

DOCTOR v ROCHE and CHUGAI PHARMA

Journal supplement

A doctor complained about a supplement, 'Rheumatoid arthritis – from policy to action', that appeared in the Health Service Journal (HSJ), 10 December 2009. The back cover of the supplement carried an advertisement for RoActemara (tocilizumab) which was co-promoted by Roche and Chugai.

The complainant noted that, as stated in the supplement, Roche and Chugai had sponsored its development and distribution, and checked it for factual accuracy; they had also paid the author of the articles via the journal. The complainant alleged that the supplement, which was stapled inside the journal, was completely indistinguishable from independent editorial matter. The supplement used exactly the same house style as the HSJ and so readers who opened the journal at one of the supplement's pages would not know that it was promotional material.

The detailed response from Roche and Chugai is given below.

The Panel noted that Roche and Chugai had paid for the writing, printing and distribution of the supplement. The supplement was intended to be provided as a separate item but was instead stapled into the centre of the HSJ.

The Panel noted that the HSJ was written in four columns per page and each left hand page was colour coded in the top left hand corner to denote the section of the journal ie news (red), opinion (blue) etc. The supplement was presented in three columns per page and there was no colour coding of the left hand pages. The Panel thus did not consider that the supplement used exactly the same house style as the HSJ; it was not completely indistinguishable from the journal's independent editorial matter. That a sponsored supplement was bound in rather than loose did not *ipso facto* mean that its nature was disguised. The overall impression given to readers was the most relevant factor. A clear declaration of sponsorship appeared on the front cover. Further details were also provided on the inside front cover, beneath the index. The Panel considered that the supplement could be distinguished from the independent editorial matter and so was not disguised in that regard; no breach of the Code was ruled.

Upon appeal by the complainant, the Appeal Board noted that contrary to verbal information provided to Roche by its communications agency, the supplement had been stapled into the journal

and not produced as a physically separate item as intended. In the Appeal Board's view this fundamentally changed the way in which readers would view it; many would flick through the journal, often from back to front, and might thus read one of the inside pages of the supplement without first seeing the declarations of sponsorship on what should have been the front cover and front inside cover. In the Appeal Board's view the inside pages of the supplement were not sufficiently dissimilar to the standard editorial text of the journal and so in that regard their nature was disguised. A breach of the Code was ruled as acknowledged by the companies.

A doctor complained about a 12 page rheumatology supplement, 'Rheumatoid arthritis – from policy to action', (ref ACTE00150W) that appeared in the Health Service Journal (HSJ), 10 December 2009. The back cover of the supplement carried an advertisement for RoActemara (tocilizumab) which was co-promoted by Roche Products Ltd and Chugai Pharma Europe Ltd.

COMPLAINT

The complainant noted that as stated on the inside front page of the supplement, the development and distribution of the supplement was sponsored, and checked for factual accuracy, by Roche and Chugai. It was further stated that the author of the articles was paid by Roche and Chugai via the Health Service Journal. The complainant noted that the supplementary information to Clause 12.1 of the Code stated that 'When a company pays for, or otherwise secures or arranges the publication of promotional material in journals, such material must not resemble independent editorial matter'. The complainant alleged that the supplement, which was stapled inside the journal, was completely indistinguishable from independent editorial matter. The supplement used exactly the same house style as the HSJ and so readers who opened the journal at one of the pages of the supplement would be unaware that it was promotional material.

When writing to Roche and Chugai the Authority asked them to respond in relation to the requirements of Clause 12.1 of the Code.

RESPONSE

Roche submitted a joint response on behalf of both companies.

The companies accepted the complainant's allegation of a breach of Clause 12.1. However,

whilst the companies recognised the complainant's concerns they stated that the intent was for the supplement to be an educational piece to provide the HSJ readers with an overview of rheumatoid arthritis policy through 2009.

The companies submitted that they had been verbally informed, by the communications agency facilitating the supplement, that the supplement would be separate ie not physically attached within the HSJ. There was no intention of disguising the supplement within the body content of the journal as the companies' sponsorship declaration was clear on both the outside and inside front cover in accordance with Clause 9.10.

The companies submitted that they had paid for the writing, printing and distribution of the supplement with full editorial control, with the author provided by the HSJ. Due to the full editorial control, and the inclusion of an advertisement, the supplement was certified in accordance with the companies' processes.

Although this was an inadvertent mistake, the companies submitted that they took any breach of the Code very seriously and were considering what action was required to ensure that this did not happen again.

PANEL RULING

The Panel noted that Roche and Chugai had paid for the writing, printing and distribution of the supplement. The supplement was intended to be provided as a separate item but was instead stapled into the centre of the HSJ.

