

# ANONYMOUS, NON-CONTACTABLE v MYLAN

## Exhibition stand design and hospitality

An anonymous, non-contactable complainant alleged that the majority of exhibition stands at a European congress held in London in 2015 were extremely extravagant and in poor taste considering today's economic climate. Three examples were given including that Mylan had an ice-cream stand. The complainant stated that there was a real party atmosphere rather than a true scientific congress atmosphere which he/she expected in such stands.

The detailed response from Mylan is given below.

The PMCPA's guidance on items at conferences and exhibition stands stated that the Code allowed the provision of hospitality at scientific meetings including from an exhibition stand; hospitality provided from an exhibition stand must be subsistence only and not such as to induce a delegate to visit the stand eg no more than non-alcoholic beverages, such as tea, coffee and water, and very limited quantities of sweets, biscuits or fruit. In the Authority's view hot dogs, ice-cream, waffles, etc should not be provided at exhibition stands.

The Panel noted Mylan's submission that frozen yoghurt rather than ice-cream was available from its stand. It was chosen to provide a healthy and balanced alternative to sweets or biscuits and the costs did not exceed the level which the recipients would normally adopt when paying for themselves. The Panel noted the cost per serving and the number of servings over the four day period.

The Panel considered that it was important for a company to be mindful of the impression created by its activities; perception and cost were important factors when deciding whether subsistence was appropriate. In the Panel's view, the availability of frozen yoghurt from the Mylan stand went beyond the provision of subsistence and was contrary to the requirements of the Code and a breach was ruled. High standards had not been maintained and a further breach was ruled.

The Panel noted that the complainant had made a general allegation that the majority of the stands at the congress were extravagant. The complainant, who had the burden of proving his/her complaint on the balance of probabilities, had not provided any material to support his/her allegations in this regard; it was not clear from the complaint what aspect of the stands were 'extremely extravagant and in poor taste considering today's economic climate'. As the complainant was non-contactable, it was not possible to obtain more information from him/her. A judgement had to be made on the available evidence. In the Panel's view the complainant had not shown that the Mylan exhibition stand was unacceptable as alleged. No breach of the Code was ruled.

An anonymous, non-contactable complainant who described him/herself as a UK health professional complained about exhibition stands at the European Society of Cardiology (ESC) Congress held in London 29 August – 2 September 2015.

### COMPLAINT

The complainant stated that the majority of the stands at the congress were extremely extravagant and in poor taste considering today's economic climate. It showed that pharmaceutical companies had far too much money to splash around. Three examples were given including that Mylan had an ice-cream stand. According to the complainant, there was a real party atmosphere rather than a true scientific congress atmosphere which would be expected in such stands. The complainant provided photographic evidence of the Mylan stand and queried its acceptability.

When writing to Mylan the Authority asked it to respond in relation to Clauses 9.1, 9.7 and 22.1 of the 2015 Code.

### RESPONSE

Mylan stated that the ESC was an international congress with over 30,000 registered delegates from all over the world and approximately 600 exhibitors.

Mylan was represented by the EPD global cardio metabolic team. The global EPD portfolio fell locally under BGP Products Limited which was currently a member of the ABPI. Mylan submitted that its stand design and all scientific items for distribution were reviewed and approved at both global and local level. The approval of the stand was also provided by the ESC. BGP Products Ltd could not comment on the atmosphere in the congress in general however it strongly disagreed that the Mylan stand had 'a real party atmosphere'.

Mylan noted that the complainant's statement that 'the majority of the stands at the congress were extremely extravagant' was a general comment that did not apply to the Mylan stand which was not 'extremely extravagant'.

Mylan provided a copy of the ESC floor plan which showed Mylan's stand location and size, which it submitted that considering the size of the ESC Congress and the surrounding stands, could be described as small to medium sized. The stand was designed to allow health professionals to engage in an appropriate scientific environment by providing seating to help facilitate scientific discussion between the Mylan international team and congress delegates. Product monographs, summaries of product characteristics (SPCs) and clinical paper

reprints were available on request. The stand was manned by the Mylan international team throughout the congress. The global and local teams ensured the stand environment and format was appropriate for an international congress of the size and magnitude of the ESC.

Mylan submitted that it provided tea and coffee from its stand. Frozen yoghurt, not ice-cream as alleged, was also supplied. The level of hospitality was approved by the global cardio-metabolic team.

