

MEMBER OF THE PUBLIC v BIOGEN IDEC

Tysabri on-line advertisement

A member of the public complained about an advertisement for Tysabri (natalizumab) published in the online version of The Telegraph newspaper. Tysabri was one of Biogen Idec UK's medicines. The complainant stated that it was strange that this prescription only medicine (POM) was advertised to the public. A screenshot showing the advertisement was provided.

The detailed response from Biogen Idec is given below.

Following Biogen Idec's response that the advertisement was from the US and not intended for a UK audience, the complainant was asked for further information. The complainant could not think of any website that would lead to receipt of the advertisement while reading a UK newspaper online. The complainant was British and resided in the UK.

The Panel noted that the material at issue was a retargeted advertisement placed by Biogen Idec's US affiliate and that Biogen Idec in the UK had no role in the creation or publication of the advertisement. The Panel noted that in accordance with an established principle under the Code, Biogen Idec UK was responsible for the acts and omissions of its US affiliate that came within the scope of the Code.

The Panel noted that the complainant, a UK resident, had seen an advertisement for a POM published on the UK website of a British daily newspaper. The Panel considered that the link to the UK was such that the matter came within the scope of the Code.

The Panel noted that an internet protocol (IP) address was the unique number assigned to every computer or connection to the internet. Biogen Idec submitted that the complainant must have seen the Tysabri advertisement on a US site before she could be served the same advertisement on another site, in this case The Telegraph online. According to Biogen Idec the complainant would have had a US IP address or server.

The Panel also queried whether, irrespective of its comments above about retargeting, The Telegraph online was an appropriate forum on which to re-serve a targeted US advertisement for a POM. Both its readership and content were relevant. The Telegraph was a British newspaper which published UK and global news from a UK perspective. The Panel noted that both within Western Europe and globally in June 2011 the

largest single absolute number of hits to the UK website was from the UK. In June 2011 48% of hits were from the UK and 23% were from the US. The Panel noted Biogen Idec's submission that the retargeting criteria that qualified The Telegraph as a suitable site for US based IP address users were the type of audience the site catered for, overall content and demographics.

The complainant, a UK resident, had seen a US advertisement for a POM on a website for a UK daily newspaper. The complainant did not know her IP address. The Panel noted its comments above about retargeting. Overall the Panel considered that retargeting did not appear to be sufficiently sophisticated to ensure compliance with the Code. The Panel considered on balance that a user's IP address or location of the user's server was not a sufficiently precise surrogate for the user's status in the UK so as to ensure not promoting a POM to the public. The Panel considered that irrespective of whether the complainant had a UK or US IP address, the publication of the retargeted US Tysabri advertisement in The Telegraph on line as seen by the complainant constituted promotion of a POM to the public. A breach of the Code was ruled. High standards had not been maintained. A breach of the Code was ruled. These rulings were appealed by Biogen Idec.

Overall, the Panel did not consider that the circumstances warranted a ruling of a breach of Clause 2 which was reserved to indicate particular censure. Some attempt, albeit unsatisfactory, had been made to ensure a link to a US audience. No breach of Clause 2 was ruled. This ruling was not appealed.

The Appeal Board noted Biogen Idec's submission that advertisement retargeting ie reserving an internet user with an advertisement on a different website from that on which they had viewed it before, was based on geographic-specific IP addresses. This type of retargeting was standard for the internet as a whole and was how Biogen Idec US could retarget its advertisements only to those with a US IP address. The Telegraph website, telegraph.co.uk, (when accessed via a US IP address) was included in the retargeting package purchased by Biogen Idec US.

The Appeal Board noted the submission that the Internet Service Provider (ISP), the means by which access to the internet was provided, could not determine the user's geographical location. It was possible to connect to a US IP address via a UK ISP.

