

CASE AUTH/2083/1/08

GENERAL PRACTITIONER v ROCHE

Unsolicited email for Tamiflu

A general practitioner complained that Roche had sent him, via an agency, an unsolicited email about Tamiflu (oseltamivir) to his NHS email address. This was a working email address, the utility of which would be rapidly degraded by advertising or infomercial emails. The complainant stated that he had not knowingly signed up to receive any information from Roche or any other pharmaceutical company; it was most unwelcome. The ability to be able to unsubscribe did not in any way excuse the activity.

The Panel noted that the Code prohibited the use of email for promotional purposes except with the prior permission of the recipient. The Panel considered that the email on Tamiflu was clearly promotional material. Whilst it had not been sent directly by Roche, it was nonetheless an established principle under the Code that pharmaceutical companies were responsible for work undertaken by third parties on their behalf.

The Panel also noted that health professionals were told by telephone that the agency would, from time to time, send details by email about its affiliates' products and services which might include updates on specialist services, conferences and seminars, diagnostic, medical, pharmaceutical and promotional materials as well as official information. The text did not make it abundantly clear that the agency intended to send promotional material from pharmaceutical companies; the text referred to pharmaceutical *and* (emphasis added) promotional materials as if the two were wholly separate. Furthermore, the text referred to 'affiliates' of the agency. In the Panel's view pharmaceutical companies were not affiliates of the agency, and would not be seen as such. Pharmaceutical companies would be purchasing a service from the agency.

The Panel considered that the email had been unsolicited. There was no evidence to show that the complainant had given prior, fully informed, consent to receive by email promotional material from a pharmaceutical company. A breach of the Code was ruled.

A general practitioner complained about an unsolicited email about Tamiflu (oseltamivir) which he had received from Roche Products Limited via an agency.

COMPLAINT

The complainant explained that the email was sent to his NHS email address. This was a working email address, the utility of which would be rapidly degraded by advertising or infomercial emails if the industry took up this practice. The complainant stated

that he had not knowingly signed up to receive any information from Roche or any other pharmaceutical company; it was most unwelcome.

The complainant submitted that if the sending of SPAM emails was not already contrary to the Code then he thought it should be. The complainant was astonished that Roche allowed its name to be associated with this behaviour as sending SPAM was associated with the seedier side of the Internet and was a practice frowned upon by most reputable organisations which wished to preserve a good name. The ability to be able to unsubscribe did not in any way excuse the activity.

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

RESPONSE

Roche submitted that the email was sent to provide a level of Tamiflu education to health professionals who had previously consented to receive promotional information about pharmaceutical products via email. Roche fully appreciated the requirements of the Code with regard to unsolicited communications with health professionals and therefore it was important to the company that it only sent information to individuals who had previously agreed and who would be receptive to receiving it. Roche contracted an agency that specialised in electronic communication with health professionals to facilitate this controlled distribution. Roche reviewed the agency's processes of engagement with health professionals prior to the initiation of the contract to ensure it operated within the Code, the data protection act and internal policy. Roche was therefore satisfied with the agency's level of documentation and process.

The agency was an organisation which as part of its business emailed health professionals. It conducted this work on behalf of itself and also for third parties. Roche did not commission the construction of a database as this was already in existence.

Prior to communicating with any health professional, the agency always telephoned them to explain who it was, what it did, and that in order to email them on behalf of organisations such as pharmaceutical companies, it required their email address to be provided verbally whilst on the telephone. The health professional was told that they might receive communications from one of the agency's associated companies, which would be relevant to their medical specialisation or administrative responsibilities. A transcript of the exact wording read to them over the telephone was: '[the agency] will from time to time send information by email about our affiliates'

products and services which may include updates on specialist services, conferences and seminars, diagnostic, medical, pharmaceutical and promotional materials as well as official information’.

After the telephone call the doctor then received an email (to the address they provided to the agency) confirming the points raised in the conversation and confirming an access code for NHS online directory service, an information system hosted by the agency on the Internet should they wish to visit this site. The email further explained that they would be asked to complete a short registration process if they required full access to the database provided. At this point the agency reiterated that it would send information which might include updates on specialist services, conferences and seminars, diagnostic, medical, pharmaceutical and promotional materials as well as official information, as in the transcript above. The health professional then opted in to receiving such information from the agency and further confirmed the email address to which they wished to have this information sent. If the health professional no longer wished to receive further information there was an easy opt out button available on each communication. At this point they would no longer be contacted. This ensured the agency never sent SPAM or unsolicited emails and complied with the Data Protection Act.

Roche provided copies of the promotional material information that the complainant agreed to receive via email as described in the process on 7 September 2007, and received his confirmation email to confirm his email address once more on the same day.

The complainant had received several communications since then from the agency, unrelated to Roche or any of its products. These communications had also included promotional material from other pharmaceutical companies. Therefore Roche was assured that the complainant had consented to receiving these communications and had not opted out of the system.

Roche also confirmed that the complainant did not view the material available online as there was an option allowing health professionals to choose not to. The complainant had been contacted by the agency

and removed from their list of ‘opted in’ health professionals to ensure he did not receive further information from Roche or any other organisation including, the National Institute for Health and Clinical Excellence (NICE) and other pharmaceutical companies.

PANEL RULING

The Panel noted that Clause 9.9 prohibited the use of email for promotional purposes except with the prior permission of the recipient. The Panel considered that the email on Tamiflu was clearly promotional material. Whilst it had not been sent directly by Roche, it was nonetheless an established principle under the Code that pharmaceutical companies were responsible for work undertaken by third parties on their behalf.

The Panel also noted the script used on the telephone: health professionals were told that the agency would, from time to time, send details by email about its affiliates’ products and services which might include updates on specialist services, conferences and seminars, diagnostic, medical, pharmaceutical and promotional materials as well as official information. The text did not make it abundantly clear that the company intended to send promotional material from pharmaceutical companies; the text referred to pharmaceutical *and* (emphasis added) promotional materials as if the two were wholly separate. Furthermore, the text referred to ‘affiliates’ of the agency. In the Panel’s view pharmaceutical companies were not affiliates of the agency, and would not be seen as such. Pharmaceutical companies would be purchasing a service from the agency.

The Panel considered that the email had been unsolicited. There was no evidence to show that the complainant had given prior, fully informed, consent to receive by email promotional material from a pharmaceutical company. A breach of Clause 9.9 was ruled.

Complaint received	24 January 2008
Case completed	22 February 2008