

GENERAL PRACTITIONER v LILLY and BOEHRINGER INGELHEIM

Email promotion of Trajenta

A general practitioner complained that Lilly and Boehringer Ingelheim had sent an advertisement for Trajenta (linagliptin) 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 Lilly and Boehringer Ingelheim 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 Lilly and Boehringer Ingelheim 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 the companies' submission that the complainant had registered his details with the database in February 2012. During the registration process the complainant was made aware that he would receive promotional emails. 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 Trajenta (linagliptin) by Eli Lilly and Company Limited and Boehringer Ingelheim Limited.

COMPLAINT

The complainant objected to a Trajenta advertisement from Lilly and Boehringer Ingelheim 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 Lilly and Boehringer Ingelheim, the Authority asked them to respond in relation to Clauses 9.1 and 9.9 of the Code.

RESPONSE

Lilly (Case AUTH/2542/11/12) and Boehringer Ingelheim (Case AUTH/2543/11/12) submitted identical responses.

The companies stated that the email sent to the complainant's NHS email address highlighted the availability of a series of Trajenta webcasts initiated by the Boehringer Ingelheim and Eli Lilly and Co Diabetes Alliance (the Alliance) over the course of 2012. This series was put together in conjunction with and disseminated by a digital communications agency. Information about the webcasts was emailed to eligible health professionals who had previously registered their contact details into a database of NHS personnel. The agency had confirmed that it had a non-disclosure agreement with the database which allowed the transfer of confidential information.

The database of UK medical professionals at issue was independent of the Department of Health and the NHS. Health professionals could register their details with the database for information about prescription only medicines and medical devices. In addition the database provided all registered health professionals with information on the management of a variety of diseases and therapy areas. Health professionals could proactively access and register themselves on the database. Alternatively health professionals might be sent an email notification from an agency inviting them to register. All health professionals could only complete the registration once they had accepted the terms and conditions of the database website which might then allow information about affiliated organisations including promotional emails to be sent to them. Health professionals could opt in or out to receiving these communications.

Upon receipt of this complaint the companies discussed the issues with the digital communications agency which confirmed that the complainant registered his details with the database on 2 February 2012. Furthermore during the registration process the complainant was made aware that he would receive pharmaceutical company communications some of which might be promotional in nature. The exact wording was:

‘In order to ensure that [the agency’s] secure online database is the most up-to-date and comprehensive available, our data verification team will implement changes as-and-when they occur, based on revisions provided by you and your colleagues. [The agency] will from time to time send information by e-mail about our associated/affiliated companies and their clients’ product and services, which may include updates on specialist services, conferences and seminars, diagnostic, medical and pharmaceutical promotional materials as well as official information. However, please be advised that we will not share your e-mails with any third parties. We welcome feedback on any aspect of the service. If you wish to suggest specific amendments or wish to draw our attention to certain matters, please feel free to contact us.’

Following this statement the complainant would have also been given the option of opting in/opting out to receiving such communications. The database overview clearly defined the registration process as well as the option to opt in or opt out.

Boehringer Ingelheim and Lilly were strongly of the opinion that they had wholly adhered to the requirements of the Code. The email communicating the availability of the Trajenta promotional webcasts was sent on their behalf by the agency. These emails were only sent to health professionals who had previously registered with the digital communications website and opted in to receiving communications from associated/affiliated companies. Hence the requirements of Clause 9.9 had been fully adhered to.

In conclusion, the companies strongly refuted the allegation of any wrongdoing. As evidenced by the documents provided in their response, the companies submitted that they had maintained high standards throughout this project.

In response to a request for further information, Boehringer Ingelheim and Lilly stated that the complainant was contacted by the agency’s representative in January 2012 and following this initial telephone call, then received the preliminary email on 26 January 2012. The registration form was then completed and following this the complainant received his login details on 2 February 2012. Details were provided.

Lilly submitted that its response clearly demonstrated that the complainant had voluntarily

provided his contact details including his professional email address to the agency. Before completing his registration, the complainant would have been made aware on separate occasions that he would be sent information regarding promotional activities undertaken by companies affiliated with the agency. This information would have been conveyed firstly by the agency’s operative during the initial telephone call and then again in the preliminary email. The complainant would also have had the opportunity to opt out of receiving such communications by selecting this option in the preliminary email. The agency had confirmed that, to date, no opt out requests had been received from the complainant.

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 Lilly and Boehringer Ingelheim 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 Lilly and Boehringer Ingelheim 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	29 November 2012
Case completed	20 March 2013