The Appeal Board noted Biogen Idec's submission that, with 99.9% certainty, to have seen the advertisement at issue the complainant would have had to have first seen it on the Tysabri.com website via a US IP address. Only then would the complainant have been retargeted with the advertisement on The Telegraph website when this was also accessed via the same US IP address.

There appeared to be inconsistencies between the written submissions and Biogen Idec's presentation at the appeal as to whether the reader had to visit a specific US site, previously responded to a US Tysabri advertisement or merely have seen a US Tysabri advertisement.

At the appeal hearing Biogen Idec's representatives stated that the advertisement in question could only be viewed if the reader's IP address had been 'retargeted'. In order for this to happen two conditions had to be met: firstly the reader must voluntarily have accessed a US Tysabri website via a US IP address and secondly the reader must have then subsequently viewed another website using the same US IP address. The slide stated that thus the advertisement could only be seen if the reader had viewed at least two US websites (including specifically the Tysabri US website) using a US IP address. This was described as a core element of Biogen Idec's US 'media buy' package for this activity.

The Appeal Board further noted from Biogen Idec's submission that it would expect the majority of internet users in the UK to have a UK IP address. Exceptions might include those who worked for a US company and accessed the internet via their employer's internet connection or those who had installed specialist software. The complainant had not stated that either of these applied.

The Appeal Board considered that it was confusing that an advertisement for a POM was linked to a .co.uk website as it would appear to some readers (albeit those with US IP addresses) that the advertisement was a part of the .co.uk website when in fact that was not so.

The Appeal Board considered that advertising POMs to the public was a serious matter. However the complainant had the burden of proving his/her complaint on the balance of probabilities and in that regard had provided limited information and had not confirmed his/her IP address.

The Appeal Board considered that the complainant had not established his/her case on the balance of probabilities and thus ruled no breach of the Code. The Appeal Board did not consider that Biogen Idec had failed to maintain high standards. No breach of the Code was ruled. The appeal on both points was successful.

A member of the public complained about an advertisement for Tysabri (natalizumab), a prescription only medicine, published in the online version of The Telegraph (www.telegraph.co.uk) on 24 June 2011. Tysabri was one of Biogen Idec UK Limited's medicines.

COMPLAINT

The complainant stated that it was strange that this prescription only medicine was advertised to the public and alleged breaches of Clauses 2, 9.1 and 22.1. The complainant provided a screenshot of the page in question.

RESPONSE

Biogen Idec stated that the UK affiliate did not promote prescription only medicines to the public. The advertisement image sent by the complainant was of poor quality, however based on the wording deciphered from the indication and important safety information from the advertisement Biogen Idec confirmed it was produced in the US, where it was advertised to the public in accordance with local law. It was not intended for a UK audience. It was not created nor placed on the internet by Biogen Idec UK. Given this it did not have copies of certification or references to provide, and the UK summary of product characteristics was not applicable to US promotional material.

Biogen Idec UK contacted The Telegraph online advertising department to ask for clarification as to whether geographical location determined which advertisements could be viewed online. It confirmed that advertisement targeting was based on internet protocol (IP) address or server location. Biogen Idec understood that the IP address was a unique number assigned to every computer or connection to the internet. The numbers were grouped by geographical region. UK targeted advertisements could only be seen from a UK IP address or server. Similarly, US targeted advertisements could only be seen from a US IP address or server. Biogen Idec was unable to locate the advertisement in question when it accessed the newspaper website and the relevant page from a UK IP address or from a UK internet service provider.

The Telegraph website provided media purchasing inventory to a US company that specialised in media audience targeting platforms. This company was one of the service providers of Biogen Idec's US affiliate. Consumers had to have seen the Tysabri advertisement on a US site before they could be served the same advertisement on another network site targeted by the media audience targeting service (a method known as 'retargeting'). Biogen Idec's media buy for this was a US only initiative. The US media audience targeting platform service provider confirmed that the complainant who saw the Tysabri banner advertisement on www.telegraph.co.uk would have had a US IP address. The service provider also

confirmed that 99.9% of its retargeting activities had a US IP address (100% was impossible to claim due to the possibility of computer registration error).

