

# GENERAL PRACTITIONER v JANSSEN-CILAG

## Durogesic DTrans email

A general practitioner complained that an unsolicited email about Durogesic DTrans (fentanyl patches) which he had received from Janssen-Cilag seemed to be a misuse of the NHS net for advertising purposes.

The Panel noted that the parties' accounts differed. The complainant stated that the email was unsolicited. Janssen-Cilag stated that the email was only sent to those who had given prior permission for it to send them promotional material. It was impossible to know where the truth lay. No breach of the Code was ruled.

A general practitioner complained about an unsolicited email about Durogesic DTrans (fentanyl patches) which he had received, via an agency, from Janssen-Cilag Ltd.

### COMPLAINT

The complainant stated that the unsolicited email from the Durogesic DTrans Team [DurogesicDTrans@ehealthinfo.co.uk] seemed to be a misuse of the NHS net for advertising purposes. The email promoted Durogesic DTrans and was from the product manager. Recipients were offered an opportunity to take part in a survey, and receive a free 64mb memory stick.

When writing to Janssen-Cilag, the Authority asked it to respond in relation to Clause 9.9 of the Code.

### RESPONSE

Janssen-Cilag stated that it was not in breach of Clause 9.9 since recipients of the email had given permission for promotional materials to be sent to them electronically.

The agency which had sent the email was contracted to Janssen-Cilag to undertake certain activities, such as distribution of the email in question. The contract between the two parties stated that the agency would obtain all necessary permissions from health professionals in line with certain regulatory requirements, the Data Protection Act and the Code, and that its practices would comply with the Code. Implicit within this, was that only those doctors who had given prior permission would be sent Janssen-Cilag material by electronic mailing. The contract also specified that the agency would record how and when the permission was obtained, ensuring that permission could be traced on an individual basis and provided to the Authority if necessary.

Following receipt of the complaint, Janssen-Cilag contacted the agency requesting it to confirm that prior permission had been given by health professionals to receive the email in question and also to address other issues raised within the letter.

The agency confirmed that the email address referred to in the complaint 'ehealthinfo.co.uk' belonged to it

and was not an NHS email address; therefore, the complainant's concern as to what was perceived to be a misuse of the NHS net for advertising purposes was unfounded.

In respect of the generation of mailing lists and obtaining health professionals' permission to receive promotional materials, the agency had told Janssen-Cilag that the mailing list was generated from information received directly from health professionals or, as sometimes happened, from practice managers with the approval of the doctors. Questionnaires had been sent out to every surgery and NHS trust in the country. This was followed up by a letter requesting the return of the questionnaire (if necessary). This was then followed by a personal call. Much of the updating was done online and in view of the longstanding relationship built up between the agency and NHS personnel, a lot of the updates were now simply a matter of a quick telephone call. However, in every case the health professionals were told that they were giving this information to a private organisation and that they would from time to time receive information, some from government departments, some educational and some of a promotional nature, all forwarded by the agency on behalf of other organisations. At that stage they gave the agency the information and opted in for the receipt of e-mails.'

It was therefore within the context of Janssen-Cilag's contract with the agency and its processes as outlined above, that the Durogesic DTrans promotional email was distributed to health professionals on the agency's distribution list of those who had given permission to receive such promotional items. The email indicated that it had been forwarded by the agency on behalf of Janssen-Cilag and in addition, there was an opportunity for health professionals to unsubscribe and therefore not receive any further emails.

As the identity of the complainant was not known to Janssen-Cilag, it was unable to comment specifically with regard to how he had consented to receive emails from agency. However the contract between the agency and Janssen-Cilag stipulated that permissions could be traced on an individual basis and provided to the Authority if so requested. Any such request would remain confidential between the Authority, the agency, and the individual general practitioner.

Janssen-Cilag denied a breach of Clause 9.9 of the Code.

### PANEL RULING

The Panel noted that in its preliminary consideration of this case it had decided to send Janssen-Cilag's response to the complainant for comment before it

made its ruling. Permission was also sought to reveal the complainant's identity to Janssen-Cilag thus allowing it to search its records to determine if permission had been granted for it to send promotional emails to the complainant. No response was received from the complainant.

The Panel noted that the parties' accounts differed. The complainant stated that the email was unsolicited. Janssen-Cilag stated that the email was

only sent to those who had given prior permission for it to send them promotional material. It was impossible to know where the truth lay. No breach of Clause 9.9 was ruled.

**Complaint received**                      **24 April 2006**

**Case completed**                              **8 August 2006**

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