

# Reporter fined for 'promoting' medicinal product on website



**Claire Callanan** of Beauchamps Solicitors reports on a case in which a medical reporter – despite having no commercial interest in a drug – was fined for 'advertising' it

The protection of public health is an essential aim of the EU legislation governing the promotion of medicinal products. Article 86(1) of EU Directive 2001/83/EC (as amended) (the Directive) on medicinal products for human use defines the advertising of medicinal products as 'any form of door-to-door information, canvassing activity or inducement designed to promote the prescription, supply, sale or consumption of medicinal products...'

However, it specifically excludes 'information relating to human health or diseases, provided that there is no reference, even indirect, to medicinal products' from the scope of the advertising of these products.



The Medicinal Products (Control of Placing on the Market) Regulations 2007 implement this Directive in Ireland. A recent decision of the European Court of Justice

(ECJ) suggests that what could constitute the 'promotion' of medicinal products in the EU should be interpreted very strictly (Frede Damgaard, C-421/07).

## The case

A Danish journalist in the health-food sector provided information on his website about a medicinal product, Hyben Total, which had been banned in

Denmark. Hyben Total was previously marketed in Denmark as a food supplement intended to treat gout, and many other ailments, until marketing authorisation was refused by the Danish authorities.

## Danish court fine

The journalist then posted information on his website setting out the benefits of the product, and, of its availability in other EU member states. As a result, he was fined by a Danish court for the offence of disseminating information about non-authorised medicinal products.

The journalist appealed this decision claiming that he had no connection with the product manufacturer or any commercial interest in it.

He also claimed his activities were limited to communicating information to interested parties and were therefore not 'advertising' within the terms of the Directive.

A Danish court asked the ECJ how to interpret the EU definition of the advertising of medicinal products.

## ECJ decision

On April 2, 2009 the ECJ held that the absence of legal, commercial or other links between the manufacturer of a medicinal product and a third party disseminating information about it does not exclude activities of that third party from the definition of advertising in the Directive. The dissemination of information by anyone on the properties and availability of a product could influence consumers' behaviour and encourage its consumption; hence all are subject to the Directive.

The ECJ stated that advertising of medicinal products has potential to harm public health, the safeguarding of which is the essential aim of the Directive.

It also held that it is for national courts to determine whether or not the content of the communication constitutes advertising within the meaning of the Directive.

Following this decision, any third party communication about a medicinal product may now fall within the scope of 'advertising'. It should be noted the EU is currently considering amending the current rules on the provision of information to patients in the EU. A clarification of the exact position would be welcome.

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