

# ANONYMOUS, NON-CONTACTABLE v DAIICHI-SANKYO

## 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 extravagant and in poor taste considering today's economic climate. Three examples were given including that Daiichi-Sankyo's stand looked like a Harley Street beauty therapy shop. The complainant stated that there was a real party atmosphere rather than a true scientific congress atmosphere which would be expected in such stands.

The detailed response from Daiichi-Sankyo is given below.

The Panel noted Daiichi-Sankyo's submission that there were no giveaways on the stand, such as USB sticks, pens, or pads. The only take away items were promotional leavepieces and invitations to the promotional satellite symposia organised by Daiichi-Sankyo. The Panel noted that photos taken in a photo booth in the corporate section of the promotional stand were emailed to visitors. In the Panel's view the photographs constituted a gift and even though no hard copies of pictures were printed or distributed at the stand, they were still created on the stand and should thus be considered as being given away from it. The Panel noted Daiichi-Sankyo's submission that the template for the picture was corporate branded with no product branding. However, the photo booth was on a promotional stand albeit in a corporate section and therefore the emailed photos were sent to visitors in connection with the promotion of medicines contrary to the requirements of the Code and a breach was ruled which was upheld on appeal. High standards had not been maintained in this regard. A breach of the Code was ruled which was overturned on appeal.

The Panel noted that the complainant had made a general allegation that the majority of the stands at the congress were extravagant and that Daiichi-Sankyo's stand looked like a Harley Street beauty therapy shop. The complainant, who had the burden of proving his/her complaint on the balance of probabilities, had not provided any material to support these allegations. 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. Daiichi-Sankyo had provided a photograph of the stand and its general appearance did not appear to be unreasonable. In the Panel's view the complainant had not shown that the 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, submitted a complaint about 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 Daiichi-Sankyo's stand looked like a Harley Street beauty therapy shop. According to the complainant, there was a real party atmosphere rather than a true scientific congress atmosphere which would be expected in such stands.

When writing to Daiichi-Sankyo the Authority asked it to respond in relation to Clauses 9.1, 9.7 and 18 of the 2015 Code.

### RESPONSE

Daiichi-Sankyo stated that ESC was the world's largest cardiology conference; it attracted over 32,000 attendees from over 140 countries in 2015.

The stand itself, and all materials on it were certified by Daiichi-Sankyo UK as per the Code and the company's standard operating procedures (SOPs).

Daiichi-Sankyo submitted that the stand was designed to accommodate the significant numbers of customers who it anticipated would be interested in a product approved only several weeks previously. For many European physicians, this was their first opportunity to receive product information directly from the manufacturer.

Daiichi-Sankyo provided a plan of the exhibition space to give context as to its relative size compared with other company stands and noted that some companies had multiple stand areas. In terms of square footage, Daiichi-Sankyo's stand was not the largest in the exhibition.

The stand consisted of multiple, clearly delineated areas which were separated by walls.

Areas were dedicated to:

- Promotion of Lixiana (edoxaban) – in brand colours (pink and white walls, white floors)
- Speaker area – also in Lixiana brand colours
- Medical information – in corporate livery (white walls/white floors/ Daiichi-Sankyo logo colours)
- Disease awareness – in separate colours (red/ white floors)
- Corporate communication – in corporate livery.

A 3D likeness of the stand and photographs of the actual stand in situ were provided.

Daiichi-Sankyo submitted that there were no giveaways on the stand, such as USB sticks, pens, or pads. The only take away items were promotional leavestieces and invitations to the promotional satellite symposia organised by Daiichi-Sankyo. These items were provided.

Nine audiovisual screens on the stand displayed certified promotional materials. The content of these screens were provided.

There was a holographic display that outlined the development history of the edoxaban molecule. It was not possible to recreate the 3D display but a copy of the video was provided.

A coffee desk was also available for visitors to the stand.

The corporate section included a photo booth which allowed visitors to take a picture of themselves with their own messages using simple magnetic words on a board behind them. The picture was emailed to the visitor automatically to the email address they supplied. The template for the picture was corporate branded with no product branding. Thus, no hard copies of pictures were printed or distributed at the stand. There were no other displays, quizzes, or games.

Daiichi-Sankyo stated that it was difficult to understand why a physician would come to the conclusion stated in the complaint. Nobody in the team who was involved in the design, build or approval was familiar with the premises described by the complainant, let alone took inspiration from them. Daiichi-Sankyo could only venture that it might have been the clean, uncluttered design. This design was certainly not intended to cause offence.

Regarding the allegation of extravagance, Daiichi-Sankyo submitted that the materials on the stand were of a scientific nature, commensurate with the professional educational setting of the ESC Congress, and there were no physical giveaways.

