

GENUS v STIEFEL LABORATORIES

Alleged inappropriate rebate

Genus complained about the marketing of Oilatum Cream by Stiefel Laboratories. Genus supplied Cetraben.

Genus stated that it received an email on 13 October from a primary care trust (PCT), stating that Stiefel had offered the PCT a rebate on the price difference between Cetraben and Oilatum if the PCT reinstated Oilatum onto the PCT formulary. Genus alleged that this not only breached the Code but more seriously was an inducement to prescribe which discredited and reduced confidence in the industry.

The detailed response from Stiefel Laboratories is given below.

The Panel noted that the supplementary information to the Code stated that measures or trade practices relating to prices, margins and discounts which were in regular use by a significant proportion of the pharmaceutical industry on 1 January 1993 were outside the scope of the Code. Other trade practices were subject to the Code. The terms 'prices', 'margins' and 'discounts' were primarily financial terms. The Panel considered that a cash rebate scheme was related to prices, margins and discounts. However, it did not know whether such schemes were in regular use by a significant proportion of the pharmaceutical industry on 1 January 1993. Stiefel had not provided any information in this regard. Thus the matter now at issue had to be considered as its exemption from the Code had not been established.

The Panel noted the parties' account of events differed. The complaint was based upon the following from a third party: 'I have been contacted by Steefel [sic] and they are going to give us a rebate on the prescription if we put back oilutim [sic] on the formulary, I am considering, you asked me to let you know'. Thus according to the third party, Stiefel had offered the rebate to the local PCT if it reinstated Oilatum onto its formulary. Stiefel's account of the matter was that the local PCT indicated that if Stiefel arranged a rebate scheme for Oilatum then Cetraben would be taken off the formulary. The question was, did Stiefel offer the cash rebate in exchange for reinstatement of its product onto the formulary or did the PCT ask for the rebate and offer reinstatement? The Panel noted Stiefel's submission that no agreement was made regarding any rebate scheme and the discussions which had taken place with the PCT were information sharing only.

The Panel considered that given the parties'

differing accounts it was not possible to establish, on the balance of probabilities, what had actually occurred. No breach of the Code was thus ruled.

Genus Pharmaceuticals Ltd complained about the marketing of Oilatum Cream by Stiefel Laboratories (UK) Limited. Genus supplied Cetraben.

COMPLAINT

Genus regretted that, following written dialogue with Stiefel concerning a serious breach of Clauses 18.1 and 2 of the Code in relation to the marketing of Oilatum, it had no further option other than to complain to the Authority.

Genus stated that it received an email on 13 October from a primary care trust (PCT) stating that Stiefel had offered the PCT a rebate on the price difference between Cetraben and Oilatum if the PCT reinstated Oilatum onto the PCT formulary. Genus alleged that this not only breached Clause 18.1 but more seriously was an inducement to prescribe which discredited and reduced confidence in the industry.

Genus wrote to Stiefel requesting its response concerning this serious issue; the response then denied any breach of Clauses 18.1 and 2. Genus then emailed Stiefel to state that following its response, Genus would refer its complaint to the Authority. Stiefel had requested a copy of the email sent to Genus by the PCT but as this was private correspondence, it was considered inappropriate to divulge the author's identity. However Genus confirmed to Stiefel that the wording of its charge accurately reflected the text of the PCT correspondence.

RESPONSE

Stiefel Laboratories stated that it was saddened by Genus's action especially after several attempts were made to talk directly with the company to better understand its concerns and respond appropriately. Stiefel did not believe that any action that it had taken had breached the Code and certainly not in respect of Clauses 18.1 and 2, hence being totally surprised by Genus' accusations.

The series of events referred to by Genus were as follows. Stiefel understood that a number of pharmaceutical companies operated cash rebate schemes. To understand if such could be applied to Stiefel and its product portfolio, a meeting was organised on 7 October at the PCT headquarters.

In these discussions, the agenda and objectives for both parties were two-fold: an exploration as to how recent National Institute for Health and Clinical Excellence (NICE) guidelines on atopic dermatitis could be disseminated across the trust with educational initiatives and a discussion of local rebate schemes employed by either the PCT or the local hospital. This was a follow up to previous brief discussions with PCT pharmaceutical advisors at a PCT meeting held in central London in July 2008.

No arrangements were made with either party to undertake a rebate scheme for Oilatum Cream but the different schemes that the PCT currently operated were highlighted, one of which was with Genus for its product Cetraben. The PCT indicated that, if Stiefel wished to arrange a particular rebate scheme, the incumbent (ie Cetraben) would be taken off the current rebate scheme. Stiefel reiterated that no agreements were made to enter into any rebate scheme and that the discussions were information sharing only. The PCT could confirm these series of events and the exact nature of the discussions.

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The Authority also received a letter from the PCT but as it had not been sent with Stiefel's authority it could not form part of Stiefel's response. It was thus not considered by the Panel.

PANEL RULING

The Panel noted that the supplementary information to Clause 18.1, Terms of Trade, stated that measures or trade practices relating to prices, margins and discounts which were in regular use by a significant proportion of the pharmaceutical industry on 1 January 1993 were outside the scope of the Code. Other trade practices were subject to the Code. The terms 'prices', 'margins' and

'discounts' were primarily financial terms. The Panel considered that a cash rebate scheme was related to prices, margins and discounts. However, it did not know whether such schemes were in regular use by a significant proportion of the pharmaceutical industry on 1 January 1993. Stiefel had not provided any information in this regard. Thus the matter now at issue had to be considered as its exemption from the Code had not been established.

The Panel noted the parties' account of events differed. The complaint was based upon the following from a third party: 'I have been contacted by Steefel [sic] and they are going to give us a rebate on the prescription if we put back oilutum [sic] on the formulary, I am considering, you asked me to let you know'. Thus according to the third party, Stiefel had offered the rebate to the local PCT if it reinstated Oilatum onto its formulary. Stiefel's account of the matter was that the local PCT indicated that if Stiefel arranged a rebate scheme for Oilatum then Cetraben would be taken off the formulary. The question was, did Stiefel offer the cash rebate in exchange for reinstatement of its product onto the formulary or did the PCT ask for the rebate and offer reinstatement? The Panel noted Stiefel's submission that no agreement was made regarding any rebate scheme and the discussions which had taken place with the PCT were information sharing only.

The Panel considered that given the parties' differing accounts it was not possible to establish, on the balance of probabilities, what had actually occurred. No breach of Clause 18.1 was thus ruled. It thus followed that there could be no breach of Clause 2.

Complaint received	6 November 2008
Case completed	27 January 2009