Biogen Idec stated that if, notwithstanding the accessibility of web content as described above, the complainant asserted that he/she did view the website page from a UK server or IP address, evidence would be needed to support this. The complainant cited breaches of Clauses 2, 9.1 and 22.1 of the Code. To the extent that the advertisement was viewed from the US or via a non-UK server or IP address, Biogen Idec's view was that the Code was not intended to cover legitimate extra-territorial promotional activities by non-UK entities who were not within the jurisdiction of the Code and whose activities were not intended to be directed or routed to a UK audience under Clause 1.1.

In response to a request for further information from the Panel, Biogen Idec stated that its US affiliate confirmed that the retargeting criteria which qualified The Telegraph as a suitable site for advertising online was based on the fact that the site was aligned to Tysabri inventory quality standards (type of audience the site catered for, overall content and demographics). Fulfilment of these criteria made the site a suitable candidate for US-based IP address users. Using these standards, retargeting was based on data provided by the third party retargeting company (website details were provided). The retargeting companies service was used in addition to Biogen Idec's US affiliate's advertising agency's own internal proprietary data warehouse.

Biogen Idec confirmed that viewing or being served a Tysabri advertisement on The Telegraph website could only be done via a US IP address due to the US-only campaign specifications. It confirmed that for this retargeting to occur, one must have previously been exposed to a Tysabri advertisement whilst being on a US server or IP address.

Biogen Idec noted out that The Telegraph online, although a UK newspaper, had global readership. Based on information provided by The Telegraph, approximately 23% of the hits to its website in June 2011 were from the US. This constituted the majority (44%) of hits received excluding the UK.

FURTHER INFORMATION FROM THE COMPLAINANT

In response to a request for further information about whether the computer on which the complainant saw the advertisement had a US IP address and whether the complainant or other person using the computer could recall seeing the advertisement previously on a US site the complainant stated that she had no idea and that she had used her home computer. The complainant explained that she had used the UK Google site but did not use the computer for much other than emails and keeping up with the news. The

complainant could not think of any website used that would lead her to receiving the advertisement while reading a UK newspaper online. The complainant was British and resided in the UK.

PANEL RULING

The Panel noted that the complainant, a British resident, had seen a US advertisement for Biogen Idec's prescription only medicine Tysabri on the on-line version of The Telegraph. The Panel noted that Clause 22.1 prohibited the promotion of a prescription only medicine to the public. The Code reflected UK and European law in this regard. Clause 22.1 and its supplementary information was silent on matters of nationality.

The Panel noted that the material at issue was a retargeted advertisement placed by Biogen Idec's US affiliate and that Biogen Idec in the UK had no role in the creation or publication of the advertisement. The Panel did not accept the company's submission that the Code was not intended to cover legitimate extra-territorial promotional activities by non-UK entities who were not within the jurisdiction of the Code and whose activities were not intended to be directed or routed to a UK audience under Clause 1.1. The position was not so simple. The Panel noted that it was an established principle under the Code that UK companies were responsible for the acts/omissions of their overseas affiliates that came within the scope of the Code. If it were otherwise, UK companies would be able to rely on such acts and omissions as a means of circumventing the requirements of the Code. Biogen Idec UK was thus responsible for the acts and omissions of its US affiliate that came within the scope of the Code.

The Panel noted that the complainant, a UK resident, had seen an advertisement for a prescription only medicine published on the UK website of a British daily newspaper. The Panel noted Biogen Idec's submission about the newspaper's readership. The Panel considered that the link to the UK was such that the matter came within the scope of the Code.

The Panel noted that the IP address was the unique number assigned to every computer or connection to the internet. Biogen Idec submitted that the complainant must have seen the Tysabri advertisement on a US site before she could be served the same Tysabri advertisement on another site, in this case The Telegraph online. According to Biogen Idec the complainant would have had a US IP address or server.