The ESC instructed the global team that 'All catering offered within exhibit areas should be ordered from the official stand caterer'. The provision of frozen yoghurt was one of the services listed in the caterer's brochure. The Mylan stand did not have any signage advertising the availability of frozen yoghurt, nor was any frozen yoghurt handed out unsolicited. Congress attendees requested the frozen yoghurt as refreshment from one of the baristas provided by the official stand caterer. Mylan provided details of the cost of the hospitality provided on the stand over 4 full days of the ESC congress which included 4 staff to man the coffee and frozen yoghurt bar.

Mylan submitted that the hospitality provided from its stand, was intended to be subsistence only, no steps were made to induce a delegate to visit the stand. The provision of a frozen yoghurt bar was only taken to provide a healthy and balanced catering offer (vs sweets, or biscuits) for the delegates as per ESC's recommendations. Furthermore the hospitality costs did not exceed the level which the recipients would normally adopt when paying for themselves.

Taking the above into consideration BGP Products Ltd submitted it had not breached Clauses 9.1, 9.7 or 22.1.

#### **PANEL RULING**

The Panel noted that the complainant was anonymous and non-contactable. As stated in the introduction to the Constitution and Procedure, anonymous complaints were accepted and like all complaints, judged on the evidence provided by the parties. Complainants had the burden of proving their complaint on the balance of probabilities. The Panel noted that it was not possible to ask the complainant for further information.

Clause 22.1 stated that hospitality must be strictly limited to the main purpose of the event and must be secondary to the purpose of the meeting ie subsistence only. The level of subsistence offered must be appropriate and not out of proportion to the occasion. Clause 22.1 applied to scientific meetings, promotional meetings, scientific congresses and other such meetings and training. The supplementary information to Clause 22.1 also stated that a useful criterion in determining whether the arrangements for any meeting were acceptable was to apply the question 'Would you and your company be willing to have these arrangements generally known?'. The impression that was created by the arrangements for any meeting must always be kept in mind.

The PMCPA's guidance on items at conferences and exhibition stands stated that the Code allowed the provision of hospitality at scientific meetings and the like and there was no reason why it should not be offered from an exhibition stand. Companies would have to be certain that the hospitality overall complied with the Code and that any hospitality provided from an exhibition stand was subsistence only and not at a level as to induce a delegate to visit the stand. In the Authority's view companies should provide no more than non-alcoholic beverages, such as tea, coffee and water, and very limited quantities of sweets, biscuits or fruit. The Authority advised that it did not consider that hot dogs, ice-cream, waffles, etc should be provided at exhibition stands.

The Panel noted Mylan's submission that frozen yoghurt rather than ice-cream as referred to in the complaint, was available from its stand. According to Mylan, it was one of the services listed in the caterer's brochure mandated by the exhibition organiser and was approved by Mylan's global cardio-metabolic team. It was chosen to provide a healthy and balanced catering alternative to sweets or biscuits for the delegates and the costs did not exceed the level which the recipients would normally adopt when paying for themselves. The Panel noted the cost *per serving* and the number of servings over the four day period.

The Panel considered that it was important for a company to be mindful of the impression created by its activities; perception and cost were important factors when deciding whether subsistence was appropriate. Services available from an exhibition caterer may not be appropriate for use by pharmaceutical companies. In the Panel's view, the availability of frozen yoghurt from the Mylan stand went beyond the provision of subsistence and was contrary to the requirements of Clause 22.1 of the Code. A breach of Clause 22.1 was ruled. High standards had not been maintained. A breach of Clause 9.1 was ruled.

The Panel noted that the complainant had made a general allegation that the majority of the stands at the congress were extravagant and showed that companies had far too much money to splash around. Clause 9.7 stated that extremes of format, size or cost of material must be avoided. The complainant, who had the burden of proving his/her complaint on the balance of probabilities, had not provided any material to support his/her allegations in this regard; it was not clear from the complaint what aspect of the stands were 'extremely extravagant and in poor taste considering today's economic climate'. As the complainant was non-contactable, it was not possible to obtain more information from him/her. A judgement had to be made on the available evidence. In the Panel's view the complainant had not shown that the exhibition stand was unacceptable as alleged. No breach of Clause 9.7 was ruled.

**Complaint received**                      **21 December 2015**

**Case completed**                         **2 March 2016**