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South Africa

**THE EX-PARTE PANEL OF THE MARKETING CODE AUTHORITY OF SOUTH AFRICA**

Ex Parte Case No: MCA Ex0002

Date: 17 September 2015

**In the matter requested by:**

**Committee:**

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It is noted that a legal intern was also present at the meeting as an observer and did not contribute to the discussion on which this opinion is formulated.

***Summary of the ex-parte application for a non-binding opinion:***

An ex-parte application was received requesting an opinion with respect to Clause 9.1 and Clause 19.2 as contained in the SA Code of Marketing Practice (November 2014) and Note 1 to Clause 9 and Notes 7 and 8 to Clause 19 as contained in the Guideline to the Code of Marketing Practice (February 2015) as they pertain to the following:

1. The acceptability of providing prescription pads to HCP's bearing the name of the pharmaceutical company or the product names (schedule 0 – 6) either as a watermark or otherwise. This includes the promotion of product or company names within a prescription pad between prescription scripts (i.e. every 20th page being an advert).
2. The meaning of the term "occasional basis" in note 8.
3. Whether the reference to "occasional basis" in note 8 applies to items of general utility (note 7). If not, whether there is any restriction on the number and/or frequency of items.

Before commencing the discussion around the acceptability of providing prescription pads to HCP's bearing the name of the pharmaceutical company or the product names (schedule 0 – 6) either as a watermark or otherwise or the promotion of product or company names within a prescription pad between prescription scripts (i.e. every 20th page being an advert), the ex-parte MCA Committee present confirmed their understanding of a prescription pad as being a pad containing a number of pages that has the doctor's/HCP's details pre-printed at the top of each page (i.e. name, address, contact details, qualifications and practice number).

Clarity was sought from the ex-parte Applicant, via the MCA, if they also defined a "prescription pad" as a pad containing a number of pages that has the doctor's/HCP's details at the top of each page (i.e. name, address, contact details, qualifications and practice number). Their response, i.e. "Your definition below is correct. The minimum required information may be pre-printed or hand-written on the prescription by the HCP. Our question is whether the provision to HCP's of prescription pads bearing pharmaceutical company names or product names (schedule 0-6), whether as watermarks or otherwise, is acceptable. This includes the promotion of product or company names within a prescription pad between prescription scripts (i.e. every 20th page being an advert)."

In their deliberations, the ex-parte MCA Committee also considered the acceptability of providing pre-printed prescription pads to HCP's in terms of the SA Code of Practice, irrespective of whether or not the prescription pads bore the name of the pharmaceutical company or the product names (schedule 0 – 6) either as a watermark or otherwise or the promotion of product or company names within a prescription pad between prescription scripts (i.e. every 20th page being an advert).

#### **Evaluation and Findings:**

The opinion of the ex-parte MCA Committee is as follows with respect to

1. The acceptability of providing prescription pads to HCP's bearing the name of the pharmaceutical company or the product names (schedule 0 – 6) either as a watermark or otherwise. This includes the promotion of product or company names within a prescription pad between prescription scripts (i.e. every 20th page being an advert).

#### **NOT ACCEPTABLE**

- a) A prescription pad pre-printed with the HCP's details, irrespective of whether or not it bears the name of the pharmaceutical company or the product names (schedule 0 – 6) either as a watermark or otherwise **is not considered an item of general utility and may be deemed an item for personal use** as no other HCP could routinely use that prescription pad. (Clause 19.2.1.2 of the SA Code of Marketing Practice - November 2014 and Clause 19, Note 7 as contained in the Guideline to the Code of Marketing Practice - February 2015).
- b) While it may be argued that a prescription pad pre-printed with the HCP's details could constitute an item of medical utility, **prescription pads are used in the routine business practice of a HCP and provision of pre-printed prescription pads would be seen as offsetting costs that would otherwise be routinely incurred by a HCP** (Clause 19, Note 8 as contained in the Guideline to the Code of Marketing Practice - February 2015).

More specifically,

- c) Providing a HCP with prescription pads which are pre-printed with his/her details which also bears the name of the pharmaceutical company or the product names (schedule 0 – 6) either as a watermark or otherwise, **would not be acceptable in terms of Clause 19, Note 4** (Good practice guidelines for healthcare professionals) as contained in the Guideline to the Code of Marketing Practice - February 2015. Provision of prescription pads to HCP's which bear the name of the pharmaceutical company or product names for the HCP's use in his practice may be seen as causing the HCP to contravene Clause 3.3 of the HPCSA Booklet 5 (Guidelines on overservicing, perverse incentives and related matters) which states that *"Health care practitioners shall not advertise or endorse or encourage the use of any health establishment or orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance or health related product or health related service in a manner that unfairly promotes the practice of a particular health care practitioner or a health care facility for the purpose of financial gain or other valuable consideration."*
- d) Use of prescription pads by HCPs, which are pre-printed with a HCP's details and which also bears the name of the pharmaceutical company or the product names of pharmaceutical products (schedules 0 – 6) may lead to the recipient of the prescription to believe that that the HCP endorses the particular pharmaceutical company or the pharmaceutical product, which may not necessarily be the case. It may also call into question the HCP's professional autonomy and independence. As such, this item is not acceptable in terms of Clause 9.1 of the SA Code of Marketing Practice - November 2014 and Clause 9, Note 1 of the Guideline to the Code of Marketing Practice - February 2015 as it does not take cognisance of the need for professional autonomy and independence of the HCPs.

It should be noted that generic prescription pads that are printed with fields for the name, address, contact details, qualifications and practice number (which are required to be hand written in by the HCP) and which bears the name of the pharmaceutical company or the product names (schedule 0 – 6) either as a watermark or otherwise, that could be possibly considered as an item of general utility because any HCP could use the prescription pad, are also considered "not acceptable" as points c and d above would still apply.

2. The meaning of the term "occasional basis" in note 8

The ex-parte MCA Committee were of the opinion that the meaning of the term "occasional basis" in note 8 could have different meanings depending on the item of medical utility that is provided. The ex-parte MCA Committee is of the opinion that providing a meaning of the term "occasional basis" with respect to providing prescription pads to HCP's bearing the name of the pharmaceutical company or the product names (schedule 0 – 6) either as a watermark or otherwise or the promotion of product or company names within a prescription pad between prescription scripts (i.e. every 20th page being an advert), is not warranted in light of the "not acceptable" opinion provided in point 1 above.

3. Whether the reference to "occasional basis" in note 8 applies to items of general utility (note 7). If not, whether there is any restriction on the number and frequency of items.



While Clause 19, note 7 of the Guideline to the Code of Marketing Practice - February 2015 does not make reference to the number and/or frequency items of general utility may be provided to HCPs, the MCA panellists refer the applicant to point Clause 19.2.1 of the SA Code of Marketing Practice - November 2014 which makes reference to "occasional" items. The ex-parte MCA Committee is of the opinion that a finite meaning of the term "occasional" is not possible as it would again depend on the item of general utility being given. It was determined in point 1 above that the item in question was "not acceptable" therefore an opinion with respect to whether or not there is any restriction on the number and/or frequency of the item is not warranted.

It should be noted that the above opinion provided is non-binding. The applicant is referred to the MCA complaints process as contained in the SA Code of Marketing Practice of November 2014.

**Signatures:**

Signed at JOHANNESBURG on this 21<sup>ST</sup> day of SEPTEMBER 2015

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Signed at JOHANNESBURG on this 18<sup>TH</sup> day of SEPTEMBER 2015

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Signed at JOHANNESBURG on this 21<sup>ST</sup> day of SEPTEMBER 2015

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