The Panel noted that the complainant did not know what her IP address was. Nonetheless, irrespective of her IP address, she had seen a US advertisement for a prescription only medicine on a UK website and provided a screenshot copy of it.

The Panel noted that retargeting was a US initiative. The retargeting service and data was provided by a

third party; a link to its website was provided although Biogen Idec had not highlighted any particular part of it. According to the third party's website its service allowed companies to automatically target content and messages with the highest degree of data depth available based on user IP addresses. It also referred to data at postcode level. The page on geo-targeted online advertising explained that advertisers could geo-target to city level (IP city) worldwide and incorporate other parameters. It was not entirely clear which element of the service had actually been used by Biogen Idec's US affiliate. In addition, the US affiliate's advertising agency's internal proprietary data was used for retargeting. The Panel had no information about the retargeting parameters used by the affiliate's advertising agency. Biogen Idec's response only referred to a US IP address or a US server. It did not appear that retargeting had taken place at any greater depth.

The Panel queried whether retargeting at the level used by Biogen Idec's US affiliate was sufficiently sophisticated to ensure compliance with the Code which prohibited the advertising of prescription only medicines to the public.

The Panel also queried whether, irrespective of its comments above about retargeting, The Telegraph online was an appropriate forum on which to reserve a targeted US advertisement for a prescription only medicine. Both its readership and content were relevant. The Telegraph was a British newspaper which published UK and global news from a UK perspective. The Panel noted Biogen Idec's submission about its global readership and percentage of US hits. The Panel noted that both within Western Europe and globally in June 2011 the largest single absolute number of hits to the UK website was from the UK. In June 2011 48% of hits were from the UK and 23% were from the US. The Panel noted Biogen Idec's submission that the retargeting criteria that qualified The Telegraph as a suitable site for US based IP address users were the type of audience the site catered for, overall content and demographics.

The complainant, a UK resident, had seen a US advertisement for a prescription only medicine on a website for a UK daily newspaper. The complainant did not know her IP address. The Panel noted its comments above about retargeting. Overall the Panel considered that retargeting did not appear to be sufficiently sophisticated to ensure compliance with the Code. The Panel considered on balance that a user's IP address or location of the user's server was not a sufficiently precise surrogate for the user's status in the UK so as to ensure compliance with Clause 22.1 which prohibited the promotion of a prescription only medicine to the public. The Panel considered that irrespective of whether the complainant had a UK or US IP address, the publication of the retargeted US Tysabri advertisement in The Telegraph on line as seen by the complainant constituted promotion of a prescription only medicine to the public. A breach

of Clause 22.1 was ruled.

The Panel noted its ruling of a breach of the Code above. A prescription only medicine had been promoted to the public. The Panel queried whether sufficient regard had been paid by the US affiliate to compliance with overseas laws and regulations. High standards had not been maintained. A breach of Clause 9.1 was ruled.

Overall, the Panel did not consider that the circumstances warranted a ruling of a breach of Clause 2 which was reserved to indicate particular censure. Some attempt, albeit unsatisfactory, had been made to ensure a link to a US audience. No breach of Clause 2 was ruled.

APPEAL BY BIOGEN IDEC

Biogen Idec strongly disagreed with the ruling of a breach of Clause 9.1 as both it and its US affiliate had maintained standards commensurate with industry best practice, in both jurisdictions. Specifically, Biogen Idec disagreed with the Panel's assertion that a user's IP address or server location was not a sufficiently precise surrogate for the user's status in the UK. On the contrary, that IP address was the only practicable means by which targeting to an extra-jurisdictional audience could be viably prevented. By targeting US IP addresses only, the US affiliate had at all times maintained high standards and had also respected applicable law and codes with respect to all ex-US jurisdictions.

