

# PRIMARY CARE TRUST HEAD OF MEDICINES MANAGEMENT v WYETH

## Enbrel website advertisement

The head of medicines management at a primary care trust alleged that an advertisement for Enbrel (etanercept), marketed by Wyeth, which appeared on [www.yahoo.com](http://www.yahoo.com), constituted direct to consumer advertising. There was a small get-out clause buried on one of the inside pages of the advertisement, which stated that the message was only for the attention of US residents and that other countries had different regulations related to the use of medicines. However, by the time anybody reached that section they would have already read the advertisement that advised anybody with severe arthritis, and not getting sufficient relief, to ask their prescriber about Enbrel. This was clearly a breach of the Code.

The Panel noted that the [yahoo.com](http://yahoo.com) website, which featured the first part of the Enbrel advertisement, was a US website – it referred *inter alia* to NBC and Dallas cowboys. The website was directed to a US audience. There was a separate Yahoo website for the UK and Ireland. Within the on-line advertisement at issue, readers were given the option to search, using ZIP code or state, for rheumatologists. Various pages of the advertisement stated ‘This site is intended for US audiences only’. The advertisement had been placed by the US company not Wyeth UK.

The Panel considered that although accessible to anyone, the website at issue was directed to a US audience; further, the advertisement itself did not address a UK audience. The material was thus not directed to a UK audience and so the Panel ruled no breach of the Code. It was not an advertisement to the UK public for a prescription only medicine. No breach was ruled.

The head of medicines management at a primary care trust complained about an advertisement for Enbrel (etanercept), marketed by Wyeth Pharmaceuticals which appeared on [www.yahoo.com](http://www.yahoo.com) on 13 December 2006.

### COMPLAINT

The complainant alleged that this advertisement constituted direct to consumer advertising of Enbrel. There was a small get-out clause buried on one of the inside pages of the advertisement, which stated that the message was only for the attention of US residents and that other countries had different regulations related to the use of medicines. However, by the time anybody reached that section they would have already read the advertisement that advised anybody with severe arthritis, and not getting sufficient relief, to ask

their prescriber about Enbrel. This was clearly a breach of the Code.

When writing to Wyeth the Authority asked it to respond in relation to Clauses 2, 9.1, 20.1 and 21 of the Code.

### RESPONSE

Wyeth stated that the Enbrel advertisement on the [yahoo.com](http://yahoo.com) website was authorised and placed there by its US affiliate, from 21 November 2006 to 21 December 2006, without the involvement or, indeed, knowledge of Wyeth UK. The advertisement was intended for a US audience only. Consequently, the advertisement did not specifically refer to the UK availability or use of the medicine.

A copy of the [yahoo.com](http://yahoo.com) home page containing the website link to the Enbrel advertisement and a copy of the advertisement were provided together with a selection of pages linked to the advertisement. The various pages behind the link on the [yahoo.com](http://yahoo.com) home page were US-specific. For example:

- to find a rheumatologist using the search service provided, either a US zip code or a US state needed be given. There was no option to select a different country. Further, the terms and conditions of use of this service referred to checking the physician’s credentials with the American Medical Association, and stated, at the end, ‘This site is intended for US audiences only’;
- a US toll-free contact telephone number was given, to receive an Enbrel Information Kit;
- as was custom and practice with websites, links to the Terms of Use, Privacy Policy and other important information to which the website user was deemed to be bound, by virtue of using the website, was set out at the bottom of each Wyeth US web page. These made it clear that the Enbrel pages were only intended for a US audience. For example, in the Terms of Use there was a specific statement to this effect; the prescribing information was stated to be the US prescribing information and, before the full US prescribing information could be accessed, there was a statement that this information was intended for use only by US residents.

Wyeth submitted therefore, that as the advertisement did not refer to the availability or use of Enbrel outside of the US and did not specifically refer to its availability or use in the UK, the company had not

breached Clause 21.2 of the Code. Consequently, Wyeth did not accept that it had advertised Enbrel to the UK general public in breach of Clause 20.1.

Further, Wyeth submitted that in relation to the US advertisement at issue, it had maintained high standards at all times in compliance with Clause 9.1 and had done nothing to discredit or reduce confidence in the pharmaceutical industry in breach of Clause 2.

#### **PANEL RULING**

The Panel noted that the yahoo.com website, which featured the first part of the Enbrel advertisement, was a US website – it referred *inter alia* to NBC and Dallas cowboys. The website was directed to a US audience. There was a separate Yahoo website for the UK and Ireland. Within the on-line advertisement at issue, readers were given the option to search, using ZIP code

or state, for rheumatologists. Various pages of the advertisement stated 'This site is intended for US audiences only'. The advertisement had been placed by the US company not Wyeth UK.

The Panel considered that although accessible to anyone, the website at issue was directed to a US audience; further, the advertisement itself did not address a UK audience. The material was thus not directed to a UK audience and so the Panel ruled no breach of Clause 21.1. It was not an advertisement to the UK public for a prescription only medicine. No breach of Clause 20.1 was ruled. Given these rulings it followed that there could be no breach of Clauses 2 and 9.1 and the Panel ruled accordingly.

**Complaint received**      **2 January 2007**

**Case completed**         **8 March 2007**