prescription medicine finasteride to the public, advertising of over-the-counter medicines without the required statutory information, and advertising of unlicensed products (images and claims about products being 'clinically approved').

8.2 MHRA has also looked at jet-lag services and the advertising of a prescription medicine off-label for a condition for which it is not licensed. A medicine for short-term insomnia was being advertised for jet lag.

8.3 MHRA took action on advertising of Kenalog (a prescription-only medicine) to the public on social media for hay fever – an unapproved treatment due to safety concerns. Advice was given to third party clinics about how to produce compliant advertising for hay fever services.

8.4 PMCPA said complaints about digital adverts remain high – e.g., pharmaceutical company activities on websites and activities on employees' own social media accounts.

8.5 Radiocentre has dealt with a range of vitamins and supplements claims in relation to covid-19.

8.6 HFMA has dealt with immunity claims on company websites in the context of covid-19.

8.7 CAP ruled on antibody tests in October 2020 – exaggerated accuracy and claims for immunity alongside incorrect endorsement by public health bodies. There is now precedent in place for this service area.

9 Any other business

None.