

GENERAL PRACTITIONER v RECKITT BENCKISER HEALTHCARE

Unsolicited email about Gaviscon Advance

A general practitioner who had complained previously about receiving unsolicited emails (Cases AUTH/2083/1/08, AUTH/2088/1/08 and AUTH/2089/1/08) further complained that he continued to receive spam emails despite having opted-out of the email service.

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 Gaviscon Advance was clearly promotional material. Whilst it had not been sent directly by Reckitt Benckiser 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 noted that, following previous complaints by the complainant about unsolicited promotional emails, he had asked for his details to be removed from the agency's database. The agency failed to do this and thus as a result of retaining his details, and presumably unbeknown to Reckitt Benckiser, the email promoting Gaviscon Advance was sent, unsolicited, to the complainant. The Panel noted the circumstances of this case and considered that Reckitt Benckiser had been badly let down by the third party working on its behalf. A breach of the Code was ruled.

A general practitioner, who had complained previously about unsolicited promotional emails (Cases AUTH/2083/1/08, AUTH/2088/1/08 and AUTH/2089/1/08), further complained that despite opting-out of the email service offered by an agency he had continued to receive spam emails. The email now in question promoted Gaviscon Advance and had been sent on behalf of Reckitt Benckiser Healthcare.

When writing to Reckitt Benckiser to inform it of the complaint the Authority asked it to consider the requirements of Clause 9.9 of the Code.

RESPONSE

Reckitt Benckiser submitted that it had sent the email in question via an agency that provided education and pharmaceutical industry sponsored promotional material to prescribers in the NHS. All material sent to prescribers by the agency by an opt-in system. Prior permission of the recipient was sought before promotional material was sent electronically. The agency's policy in this regard was provided.

Reckitt Benckiser discussed the proposed email with the agency. In January 2008, after checking that only health professionals who had opted-in would be emailed, Reckitt Benckiser decided to work with the agency. Material provided by the agency to Reckitt Benckiser when the company decided to use the agency to email promotional material to opted-in prescribers was supplied.

The agency advised Reckitt Benckiser that it sent out a number of different emails which were considered to be educational and diagnostic tools by clinicians. Some of these communications involved a sponsorship element, and Reckitt Benckiser sponsored the email in question.

Reckitt Benckiser noted that although it supplied the information for the section of the email dealing with Gaviscon Advance, it did not sponsor the entire email. The major proportion of the content, including the independent article, was written and wholly managed by the agency which had full editorial control and copyright for same.

On 29 January 2008, the agency was notified of a complaint by the complainant who had given instructions to unsubscribe him from the electronic database and mailing list. The complainant had previously opted-in to receive emails from the agency, but since 29 January had requested that his details be removed from the database. The agency assured him it would do so. However, the individual who usually headed up the data division was on leave and a much junior person was asked to remove the complainant's name from the database. To clarify the opt-out position, the individual telephoned the complainant's group practice to establish whether all the doctors wished to be removed from the database. This junior individual was confused by the instructions received as all the other doctors at the practice wanted to remain on the recipient list. The complainant's name was therefore not removed from the database list and it was unfortunate that he received further emails from the agency which included a sponsored element about Gaviscon Advance.

When this was raised with the agency, it sent a letter of apology and explanation to the complainant. The agency also stated that it should take full responsibility for this misunderstanding and not Reckitt Benckiser.

Reckitt Benckiser submitted that this had been a genuine misunderstanding and error by the agency. Reckitt Benckiser had carried out the necessary due

diligence to establish that the agency had prior agreement from clinicians to receive the email in question.

Reckitt Benckiser therefore believed that in this instance, it had not breached Clause 9.9 of the Code.

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 Gaviscon Advance was clearly promotional material. Whilst it had not been sent directly by Reckitt Benckiser 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 noted that, following previous complaints

by the complainant about unsolicited promotional emails, he had asked for his details to be removed from the agency's database. That task was given to a junior member of staff who became confused and, in error, left the complainant's details on the database. As a result of retaining these details, and presumably unbeknown to Reckitt Benckiser, the email promoting Gaviscon Advance was sent to the complainant.

The Panel noted that the complainant had stated that he did not want to receive promotional emails; the email in question was thus unsolicited. The Panel noted the circumstances of this case and considered that Reckitt Benckiser had been badly let down by the third party working on its behalf. A breach of Clause 9.9 was ruled.

Complaint received **21 April 2008**

Case completed **30 May 2008**