Daiichi-Sankyo noted that whilst its stand was referred to by the complainant, he/she pointed out a general issue with all the stands at the congress. Therefore, Daiichi-Sankyo submitted that some context needed to be provided regarding activities or materials on competitors' stands which might need to be taken up with other companies. For example, the Daiichi-Sankyo stand did not include augmented reality displays accompanied by iPads, or golfing/gaming simulations which were available at other stands.

Overall, Daiichi-Sankyo firmly believed that the design of its stand was clean and uncluttered, appropriate for a congress such as the ESC, providing materials with appropriate scientific content and no frivolous giveaways.

It was unfortunate that an individual should write to the PMCPA on this subject, in contrast to the positive verbal feedback received by various members of the team who manned the stand.

In response to a request for further information, Daiichi-Sankyo submitted that it had a corporate section on the stand with a photo booth. The booth was in line with the corporate social initiative 'Make your heart feel good' by Daiichi-Sankyo Europe which supported a chosen European charity 'Little Hearts' by raising funds for orphaned children, and also helped to reinforce the importance of healthy 'Big Hearts' by increasing awareness of hypertension and other cardiovascular diseases. Daiichi-Sankyo provided a representation of the photo wall and an example of the digital photoframe. Daiichi-Sankyo asked the question 'What Makes Your Heart Feel Good?' and then visitors to the booth would answer by using magnetic words and icons from a list available, which were approved to be in line with the initiative and did not convey a party atmosphere. Their picture was taken and emailed to them. Daiichi-Sankyo submitted that there were no other props or giveaways.

Daiichi-Sankyo submitted that coffee available on the stand was provided by the congress venue's official caterer; it was provided as a package including the coffee machine, two trained baristas, coffee cups, coffee beans and tea bags. The range was similar to that available to health professionals at coffee shops throughout the conference venue except that only medium sized cups were available on the stand. The cost of the package would be similar to what the other exhibitors would have access to. Daiichi-Sankyo did not have the number of servings distributed so the overall cost per serving was not available. The actual cost of a cup and the hot water/coffee/tea bag would be a matter of pennies. Nevertheless, the perceived value would be no more than what a health professional would be able to buy for themselves at the congress venue. No other drinks were served on the stand and Daiichi-Sankyo considered that the provision of coffee did not contribute to the perceived party atmosphere and was appropriate in the context of the scientific congress.

## 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 18.1 stated that no gift, pecuniary advantage or benefit might be supplied, offered or promised to members of the health professions or to other relevant decision makers in connection with the promotion of medicines or as an inducement to prescribe, supply, administer, recommend, buy or sell any medicine, subject to the provisions of Clauses 18.2 (patient support items) and 18.3 (inexpensive pens/pencils and notebooks).

The Panel noted Daiichi-Sankyo's submission that there were no giveaways on the stand, such as

USB sticks, pens, or pads. The only take away items were promotional leavepieces and invitations to the promotional satellite symposia organised by Daiichi-Sankyo. The Panel noted that photos taken in a photo booth in the corporate section of the promotional stand were emailed to visitors automatically, to the email address they provided. In the Panel's view the photographs constituted a gift and even though no hard copies of pictures were printed or distributed at the stand, they were still created on the stand and should thus be considered as being given away from it. The Panel noted Daiichi-Sankyo's submission that the template for the picture was corporate branded with no product branding. However, the photo booth was on a promotional stand albeit in a corporate section and therefore the emailed photos were sent to visitors in connection with the promotion of medicines contrary to the requirements of Clause 18.1 and a breach of that clause was ruled. High standards had not been maintained in this regard. A breach of Clause 9.1 was ruled. These rulings were appealed by Daiichi-Sankyo.

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 Panel noted the complainant's allegation that Daiichi-Sankyo's stand looked like a Harley Street beauty therapy shop. 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 Daiichi-Sankyo stand was 'extremely extravagant and in poor taste considering today's economic climate' or why it looked like a beauty therapy shop. 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. Daiichi-Sankyo had provided a photograph of the stand and its general appearance did not appear to be unreasonable. 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.

#### **APPEAL BY DAIICHI-SANKYO**

Daiichi-Sankyo noted that the original allegation, *inter alia*, was that it had an extravagant stand which contributed to a party atmosphere at the 2015 ESC Congress.

Daiichi-Sankyo submitted that its stand was designed to be in keeping with the scientific nature of the meeting, had appropriately distinct promotional areas, and corporate branded, non promotional areas for medical information and corporate communications about the company's charitable activities. These areas were not only physically distinct with walls and barriers between them but were also staffed differently with clear briefings as to roles and responsibilities ie promotional staff were restricted to the promotional areas.

The medical information area was manned by the medical scientific liaison team from the various affiliates and the corporate area by the European corporate communications team. The corporate communication area was dedicated to, and aimed to raise awareness of, Daiichi-Sankyo's long running campaign, 'Make your heart feel good' and was aimed at raising awareness for it. The campaign also tried to raise money towards Daiichi-Sankyo's 'Little Hearts' program to support children at an orphanage in Ukraine.

