

CONSULTANT RADIOLOGIST v BRACCO

Letter to radiology health professionals

A hospital consultant complained about an unsolicited letter dated 21 April 2009 received from Bracco.

The complainant alleged that the letter was sent to radiology centres across the UK, to inform clinicians of the outcomes of a legal case in the US. The findings of the case, as described in the letter, were very negative for GE Healthcare and as the complainant was familiar with that company he had contacted it to see if it agreed with Bracco's description. GE Healthcare wrote to the complainant with a more detailed description of the outcome of the legal case; a copy of the letter was provided.

The complainant was concerned that Bracco's letter clearly only covered those aspects that were positive for Bracco and negative for GE Healthcare, when in fact the judge also criticised Bracco's activities. Bracco's letter implied that GE Healthcare was misleading clinicians everywhere, where in fact the activities in question only took place in the US and occurred a number of years ago. In contrast, the aspects of the case that were negative for Bracco concerned studies that it continued to use to promote its products in the UK.

The detailed response from Bracco is given below.

The Panel considered that the letter in question promoted Bracco products; although it did not mention any products by name it did refer to Bracco's low osmolar contrast media. Bracco's letter wrongly implied that the published outcome of the trial stated that GE Healthcare employed very aggressive marketing techniques. The Bracco letter stated that GE Healthcare had been ordered to pay Bracco \$11.4 million (although the actual amount GE Healthcare was ordered to pay was \$11,376,500) but did not make it clear that this was in relation to Bracco's corrective advertising costs incurred as a result of GE Healthcare's wrongful conduct and that no other damages were awarded.

The letter did not mention that because Bracco had discontinued advertisements GE Healthcare had alleged to be false in its counterclaim, GE Healthcare was not entitled to injunctive relief. Nor did it give any indication of the relevance of the US action to the UK. The letter did not state where or when GE Healthcare has disseminated the misleading claims.

The Panel considered that by not giving accurate or sufficient information about the detail of the

legal case, its outcome and the counterclaim the letter was misleading and unfair. A breach of the Code was ruled. The misleading account disparaged GE Healthcare and a breach was ruled. High standards had not been maintained in breach of the Code.

The Panel was concerned that misleading information had been supplied by Bracco in a letter which specifically referred to Bracco's commitment to providing scientific information in a thorough, fair and balanced manner. The Panel considered that the letter would give recipients a poor view of the industry but on balance did not consider the circumstances warranted a ruling of a breach of Clause 2.

A consultant in radiology complained about an unsolicited letter dated 21 April 2009 received from Bracco UK Ltd.

The complainant had advised the Authority that he was not an employee or ex-employee of either Bracco or GE Healthcare. The complainant had received honoraria from GE Healthcare for speaking at a sponsored symposium. The complainant had also received honoraria from another pharmaceutical company for similar activity. Bracco had been informed.

COMPLAINT

The complainant alleged that the letter was sent to radiology centres across the UK, clearly with the intention of informing clinicians of the outcomes of a legal case in the US. The findings of the case, as described in the letter, were very negative for GE Healthcare and as the complainant was familiar with that company he had contacted it to see if it agreed with Bracco's description of the outcome. GE Healthcare then wrote to the complainant with a more detailed description of the outcome of the legal case; a copy of the letter was provided.

The complainant had a number of concerns. Bracco's letter clearly only covered those aspects of the outcome that were positive for Bracco and negative for GE Healthcare, when in fact there were a number of criticisms made by the judge of Bracco's activities. Bracco's letter implied that GE Healthcare was guilty of misleading clinicians everywhere, where in fact the activities in question only took place in the US and occurred a number of years ago. In contrast, the aspects of the case that were negative for Bracco concerned studies that it continued to use to promote its products in the UK.

When writing to Bracco the Authority asked it to respond in relation to Clauses 2, 7.2, 8.1 and 9.1 of the Code.

RESPONSE

Bracco submitted that the letter at issue was sent to 3,221 UK health professionals in radiology. As a responsible pharmaceutical manufacturer, Bracco was committed to ensuring that its communications complied with the Code at all times. The letter, approved in accordance with Bracco's internal clearance procedures, complied with the requirements of the Code.

Bracco noted that there had been a number of disputes between it and GE Healthcare recently, both in the US and other markets, including the UK.

