

CASE AUTH/2068/11/07

BAYER SCHERING PHARMA v MERCK SERONO

Hospitality at international meeting

Bayer Schering Pharma complained that, at an international meeting held in Prague in October 2007, Merck Serono had accommodated its UK sponsored delegates at a 5 star hotel in the city centre.

Bayer Schering stated that the hotel was a member of the internationally recognised luxury hotel brand 'Leading Hotels of the World' (LHW). The opening page of the hotel website described staying there as 'a unique experience of classical elegance and sparkling luxury' and that 'The [hotel] belongs to one of the most luxurious hotels and its clients expect individual top quality service and fulfilment of each single wish'.

Additionally, the LHW website emphasised the luxury and first class service provided by its member hotels.

Whilst the Code did not give a star rating or any other specific criteria that would define 'deluxe', in Bayer Schering's view, the hotel's 5 star rating and membership of the LHW confirmed that it would inevitably be perceived as a 'deluxe' venue and thus its use for hospitality was not acceptable under the Code.

The Panel noted that the Code stated that the costs of hospitality must not exceed that level which recipients would normally adopt when paying for themselves. Supplementary information stated that hospitality was limited to refreshments/subsistence (meals and drinks), accommodation, genuine registration fees and the payment of reasonable travel costs which a company might provide to sponsor a delegate to attend a meeting. The supplementary information further stated that lavish and deluxe venues must not be used and that the impression that was created by the arrangements for any meeting must always be kept in mind. It should be the programme that attracted delegates and not the associated hospitality or venue. The Code did not prohibit the use of five star hotels per se. Some companies' own codes and policies prevented use of such hotels.

The Panel noted that Merck Serono's invitation to attend the meeting in Prague had not named the hotel and so in that regard delegates could not have been attracted to the meeting by the accommodation being offered. The hotel was convenient for the meeting venue and according to Merck Serono accommodation was limited. Nonetheless, accommodation had been provided at an hotel which was a member of the LHW group and more often than not rated five star and consistently described in terms of the luxury it provided, not only on its own

website but also on others. Even allowing for differences in the star rating system, the impression was thus that Merck Serono's guests were being accommodated in a luxury hotel. The final breakdown of costs showed that one night's bed and breakfast accommodation cost £238 per person.

The Panel noted that almost half of Merck Serono's sponsored delegates were nurses. In the Panel's view the cost of accommodation was more than most people might be expected to pay if they were paying for themselves; it was higher than nurses would normally pay.

On balance, the Panel considered that excessive hospitality had been provided and a breach of the Code was ruled.

Bayer Schering Pharma complained about hospitality provided by Merck Serono to UK health professionals at an international meeting in Prague.

COMPLAINT

Bayer Schering sought clarification of Clause 19.1 of the Code with respect to the activities of Merck Serono at the recent meeting of the European Committee for Treatment and Research in Multiple Sclerosis (ECTRIMS) held from 10-14 October in Prague. Whilst at the meeting, Bayer Schering became aware that Merck Serono had accommodated its UK sponsored delegates at a 5 star hotel in the city centre.

The hotel was a member of the internationally recognised luxury hotel brand 'Leading Hotels of the World' (LHW). A brochure for the hotel was provided. The opening page of the hotel website described staying there as 'a unique experience of classical elegance and sparkling luxury' and that 'The [hotel] belongs to one of *the most luxurious hotels* and its clients expect individual top quality service and fulfilment of each single wish'.

Additionally, the LHW website stated that: 'The Leading Hotels of the World understands the finer points of hospitality and luxury. Indulge yourself in a lifestyle of luxury at one of our 5 star hotels and the unparalleled comfort they offer. The Leading Hotels of the World's featured hotels cater to the discriminating few, where first class service is a norm rather than an exception. The Leading Hotels of the World features small luxury hotels, resort hotels as well as world-renowned stately hotels offering all the possibilities for family getaways, romantic escapades and business meetings. Whether you need accommodation for business or pleasure, The Leading Hotels of the World will have the perfect solution for you'.

Whilst Clause 19.1 did not give a star rating or any other specific criteria that would define 'deluxe', in Bayer Schering's view, the hotel's 5 star rating and membership of the LHW confirmed that it would inevitably be perceived as a 'deluxe' venue and thus its use for hospitality was not acceptable under the Code.

On 15 October, immediately after the meeting, Bayer Schering contacted Merck Serono with its concerns. Merck Serono confirmed that it had paid for UK delegates to stay at the hotel in question, but did not accept that its actions fell outside the Code. Merck Serono subsequently stated that an agent had inspected the hotel prior to the company confirming its booking.

