

GENERAL PRACTITIONER v SANDOZ

Email about Sandoz products

A general practitioner complained about large junk emails sent by Sandoz which crammed up clinical email boxes and slowed the computer. The complainant had tried unsuccessfully to stop receipt, and requested that the Authority find some way to stop them.

The Panel noted that the Code prohibited the sending of promotional emails except with the prior permission of the recipient. The Panel considered that the email was clearly promotional material. Whilst it had not been sent directly by Sandoz 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 since February 2008, when obtaining permission from health professionals to add them to their database, the agency which had sent the email on Sandoz's behalf had been clear that it would, from time to time, send emails which might include, *inter alia*, pharmaceutical promotional materials. The wording used before February 2008 had not been clear on this point. The Panel did not know when the complainant's details had been added to the database. The complainant had not responded to a request for the Authority to be able to reveal his identity to Sandoz. In the circumstances the Panel considered that there was nothing further that could be done. It thus ruled no breach of the Code.

COMPLAINT

A general practitioner complained about large junk emails sent by Sandoz Ltd which crammed up clinical email boxes and slowed the computer. The complainant had tried junk mail rules to stop receipt, but the agency which sent the emails used multiple email addresses which circumvented junk filters. The complainant requested that some way be found to stop them, or just stop them using the internet if the Authority had to.

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

RESPONSE

Sandoz stated that the emails in question were part of a marketing activity, which was provided by an agency. This service provider used an email account to send emails only to members of the NHS who consented to receiving information from/via the agency, including doctors, nurses and

administrators. The emails contained an embedded link to a special webpage on which an independent article to a special topic (in this case pain therapy), additional information to a related Sandoz product (Fentanyl Mezolar Matrix and Fentanyl Reservoir) as well as the summaries of product characteristics (SPCs) for these products could be found.

Sandoz regretted that a health professional might have been inconvenienced in this way. The company relied on the agency to have obtained consent from the health professional.

As a consequence of this complaint Sandoz had informed the agency that it had serious concerns regarding its database and records.

Sandoz provided information from the agency regarding the arrangements. In the first instance the doctor would be contacted by telephone. During this call the agency would outline who it was, what it did and that the doctor's email address was needed in order to allocate an access code to its NHS online directory service.

At that time the doctors was informed that they might, from time to time, receive communications from one of the agency's associated companies which would be relevant to their medical specialisation or administrative responsibilities. The wording was along the lines of: '[the agency] will from time to time send information by email about our affiliates' product and services which may include updates on specialist services, conferences and seminars, diagnostic, medical and pharmaceutical promotional materials as well as official information.'

As a follow-up to the telephone call the doctor would then receive an email confirming the points raised in the conversation and also confirming the access code for NHS online. This email also invited comment from the recipient and asked them to contact the agency if they had any comments or needed any of their information amended. It also reiterated that they would be sent information about products and services along with other medical and non-medical information. The final paragraph of this email welcomed feedback on any aspect of the service.

The database on health professionals had been built up over approximately 15 years with regular contact between the agency's database research department and NHS organisations. During this time email addresses had been freely given by those who wished to receive information on a variety of topics.

Also, in order to ensure that only those recipients who wished to receive such material did so there was an opt-out facility on emails. The agency sent out thousands of emails each week and received less than 0.5% opt-out request's a year, a figure which spoke for itself. The agency also re-evaluated its opt-in procedures on a regular basis. A copy of Sandoz's policy was provided.

Without knowing the identity of the complainant the agency stated that it was difficult for the database department to provide information on when they were contacted.

In response to a request for further information, Sandoz stated that the wording above, used by the agency to introduce itself and its services, had been used since February 2008. Before then the wording, although similar, had referred to the sending of 'updates on specialist services, conferences and seminars, diagnostic, medical, pharmaceutical and promotional materials as well as official information'. The agency validated/re-checked its database on a six monthly rolling basis and was endeavouring to accelerate that process.

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 was clearly promotional material. Whilst it had not been sent directly by Sandoz 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 since February 2008, when obtaining permission from health professionals to add them to their database, the agency had made it clear to them that it would, from time to time, send emails which might include updates on specialist services, conferences and seminars, diagnostic, medical and pharmaceutical promotional materials as well as official information. It was clear that the company intended to send promotional material from pharmaceutical companies. The wording used before February 2008 had not been clear on this point. The Panel did not know when the complainant's details had been added to the database. The complainant had not responded to a request for the Authority to be able to reveal his identity to Sandoz. In the circumstances the Panel considered that there was nothing further that could be done. It thus ruled no breach of Clause 9.9.

Complaint received	24 April 2008
Case completed	30 July 2008