As background to the case in the US Bracco explained that it had brought a number of claims against GE Healthcare, including for dissemination of false and misleading advertising, violation of unfair competition law and negligent misrepresentation; GE Healthcare counterclaimed for false advertising against Bracco. The outcome of the trial was set out in an Order of the United States District Court, District of New Jersey (the Order). This document (copy provided) confirmed that GE Healthcare had disseminated false messages in its advertising for Visipaque and, as a result, several orders were made against it, including that the company must:

- not make certain claims relating to Visipaque and limit the content of future advertising based on the studies in question
- issue a press release regarding the Court's decision and issue corrective advertisement
- pay over \$11 million to Bracco for the corrective advertising costs it incurred as a result of GE Healthcare's wrongful conduct.

Bracco submitted that no orders were made against it in relation to its advertising and no damages or other relief were awarded to GE Healthcare.

Bracco submitted that the letter was a factual, accurate and informative summary of the outcome of the US case between Bracco and GE Healthcare. The Order referred to above was the outcome of this trial, following the lengthy arguments put forward by Bracco and GE Healthcare. The letter provided a fair and balanced view of the Order, which contained numerous orders against GE Healthcare and no orders against Bracco. The letter also provided a very brief and accurate synopsis of the case brought by Bracco against GE Healthcare.

Bracco submitted that the letter kept health professionals up-to-date as to the outcome of this case (and not to reiterate the lengthy arguments from each party). The letter did not disparage or criticise GE Healthcare or its products but summarised the factual outcome of the case, which

was publicly available. Critical references to another company's products were permitted under the Code, provided that they complied with Clause 8.

Bracco submitted that the letter clearly stated that the ruling was from a Federal Court in the US. It was evident to the reader that the case related to activities in the US. The outcome of the trial was, however, of relevance and interest to UK health professionals as the materials and claims in question in the US had also been distributed globally by GE Healthcare, including the UK market.

Bracco submitted that it was also common knowledge that court cases took time to reach trial, hence recipients would not interpret the letter as referring to activities taking place presently but rather to activities that occurred in the past.

Bracco submitted that the letter complied with the Code and that it had maintained its usual high standards when circulating this information.

Bracco's decision to inform health professionals of the US ruling on GE Healthcare's claims did not discredit or reduce confidence in the pharmaceutical industry. Instead, by communicating the summary of the US court decision, Bracco had confirmed that advertising material produced by pharmaceutical companies was heavily regulated and that such regulation was an effective way of maintaining standards across the industry.

With specific reference to Clause 2 of the Code, the criticisms of the letter raised by the complainant were not of a similar nature to the examples listed in the supplementary information accompanying this clause in the Code. Given this, and the information provided above, Bracco submitted that its letter was not in breach of Clause 2 of the Code.

Notwithstanding that Bracco believed that the letter fully complied with the Code, the company did not intend to recirculate it or write further to the recipients, particularly given that GE Healthcare had also written to UK health professionals about the outcome of the trial (a copy of which was received by the complainant). On this basis, health professionals had already been provided with sufficient information from both companies to be able to form their own view of the outcome of the trial. Bracco submitted that it had been in direct discussions with GE Healthcare regarding both companies' UK communications on the US trial, and it had resolved the issue to both parties' satisfaction, with no further action being required by either company.

PANEL RULING

The Panel considered that the letter in question was promotional material for Bracco products. The letter did not mention any Bracco products by name but did refer to Bracco's low osmolar contrast media.

Bracco's letter implied that the Order stated that GE Healthcare employed very aggressive marketing techniques; the Order made no such statement. The Bracco letter stated that GE Healthcare had been ordered to pay Bracco \$11.4 million but did not make it clear that this was in relation to Bracco's corrective advertising costs incurred as a result of GE Healthcare's wrongful conduct and that no other damages were awarded. The amount that GE Healthcare was ordered to pay was \$11,376,500, ie less than that quoted in the letter.

The letter did not mention that the Order stated that because Bracco had discontinued advertisements GE Healthcare had alleged to be false in its counterclaim, GE Healthcare was not entitled to injunctive relief. Nor did it give any indication of the relevance of the US action to the UK. The letter did not state where or when GE Healthcare had disseminated the misleading claims.

The Panel considered that by not giving accurate or sufficient information about the detail of the legal

case, Order and the counterclaim the letter was misleading and unfair. A breach of Clause 7.2 was ruled. The Panel considered that the misleading account disparaged GE Healthcare and a breach of Clause 8.1 was ruled. The Panel considered that high standards had not been maintained and thus ruled a breach of Clause 9.1.

The Panel was concerned that misleading information had been supplied by Bracco in a letter which specifically referred to Bracco's commitment to providing scientific information in a thorough, fair and balanced manner. The Panel considered that the letter would give recipients a poor view of the industry but on balance did not consider the circumstances warranted a ruling of a breach of Clause 2 which was a sign of particular censure and reserved for such use.

Complaint received **10 June 2009**

Case completed **14 July 2009**
