

# PFIZER v BAYER

## SortEDin10 campaign

Pfizer complained about an erectile dysfunction (ED) disease awareness and educational campaign, SortEDin10, sponsored by Bayer. The material at issue was an interview with a sporting celebrity which appeared on the BBC News website. Pfizer alleged that SortEDin10 targeted the public via a website and associated materials.

Pfizer noted the BBC News website published an interview with the celebrity who was the primary spokesman for the SortEDin10 campaign. Under the auspices of that campaign, the celebrity was quoted as saying 'The impotence drug Viagra did not help me and I found an alternative called Cialis did not have very quick results, but a drug called Levitra suited my lifestyle. I took it and within 15 minutes I could be in action. If you take one of these drugs you do not get an erection immediately'. Pfizer alleged that that statement promoted Levitra to the public and encouraged men with ED to ask their health professional to prescribe Levitra in breach of the Code. Pfizer further alleged that the implication of the celebrity's statement was made even more serious because of his high profile and his widely advertised association with the SortEDin10 education campaign and website.

Pfizer further alleged that the statement was disparaging; the claims made by the celebrity implied that Viagra did not work effectively and that it was an inferior choice for the treatment of ED.

The Panel noted that when interviewed for the BBC and asked about his treatment for erectile dysfunction, the celebrity stated 'The impotence drug Viagra did not help me and I found an alternative called Cialis did not have very quick results, but a drug called Levitra suited my lifestyle. I took it and within 15 minutes I could be in "action". If you take one of these drugs you do not get an erection immediately'.

The Panel acknowledged that the celebrity was expressing his own opinions about his treatment with Viagra and Levitra but considered that those opinions would have been known to Bayer; the company knew that he took Levitra and by briefing him to talk about his treatment and facilitating his interview with the BBC it had encouraged him to talk about his treatment and so it was responsible for the remarks he made to the BBC journalist. The Panel considered that Bayer was responsible under the Code for the statements made by the celebrity and that the statement about Levitra encouraged members of the public to ask their doctor to prescribe it. A breach of the Code was ruled. The Panel considered that the BBC interview in effect advertised Levitra to the public and thus ruled a breach of the Code.

With regard to the statement by the celebrity that '...Viagra did not help me...' the Panel considered that while the statement was no doubt personally true for him, it lacked balance in that there was no reference to the many men that Viagra would have helped. The Panel thus considered that the celebrity's statement disparaged Viagra. A breach of the Code was ruled.

Pfizer Limited complained about an erectile dysfunction (ED) disease awareness and educational campaign, SortEDin10, sponsored by Bayer Health Care Pharmaceutical Division of Bayer plc. The material at issue was an interview with a sporting celebrity which appeared on the BBC News website.

Intercompany correspondence had failed to resolve the issues.

### COMPLAINT

Pfizer alleged that SortEDin10 targeted the public in the UK via a website and associated materials. The educational platform was championed by the sporting celebrity. Bayer had previously confirmed that the celebrity was under contractual legal obligations to adhere to the Code and UK law not to either directly or indirectly promote prescription only medicines to the public.

Pfizer noted that in a recent series on celebrities and their health, the BBC News website published an interview with the celebrity in question who was the primary spokesman for the SortEDin10 campaign. Under the auspices of that campaign, the celebrity was quoted as saying 'The impotence drug Viagra did not help me and I found an alternative called Cialis did not have very quick results, but a drug called Levitra suited my lifestyle. I took it and within 15 minutes I could be in action. If you take one of these drugs you do not get an erection immediately'.

Pfizer alleged that the quote could be construed to promote a specific medicine for ED to the public, ie Levitra (vardenafil), manufactured and promoted by Bayer. The statement also encouraged men with ED to ask their health professional to prescribe Levitra.

Pfizer alleged that the implication of the celebrity's statement was made even more serious because of his high profile and his widely advertised association with the SortEDin10 education campaign and website. Pfizer alleged that his statement was in breach of Clauses 20.1 and 20.2 of the Code.

Pfizer further alleged that the statement was disparaging, in breach of Clause 8.1 of the Code. The BBC News website interview and the claims made by the celebrity implied that Viagra did not work effectively and that it was an inferior choice for the treatment of ED.

Pfizer also alleged that there had been prior instances during the Summer of 2005 in which Bayer had been implicated in promoting Levitra to the public.

### RESPONSE

Bayer noted that the BBC transcript had not appeared on its SortEDin10 website; it had only appeared on the BBC website over which Bayer had no editorial control.

Bayer submitted that in January 2005, at the launch of SortEDin10, it had provided all briefing documents to the Medicines and Healthcare products Regulatory Agency (MHRA), together with relevant press articles. The MHRA requested no further information and made no comments suggesting that further scrutiny was needed to exclude a breach of the Code.

Bayer submitted that information supplied to both the celebrity and journalists dating back to the launch of SortEDin10 in December 2004 had complied with the Code. Specific references were made to the prohibition of promotion of prescription medicines to the public in all briefing documents to the celebrity. The relevant briefings to the celebrity were provided including his responsibilities in respect of the Code.

