

Substantial reduction of fine to be imposed on a pharmaceutical undertaking due to cooperation with the GVH

The Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter GVH) found that Bayer Hungária Kft. had misled consumers when promoting its “Berocca” products. When imposing a fine for the established infringement, the GVH did, however, take into account both the undertaking’s acknowledgement of the infringement and its compliance efforts.

According to the decision of the GVH, the commercials of Bayer Hungária Kft concerning the non-prescription medicine “Berocca Performance” and the food supplement tablet “Berocca effervescent” were misleading and contained information that was not compliant with sectoral regulations. The GVH imposed a fine of HUF 95 million (approx. EUR 280000) on the undertaking.

Based on the findings of the GVH, in its commercials relating to the effervescent tablet the undertaking made claims that went beyond the actual and proven effects of the product (e.g. “energetic day”, “maximum achievement”) that are permissible under Community law. Furthermore, the exact component allegedly giving rise to the stated improvement in performance was not specified. As regards to the non-prescription medicine “Berocca Performance”, the GVH objected to the fact that the product category to which it belonged was not indicated. Additionally, the claim made in the commercial that the product was effective within a short period of time was not in line with the product characteristics, which stated that it took four weeks to be effective.

While in its decision the GVH referred to the fact that it is not forbidden to operate using an umbrella brand under which various categories of products can be offered, it also stated that undertakings must pay attention to which product(s) are covered by certain commercial communications and the content and manner in which they are displayed. It is a requirement that adequate information is provided in relation to all products.

The GVH is empowered to significantly reduce the fine imposed on an undertaking if it has acknowledged its infringement, carried out proactive reparation or elaborated a leniency programme plan. Having regard to the undertaking’s partial acknowledgement of the infringement and its already executed compliance efforts, the GVH reduced the fine that would have originally been imposed if the mitigating circumstances had not been taken into account by more than fifty percent.

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Hungarian Competition Authority

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