

# ANONYMOUS v ACTELION

## Hospitality at an exhibition stand

An anonymous, non-contactable complainant, who described him/herself as a physician, complained that Actelion had offered frozen yoghurt from its exhibition stand at a European congress held in London in September 2016 despite another named company being previously ruled in breach of the Code for doing so (Case AUTH/2812/12/15).

The detailed response from Actelion is given below.

**The PMCPA's guidance on items at conferences and exhibition stands stated that the Code allowed the provision of hospitality at scientific meetings including from an exhibition stand; hospitality provided from an exhibition stand must be subsistence only and not such as to induce a delegate to visit the stand eg no more than non-alcoholic beverages, such as tea, coffee and water, and very limited quantities of sweets, biscuits or fruit. In the Authority's view hot dogs, ice-cream, waffles, etc should not be provided at exhibition stands.**

**The Panel noted Actelion's submission that the ruling in Case AUTH/2812/12/15 had been missed. In the Panel's view that ruling had been published soon enough for Actelion to have cancelled the frozen yoghurt offering at its stand in September 2016.**

**The Panel considered that it was important for a company to be mindful of the impression created by its activities; perception and cost were important factors when deciding whether subsistence was appropriate. In the Panel's view, the availability of frozen yoghurt from Actelion's stand went beyond the provision of subsistence and was contrary to the requirements of the Code and a breach was ruled. High standards had not been maintained and a further breach was ruled.**

An anonymous, non-contactable complainant, who described him/herself as a physician, complained that at the European Respiratory Society (ERS) Congress, Actelion Pharmaceuticals UK had offered frozen yoghurt from its exhibition stand. The congress was held in London, 3-7 September 2016.

### COMPLAINT

The complainant stated that he/she was somewhat dismayed that despite Case AUTH/2812/12/15 in which a named pharmaceutical company was ruled in breach of the Code for serving frozen yoghurt, Actelion had offered a selection of frozen yoghurts that could be ordered via iPads to be delivered to the customer at their position on the booth to eat on or off the stand. The complainant stated that this was clearly unacceptable, particularly given the recent ruling.

When writing to Actelion the Authority asked it to respond in relation to the requirements of Clauses 9.1 and 22.1.

### RESPONSE

Actelion stated that it took the Code and any complaints very seriously; it was the first time it had received a complaint about the provision of hospitality at a scientific congress. Actelion submitted that it had supplied naturally flavoured frozen yoghurt, tea, barista made coffee, and bottled water. Actelion provided details of the cost and number of servings of frozen yoghurt dispensed during the congress.

Actelion explained that visitors to its stand could order frozen yoghurt either via iPad stations located at the designated visitor seating areas or directly from the refreshment counter serviced by contracted staff. The provision of frozen yoghurt was not advertised and the frozen yoghurt dispensing stand was not obvious from the exhibition floor such as to induce passing delegates; there was no intention to induce attendees to the stand by offering frozen yoghurt. It was intended purely as a healthy form of subsistence and was secondary to the scientific exchange at the booth.

The decision to provide the choice and options of refreshments, including frozen yoghurt, was made in April 2016 when Actelion was not aware of the ruling in Case AUTH/2812/12/15 as published in May 2016. The decision was made by the joint Actelion UK affiliate and Actelion global ERS 2016 senior project team, convened by the UK affiliate to ensure adherence to the Code in all ERS activities sponsored by Actelion.

Code of Practice Reviews published by the PMCPA were a helpful resource for companies to keep abreast of recent trends in governance undertakings, in particular, to take note of any sanction that might be relevant to activities sponsored by Actelion. However, and it was unfortunate that, for a variety of extenuating circumstances which was not an excuse, the review and ruling of Case AUTH/2812/12/15 was missed by Actelion.

Actelion noted that PMCPA guidance about hospitality listed types of subsistence allowed but did not give a definitive list of subsistence that was strictly forbidden, including frozen yoghurt. The guidance stated that 'the provision of subsistence allowed includes – non-alcoholic beverages, such as tea, coffee and water and very limited quantities of sweets, chocolates or fruit. In the Authority's view, hot dogs, ice-cream, waffles etc should not be provided at exhibition stands'.

