

## **COMPLAINANT v CHIESI**

### **Concerns about an invitation to MIMS Live Digital Event**

**A contactable complainant who described him/herself as a health professional complained about an invitation to a MIMS live digital event in which there was the opportunity to win a FREE annual subscription to MIMS Learning by entering a draw and attending a session on all three days of the virtual series - for which Chiesi had a session.**

**The complainant stated that the Code stated the few conditions where quizzes were allowed. They should not be linked to promotion. In this case, this pecuniary advantage was linked to Chiesi's promotion as there was no statement of involvement denouncing the company's involvement or separating its sponsorship from such a benefit. There was no statement to show that Chiesi was not involved. It appeared to the complainant it was an inducement to attend the events which included Chiesi's promotional session. In the full programme, it was clear that Chiesi was sponsoring the asthma session. The complainant alleged that this was clearly not in line with the Code requirements to include full unambiguous sponsorship statements. There was no sufficient sponsorship statement covering the company's involvement in the draw. Chiesi was responsible for the acts and omission of MIMS in this case and the impression given by this email and event programme.**

**The detailed response from Chiesi is given below.**

**The Panel noted that the email at issue related to a reminder to a MIMS Live Digital Event which took place in March 2022. The Panel noted that the email was headed 'Don't forget, you have an upcoming event next week' and appeared to be from a third party organising the event on behalf of MIMS.**

**The Panel noted that the email started by stating it was a reminder that the event was upcoming and that recipients had registered for three evenings of free CPD accredited clinical learning. The email gave details of the three day agenda; there were two presentations on the first day, a third presentation on the second day (a Chiesi presentation) and a fourth presentation on the final day. The email finished by reminding delegates that they could win a free annual subscription to MIMS learning by entering a draw and attending at least one session on each of the three days. The bottom of the email stated the event was made possible by sponsorship from a named financial company and Chiesi.**

**Whilst the Panel noted there was a prominent Chiesi logo at the bottom of the email, the Panel considered that this required a reader to scroll down and no reference was made to the 'Hot topics in asthma management' presentation on day 2 being a Chiesi presentation in the section of the email which set out the agenda for the three evenings. In the Panel's view, the material, with the placement of the Chiesi logo at the bottom of**

the email, gave the impression that Chiesi had sponsored the whole event including the prize draw.

The Panel noted Chiesi's submission about its requests to MIMS regarding the sponsorship and that the Chiesi session was promotional. The Panel noted that on one of the screenshots provided by the complainant which appeared to be the same as the programme page provided by Chiesi the Chiesi logo was placed next to the name of the relevant session and speaker photograph/details, beneath which stated, in smaller font than the rest of the section, 'This session has been organised and funded by Chiesi Ltd and will include promotional content'.

Whilst the Panel noted that the programme page included Chiesi's involvement, the Panel did not consider it was clear from the email invitation provided by Chiesi that the company was sponsoring one of the sessions and that this session was promotional.

The Panel did not consider that the material clearly described the role of Chiesi and ruled a breach of the Code in that regard.

In relation to the prize draw, the Panel noted the arrangements for the event as provided by Chiesi, including that it was unaware of the arrangements for the prize draw until it was notified by the PMCPA in March 2022.

With regard to whether MIMS was acting as a third party as defined in the Code, the Panel did not accept Chiesi's submission that the relevant clause did not apply. Chiesi provided sponsorship which meant, in the Panel's view, that the company was given certain benefits by MIMS including a 45 minute presentation at the meeting.

The Panel considered that Chiesi was responsible under the Code for the email sent by MIMS. In order to be able to enter the prize draw, a health professional had to attend at least one session each day, of which the only session on day two was the promotional presentation provided by Chiesi. Whilst it was concerning, in the Panel's view, that Chiesi had not been informed of the prize draw, the Panel nonetheless considered that the arrangements were prohibited by the Code and ruled a breach accordingly.

The Panel considered that the arrangements for the prize draw, which required recipients to attend the Chiesi promotional session to be eligible, amounted to offering a benefit in connection with the promotion of medicines. The Panel thus ruled a breach of the Code in this regard.

