



GAZDASÁGI
VERSENYHIVATAL

Treatment results of R47- Protumol could not be justified

Propharmatech Kft was imposed a fine of HUF 1,7 million (approx. EUR 5700) by the Hungarian Competition Authority (GVH). Propharma claimed that its R47-Protumol treatment cream could prevent and treat tumours, however, it was not able to prove these statements.

The GVH initiated a competition supervision proceeding against Propharmatech Kft and NewCell Kft on 26 January 2009. The GVH observed that R47-Protumol treatment cream – developed and distributed by Propharma, also distributed by NewCell – was recommended for the prevention and treatment of tumours, and for relieving and avoiding the side-effects of medical treatments (eg. chemotherapy).

The GVH has to analyse whether the statements appearing in different information provided for consumers are misleading with respect to curative effects or positive physiological effects. The GVH is not required to repeat the tests carried out by different authorising agencies or to collect experimental evidence instead of them in order to find out about the curative- and physiological effects, as essential features of a certain product.

An infringement of the competition law provisions can be established – without testing the actual effects of the product in question - in case the information contains statements relating to health, the reduced risks of illnesses, curative effect or positive physiological effects, however the product in question has never gone through the obligatory authorisation and notification processes, and the information concealed this fact.

The product investigated in the present proceeding cannot be deemed as a medicinal product or a therapeutic preparation not classified as medicinal product either, because it has not gone through any appropriate authorization or registration procedure. Therefore, pursuant to the law provisions applying for the distribution of products, attributing curative effects to the product in question or claiming that it is reducing the risks of illnesses is unlawful.

Thorough experiments are required to provide scientific evidence supporting the preventive, treatment and curative effects of a product.

The undertakings under investigation tried to prove the curative effect of R47-Protamol by presenting recommendations from doctors, catchy user reports lacking controllable treatment results, however, none of them are considered scientific evidence by the GVH. No studies or documents on scientific experiments were submitted in the course of the proceeding, which could have proved the statements on the curative effect of R47-Protumol.

By reason of all the above mentioned the GVH established that when advertising its product R47-Protumol treating cream between 31 May 2008 and 1 September 2008, Propharmatech

Kft infringed the prohibition of unfair manipulation of consumer choice and in the period between 1 September 2008 and 26 January 2009 it was engaged in unfair commercial practices. NewCell Kft infringed the prohibition of unfair commercial practices from 5 September 2008.

The GVH holds Propharma Kft responsible for the infringement in first place, since it fully determined the content of the statements relating to the curative effect of the product it had developed. Nevertheless, NewCell is also to blame, on the one hand because the information served also its commercial interests, on the other hand when adopting the information without altering its content it did not exercise the professional diligence that could have been expected. The GVH prohibited the continuation of the unlawful conduct in the case of both undertakings.

Usually the GVH imposes fines in case of infringements having any kind of connection with human health, however in the present proceeding the GVH made an exception with NewCell. The reason for this was that based on the low amount of turnover of the undertaking, only a fine of minor importance could have been imposed. At the same time the GVH imposed a fine of HUF 1,7 million (approx. EUR 5700) on Propharmatech Kft. The GVH considered as an aggravating circumstance that the product concerned by the infringement is of confidential nature, the consumer group concerned is highly vulnerable, suffering from tumour illnesses. The undertaking must have been aware of the fact that no therapeutic and curative effects could be attributed to its product distributed as a cosmetic preparation. The GVH has already established an infringement of Propharma Kft. relating to statements on the curative effect of R47-Protumol before, which was considered to be an aggravating circumstance.