



The FENIN Code cannot be used for complaints regarding advertising addressed to the general public

Judgment of the Jury of Autocontrol of 15 October 2015

Background

This judgment was handed down as a result of a complaint brought against advertising produced by the manufacturer of ostomy products.

To commemorate “World Ostomy Day”, the advertiser, with a view to raising awareness about ostomy and improving the quality of life of these patients, disseminated leaflets containing information on ostomy to the public and released a series of messages on the topic via Twitter and Facebook. The plaintiff considered said activities as being in breach of the FENIN Code; therefore, pursuant to the provisions of said code, a complaint was filed before the Monitoring Committee, which in turn transferred the complaint to Autocontrol (the Advertising Self-Regulation Association).

The position of the parties

According to the plaintiff, by disseminating the leaflet and message on social networks, the advertiser was directly promoting publicly financed prescription medical devices to the public. Furthermore, the plaintiff considered that the leaflet on the illness was, in reality, surreptitious advertising of certain products. The plaintiff also alleged that during the awareness-raising campaign, the advertiser attached a pack to the leaflet containing a sample of the product in question, infringing the applicable regulations.

The advertiser, in turn, filed a motion on jurisdiction, stating that the communication embarked upon as part of the campaign had

targeted the general public, and therefore the FENIN Code was inapplicable, as this code only serves to regulate interaction between companies selling medical devices and health professionals.

As regards the substance, the advertiser asserted that the campaign lacked an advertising purpose and solely served to raise awareness of ostomy. Furthermore, it alleged that the campaign should be considered as institutional advertising rather than product advertising. As regards the samples offered, the advertiser stated that they were made available by a communications agency for journalists to take photos of themselves with the products, including products manufactured by other brands; these photos were then to be uploaded to the Facebook page created to this end and that products were never made available to the public.

Judgment of the Jury

After analysing the scope of application of the FENIN Code, the Jury ruled that it applies exclusively to relationships between its members and health professionals, thus considering that the complaint filed was inadmissible. Nonetheless, the Jury stated that the matter in hand could be considered in the context of the Autocontrol Code of Conduct, expressly citing the principle of legality referred to in Article 2 thereof. In this respect, it is worth noting that the regulations that control the promotion of medical devices do not allow for the promotion (aimed at the public) of prescription medical devices financed by the National Health Service.