Bayer Schering considered Merck Serono's responses inadequate because:

- *'There were only a few hotels that could accommodate us due to the usual massive demand for ECTRIMS 2007 hotel space and we selected this one as the most appropriate.'*

Thus Merck Serono conceded that alternatives were available. However, even if lower quality hotels or no other hotels were available, there was nothing in the Code with regard to lack of availability of suitable alternatives being a defence for providing hospitality that would otherwise be considered inappropriate under Clause 19.1.

- *'Often Czech classified 5 or 4 star hotels would only register 3 or 4 stars in other parts of the world.'*

Hotel quality, especially when comparing different countries, was highly subjective – one person's 'deluxe' might be another's 'adequate'. Accordingly, when selecting accommodation for sponsored health professionals, the impression given by the arrangements should be as important as the standards of the facilities. In Bayer Schering's view, a 5 star LHW would by definition be perceived as a lavish venue and the use of such a hotel for hospitality would not create a good impression of the industry. Additionally, membership of this luxury group would ensure consistent standards compared to other countries. LWH had confirmed that it had a consistent rating system throughout the world. Bayer Schering provided brief details of LWH's process for worldwide quality assurance.

- *The hotel 'does not have a swimming pool nor fitness suite nor spa treatment facilities'.*

However, as the hotel website noted, these were available nearby in a 'world class fitness centre club'; hotel guests could use all these facilities free of charge on presentation of a voucher. It was surprising that Merck Serono had not been told of this in the pre-booking inspection.

Additionally, in Bayer Schering's opinion the presence or absence of fitness facilities and/or a pool on site was not necessarily relevant to the

definition of deluxe. Many ordinary 3 and 4 star hotels had facilities such as pools and/or fitness equipment and many very exclusive deluxe hotels (especially in cities) did not.

When Bayer Schering told Merck Serono that it intended to complain formally to the Authority because it was not satisfied with Merck Serono's response, Merck Serono requested a face-to-face meeting to discuss a mutually agreeable and appropriate accommodation for our customers at next year's meetings ... [...] ... in the spirit of the inter-company dialogue requested by the Code. However, Bayer Schering believed it had already engaged in considerable discussion over several weeks without receiving a satisfactory response, and that simply agreeing to avoid using inappropriately lavish accommodation in future could not undo any benefit Merck Serono might have gained from the hospitality already provided at ECTRIMS this year. Only a formal complaint upheld by the Authority would both reprimand Merck Serono publicly and clarify what constituted appropriate hospitality.

Bayer Schering would therefore be very grateful for the Authority's view on these events, and whether Merck Serono's hospitality arrangements at ECTRIMS were in breach of Clause 19.1. Should the Authority uphold Bayer Schering's complaint, in addition to reviewing its internal procedures for approval of hospitality arrangements, Bayer Schering believed it would be appropriate for Merck Serono to contact all UK health professionals who stayed at the hotel in order to inform them that the arrangements were in breach of the Code.

RESPONSE

Merck Serono stated that its UK delegates to the ECTRIMS meeting in Prague stayed in the hotel in question arranged for by an agency. Merck Serono discussed with the agency in advance of the meeting about the star rating and adherence to the Code (see below). The agency also visited the hotel.

Merck Serono had a rigorous system to ensure that all relevant materials were certified in line with the Code. It had acted in good faith in using this hotel and denied Bayer Schering's allegations. Merck Serono considered that rather than seeking clarification of Clause 19.1, as stated, Bayer Schering was demanding inappropriately punitive action for reasons that were unclear. Merck Serono tried to enter into constructive inter-company dialogue with Bayer Schering, which it declined after essentially one set of email exchanges and it decided to complain immediately to the Authority.

There were variations for hotel star rating classification across the world. The hotel used by Merck Serono was rated between 5 star and 3 star when viewing different systems and the hotel used by Bayer Schering was rated 4 star. Therefore the star rating system was fairly meaningless. The issue related more to whether the venue was lavish or deluxe, as stated in the Code, rather than the star rating. Furthermore the two hotels

were similar in standard but the hotel in question was near the congress centre (giving Merck Serono's customers easy access for the business reason that they were in Prague). The hotel used by Bayer Schering was 11 miles away, which might have been inconvenient for its customers.

Star rating

The star system and accommodation in Prague was not to the same standard as Western Europe. Often Czech classified 5 or 4 star hotels would only register 3 or 4 stars in other parts of the world.

The website of the hotel in question rated it as 5 star (as a member of the LHW group). LHW was a brand and marketing tool used by a profit-making organisation. It was not an independent quality standard. On two independent travel websites, the hotel was classified as 4 star (trip advisor) or 3 star (Frommer).

