

CASE AUTH/2088/1/08

GENERAL PRACTITIONER v ASTRAZENECA

Unsolicited email about Crestor

A general practitioner complained that AstraZeneca had sent him, via an agency, an unsolicited email about Crestor (rosuvastatin) to his NHS email address. This was a working email address, the utility of which would be rapidly degraded by advertising or infomercial emails. The complainant stated that he had not knowingly signed up to receive any information from AstraZeneca or any other pharmaceutical company; it was most unwelcome. The ability to be able to unsubscribe did not in any way excuse the activity.

The Panel noted that the Code prohibited the use of email for promotional purposes except with the prior permission of the recipient. The Panel considered that the email on Crestor was clearly promotional material. Whilst it had not been sent directly by AstraZeneca, 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 also noted that health professionals were told by telephone that the agency would, from time to time, send information by email about its affiliates' products and services which might include updates on specialist services, conferences and seminars, diagnostic, medical, pharmaceutical and promotional materials as well as official information. The text did not make it abundantly clear that the agency intended to send promotional material from pharmaceutical companies; the text referred to pharmaceutical *and* (emphasis added) promotional materials as if the two were wholly separate. Furthermore, the text referred to 'affiliates' of the agency. In the Panel's view pharmaceutical companies were not affiliates of the agency, and would not be seen as such. Pharmaceutical companies would be purchasing a service from the agency. Similar text appeared in the subsequent confirmatory email.

The Panel considered that the email had been unsolicited. There was no evidence to show that the complainant had given prior, fully informed consent to receive by email promotional material from a pharmaceutical company. A breach of the Code was ruled.

A general practitioner complained about an unsolicited email about Crestor (rosuvastatin) received from AstraZeneca UK.

COMPLAINT

The complainant explained that the email was sent to his NHS email address. This was a working email address, the utility of which would be rapidly

degraded by advertising or infomercial emails if the industry took up this practice. The complainant stated that he had not knowingly signed up to receive any information from AstraZeneca or any other pharmaceutical company; it was most unwelcome.

The complainant submitted that if the sending of SPAM emails was not already contrary to the Code then he thought it should be. The complainant was astonished that AstraZeneca allowed its name to be associated with this behaviour as sending SPAM was associated with the seedier side of the Internet and was a practice frowned upon by most reputable organisations which wished to preserve a good name. The ability to be able to unsubscribe did not in any way excuse the activity.

When writing to AstraZeneca, the Authority asked it to respond to Clause 9.9 of the Code.

RESPONSE

AstraZeneca submitted that it had commissioned an agency to distribute an educational email on hyperlipidaemia to primary care physicians who had subscribed to the agency's services. The agency sent regular emails containing information on products and services on behalf of several government bodies and the pharmaceutical industry. The commission by AstraZeneca was a one-off agreement and there were no additional plans to re-send the material.

AstraZeneca submitted that the agency operated an opt-in process for receipt of email. Health professionals were initially telephoned by the agency which outlined who it was, what it did and the services offered, explaining that from time to time it might send emails about affiliated products and services including pharmaceutical promotional material.

The agency asked if the health professional was interested in receiving this service. If so they were asked to provide their email address.

The agency then sent a confirmatory email containing the health professional's unique access code in order to access the website. This email reiterated the information given in the initial telephone call and specifically highlighted that the agency would send 'from time to time information by email about our affiliates' products and services which may include updates on specialist services, conferences and seminars, diagnostic, medical, pharmaceutical and promotional materials as well as official information'. The health professional was then required to log in and enter their contact details, before the service was finally activated.

AstraZeneca had confirmed the process with the

agency before approving the material in question, and was assured that the material would be sent to 18,000 GPs who had opted-in to the service. This service also offered an opt-out facility to allow those who no longer wished to receive such material to be removed from the subscribing list. This facility was on the front page of the material. A copy of a letter from the agency describing the validation process and services was provided together with the telephone transcript and the confirmation email. According to the agency, the complainant was initially contacted in September 2007, at which time he confirmed his contact information, including his email address, and subsequently received a follow-up confirmatory email as outlined above. He had been included in a number of communications from the agency since September 2007.

In summary, AstraZeneca submitted that it was satisfied that the process and procedures as described above were in accordance with both the letter and the spirit of the Code and that the email distribution was from a genuine, validated, opt-in database.

AstraZeneca understood the complainant's frustration and annoyance on receiving this email. Nevertheless on this particular occasion AstraZeneca did not believe that this was an unsolicited email.

PANEL MINUTE

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 on Crestor was clearly promotional material. Whilst it had not been sent directly by AstraZeneca, 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 also noted the script used on the telephone: health professionals were told that the agency would, from time to time, send information by email about its affiliates' products and services which might include updates on specialist services, conferences and seminars, diagnostic, medical, pharmaceutical and promotional materials as well as official information. The text did not make it abundantly clear that the agency intended to send promotional material from pharmaceutical companies; the text referred to pharmaceutical *and* (emphasis added) promotional materials as if the two were wholly separate. Furthermore, the text referred to 'affiliates' of the agency. In the Panel's view pharmaceutical companies were not affiliates of the agency, and would not be seen as such. Pharmaceutical companies would be purchasing a service from the agency. Similar text appeared in the subsequent confirmatory email.

The Panel considered that the email had been unsolicited. There was no evidence to show that the complainant had given prior, fully informed, consent to receive by email promotional material from a pharmaceutical company. A breach of Clause 9.9 was ruled.

Complaint received	25 January 2008
Case completed	29 February 2008
