
STATUTORY INSTRUMENTS

2012 No. 1916

The Human Medicines Regulations 2012

PART 14

Advertising

CHAPTER 3

Monitoring of Advertising

Injunctions

Application for injunction

311.—(1) This regulation applies—

- (a) if the Ministers consider that an advertisement that has been published, or that is proposed to be published, is incompatible with the prohibitions imposed by Chapter 2; and
- (b) whether or not a complaint has been made to the Ministers or to any other person.

(2) The Ministers may apply to the court for an injunction against any person appearing to them to be concerned or likely to be concerned with the publication of the advertisement.

(3) On the making of an application under paragraph (2), the court may grant an injunction prohibiting the publication, or further publication, of the advertisement.

(4) An injunction granted under paragraph (3) may also prohibit the publication, or further publication, of any advertisement in similar terms or likely to convey a similar impression.

(5) The court may not refuse to grant an injunction for lack of evidence that—

- (a) the publication, or proposed publication, of the advertisement has given rise to loss or damage to any person; or
- (b) the person responsible for the advertisement intended it to be incompatible with the prohibitions imposed by Chapter 2 or failed to exercise proper care to prevent it from being so incompatible.

(6) The court must give its detailed reasons in writing for its decision to grant or refuse an injunction.

(7) Where the court grants an injunction, the Ministers must as soon as is reasonably practicable provide the following in writing to each person against whom the injunction has been granted—

- (a) the court's reasons for granting the injunction;
- (b) any remedy available in the court; and
- (c) the time limit to be met for any remedy to be available.

Application for injunction: accuracy of factual claim

312.—(1) This regulation applies if—

- (a) an application for an injunction is made under regulation 311; and
 - (b) the advertisement in question makes a factual claim about the medicinal product to which it relates.
- (2) The court may require any person appearing to it to be responsible for the advertisement to provide evidence as to the accuracy of the factual claim.
- (3) The court may impose a requirement under paragraph (2)—
- (a) on the application of any party to the proceedings for the injunction; or
 - (b) of its own motion.
- (4) In deciding whether or not to impose a requirement under paragraph (2) the court must have regard to the interests of any person who would be subject to, or affected by, the requirement.
- (5) A requirement imposed under paragraph (2) must specify the time within which the evidence must be provided.
- (6) If the person on whom a requirement is imposed under paragraph (2) fails to comply with it the court may infer that the factual claim is inaccurate.
- (7) A person may fail to comply with a requirement imposed under paragraph (2) by—
- (a) not providing any evidence; or
 - (b) providing evidence that the court considers inadequate.

Grant of injunction: publication of decision and corrective statement

- 313.**—(1) This regulation applies if the court grants an injunction under regulation 311, other than an interim injunction, in respect of an advertisement that has been published.
- (2) The Ministers may by notice in writing require any person against whom the injunction has been granted to publish—
- (a) all or part of the court’s decision; and
 - (b) a corrective statement concerning the advertisement in respect of which the application for the injunction was made.
- (3) A requirement imposed under paragraph (2)—
- (a) must specify the time within which publication must take place; and
 - (b) may specify the form of publication.
- (4) If a person (“P”) fails to comply with a requirement imposed under paragraph (2) the Ministers may certify that failure to the court and the court may enquire into the matter.
- (5) If the court enquires into the matter it must as part of its enquiry—
- (a) hear any witnesses produced against or on behalf of P; and
 - (b) consider any statement offered in P’s defence.
- (6) If having conducted its enquiry the court is satisfied that P failed without reasonable excuse to comply with a requirement imposed under paragraph (2) it may deal with P as if P were in contempt of court.