Biogen Idec disagreed that there had been any breach, including an inadvertent breach, of Clause 22.1. For the reasons stated above, it did not believe that the possibility of accessing, via a US IP address, a legitimate US advertisement, targeted at the US public by a US legal entity constituted a lapse in standards that provoked the mischief that Clause 22.1 sought to address. Notwithstanding requests, Biogen Idec submitted that it been provided with insufficient evidence to confirm that the complainant viewed the advertisement in question from a non-US IP address and, despite repeated efforts, Biogen Idec had been unable to access the advertisement in question (or any prescription only medicine advertisement banner) from such an IP address.

Clause 9.1

With regard to the ruling of a breach of Clause 9.1, Biogen Idec noted that the Panel stated that a prescription only medicine had been advertised to the public. The Panel queried whether sufficient regard had been paid by the US affiliate to comply with overseas laws and regulations. Biogen Idec strongly disagreed with the Panel's assertion that high standards had not been maintained for the following reasons:

- As described above, targeting of advertisements was based solely on US IP addresses. This was a

standard industry practice. The target audience was newspaper readers in the US. The US pharmaceutical industry used retargeting methodology ie targeting US IP address websites after a consumer had voluntarily accessed a product advertisement online via a US IP address. Newspapers offered high quality US audiences who wished to be informed including a wish to be informed of relevant information regarding treatment choices.

Biogen Idec submitted that of the 3,223 websites included in the 2011 media buy related to the Tysabri advertisement banner, 80 could be classified as 'newspaper sites' of which four were UK sites. The UK sites were part of a standard media buy package. They were not pre-selected. Biogen Idec's US affiliate was not incentivised to target non-US patients, nor would it be inclined or motivated to do so. All of the US affiliate's promotional effort was focused on the US and Puerto Rico.

Biogen Idec submitted that 23% of the website hits to The Telegraph in June 2011 were in the US (or via a US IP address) and over 50% of the hits were via non-UK IP addresses. Biogen Idec agreed that 48% of the readers were based in the UK, however given that the advertisement in question was targeted via US IP addresses only, the UK readers of the on-line newspaper were not able to view the Tysabri advertisement banner. Therefore Biogen Idec did not believe that the location of a website, its readership or its country of origin was ultimately a deciding factor as to whether its exposure to a member of the public in the UK resulted in a breach of the Clause 9.1 (or in turn, Clause 22.1). Biogen Idec did not believe that UK readers accessing the website from home in the UK using their standard UK IP addresses would be subject to unsolicited direct-to-consumer advertising of a prescription medicine. Despite repeated efforts to access such advertising via UK home internet accounts (ie via UK IP addresses), Biogen Idec had not found any evidence to the contrary in relation to Tysabri advertisements, or advertisements for any other company. Biogen Idec provided examples of The Telegraph website accessed in August from the UK via a US IP address and accessed in August from the UK using a UK IP address. Both examples displayed The Telegraph website page subject to the complaint but different advertisements clearly targeted to US and UK audiences respectively.

Biogen Idec submitted a memorandum provided by its US affiliate from the internet advertising vendor which confirmed (with 99.9% certainty) that the complainant would have viewed the advertisement via a US IP address. In addition, Biogen Idec had further corroborative confirmation from The Telegraph that targeting was based on IP address, thus UK-targeted advertisements could only be seen from UK IP addresses, and US-targeted advertisements could only be seen from US IP addresses.

Biogen Idec submitted that the key determining

factor was whether the advertisement was directed to a UK resident via a UK IP address. Unless it could be proven otherwise, Biogen Idec and its US affiliate had met high standards by ensuring that targeting was based on US IP addresses only.

Clause 22.1

With regard to the alleged promotion of a prescription only medicine to the public, Biogen Idec noted that the Panel stated that, on balance, a user's IP address or location or the user's server was not a sufficiently precise surrogate for the user's status in the UK so as to ensure compliance with Clause 22.1, which prohibited the promotion of prescription only medicines to the public. The Panel considered that irrespective of whether the complainant had a UK or US IP address, the publication of a retargeted US Tysabri advertisement in The Telegraph on line as seen by the complainant was in breach of Clause 22.1.