Merck Serono explained that there was a worldwide independent standard industry classification tool (hotel and travel index classification system) that most corporate travel companies used when assessing and booking hotels. The classification was Superior Deluxe, Deluxe, Moderate Deluxe, Superior First Class, First Class, Limited – Service First Class, Moderate First Class, Superior Tourist Class, Tourist Class and Moderate Tourist Class. The hotel was listed as Superior First Class.

The facilities, maintenance and general service in the Czech Republic were not to the same standard as Western European hotels. The hotel in question had two meetings rooms and business centre, restaurants, ground floor bar; it did not have an onsite swimming pool nor fitness suite or spa facilities. Bayer Schering stated that a nearby fitness centre was available to hotel guests. Leisure facilities were neither required nor sought by Merck Serono nor pointed out to its guests, nor were they obvious in the hotel. The invitation did not mention the hotel and so it could not have been an inducement to attend ECTRIMS with Merck Serono.

Lavish or deluxe?

At the same meeting, Bayer Schering accommodated its customers in a hotel which had an onsite fitness centre, offsite swimming pool and golf and first class amenities. It was situated in a centre with fantastic shopping and entertainment. The hotel website described luxury bedding etc. This was an example of the marketing terminology used to attract customers to the hotel and was not the same as that used in the Code and therefore not the same standard.

Merck Serono stated that its guests did not perceive the hotel it used to be deluxe or in any way plush; it was an adequate and appropriate small hotel to accommodate them for the purpose of the business and congress but nothing special. It did not exceed that level which the recipients would normally adopt when paying for themselves.

When the hotel used by Merck Serono (£115 B&B) and the hotel used by Bayer Schering (£96 B&B) were compared for price and facilities (no onsite leisure facilities vs onsite fitness) they were similar.

The hotel at issue was compliant with the Code, business appropriate, convenient to the congress centre (2 miles and close to metro) and a small hotel. Merck Serono believed that the issue for Bayer Schering might be that it booked a hotel (that was similar to its hotel in standard – see above) that was inconvenient for delegates (11 miles from the congress centre) and its customers had complained.

Additionally, when Merck Serono started looking for hotels, there were only a few that could accommodate it due to the usual high demand. Merck Serono considered a few hotels over the previous months; there was only one that met the requirements of the Code and could accommodate 58 people when Merck Serono booked. It was not unusual for hotels in cities to become heavily booked at times of international congresses.

In summary the Code stated:

- 1 'Lavish or deluxe venues must not be used; Merck Serono did not, feedback from attendees was that it was not deluxe accommodation.
- 2 The cost involved 'must not exceed that level which the recipients would normally adopt when paying for themselves' – Merck Serono did not.

Merck Serono therefore acted in good faith in agreeing to use this hotel.

Conclusion

Merck Serono denied that there had been 'considerable discussion over several weeks' as submitted by Bayer Schering and believed that Bayer Schering had acted precipitately and against the spirit of the inter-company dialogue requested by the Code. Although it stated that it wished to seek clarification of Clause 19.1, its request for further punitive action (review of internal procedures and writing to customers stating Merck Serono had breached the Code), and 'a formal complaint upheld by the PMCPA will both reprimand Merck Serono publicly' suggested it wanted more than that.

Merck Serono took adherence to the Code very seriously and it ensured that all its activities were appropriate and reasonable and that it maintained the ethical, professional and high standards expected from the Code.

PANEL RULING

The Panel noted that Clause 19.1 stated that the costs of hospitality must not exceed that level which recipients would normally adopt when paying for themselves. The supplementary information to Clause 19.1 stated that hospitality was limited to refreshments/subsistence (meals and drinks), accommodation, genuine registration fees and the

payment of reasonable travel costs which a company might provide to sponsor a delegate to attend a meeting. The supplementary information further stated that lavish and deluxe venues must not be used and that the impression that was created by the arrangements for any meeting must always be kept in mind. It should be the programme that attracted delegates and not the associated hospitality or venue. The Code did not prohibit the use of five star hotels per se. Some companies' own codes and policies prevented use of such hotels.

The Panel noted that Merck Serono's invitation to attend the ECTRIMS meeting in Prague had not referred to the hotel and so in that regard delegates could not have been attracted to the meeting by the accommodation being offered. It was convenient for the meeting venue and according to Merck Serono accommodation was limited. Nonetheless, accommodation had been provided at an hotel which was a member of the LHW group and more often than not rated five star and consistently described in terms of the luxury it provided, not only on its own website

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On balance, the Panel considered that excessive hospitality had been provided. A breach of Clause 19.1 was ruled.

Complaint received **21 November 2007**

Case completed **7 January 2008**