Daiichi-Sankyo submitted that this campaign was not linked to a product in any way and was branded in corporate colours. An automated photo booth was set up in the corporate section to allow visitors to photograph themselves against a white background upon which words could be magnetically attached. The picture was placed on a template which was branded in corporate colours and had the name of Daiichi-Sankyo's charitable campaign. The picture was emailed to the address the visitor supplied. The email addresses were not collected and used for any other purpose.

The Panel decided that this email constituted a gift from a promotional stand and ruled a breach of Clause 18.1 and subsequently a breach of Clause 9.1. Daiichi-Sankyo disagreed with this interpretation of the Code.

Daiichi-Sankyo submitted that a non-promotional email in connection with raising awareness of charitable activities did not constitute a gift. The picture itself was done by an automated machine and was placed on a template. The picture could not be recycled for any other purpose, had no monetary value and was not linked to the promotion of Daiichi-Sankyo products.

Daiichi-Sankyo submitted that the fact that the picture was sent from the stand also did not automatically mean that it was linked to a product. Daiichi-Sankyo was very careful to delineate the areas not just physically but also when it came to who was staffing the corporate area. No promotional staff was allowed in that space. This was briefed on teleconferences to all attendees before the meeting, at a face-to-face and a briefing meeting before the meeting. If this interpretation was applied, this would make all communication derived from the stand including medical information requests promotional. The disheartening aspect of this was that had this email actually been promotional and in brand colours with promotional messaging on it and accompanied by prescribing information, it would have been considered a promotional aid in accordance with the supplementary information to Clause 18.1. Daiichi-Sankyo submitted that it was ruled in breach for carrying out a genuine charitable endeavour in line with its corporate social responsibility. Daiichi-Sankyo noted that the complainant stated there was an air of extravagance and a party atmosphere at the ESC Congress. Daiichi-Sankyo disagreed that the emails contributed to this impression and it submitted that it had complied with the letter and the spirit of the Code.

## APPEAL BOARD RULING

The Appeal Board noted that the plan of Daiichi-Sankyo's stand showed that the photo booth was in an area labelled 'Photo attract area' which implied that its purpose was to attract delegates to the stand. If delegates approached the stand from the exhibition hall entrance (main traffic flow), they would enter the photo attract area via the branded/promotional areas of the stand. There was some secondary traffic flow shown on the plan such that the photo booth could be accessed via an area labelled 'Patient profile area with pre-launch patient content'.

The Appeal Board noted the explanation from Daiichi-Sankyo at the appeal that the patient profile area focussed on disease awareness with non-promotional staff detailing patients' stories and the difficulties they faced. The Appeal Board noted that a patient case study display within this area featured patients that might be appropriate for treatment with Lixiana. The Appeal Board noted that although the photo booth camera had been positioned such that the resultant photograph would not include any promotional material in the background, attendees in this area could see into the area of the stand that contained promotional messages for Lixiana and the delegate being photographed could see such material.

The Appeal Board noted that the photo template provided by Daiichi-Sankyo did not refer to the company's charitable campaign 'Little Hearts' as submitted. In the bottom left-hand corner of the template was the question 'What Makes Your Heart Feel Good' and in the bottom right was the Daiichi-Sankyo logo. The photo wall similarly did not refer to the charity. In the Appeal Board's view, the resultant photograph was more likely to remind the delegate of Daiichi-Sankyo than of its charitable initiative.

The Appeal Board noted from Daiichi-Sankyo at the appeal that in the planning stage, it decided to switch off the photo booth's capacity to print so that the photographs were emailed to delegates. Further the company had decided that a digital photograph was not a gift as it had no value. The Appeal Board considered that digital photographs were commonplace and easy to produce and had little or no monetary value. Nonetheless, the emailed photograph was something the recipient would not have had unless he/she visited Daiichi-Sankyo's photo booth and so in that regard the Appeal Board considered that it constituted a gift. Clause 18.1 stated that 'No gift, pecuniary advantage or benefit may be supplied, offered, or promised to health professions or other relevant decision makers in connection with the promotion of medicines or as an inducement to prescribe, supply, administer, recommend, buy or sell any medicine subject to the provision of Clauses 18.2 and 18.3'. Clause 18.2 and 18.3 set out the limited items that could be provided to health professionals etc. Personal photographs were not so listed.

Noting its comments above, the Appeal Board considered that the gift of the emailed photograph occurred in a promotional setting and thus it upheld the Panel's ruling of a breach of Clause 18.1. The appeal on that point was unsuccessful.

The Appeal Board did not consider in the circumstances that high standards had not been maintained and it ruled no breach of Clause 9.1. The appeal on that point was successful.

<b>Complaint received</b>	<b>21 December 2015</b>
<b>Case completed</b>	<b>13 May 2016</b>