The Panel noted the circumstances of this case and considered that Chiesi had been badly let down by MIMS. The Panel, nonetheless, noted its rulings of breaches as set out above, and considered that high standards had not been maintained and ruled a breach of the Code.

The Panel did not consider the circumstances amounted to a breach of Clause 2 which was a sign of particular censure. The Panel therefore ruled no breach of Clause 2.

A contactable complainant who described him/herself as a health professional complained about an invitation to a MIMS live digital event. The complainant stated that in the email inviting him/her to a MIMS Digital event there was the opportunity to win a FREE annual subscription to

MIMS Learning by entering a draw and attending a session on all three days of the virtual series - for which Chiesi had a session. The complainant provided a screenshot of the email.

## **COMPLAINT**

The complainant stated that the Code stated the few conditions where quizzes were allowed. They should not be linked to promotion. In this case, this pecuniary advantage was linked to Chiesi's promotion as there was no statement of involvement denouncing the company's involvement or separating its sponsorship from such a benefit. There was no statement to show that Chiesi was not involved. It appeared to the complainant it was an inducement to attend the events which included Chiesi's promotional session. In the full programme, it was clear that Chiesi was sponsoring the asthma session. The complainant alleged that this was clearly not in line with the Code requirements to include full unambiguous sponsorship statements. There was no sufficient sponsorship statement covering the company's involvement in the draw. Chiesi was responsible for the acts and omission of MIMS in this case and the impression given by this email and event programme.

When writing to Chiesi, the Authority asked it to consider the requirements of Clauses 2, 5.1, 5.5, 10.6 and 19.1 of the Code.

## **RESPONSE**

Chiesi stated that it took alleged breaches of the Code very seriously and had investigated the allegations made. Chiesi set out its response to the allegations as follows.

### **Relationship with MIMS**

In order to address this, Chiesi referred to the declaration on the MIMS website referring to MIMS' independence from the influence of pharmaceutical companies ([www.mims.co.uk/about-mims](http://www.mims.co.uk/about-mims)): 'MIMS content is compiled by a team of pharmacists for the benefit of UK healthcare professionals and is not influenced by marketing information from pharmaceutical companies'. MIMS was published by a named media company and was an independent point of clinical reference for prescribers.

Chiesi confirmed that it had no direct relationship with MIMS other than sponsorship of educational events, and the purchase of advertising space in their publication. In relation to the matters raised by the complainant, Chiesi submitted that its relationship was purely a business engagement with MIMS as an independent meeting organiser of educational webinars.

For the MIMS Live Digital Event at issue ('MIMS Event'), Chiesi purchased Gold sponsorship which included:

- Chiesi logo and profile on MLL event website
- Chiesi logo on delegate acquisition and service emails
- Chiesi logo and profile on MLL event platform plus contact details, resources/videos (up to 3) and Chiesi representative profiles
- Speaker photo and biography included alongside speaker presentation
- 45-minute pre-recorded speaker presentation plus 15 minute audience Q+A
- Insights report consisting of registrants, viewers, name, job title, organisation, location, audience questions, audience comments and feedback

- 'Opt in' delegate list including name, organisation, full address, email and phone number
- Enduring webinar content on [www.mimslearning.co.uk](http://www.mimslearning.co.uk)
- Chiesi logo on <https://www.mimslearning.co.uk/pages/on-demand-webinars>
- 6-month hosting of the webinar, with 150+ module views
- Quarterly engagement report.

### **Declaration**

The complainant raised the concern that the competition gave the 'impression that this is a pecuniary advantage linked to Chiesi's promotion and that there was not a statement of involvement denouncing their involvement, or separating their sponsorship from such a benefit'.

In order to address whether the declarations accurately reflected Chiesi's level of sponsorship of the MIMS Event, Chiesi referred to the detail of Gold sponsorship provided for the MIMS Event in Chiesi's assessment form, where it was clear that Chiesi had no involvement in sponsoring the competition in question.

