

# GENERAL PRACTITIONER v MERCK SHARP & DOHME

## Maxalt email

A general practitioner complained about an email, sent 'In association with MSD', from eMIMS which announced the availability of a new online presentation for doctors containing the latest information about Maxalt (rizatriptan) which was available via a direct link. 'eMIMS MAXALT Presentation: appropriate use in migraine' appeared as a banner across the top of the first page of the email.

The complainant alleged that the email was in breach of the Code because the most prominent display of the name Maxalt, in the banner, was not accompanied by the non-proprietary name.

The Panel noted Merck Sharp & Dohme's submission that transmission of the email was arranged via a third party. The company had approved its input into the email but had not known that introductory text (including the banner) would be added. Merck Sharp & Dohme had not seen the final email. Nonetheless the Panel considered that Merck Sharp Dohme was responsible for the whole of the email which had been arranged on its behalf and would not have been sent without its support. The email promoted Merck Sharp & Dohme's product Maxalt.

The Panel considered that the most prominent display of the brand name was in the banner; the non-proprietary name did not appear immediately adjacent to this display of the brand name. A breach of the Code was ruled.

A general practitioner complained about an email he had received from eMIMS which announced the availability of a new online presentation for doctors containing the latest information about Maxalt (rizatriptan) which was available via a direct link. 'eMIMS MAXALT Presentation: appropriate use in migraine' appeared as a banner across the top of the email. The email had been sent by the editor and director and the editor; below their names appeared the phrase 'In association with MSD', with the company logo. Below this more information was given, including the link to the online presentation and the prescribing information followed by mention of a publications company and instructions for unsubscribing from the mailing list. The email was dated 27 January 2006.

### COMPLAINT

The complainant noted that the most prominent display of the name Maxalt occurred at the top of the first page, in the banner, and this was not accompanied by the non-proprietary name. There was a mention of Maxalt to the bottom of the first page which was accompanied by the non-proprietary name. A breach of the Code was alleged.

Merck Sharp & Dohme was asked to respond in relation to Clause 4.3 of the Code.

### RESPONSE

Merck Sharp & Dohme stated that the email was sent

to health professionals to tell them about an interactive promotional website (edetail) for Maxalt, indicated for the management of the headache phase of migraine attacks. The email was in three parts.

Part 1 was the brief introductory text from the start through to the names of the editor and the director and the MSD logo.

Part 2 was the text that immediately followed the introduction, ie from 'Learn more about Maxalt (rizatriptan) .....' through to the end of the prescribing information.

Part 3 ran from '© Copyright' through to the end of the email.

Merck Sharp & Dohme explained that it had discussed the edetail project with an agency which had numerous media partners, including a publications company. Through its collaborations with such partners, emails were sent on its behalf to various distribution lists. It was through its partnership with the publications company that the item in question was released.

When the publications company released such communications, (Merck Sharp & Dohme since discovered) a standard section introducing the pharmaceutical company's text was attached so as to reassure the intended audience that the material they were about to read was genuine. In the item in question the section attached was that which was referred to as part 1 above, ie that part of the email containing the specific portion referred to by the complainant.

Thus three parties were involved in the distribution of the email, ie Merck Sharp & Dohme, the agency and the publications company. Merck Sharp & Dohme had a contract with the agency, which in turn had a contract with the publications company. At no time until receipt of the complaint and the subsequent investigation into it was Merck Sharp & Dohme aware of the publications company's intent to insert part 1 and part 3 into the emails sent on Merck Sharp & Dohme's behalf.

As set out above, the text referred to as part 2 above, was the marketing material for the edetail that Merck Sharp & Dohme had developed with the agency and, as such, was the material formally approved by Merck Sharp & Dohme in September 2005. In this approved material, the most prominent mention of Maxalt was at the beginning of the text. Merck Sharp & Dohme was certain that there was no breakdown in its approval process for the material developed with the agency and was comfortable that this material satisfied the requirements of the 2006 Code.

It was clear that, without Merck Sharp & Dohme's knowledge, the agency had instructed the publications company to manage the distribution of

the material on its behalf. By adding its own top section to the approved Merck Sharp & Dohme text, the publications company had created a situation in which the most prominent mention of Maxalt could now arguably be that contained within its own text, previously unseen by Merck Sharp & Dohme. It was through this action that the complaint had arisen. The explanation and culpability had been acknowledged and accepted in full by the agency. Merck Sharp & Dohme respectfully submitted that it was not culpable for the error.

#### **PANEL RULING**

This case was considered under the 2006 Code.

The Panel noted Clause 1.2 of the Code which referred to promotion being any activity undertaken by a pharmaceutical company or with its authority which promoted the prescription, supply, sale or administration of its medicines. The Panel noted the submission from Merck Sharp & Dohme that the

company was only responsible for part of the email and that it had not known about the publications company's involvement and had not seen the final form of the email. Nonetheless, the Panel considered that Merck Sharp & Dohme was responsible for the whole of the email which had been arranged on its behalf and would not have been sent without its support. The email promoted Merck Sharp & Dohme's product Maxalt.

The Panel considered that the most prominent display of the brand name was in the banner heading to the email. The non-proprietary name did not appear immediately adjacent to the most prominent display of the brand name. Thus the Panel ruled a breach of Clause 4.3 of the Code. (There were no differences between the 2003 Code and the 2006 Code with regard to Clause 4.3.)

**Complaint received**                      **6 February 2006**

**Case completed**                              **6 March 2006**