

## Peace of Mind for Medicine Advertisers

Advertising over-the-counter medicines:  
more clarity from the Russian Federal  
Antimonopoly Service

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On 7 November 2018, the *Recommendations for Complying with the Legislation on the Advertisement of Over-the-Counter Medicines* (the “Recommendations”) were signed. The Recommendations were developed on the basis of an analysis of the established practice of the Russian Federal Antimonopoly Service (the “FAS”) and Russian courts concerning issues of applying *Federal Law No. 38-FZ On Advertising* dated 13 March 2006 (the “Law on Advertising”).

This document was prepared with the participation of numerous leading expert associations and the FAS.

The Recommendations represent a complex guide for participants in the pharmaceutical market in relation to permissible approaches to advertising over-the-counter medicines. The goal of the Recommendations is to summarise and unify the practice in order to prevent some widespread breaches of the Law on Advertising.

The Recommendations are binding on companies that decided to officially sign them. However, for all other players on the market, the Recommendations may serve as an illustrative reference of what is “good” and “bad” practice when advertising over-the-counter medicines.

Please note that the examples and rules set forth in the Recommendation are generic. Each specific advertising material in every case requires individual attention and analysis to ensure its compliance with the requirements of the Law on Advertising.

## Applicability of the Recommendations

The Recommendations cover the 10 most widespread breaches of the Law on Advertising. In specific, these breaches are when the advertisement includes the following:

- inaccurate information concerning the characteristics of the goods, as well as statements concerning medicinal properties that are outside of the scope of the indications set forth in the medication package insert
- incorrect comparisons and unsubstantiated benefits of the medicines
- efficiency guarantees
- deficiencies in relation to the completeness of essential information concerning the advertised good
- elements that give a healthy person the impression that it is necessary to apply the advertised medicine
- presumptions that a disease exists
- images of medical and pharmaceutical employees
- elements of surrogate advertising
- discrepancies in relation to mandatory warnings and disclaimers
- obscene and offensive images

We will take a look at some practical examples from the “black” and “white” handbook for advertising over-the-counter medicines.

## Examples of recommended practices

### Information concerning medicinal properties

Information concerning the therapeutic characteristics of a medicine that is conveyed in an advertisement must be confirmed by one of the following documents:

- the package insert (directions for using the medicine)
- medical treatment standards and any other official documents approved and confirmed by the Russian Ministry of Health
- any other documents or sources (including electronic) if their contents are not contradictory to the package insert

When referencing studies or publications in an advertisement, it is recommended to indicate the date and source of the study (publication).

### Using comparisons

It is permissible to compare the advertised medicine with other medicines, provided comparable criteria are used. Such criteria must be based on specific, scientifically based and reliable data. It is not permissible to make statements that discredit competitors' business reputation.

Considering the practical approach of the FAS, one should rely on relevant evidence when justifying a comparative statement being used.



## Efficiency guarantees

It is not permissible to use words and phrases that reference the guaranteed end result. It is permissible to use words and phrases that reference the process, but not the result.

Examples of permissible and impermissible words and phrases are provided below:

### Permissible:

- ▶ verbs that refer to a process:
  - treats
  - affects
  - promotes
  - helps (reduce, relieve)
- ▶ nouns and phrases that do not refer to an inevitable result:
  - reason
  - symptoms
  - treatment
  - rehabilitation
- ▶ adverbs that refer to the characteristics of the operation of the medicine, including in a figurative meaning:
  - carefully
  - delicately
- ▶ metaphors:
  - "quick reacting bacteria"
  - "first aid"
- ▶ reference to the time of operation in seconds, minutes, hours and other similar units of times:
  - within the first two minutes, the medicine begins to be absorbed**
- ▶ reference to the indications and properties of the medicine:
  - to relieve pain**
  - intended for the treatment of**

### Impermissible:

- ▶ verbs that refer to an end result:
  - will get rid of**
  - will eliminate**
  - helps (relieve, remedy)**
- ▶ nouns and phrases that refer to an end result:
  - defeat**
  - resolution (of a problem)**
  - elimination**
- ▶ adverbs that refer to an end result:
  - forever**
  - never**
- ▶ adverbs that refer to the time or speed of the operation of the medicine (in respect to its curative properties and the results of its operation):
  - quickly**
  - long**



It is not permitted to use the words "quickly", "long" and other similar words in relation to the curative characteristics of a medicine. In relation to consumer characteristics (for example, "quickly absorbed" or "quickly distributed"), such words are permitted in specific cases (in particular, when such information is included in the package insert).



## Using footnotes

It is not permitted to provide information that is essential to correctly understand the advertisement in footnotes. Clarifications that do not change the meaning of the primary statement are permitted in footnotes.

Recommendations when using footnotes:

- footnotes must be provided in a readable font using actual colors that are in contrast to the primary color of the background
- it must be possible to read the footnotes without using additional optical devices and without stopping the footage
- footnotes must be short and simple to understand
- in video advertisements, the length the footnotes shown must not be less than the length of transmitting the primary information accompanied by the footnote

## Warning statements when advertising on the Internet

Advertisement on the Internet	Rule	Analogue
YouTube video, contextual advertising	no less than 5 seconds no less than 5% of the area of the frame	television advertising
images and text	no less than 5% of the advertising area	outdoor advertising, paper mass media

## Presumptions of the existence of diseases

Phrases that contain appeals to a specific circle of individuals with a question / presumption of the existence of a disease may not be used:

- ▶ **“have a headache?”**
- ▶ **“it looks like you are sick”**

It is not permitted to presume the existence of a disease without listing its symptoms:

- ▶ **“you have a cold”**

It is permitted in an advertisement to indicate the symptoms for which the advertised medicine is applied according to the package insert:

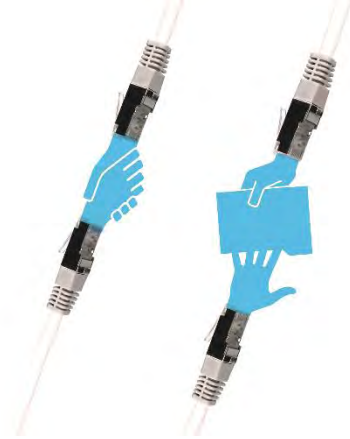
- ▶ **“for pain in the throat”**

It is permitted to use phrases that contain information concerning the goal / intention of relieving symptoms. However, distinction must be made between:

- ▶ **“to alleviate a headache”**  
(recommended option)
- ▶ **“to get rid of a headache”**  
(not recommended option)



In light of the nonuniform practice, it is advisable to ensure in advance that reference to a goal of fighting symptoms does not lead to treatment efficiency being guaranteed.



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### Contacts:

- Yury Pugach, Partner
  - ✉ [yury.pugach@eversheds-sutherland.ru](mailto:yury.pugach@eversheds-sutherland.ru)
  - ☎ +7 495 662-6434
- Nikita Butenko, Principal Associate
  - ✉ [nikita.butenko@eversheds-sutherland.ru](mailto:nikita.butenko@eversheds-sutherland.ru)
  - ☎ +7 495 662-6434
- Alexander Gavrilov, Senior Associate
  - ✉ [alexander.gavrilov@eversheds-sutherland.ru](mailto:alexander.gavrilov@eversheds-sutherland.ru)
  - ☎ +7 495 662-6434
- Alexey Fedorov, Associate
  - ✉ [alexey.fedorov@eversheds-sutherland.ru](mailto:alexey.fedorov@eversheds-sutherland.ru)
  - ☎ +7 495 662-6434

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