

# NFTHD #71: Can we promote if the product is unavailable?

This Note from the Help Desk addresses the appropriateness (or not) of promoting a product that is currently unavailable, due to known supply issues or because the product is not yet ARTG-listed. Can a company inform healthcare professionals of its upcoming launch?

## Informing HCPs of an imminent product arrival – teaser campaigns

Let's tackle the latter scenario first. The Code, as does the Therapeutic Goods Act, prevents companies from promoting unapproved products or indications. Promotion includes any statement, pictorial representation or design, however made, that is intended, whether directly or indirectly, to promote the use or supply of the goods. Because of this, a teaser campaign is going to be promotional because its intention will be to encourage the use of that product (in the future).

How about a teaser campaign that doesn't mention product, such as "new treatment for eczema is coming in 2024" – would this be acceptable? Creating buzz around a brand and building excitement about a new product (coming soon) is promotional - even if it doesn't mention product, it remains promotional in nature... and therefore is not appropriate considering that product is not yet ARTG-listed.

## So, what can be communicated?

Sounds limiting? Not necessarily. Pipeline information and corporate commitment to research can be communicated to a healthcare professional audience, but it needs to be non-promotional. These provisions in the Code are not intended to prevent the legitimate exchange of scientific and medical information between healthcare professionals or the presentation of independent clinical opinion. It is likely there are legitimate clinical needs as to why a company will want to raise awareness with healthcare professionals about the imminent arrival of a medicine prior to it being listed on the ARTG.... but this can only be done through scientific exchange by appropriate personnel, as outlined in Section 7 of the Code.

## Promoting an out-of-stock product

How about promoting a product that is listed, and on-label – but there is no current stock. Stock is due to arrive in 6 months' time. Is promotion possible?

## NFTHD #71 CONTINUED...

Previous Code editions stated, “A company should consider whether supply can be assured before advertising the product.” The Code does not address this directly, but the sentiment remains. Overarching Principle 3 ensures that companies are responsible for providing current, accurate, balanced, and scientifically valid information on products to support their appropriate use. On this basis, if the promotional material makes clear and upfront about the known lack of availability and anticipated supply date, it would be accurate and current. If a company proactively promotes product which they know to be unavailable for some time, and this is not communicated, they run a risk of it being interpreted as ‘misleading.’

Like any activity you undertake, run through potential risks and considerations...

- If it isn't in stock, is it relevant information to healthcare professionals? If they can't prescribe it, why do they need to know about it? Is it appropriate to promote product that is not available?
- How would any such promotion be received by a healthcare professional?
- Could it have an (unintended) flow-on effect of driving demand based on scarcity ... “this product is really hard to get a hold of, so it must be good”, and how can you mitigate that risk?
- How likely is it that the supply challenges will be solved and is the anticipated stock arrival date firm? Recent medicine shortages demonstrate a continual shifting of timelines.
- Pop yourselves in the (hopefully unlikely) position of defending this decision in line with the Code. Taking a risk-based lens to your decisions will help ensure they remain ethical.

Context remains key.

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