

Hot Days, Hot Issues

Forget about the summer doldrums. There's plenty of "hot" news for pharma marketers to mull over in these early days of June and July – and some of it is worrisome.

First, our Capitol Hill correspondent, Jim Davidson of the law firm Polsinelli Shughart PC, reports that the pharmaceutical industry is seriously considering giving up the allowed business expense / tax deduction for DTC advertising – which would mean companies could no longer deduct DTC advertising as a standard business expense. (For more details, turn to Davidson's "Eye on the Hill" report on page 8 of this issue.)

Davidson calls this a "troubling" development for the future of consumer marketing by pharmaceutical companies, even marketers of over-the-counter treatments. He writes, "If there were an assumption that a denial of the deduction for advertising costs would result in less advertising of prescription medications, does that suggest that both pharmaceutical companies that support the lost deduction and the Congress believe there is no value to consumers in the advertising?"

Why would the industry take this route? One can only assume there's a sense among the leadership of some companies that this offer would help the industry in the long run by protecting the current Medicare Part D pricing structure, even in a major overhaul of healthcare under the Obama administration. Time will tell if they are right, but it seems like quite a risk to take.

Also in this issue, Michael Peroff and Stuart Lee Friedel address the April regulatory action by DDMAC/FDA in which 14 pharmaceutical companies were cited for promotion violations related to the words used in sponsored links that appear at the top of search results pages on Google, Yahoo and other search engines. Peroff, a co-founder of the agency Strategic Domain Inc., and Friedel, a partner in the advertising, marketing and promotions group in the law firm of Davis & Gilbert, explain how, in their view, online advertising is distinct from print and TV advertising.

"This is a very important distinction," they write (the article begins on page 49). "The FDA is viewing search engine text advertising as 'stand-alone' communication, thereby triggering requirements for full disclosures and clear risk information. These rules serve a purpose when applied in the right communication context. This is *not* the case with search engine text ads. Text ads have to be considered in a more practical and realistic way. And in a way that is appropriate for consumers who use the medium."

The authors also offer some recommendations on how marketers can continue to use search and sponsored links, while staying within the existing DDMAC/FDA boundaries.

Finally, this issue also includes some positive news about DTC marketing. As usual in June, we have profiles of the Top 25 DTC Marketers and a rundown of some of the projects / campaigns that they have worked on over the past few years. To read more about these efforts, turn to page 55 where the Top 25 section begins.

Have a great summer.



Mark Tosh, Editor in Chief



DTC

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