



Capsulas

Information or promotion? The distribution channel also matters

New monograph from the Catalan Pharmaceutical Advertising Bulletin of 23 February

The importance of the distribution channel

The article in question, published in the Catalan Pharmaceutical Advertising Bulletin, highlights among other aspects- the importance of the distribution channel used for any material when determining whether it is informational or promotional in nature.

In this respect, it emphasises that factors such as the channel used, the frequency of dissemination, and the context in which the information is shared may be decisive in identifying a promotional intent. It also provides practical guidance for addressing situations that frequently arise in practice.

The line between information and promotion is thin

Directive 2001/83/EC and Royal Decree 1416/1994 define “advertising” as “any form of door-to-door information, canvassing activity or inducement designed to promote the prescription, supply, sale or consumption of medicinal products”. According to this definition and European case law, the key element in distinguishing between information and promotion is the purpose of the message (CJEU judgments of 2 April 2009, *Damgaard*, C-421/07, and of 22 April 2010, *Association of the British Pharmaceutical Industry*, C-62/09).

Similarly, the Jury of Advertising of Autocontrol has held that the qualification of a message as promotional must be assessed on a case-by-case basis, considering the content of the message, the context of its dissemination, and the target

audience (Decision of 10 February 2009, *Nexavar*® Case).

Elements for assessing promotional intent

Determining whether a promotional purpose exists is not always straightforward. Traditionally, the analysis has focused on the content of the material (e.g. brand references, laudatory tone, exclusive emphasis on benefits). However, the article underscores that, in addition to these elements, it is necessary to consider the conditions under which the material is disseminated:

- Whether distribution is mass or non-targeted;
- Whether the material is proactively disseminated without prior request from the recipient;
- Whether channels or environments associated with commercial activities are used;
- Whether dissemination coincides with other promotional or brand-building activities.

Where one or more of these factors are present, the likelihood that the material will be considered promotional increases significantly.

Practical scenarios

The article also examines several situations commonly encountered in practice, noting that materials which may appear informational can acquire a promotional character depending on their use or context:



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- Scientific or technical evidence dossiers (including meta-analyses or abstracts on safety and efficacy) distributed exclusively during sales visits and alongside promotional materials.
- Clinical practice guidelines or summaries reflecting the content of a company-sponsored satellite symposium focused on its product, provided only to symposium attendees.
- Scientific articles published in reputable journals that are distributed together with a corporate cover letter bearing the company and product logo and highlighting their “implications for treatment”.
- Dissemination of scientific documentation (e.g. on mechanism of action) coinciding with sales reinforcement campaigns.

Conclusion

As the article itself acknowledges, no automatic or one-size-fits-all approach should be adopted. Each case must be assessed individually, considering the content, the context, the channel, and the target audience.

In any event, the article provides useful examples of situations that the Catalan Regional Authority are likely to consider promotional, as well as practical criteria for planning informational activities with lower regulatory risk.

Ultimately, what matters in determining the purpose of a message is not only what is said, but also to whom -and how- it is communicated.

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