Bayer submitted that the press release which generated the article that appeared on the BBC News site and all other press releases clearly stated Bayer's role as sponsor of the disease awareness campaign.

Bayer submitted that neither it or its agencies were provided with transcripts of any interviews by the BBC and had had no input into the editorial copy, and so did not agree that it was a breach of any of the clauses cited.

Bayer submitted that with regard to the alleged breach of Clause 8.1, the 'disparaging' remark made by the celebrity was simply a factual statement of his own personal experience in response to a direct question regarding his treatment.

Bayer submitted that it was important to look at this complaint in the context of the ED market. This was a market of exceptionally high brand awareness; the word 'Viagra' appeared in at least two English dictionaries, and was common parlance in the English language. Bayer stated that it did not intend to complain to the Authority every time the word Viagra appeared in the lay press. Some recent examples were provided.

Bayer noted that the remit of a disease awareness campaign according to the MHRA Blue Guide was to heighten patient awareness for self help, which included awareness of treatment choices.

Bayer submitted that SortEDin10 was a disease awareness campaign designed to encourage men experiencing ED to present themselves to their doctor for assessment and potential treatment. The campaign provided essential information to patients, and their partners, about the causes of, and potential treatments available for, ED. The campaign made it clear to patients, and their partners, that the onset of ED might be an indicator of underlying serious disease, such as diabetes or heart disease, and that consultation with their doctor was all the more important to either exclude these conditions or to start treatment as soon as possible.

Bayer submitted that another important objective for the SortEDin10 campaign was to try to alleviate the embarrassment that men might experience when presenting to their doctors with ED. This embarrassment in itself might be enough to stop them seeking help and it was this important point that the campaign tried to address. The involvement of the celebrity in the campaign had been of considerable

help in this regard, he was a prominent public figure who was very willing to report that he had experienced ED and that really there was nothing for a man to be embarrassed about when talking to his doctor. The celebrity passionately believed that all men with this condition should see their doctors to seek advice and help and it was this fact that had defined his involvement in the SortEDin10 campaign.

Bayer noted that 'Viagra' was now part of the English language and synonymous with the treatment of ED. However, any treatment for ED did not work for all men. The final objective of the SortEDin10 campaign was, therefore, to make it clear to patients that other treatments existed and to encourage men who might already have seen their doctor and have treatment for their ED to return if this treatment had not been satisfactory.

Bayer submitted that the Department of Health and medical professionals alike recognised the wider benefits of disease awareness programmes of this kind. Some of the extensive work that had been done by Bayer to heighten disease awareness in this market over the last year as part of the SortEDin10 campaign was provided.

## PANEL RULING

The Panel noted that when interviewed for the BBC and asked about his treatment for erectile dysfunction, the celebrity stated 'The impotence drug Viagra did not help me and I found an alternative called Cialis did not have very quick results, but a drug called Levitra suited my lifestyle. I took it and within 15 minutes I could be in 'action'. If you take one of these drugs you do not get an erection immediately'.

As with all complaints about articles in the press the Panel examined the briefing materials which prompted the article on the BBC website and not the articles *per se*. The briefing for the celebrity noted that he was a Levitra patient; it was stated that he could respond truthfully, in a factual and descriptive way, to any questions regarding his treatment choice as he felt appropriate. In a section headed 'Treatment', in a statement which appeared to have been written by him, the celebrity stated '... the winning formula is to be fast and effective, so what I wanted was a treatment that worked fast & I could rely on – a treatment in fact, a bit like me!'. In a briefing from the communications agency it was stated that the celebrity would not be encouraged to endorse or recommend Levitra although it was later stated that he would explain about his personal experience of ED.

The Panel considered that as the celebrity, a known Levitra patient, had been briefed to talk about his treatment for, and personal experience of, erectile dysfunction, Bayer was responsible for the remarks that he made to the journalists from the BBC. The celebrity had been briefed by Bayer and the company had facilitated his interview with the BBC. It was therefore not possible for Bayer to dissociate itself from what he had said in the interview; if it were otherwise then the effect would be for companies to use patients as a means of avoiding the restrictions in the Code.

The Panel acknowledged that the celebrity was expressing his own opinions about his treatment with Viagra and Levitra but considered that those opinions would have been known to Bayer; the company knew that he took Levitra and had encouraged him to talk about his treatment. The Panel considered that Bayer was responsible under the Code for the statements made by the celebrity. The Panel considered that the statement about Levitra encouraged members of the public to ask their doctor to prescribe it. A breach of Clause 20.2 was ruled. The Panel considered that the BBC interview in effect advertised Levitra to the public and thus ruled a breach of Clause 20.1 of the Code.

With regard to the statement by the celebrity that '...Viagra did not help me...' the Panel noted that the Code allowed critical reference to another company's product provided that such a reference was fair, balanced etc and could be substantiated. The Panel considered that while the statement was no doubt personally true for the celebrity it lacked balance in that there was no reference to the many men that Viagra would have helped. The Panel thus considered that the celebrity's statement disparaged Viagra. A breach of Clause 8.1 of the Code was ruled.

**Complaint received 14 March 2006**

**Case completed 3 May 2006**