The Panel noted that the text of the HSJ itself was written in four columns per page and each left hand page was colour coded in the top left hand corner to denote the section of the journal ie news (red), opinion (blue) etc. The text of the supplement in question was presented in three columns per page and there was no colour coding of the left hand pages. In that regard the Panel did not consider that the supplement used exactly the same house style as the HSJ as alleged; it was not completely indistinguishable from the journal's independent editorial matter. That a sponsored supplement was bound in rather than loose did not ipso facto mean that its nature was disguised. The overall impression given to readers was the most relevant factor. A clear declaration of sponsorship appeared on the front cover. Further details were also provided on the inside front cover, beneath the index. The Panel noted its comments above about the differences between the journal's house style and the supplement in question. The Panel considered that the appearance of the supplement was distinguishable from the independent editorial matter and the material was not disguised in that regard; no breach of Clause 12.1 was ruled.

APPEAL BY THE COMPLAINANT

The complainant submitted that the Panel had applied too narrow a definition of the term 'resemble' in this case. The complainant alleged that the rheumatology supplement was not distinguishable from the independent editorial content of the journal, in breach of Clause 12.1. The complainant noted that the companies agreed that they had breached the Code in that regard.

The complainant noted that the Panel had found some stylistic differences between the supplement and the rest of the journal ie that the supplement was written in 3-column format whereas the journal was in 4-column format and that the supplement lacked a coloured tab in the top left corner of the left-hand pages, which was present in the rest of the journal. Because of these two differences, the Panel correctly stated that the supplement was not completely 'indistinguishable' from the journal's independent editorial matter, since the supplement did not use 'exactly the same house style' as the rest of the journal. On this basis the Panel had ruled no breach of Clause 12.1. However, the wording of the supplementary information to Clause 12.1 stated that, 'When a company pays for, or otherwise secures or arranges the publication of promotional material in journals, such material must not resemble independent editorial matter'. The complainant submitted that the word 'resemble' was key. The Code did not stipulate that 'such material must not use exactly the same house style as the independent content'. Such a standard would be too undemanding since it could be met, for example, by using font size 11.5 rather than size 12. Rather, the Code stipulated a more stringent standard, namely that the content of the supplement must not 'resemble' independent editorial content. In the supplement in question, the colour scheme, typeface, graphics, spacing, justification, design of the text boxes and font size were identical to those of the rest of the journal. Moreover, until they were noted by the Panel, the complainant had not noticed the different number of columns nor the coloured tabs on the left hand pages - this despite being a regular subscriber to the Health Service Journal. Therefore the rheumatology supplement strongly resembled the independent editorial content. A typical reader who leafed through the journal and opened it on any of the inside pages of the supplement would not have noticed these subtle differences to set it apart from the independent editorial content. These inside pages, which included several self-contained 2-page articles, showed no indication that this was anything other than independent editorial content.

The complainant agreed with the Panel that the fact that a supplement was bound into a journal did not, ipso facto, imply that its nature was disguised. However, in such circumstances, the companies concerned needed to go out of their way to ensure that the supplement was distinct from the rest of the journal. This could be achieved, for example by using a completely different typeface (eg a serif font

vs sans-serif) and by including 'SPONSORED SUPPLEMENT' in bold type at the top of every page. To do anything less risked either misleading readers or raising a suspicion of an intent to deceive.

In summary the complainant alleged that the promotional material resembled independent editorial matter in breach of Clause 12.1.

COMMENTS FROM ROCHE AND CHUGAI

Roche submitted a joint response on behalf of both companies.

The companies noted in their response above that they had accepted the alleged breach of Clause 12.1 as the supplement was stapled into the HSJ and was not a separate item as originally intended and advised by their communications agency.

The companies reiterated that: the supplement was developed for educational purposes only; as such, the educational content was non-promotional and gave no commercial advantage to Roche and clear declarations of sponsorship were included to ensure the companies' involvement was not disguised.

FINAL COMMENTS FROM THE COMPLAINANT

The complainant had no further comments.

APPEAL BOARD RULING

The Appeal Board noted that contrary to verbal information provided to Roche by its communications agency, regarding the presentation of the supplement, the supplement had been stapled into the centre of the HSJ and not produced as a physically separate item as intended. In the Appeal Board's view this fundamentally changed the way in which readers would view the supplement. The Appeal Board noted that many readers would flick through the journal, often from back to front, and might thus read one of the inside pages of the supplement without first seeing the declarations of sponsorship on what should have been the front cover and front inside cover. In the Appeal Board's view the inside pages of the supplement were not sufficiently dissimilar to the standard editorial text of the journal and so in that regard their nature was disguised. A breach of Clause 12.1 was ruled as acknowledged by the companies. The appeal was successful.

Complaint received **15 December 2009**

Case completed **25 March 2010**