In order to ensure delegates were very clear as to Chiesi's involvement in the educational content of the meeting, the company submitted that it requested the inclusion of a clear declaration immediately adjacent to any mention of the sponsored session and on any associated delegate information: 'This session has been organised and funded by Chiesi Ltd and will include promotional content'. This requested declaration was present on both the email invitation and the programme. The Chiesi logo was also immediately adjacent to the sponsored session in the programme.

In addition, Chiesi requested that there was a declaration more generally related to Chiesi's sponsorship of the meeting: 'This event was made possible by sponsorship from [Named financial company logo] [Chiesi Logo]'. This declaration was present on the email invitation and under the sponsorship & exhibition section on the MIMS Learning Live website.

In Chiesi's view, these declarations accurately reflected the nature of its sponsorship of the meeting and were present in all the necessary places.

### **Link to free annual subscription of MIMS Learning**

The complainant raised a concern related to an email invitation to the MIMS Event, which included a snapshot of a few sessions on the agenda and then referred to a competition offered by MIMS Learning:

'Don't forget, we will also be offering delegates the chance to win a FREE annual subscription to MIMS Learning. All you need to do to enter the draw is attend a session on all 3 days of the virtual series.'

Chiesi stated that it was important to highlight that the MIMS Event was a third party meeting and, as such, a pharmaceutical company would not expect to have full oversight of all materials or advertising relating to the meeting. However, Chiesi did carry out thorough due diligence prior to its agreement to sponsor this meeting, which was captured on two internal assessment forms. Chiesi due diligence covered as many of the details surrounding the conference as possible including, but not limited to:

- Meeting organiser
- Event details, including platform used
- Delegate types
- Content of the whole agenda
- Subsistence
- Sponsorship level
- Declarations
- Materials to be used at the meeting, or speakers to be used

Chiesi stated it also certified the platform hosting page where the Chiesi webinar would be hosted and requested to view the programme to ensure that the appropriate declarations were included.

Chiesi submitted that it understood from the complaint that MIMS Live organisers chose to send an email invitation which also included reference to a competition for a free annual subscription, however Chiesi had no knowledge of this competition and had not been provided with a copy of the email invitation for review. Furthermore, there was no reference to this competition on the MIMS Learning Live website, and in the 3 emails that Chiesi was on the distribution list for. It was simply not something which Chiesi could have possibly foreseen.

Following this complaint, Chiesi's formal investigation revealed that there was only one email invitation referring to the competition that was distributed alongside three others which did not mention the competition. During Chiesi's investigation MIMS also made the company aware that there had been one Twitter post which also referenced the competition.

It was relevant that the MIMS Event was free to attend and provided high quality education for GPs providing 6+ hours of CPD (the same content was also available for 6 months on-demand). Therefore, delegates could have attended the education contained within this session completely free, and also similar educational events in the future, without entering the competition.

When considering perception and intent it was important to note that the MIMS Learning website ([www.mimslearning.co.uk](http://www.mimslearning.co.uk)) had a significant number of free educational on-demand webinars associated with CPD hours (92 modules listed under 'Free CPD' when accessed on 25 March 2022). The company submitted that clearly, there would be limited benefit to the delegate to enter the competition to gain access to educational CPD content, unless the delegate wished to access the specialist content within the website.

Chiesi submitted that as demonstrated by the due diligence documentation provided, it took all possible steps to ensure that all materials related to the MIMS Event satisfied the requirements of the Code. Furthermore, this event was not a Chiesi owned event and Chiesi submitted that it would be unreasonable to expect that a third party organiser would provide every piece of material for review by a sponsor.

### **Responsibility for Third Parties**

Chiesi stated that whilst it accepted the established principle that pharmaceutical companies were responsible for the acts and omissions of their third parties, Chiesi respectfully suggested

that it could not in these circumstances be held responsible for the actions of MIMS for the following three reasons:

**(i) MIMS as a third party**

Chiesi referred to the definition of 'third party' in Clause 1.24 of the Code:

'... a legal person/entity or individual that represents a company or interacts with other parties on behalf of a company or relating to a company's medicine, such as distributors, wholesalers, consultants, contract research organisations, professional congress organisers, contracted sales forces, market research companies, advertising agencies, media buyers, providers of services related to events, public relations services, non-clinical services, non-interventional studies management services etc. Companies are responsible under the Code for the acts and omissions of their third parties which come within the scope of the Code, even if they act contrary to the instructions which they have been given.'