In response, Biogen Idec raised the following:

- The supplementary information to Clause 22.1 was silent on matters of nationality. As an industry, it would be reasonably expected that home internet users in the UK accessed the internet via UK IP addresses. There might be exceptions such as users accessing the internet through non-UK networks or IP addresses, such as company networks for some US-based organisations. In those circumstances, individuals had made an informed choice to access the internet through such channels. A similar analogy could be made for UK residents exposed to a US direct-to-consumer television advertisement, whether they viewed such advertisement in the US or via other electronic media or platforms in the UK. They would have made an informed choice to be subject to such material via a medium which was clearly routed to a US media audience.
- Biogen Idec had previously asked for confirmation that the complainant viewed the website page from a UK server or IP address. None was provided. The complainant also stated she had no idea whether she, or any other users of her home computer, recalled viewing the advertisement previously on a US website. Given previous submissions regarding firstly accessing a US promotional product website, and subsequently being retargeted to view the advertisement when viewing other websites accessed via US IP addresses, Biogen Idec submitted that its questions had not been answered appropriately. It was unusual for a breach of the Code to be ruled when Biogen Idec could not corroborate or confirm the allegation in question.

Biogen Idec noted that the URL was not visible on the poor quality image of the screenshot which was provided by the complainant. It did not appear to be a *bona fide* screenshot of the screen image. In addition, the URL in question (www.telegraph.co.uk)

was not visible on the screen. Biogen Idec found it highly unusual that this evidence was not captured when the complaint was submitted to corroborate the claim that the advertisement appeared on the website in question (eg via electronic screenshot), and that verbal assurances were provided instead. Biogen Idec noted that in the example screenshot of the relevant website page in question, which was accessed via a US IP address the website URL was clearly visible. Biogen Idec could only assume that the image sent by the complainant was not in fact a complete screenshot of the image displayed on the screen. Although Biogen Idec believed that access to the internet via a US IP address was an appropriate means of directing prescription only medicine advertising to an appropriate audience, no evidence was submitted to prove that the complainant accessed the UK website which was subject to the claim (www.telegraph.co.uk).

Given the poor quality of the image submitted, the absence of proof regarding the legitimacy of the URL accessed, and insufficient level of detail provided in response to its questions, Biogen Idec submitted that insufficient evidence had been submitted to support the assertion that it or its US affiliate had breached Clause 22.1.

Industry Practice

Biogen Idec submitted that IP addresses had been used to target and to exclude users for more than a decade, and that the use of IP addresses for that purpose was the industry standard form of geo-targeting. Biogen Idec provided two prescription only medicine advertisements viewed from the UK, by a UK resident, accessed from a US IP address from publicly available websites. Both of these products were prescription only medicines in the UK, but, as with the Tysabri advertisement at issue, clearly intended for a US consumer audience (reference to US consumer Important Safety Information was clear), and routed through a US IP address. Unless otherwise proven/demonstrated, Biogen Idec submitted that this was the case for the Tysabri advertisement in question. Additional examples of a similar nature for other products could also be provided. Biogen Idec did not believe any of these manufacturers were targeting UK residents. Moreover, they were using US IP addresses as their firewall to ensure that such material was not targeted at UK residents. None of the examples were in breach of the Code.

Biogen Idec submitted that if evidence could be provided that the advertisement was accessed via a UK IP address (something Biogen Idec had not been unable to achieve and the chances of which were extremely improbable), the only means by which the complainant would not have been able to see the advertisement was if all co.uk websites had been blocked for retargeting.