As a confounding factor, in April when Actelion decided to provide, *inter alia*, frozen yoghurt on its booth, it did not know about Case AUTH/2813/12/15 in which an anonymous complainant stated that the level of hospitality provided at an international

congress (the same congress as that in Case AUTH/2812/12/15) was contrary to the Code. However, although the named company supplied tea, coffee, hot chocolate, flavoured iced drinks, chai latte, iced coffee as well as some small chocolates, and in contrast, a richer array of refreshments than that offered by Actelion, no breaches of Clauses 22.1 and 9.1 were ruled.

Actelion noted that whilst ‘flavoured iced drinks’ together with the impression of an extensive refreshments options provided by the company in Case AUTH/2813/12/15 was appropriate and allowable subsistence, frozen yoghurt was not. One could reasonably argue that the perception of frozen yoghurt (itself an iced/frozen based milk refreshment) was subjective and no different to the supply of ‘flavoured iced drinks’, which could be, by way of impression, similar to a ‘flavoured slush puppy-like drink’.

Nevertheless, Actelion accepted that since it had decided to provide frozen yoghurt, a potential precedent was published in the May 2016 Code of Practice Review. In that case, the Panel ruled that frozen yoghurt provision was an unacceptable form of subsistence.

#### **PANEL RULING**

The Panel noted that Clause 22.1 stated that hospitality must be strictly limited to the main purpose of the event and must be secondary to the purpose of the meeting ie subsistence only. The level of subsistence offered must be appropriate and not out of proportion to the occasion. Clause 22.1 applied to scientific meetings, promotional meetings, scientific congresses and other such meetings and training. The supplementary information to Clause 22.1 also stated that a useful criterion in determining whether the arrangements for any meeting were acceptable was to apply the question ‘Would you and your company be willing to have these arrangements generally known?’ The impression that was created by the arrangements for any meeting must always be kept in mind.

The PMCPA’s guidance on items at conferences and exhibition stands stated that the Code allowed the provision of hospitality at scientific meetings and

the like and there was no reason why it should not be offered from an exhibition stand. Companies would have to be certain that the hospitality overall complied with the Code and that any hospitality provided from an exhibition stand was subsistence only and not at a level as to induce a delegate to visit the stand. In the Authority’s view companies should provide no more than non-alcoholic beverages, such as tea, coffee and water, and very limited quantities of sweets, biscuits or fruit. The Authority advised that it did not consider that hot dogs, ice-cream, waffles, etc should be provided at exhibition stands.

The Panel noted Actelion’s submission that the ruling in Case AUTH/2812/12/15, published in the May 2016 Code of Practice Review, had been missed. In the Panel’s view that ruling had been published soon enough for Actelion to have cancelled the frozen yoghurt offering at its stand in September 2016.

The Panel further noted Actelion’s submission that its supply of frozen yoghurt was not advertised and nor was the frozen yoghurt dispensing stand obvious from the exhibition floor such as to induce passing delegates. The Panel considered, however, that word of mouth would play at least some part in informing delegates about the provision of frozen yoghurt and it was possible that delegates would see others eating the yoghurt on Actelion’s stand. Actelion had stated that the frozen yoghurt was not used to attract delegates to visit its stand; it was offered only as a healthy form of subsistence and was secondary to the scientific exchange at the booth. The Panel noted the cost per serving and the number of servings over the duration of the congress.

The Panel considered that it was important for a company to be mindful of the impression created by its activities; perception and cost were important factors when deciding whether subsistence was appropriate. In the Panel’s view, the availability of frozen yoghurt from Actelion’s stand went beyond the provision of subsistence and was contrary to the requirements of the Code and a breach of Clause 22.1 was ruled. High standards had not been maintained. A breach of Clause 9.1 was ruled.

**Complaint received**                      **15 September 2016**

**Case completed**                              **2 November 2016**