

## CASE REPORT

1. Complaint reference number	587/09
2. Advertiser	Sanofi- Aventis
3. Product	Health Products
4. Type of advertisement	TV
5. Nature of complaint	Health and safety – section 2.6
6. Date of determination	Wednesday, 9 December 2009
7. DETERMINATION	Dismissed

## DESCRIPTION OF THE ADVERTISEMENT

This TVC commences with the image of a “G clamp” being wound in. The voice over says “Want to help stop migraines taking hold? The image shows a packet of Mersyndol Day Strength forcing the clamp open. “Trust a single day strength to help clear pain fast”. The clamp is seen to break apart. Image and voice over promotes the product. Fine print displays “Always read the label. Use only as directed. Incorrect use could be harmful. Consult your healthcare professional if pain persists.” Voice over “For advice about migraines, ask your Pharmacist where you see the gold cross.”

## THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*I would not be concerned if the advert referred to simple or tension headache but deflecting migraine sufferers away from a qualified clinician can have neurological consequences and pharmacists cannot legally prescribe preventer medication for migraine but can dispense medications for simple headache.*

## THE ADVERTISER’S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

*Sanofi-aventis wishes to respond to this complaint lodged against a Gold Cross Mersyndol DayStrength television advertisement. Sanofi-aventis does not agree with the allegations contained in the complaint as provide and in our opinion the Advertisement complies with all laws of Australia and in particular Section 2 of the AANA Code of Ethics. Mersyndol DayStrength contains paracetamol (500mg) and codeine (9.6mg). It is registered with the Therapeutic Goods Administration (TGA) for “Symptomatic relief of moderate to severe pain including headache, backache, tension headache, migraine, period pain, arthritis, dental pain, muscular pain or pain associated with trauma, surgery, colds or flu”. (refer to Consumer Product Information provided for further information).*

*Mersyndol DayStrength is a schedule 2 pharmacy medicine, which means that it can be purchased by a consumer in a pharmacy over the counter without a prescription. Accordingly, it is submitted that the advertisement is advertising Mersyndol DayStrength for an approved indication and may be advertised direct to consumers. The advertisement includes the visual mandatory warnings “Always read the label. Incorrect use may be harmful. Consult your healthcare professional if symptoms persist. Thus a viewer is alerted to the potential safety implication of incorrect use and the need to seek further advice when symptoms persist. In addition, a spoken message advises that: “For advice about migraines ask your pharmacist where you see the Gold Cross”.*

*Contrary to the opinion expressed in the complaint, there is large range of S2 and S3 products which a Pharmacist can legally provide to a migraine sufferer to help control pain associated with migraine. It could reasonably be expected that a pharmacist dealing with a customer requesting help with migraine pain would apply appropriate professional and ethical principles in any recommendation or advice. It is reasonable to assume this would include advice to consult a doctor in certain situations. Sanofi-aventis denies that the advertisement attempts in any way to deflect migraine sufferers away from a qualified clinician, as alleged in the complaint. On the contrary the advertisement encourages migraine sufferers to seek out information. It is unreasonable to assert that that should always be a medical practitioner when it is legally possible for registered pharmacists to provide a range of suitable medicines to migraine sufferers without the need for a prescription. It is also pointed out that the advertisement obtained approval by the Australian Self medication Industry. In conclusion, sanofi-aventis considers that the advertisement complies with all mandated requirements and Section 2 of the AANA Code of Ethics and further, that the complainant is incorrect in the allegations made that the advertisement improperly deflects migraine sufferers from seeking appropriate advice.*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant's concern that the advertisement inappropriately encouraged sufferers of migraine not to seek medical advice.

The Board viewed the advertisement and noted that the advertisement has been approved by ASMI (the Australian Self-Medication Industry) and that the advertisement is therefore for a product that is legally able to be advertised in the general media and is legally able to be sold from a pharmacy. The Board considered that the advertisement clearly indicates that the product is available for purchased from a pharmacy and that a pharmacist can be consulted in relation to 'preventing migraine taking hold'. The Board considered that the advertisement did not encourage sufferers of migraine to see a Pharmacist or purchase a product from a pharmacy instead of visiting a Doctor. The Board considered that the advertisement did not depict material contrary to prevailing community standards on health and safety and that it did not breach section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.