However, Biogen Idec submitted that if the complainant had accessed a .com website, she might have been re-served the advertisement (ie a

user being served an advertisement banner after voluntarily accessing the advertisement on a US website). Clearly, there were numerous, globally accessible .com websites. The only 100% effective means by which a UK resident could not be re-served the advertisement (regardless of IP address) would be if all websites were blocked for retargeting. Blocking the retargeting to .com websites would result in a significant global impact including a significant impact on prescription medicine advertising in the US where the practice was legal.

In order to have seen the Tysabri banner advertisement in question on any website, the recipient must have initially viewed the advertisement via a US IP address, and then re-served the advertisement (in this case, via telegraph.co.uk) also via a US IP address.

Summary

Biogen Idec strongly believed that targeting via IP address was a robust, accepted, responsible, and practicable industry standard, and an effective means by which a US consumer might be subject to direct-to-consumer advertising without infringement of overseas laws and codes. The fact that a member of the UK public was able to access a Tysabri advertisement via a US IP address was not evidence of either failure to maintain standards or an intentional or inadvertent wrongful advertisement to the public. There was insufficient evidence to confirm that the advertisement in question was not accessed via a US IP address.

COMMENTS FROM THE COMPLAINANT

The complainant noted that it was a shame that the advertisement appeared through a UK internet service provider's connection.

APPEAL BOARD RULING

The Appeal Board noted from Biogen Idec that advertisement retargeting ie re-serving an internet user with an advertisement on a different website from that on which he/she had viewed it before, was based on geographic-specific IP addresses. This type of retargeting was standard for the internet as a whole. This was how Biogen Idec US could retarget its advertisements only to those with a US IP address. The Telegraph website, telegraph.co.uk, (when accessed via a US IP address) was included in the retargeting package purchased by Biogen Idec US.

The Appeal Board noted Biogen Idec's view that the Internet Service Provider (ISP), the means by which access to the internet was provided, could not determine the user's geographical location. It was possible to connect to a US IP address via a UK ISP.

The Appeal Board noted Biogen Idec's submission that, with 99.9% certainty, to have seen the advertisement at issue the complainant would have

had to have first seen it on the Tysabri.com website via a US IP address. Only then would the complainant have been retargeted with the advertisement on The Telegraph website when this was also accessed via the same US IP address.

There appeared to be inconsistencies between the written submissions and the presentation as to whether the reader had to visit a specific US site, previously responded to a US Tysabri advertisement or merely have seen a US Tysabri advertisement.

At the appeal hearing Biogen Idec's representatives stated that the advertisement in question could only be viewed if the reader's IP address had been 'retargeted'. In order for this to happen two conditions had to be met: firstly the reader must voluntarily have accessed a US Tysabri website via a US IP address and secondly the reader must have then subsequently viewed another website using the same US IP address. The slide stated that thus the advertisement could only be seen if the reader had viewed at least two US websites (including specifically the Tysabri US website) using a US IP address. This was described as a core element of Biogen Idec's US 'media buy' package for this activity.

The Appeal Board further noted from Biogen Idec's submission that it would expect the majority of internet users in the UK to have a UK IP address. Exceptions to that might include those who worked

for a US company and accessed the internet via their employer's internet connection or those who had installed specialist software to provide a US IP address even though they accessed the internet via a UK internet provider. The complainant had not stated that either of these applied.

The Appeal Board considered that it was confusing that an advertisement for a prescription only medicine was linked to a .co.uk website as it would appear to some readers (albeit those with US IP addresses) that the advertisement was a part of the .co.uk website when in fact that was not so.

The Appeal Board considered that advertising prescription only medicines to the public was a serious matter. However the complainant had the burden of proving her complaint on the balance of probabilities and in that regard had provided limited information and had not confirmed her IP address.

The Appeal Board considered that the complainant had not established her case on the balance of probabilities and thus ruled no breach of Clause 22.1. The Appeal Board did not consider that Biogen Idec had failed to maintain high standards. No breach of Clause 9.1 was ruled. The appeal on both points was successful.

Complaint received	11 July 2011
Case completed	12 October 2011