The company submitted that MIMS did not act at any time as a representative of Chiesi and nor did MIMS either interact with other parties on Chiesi's behalf or in relation to Chiesi's products. Chiesi simply agreed to sponsor a session at the MIMS Event. The relationship was purely transactional in nature.

Chiesi stated that this could be distinguished from a relationship between a pharmaceutical company and a third party which it instructed to carry out some work on its behalf. In that scenario, where the pharmaceutical company directed the relationship for its own gain (for example the retention of a media marketing company), it was easy to understand why a pharmaceutical company might be liable for a third party's acts and omissions.

Chiesi stated that in its view, this latter scenario was the type of commercial relationship which was intended to be caught by the rule that 'pharmaceutical companies were responsible for the acts and omissions of their third parties'. MIMS was acting as an independent third party pursuing its own commercial interests and was not under the direction and/or control of Chiesi.

**(ii) Unforeseeable**

Until Chiesi received the complaint of 24 March 2022, Chiesi submitted it had no knowledge of the email referring to a prize draw and this was not something which Chiesi could possibly have foreseen. Consequently, it would be unconscionable for Chiesi to be held responsible for something over which it had no control or possibility of controlling.

**(iii) All possible steps**

Chiesi stated that as demonstrated in this response, Chiesi carried out extensive due diligence and ensured that it discharged its responsibilities under the Code regarding its sponsorship of the MIMS Event. In effect, Chiesi took all possible steps to be compliant and to observe the word and spirit of the Code.

This was all Chiesi could be expected to do in order to avoid a breach, something which was supported by the wording of undertakings provided by the Authority which required 'all possible

steps' to be taken. It followed that, in circumstances where a pharmaceutical company could demonstrate it had taken all possible steps, it could not be further responsible.

In reliance upon the facts and matters set out in this response, Chiesi strongly denied all of the allegations raised by the complainant and respectfully submitted that there had been no breach of Clauses 2, 5.1, 5.5, 10.6 and 19.1 of the Code, as alleged or at all.

## **PANEL RULING**

The Panel noted that the email at issue related to a reminder to a MIMS Live Digital Event which took place between 21-23 March 2022. The Panel noted that the email was headed 'Don't forget, you have an upcoming event next week' and appeared to be from a third party organising the event on behalf of MIMS.

The Panel noted the complainant provided four screen shots of which three appeared to be of the email at issue; the fourth screenshot appeared to be of the programme page.

The Panel noted that the email started by stating it was a reminder that the event was upcoming and that recipients had registered for three evenings of free CPD accredited clinical learning. The email gave details of the three day agenda; there were two presentations on the first day, a third presentation on the second day (a Chiesi presentation) and a fourth presentation on the final day. The email finished by reminding delegates that they could win a free annual subscription to MIMS learning by entering a draw and attending at least one session on each of the three days. At the bottom of the email was the statement that this event was made possible by sponsorship from [named financial company] and Chiesi.

Whilst the Panel noted there was a prominent Chiesi logo at the bottom of the email, the Panel considered that this required a reader to scroll down the email and that there was no statement that made reference to the 'Hot topics in asthma management' presentation on day 2 being a Chiesi presentation in the section of the email which set out the agenda for the three evenings. In the Panel's view, the material, with the placement of the Chiesi logo at the bottom of the email, gave the impression that Chiesi had sponsored the whole event including the prize draw.

The Panel noted Chiesi's submission about its requests to MIMS regarding the sponsorship and that the Chiesi session was promotional. The Panel noted that one of the screenshots provided by the complainant appeared to have been taken on a mobile device and had a photograph of the speaker at the Chiesi session and included 'This session has been organised and funded by Chiesi Ltd and will include promotional content'. The Panel noted that this appeared to be the same as the programme page provided by Chiesi but from a desktop; the Chiesi logo was placed next to the name of the relevant session and speaker photograph/details, beneath which stated, in smaller font than the rest of the section, 'This session has been organised and funded by Chiesi Ltd and will include promotional content'.

