

GENERAL PRACTITIONER v NAPP

Email promotion of Flutiform

A general practitioner complained that Napp had sent an advertisement for Flutiform (fluticasone/formoterol) to his NHS email address. The complainant did not believe that a publicly funded email network for health professionals should be used for this purpose; doctors would be unduly influenced by this inappropriate advertising and their already overloaded in-trays would be unusable if they got swamped with unauthorised spam.

The detailed response from Napp is given below.

The Panel noted that the Code prohibited the use of email for promotional purposes except with the prior permission of the recipient. Whilst the material at issue had not been sent directly by Napp 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 when obtaining permission from health professionals to add them to their database, [and thus contact them through their NHS email account] the agency had made it clear to them that it would, from time to time, email information which might include, *inter alia*, pharmaceutical promotional material. It was clear that the company intended to email promotional material from pharmaceutical companies. The Panel noted Napp's submission that the complainant had been on the database for at least ten years and he had been contracted within the last year to confirm and update his details. During the reregistration process the complainant was made aware that he would receive promotional emails from time to time. The complainant had not responded to the Authority's request to comment on this information. On the material available, the Panel considered that there was evidence that the complainant had agreed to receive promotional material by email and it thus ruled no breaches of the Code.

A general practitioner, complained about the promotion of Flutiform (fluticasone/formoterol) by Napp Pharmaceuticals Limited.

COMPLAINT

The complainant objected to a Flutiform advertisement from Napp which he had received on his NHS email, because he did not believe a publically funded email network for professionals should be infiltrated in this way and because it was in breach of the Code.

The complainant would like action taken over this as otherwise doctors would be unduly influenced by this inappropriate advertising and their already overloaded in-trays would become unusable if they got swamped with unauthorised spam.

When writing to Napp, the Authority asked it to respond in relation to Clauses 9.1 and 9.9 of the Code.

RESPONSE

Napp stated that the complainant had provided prior permission to receive promotional emails into his NHS email account from a third party agency (Clause 9.9). In addition, and in line with the supplementary information to Clause 9.9, the promotional email received by the complainant informed him how to unsubscribe. Napp believed that it had maintained high standards at all times (Clause 9.1).

Napp submitted that it contracted the agency to send the digital Flutiform advertisement at issue. The advertisement (ref UK/FLUT-12106) was certified in October 2012.

The agency provided a free resource for medical professionals employed in the NHS and private healthcare sectors in the UK. It was completely independent of the Department of Health and the NHS. Registered users had free access to information on the site, including information about prescription only medicines and medical devices, which could only be directed and accessed by health professionals who prescribed these products. The site included the latest information on the management of specific disease areas and medical conditions in an interactive format, including live online presentations and webcasts on the latest medical procedures. Users could only register via their NHS email account to prevent access by the public.

When completing their online registration form, a statement informed the health professional that completion of the form confirmed compliance with the terms and conditions which were accessible as part of the online registration process and were also included as part of email confirmation of continuing registration. These terms and conditions included the opt in policy (provided), which stated clearly that information provided might include pharmaceutical promotional materials and that users might opt out of receiving such materials without losing the remainder of the information service.

Further, approximately each year, every health professional user was contacted by the agency to confirm and update (if required) the information that they held. During this conversation, the health professional was reminded that they had consented to receive emails from the agency or its associated/affiliated companies, which included promotional information from pharmaceutical companies.

Napp submitted that the complainant had been registered with the free resource for at least ten years and the last time he was contacted was February 2012. The opt out rate was 0.25% so that it was not difficult to keep up-to-date with unsubscribers and there was no record of this being so.

The complainant re-registered electronically with the agency on 2 February 2012:

During the registration process the complainant was made aware that he would receive promotional emails from time to time.

The email advertisement for Flutiform informed the recipient how to unsubscribe to receiving further promotional emails, as required by the supplementary information to Clause 9.9.

In response to a request to provide further information setting out exactly what the complainant saw when completing the online registration, Napp submitted that the complainant had first registered with the free resource ten years ago. Details of the process for the complainant were provided. Step 1 was referred to as telephone contact. The caller would mention that the agency would from time to time send information by email about its associated/affiliated companies and their clients' products and services, which might include updates on specialist services, conferences and seminars, diagnostic, medical and pharmaceutical promotional materials as well as official information. This was also included in a follow up email (step 2). Step 3 was completion of the online registration which stated that 'completion of this online registration form confirms compliance with our terms and conditions'. Following submission of this form the complainant would receive confirmation that he was now a registered user of the free resource.

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 Napp 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 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, email information about associated/affiliated companies, its clients and its clients' products and services 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 email promotional material from pharmaceutical companies. The Panel noted the information provided by Napp regarding the inclusion of the complainant's details on the database. The complainant had not responded to the Authority's request to comment on this information. On the material available, the Panel considered that there was evidence that the complainant had agreed to receive promotional material by email and it thus ruled no breach of Clause 9.9. It consequently ruled no breach of Clause 9.1.

Complaint received	23 November 2012
Case completed	20 March 2013