

GENERAL PRACTITIONER v PFIZER

Exubera mailing

A general practitioner complained that a letter about Exubera (inhaled insulin human) looked, on first glance, as if it might be an official communication from the National Institute for Health and Clinical Excellence (NICE) from the prominent statement in the top right-hand corner, 'NICE Technology Appraisal Guidance'. It was only on closer examination that it became clear that it was a marketing letter sent by Pfizer. The complainant alleged that this was deceptive, and probably calculated to be so. The complainant further noted that the letter did not give even a summary of the very restrictive conditions under which Exubera was approved for NHS use by NICE.

The Panel noted that the mailing envelope stated on the front 'Promotional Material enclosed' and the Pfizer logo and address was on the back. If the letter had been placed on the complainant's desk, still folded as from the envelope, then all that was visible was information relating to the NICE technology appraisal guidance on inhaled insulin. The Panel queried whether this was what the complainant meant by the appearance of the letter 'on first glance'. Nonetheless the Panel considered the letter in its entirety ie unfolded.

The Panel noted that the mention of NICE was in a different style and colour to that used by NICE. The Panel did not consider that the letter was disguised promotion; readers would not conclude it was an official communication from NICE. The product logo was given at the bottom of the letter. The Panel also noted that the envelope included the statement 'Promotional Material enclosed', and that the accompanying reply paid card clearly referred to Pfizer. The Panel did not consider the letter was disguised nor that the top right-hand corner reference to NICE guidance had been used in a way that was likely to mislead readers. No breach of the Code was ruled.

A general practitioner complained about an Exubera (inhaled insulin human) mailing (ref EXU812a) sent by Pfizer Limited.

The mailing consisted of a letter, a reply paid card and a copy of the Exubera summary of product characteristics (SPC) and was sent to GPs, retail and hospital pharmacists, pharmaceutical advisors, diabetes nurses, diabetologists, and diabetes clinical assistants.

The letter was headed 'NICE [National Institute for Health and Clinical Excellence] technology appraisal guidance 113 - inhaled insulin for the treatment of diabetes (types 1 and 2)'. It mentioned that the NICE guidance was posted on the NICE website and the

Pfizer online inhaled insulin programme.

The top right-hand corner of the letter had a blue box containing 'NICE Technology Appraisal Guidance'. The bottom right-hand corner featured the Exubera product logo which included the non-proprietary name. The letter was signed by Exubera marketing on behalf of Pfizer.

COMPLAINT

The complainant stated that on first glance the letter looked as if it might be an official communication from NICE since the prominent notice at the top right-hand corner of the page stated 'NICE Technology Appraisal Guidance'. On closer examination it was a marketing letter sent by Pfizer. The complainant alleged that this was deceptive, and probably calculated to be so.

By convention the top right-hand corner of most letters showed the address and identity of the writer. The letter stated (in very much smaller print) that it was sent by Exubera marketing on behalf of Pfizer but one had to turn the page to find an address.

The letter did not give even a summary of the very restrictive conditions under which Exubera was approved for NHS use by NICE.

The complaint alleged possible breaches of Clause 10, disguised promotion, Clause 9.4, imitating device, copy slogans, general layout etc and Clause 9.5, NICE was not mentioned but perhaps should be listed at the next revision.

RESPONSE

Pfizer stated that the mailing was sent to alert health professionals to the availability of the NICE final appraisal for prescribing Exubera, which had been posted on the NICE website in December 2006. The letter referred to Pfizer's inhaled insulin website to remind health professionals of its existence if they wanted to obtain further information or request materials.

The mailing was obviously promotional and this should have been immediately apparent as the envelope clearly stated 'Promotional Material enclosed' and thus could not have been mistaken for an 'official' one.

Furthermore it was evident from the letter that the promotional material had been produced by Pfizer and signed by a member of the Exubera marketing team on behalf of the company. The NICE appraisal guidance

had been highlighted to emphasise that the reason for writing the letter was to make health professionals aware of the published guidance and to offer them an opportunity to request further information.

Given that the mailing was not made to appear non-promotional and the material was clearly not disguised, Pfizer did not believe that the material was in breach of Clause 10 of the Code.

To reinforce the obviousness of its promotional nature, the letter was presented in the brand livery and this was consistent with the envelope. The blue header on the top right-hand side of the letter 'NICE technology appraisal guidance', did not imitate the NICE logo or branding and the layout of the letter did not copy the general layout of materials produced by NICE. Pfizer therefore submitted that the mailing was not in breach of Clause 9.4 of the Code.

As Clause 9.5 of the Code did not prohibit mention of NICE in promotional materials, there could be no breach of this clause. There were many precedents for the reasonable dissemination of NICE guidelines in promotional materials.

Pfizer considered that the complainant's criticism was mistaken and did not reasonably reflect the views of other health professionals. In summary Pfizer concluded that the Exubera mailing was not in breach of Clauses 10, 9.4 or 9.5 of the Code.

PANEL RULING

The Panel noted that the envelope in which the letter had been posted clearly stated on the front 'Promotional Material enclosed' and the Pfizer logo and address was on the back. It appeared, however, that the complainant had not seen the envelope. The

Panel further noted that if the letter had been placed on the complainant's desk, still folded as from the envelope, then all that was visible was information relating to the NICE technology appraisal guidance on inhaled insulin. The Panel queried whether this was what the complainant meant by the appearance of the letter 'on first glance'. Nonetheless the Panel considered the letter in its entirety ie unfolded.

The Panel noted that NICE was not listed as a body that could not be referred to in promotional material. Thus no breach of Clause 9.5 was ruled. Companies had to ensure that references to NICE in promotional material complied with the Code.

The Panel noted that the top right-hand corner mentioned NICE but in a different style and colour to that used by NICE. The Panel did not consider that the letter was disguised promotion; readers would not conclude it was an official communication from NICE. The product logo was given at the bottom of the letter. The Panel also noted that the envelope included the statement 'Promotional Material enclosed', and that the accompanying reply paid card clearly referred to Pfizer. The Panel did not consider the letter was disguised and no breach of Clause 10.1 was ruled.

Clause 9.4 stated that promotional material must not imitate the devices copy, slogans or general layout adopted by other companies in a way that was likely to mislead. The Panel did not consider that the top right-hand corner reference to NICE guidance had been used in a way that was likely to mislead readers. Thus no breach of Clause 9.4 was ruled.

Complaint received **5 March 2007**

Case completed **18 April 2007**