Whilst the Panel noted that the programme page included Chiesi's involvement, the Panel did not consider it was clear from the email invitation provided by Chiesi that the company was sponsoring one of the sessions and that this session was promotional.

The Panel did not consider that the material clearly described the role of Chiesi and ruled a breach of Clause 5.5 in that regard.

In relation to the prize draw, the Panel noted the arrangements for the event as provided by Chiesi, including that it was unaware of the arrangements for the prize draw until it was notified by the PMCPA in March 2022. The Panel noted that according to Chiesi, one email and one twitter post referred to the prize draw. Chiesi had not been provided with the email but obtained a copy on investigating the complaint.

The question to be decided related to Chiesi's responsibility for the arrangements for the MIMS event.

With regard to whether MIMS was acting as a third party as defined in Clause 1.24 of the Code, the Panel did not accept Chiesi's submission that this clause did not apply. Chiesi provided sponsorship which meant, in the Panel's view, that the company was given certain benefits by MIMS including a 45 minute presentation at the meeting.

The Panel noted advice on the PMCPA website in relation to whether companies could participate in exhibition passport schemes or treasure hunts proposed by conference organisers which it considered had some relevance to the case. The question and answer were based on the 2019 Code and were as follows:

Can companies participate in exhibition passport schemes or treasure hunts proposed by conference organisers?

Pharmaceutical companies participating in passport competitions, treasure hunts or the like risk breaching the Code as delegates will be required to visit their stands, which will almost certainly be promoting medicines, to collect passport stickers. In the Authority's view such schemes are unacceptable under the Code. They do not involve *bona fide* tests of skill as set out in the supplementary information to Clause 18.1 [Clause 10.6 of the 2021 Code] and include exhibition stands contrary to the supplementary information to Clause 18.1 [Clause 10.6 of the 2021 Code]. The giving of prizes in association with quizzes and competitions is always unacceptable irrespective of the nature of the gift.

The only items that can be given to individual health professionals must satisfy the requirements set out in Clause 18 and its supplementary information [Clause 19 of the 2021 Code]. The involvement of a pharmaceutical company in the provision of any items beyond those set out in the Code would, in the Authority's view, be unacceptable in relation to Clause 18 [Clause 19 of the 2021 Code] regardless of the cost to the company.

That a passport scheme or treasure hunt is organised by a third party would be immaterial as pharmaceutical companies are responsible under the Code for any activity undertaken by themselves, or with their authority, which promotes the administration, consumption, prescription, purchase, recommendation, sale, supply or use of their medicines (Clause 1.2 of the Code refers) [Clause 1.17 of the 2021 Code]. By participating in such schemes, companies would be giving their authority for the schemes to be conducted on their behalf.

The Panel considered that Chiesi was responsible under the Code for the email sent by MIMS. In order to be able to enter the prize draw, a health professional had to attend at least one session each day, of which the only session on day two was the promotional presentation provided by Chiesi. Whilst it was concerning, in the Panel's view, that Chiesi had not been



informed that MIMS intended to offer a prize draw, the Panel nonetheless considered that the arrangements were prohibited by Clause 10.6 of the Code and ruled a breach of Clause 10.6 accordingly.

The Panel considered that the arrangements for the prize draw, which required recipients to attend the Chiesi promotional session to be eligible, amounted to offering a benefit in connection with the promotion of medicines. This was in contravention of Clause 19.1 of the Code and the Panel thus ruled a breach of Clause 19.1.

The Panel noted the circumstances of this case and considered that Chiesi had been badly let down by MIMS. The Panel, nonetheless, noted its rulings of breaches of the Code as set out above, in particular its ruling of a breach of Clause 5.5, and considered that high standards had not been maintained. The Panel ruled a breach of Clause 5.1.

The Panel did not consider the circumstances amounted to a breach of Clause 2 which was a sign of particular censure. The Panel therefore ruled no breach of Clause 2.

**Complaint received**      **15 March 2022**

**Case completed**        **21 December 2022**