

MEMBER OF THE PUBLIC v ELI LILLY AND BOEHRINGER INGELHEIM

Alleged promotion to the public

An anonymous, contactable 'concerned member of the public' submitted a complaint about a promotional exhibition stand run by Boehringer Ingelheim Limited and Eli Lilly and Company Limited (the Alliance). The exhibition stand promoted Boehringer Ingelheim's products Jardiance (empagliflozin) and Trajenta (linagliptin) at the Clinical Pharmacy Congress (CPC) held on 7 and 8 June at ExCeL London.

Jardiance and Trajenta were each used in certain patients with type 2 diabetes.

The complainant alleged that the clear visibility of promotional literature to whomever was passing through the public gallery was a significant breach of standards with particular reference to children who were reading the promotional stands from the coffee stand outside. The complainant provided photographs of the exhibition stand.

The detailed joint response from Eli Lilly and Boehringer Ingelheim is given below.

The complainant provided three photographs and these did not appear to include the coffee area. In comparing the photographs it appeared that from one of them the information on the Alliance stand could not be read. It appeared that the other two were taken zooming in on the Alliance stand where some of the material could be read.

The photograph provided by the Alliance included the coffee area and appeared to be as seen by the public. The entrance to the conference which appeared to be marked by the banner welcoming delegates was clearly very close to the communal coffee area. There appeared to be a very short distance between the communal coffee area and the congress.

The Panel noted Boehringer Ingelheim's submission that it had attempted to take the stands down when it realised that they might be seen from the public area and when this was not possible the stands were covered. It was less likely that there would be children in the Excel centre on a Friday when the stand was uncovered. There was no evidence to support the complainant's comment. The other events that day were held in different areas according to Boehringer Ingelheim's submission.

The Panel considered it was very important that exhibition stands promoting prescription only medicines were not in areas which were accessed by the public. It was difficult when facilities were shared.

The Panel considered that members of the public in the communal coffee area would have been able to see the exhibition. On the evidence provided, the Panel did not consider that the complainant had established on the balance of probabilities that members of the

public were able to read the information on the Alliance stand from the coffee area. No breaches of the Code were ruled including the requirement to maintain high standards.

An anonymous contactable 'concerned member of the public' submitted a complaint about a promotional exhibition stand run by Boehringer Ingelheim Limited and Eli Lilly and Company Limited (the Alliance). The exhibition stand promoted Boehringer Ingelheim's products Jardiance (empagliflozin) and Trajenta (linagliptin) at the Clinical Pharmacy Congress (CPC) held on 7 and 8 June at ExCeL London.

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COMPLAINT

The complainant alleged that the clear visibility of promotional literature to whomever was passing through the public gallery was a significant breach of standards with particular reference to children who were reading the promotional stands from the coffee stand outside. The complainant provided photographs of the exhibition stand.

When writing to Boehringer Ingelheim and Lilly, the Authority asked it to consider the requirements of Clauses 9.1 and 26.1 of the Code.

RESPONSE

Boehringer Ingelheim Limited as the marketing authorization holder responded on behalf of the Alliance, and provided a chronology of events and corresponding actions which preceded the complaint.

Boehringer Ingelheim UK stated that its standard operating procedures (SOP) for meetings also covered congress stands. This SOP stated that rooms must not be accessible or visible to the public. Training for relevant staff emphasised the need for private rooms at venues so that promotional materials on stands were never visible to the public.

In April 2018 Boehringer Ingelheim, on behalf of the Alliance, reserved a stand space for the CPC, a congress intended only for healthcare professionals organised by a third party. The congress was to be held at the ExCeL London and the stand space reserved was E10 in the exhibition hall. The expectation was that all promotional stands at the congress, including those near the entrance, would be concealed from the Boulevard (shared public area for all exhibition halls, referred to as the public gallery by the complainant) by physical screens due to the congress being attended by healthcare professionals.

Boehringer Ingelheim provided details of the certification of the CPC stand materials and the exhibition stand.

On arrival at the congress on 7 June a member of the Alliance marketing team observed that due to the proximity of the stand to the entrance of the exhibition hall, there was a concern that someone passing through the Boulevard might see parts of the panels on the Alliance stand. Staff immediately contacted the Boehringer Ingelheim Ethics & Compliance team, the Boehringer Ingelheim Head of Cardiometabolics, and the congress organiser.

There were large registration desks either side of the entrance which delegates were guided by rope barriers to queue to collect their passes. After collecting their passes, several security guards were in place in front of the entrance to the exhibit hall to scan each delegate into the congress. However, despite the controlled access, there were no physical screens in place blocking the view from the Boulevard into the congress.

The Alliance marketing team member ascertained from the venue that there were two concurrent events taking place in the ExCeL (an 'Energy' conference taking place at the other end of the Boulevard, and an Accounting Exam for students from the University College London).

Following a telephone discussion with the Ethics & Compliance team and a Boehringer Ingelheim employee, it was agreed that the correct course of action was to take down the stands. The marketing team immediately contacted the event organisers only to be told that as the congress was now open with health professionals in attendance, they were unable to take down the stand due to health and safety risks. Therefore, the marketing team took the alternative immediate action to cover the panels instead.

Finally, Boehringer Ingelheim submitted that it also alerted the potential risk to some of the other pharmaceutical company exhibitors who were also near the entrance. However, Boehringer Ingelheim stated that it was the only exhibitor which took corrective action.

The Alliance stand remained covered for the rest of the congress, despite there being no other exhibitions at the ExCeL on 8 June.

The congress was intended for clinical pharmacy professionals who would by nature of their profession be over the age of 18, as specified on their website. To gain entry, the attendees had passes which were scanned every time they left and re-entered the exhibition hallway. The Alliance staff saw no children at the venue, neither inside the CPC congress areas (exhibition hallway) nor outside the congress in the Boulevard.

Additionally, from the information provided by the congress organiser, the other two events taking place in the ExCeL were for adult-only attendees.

Boehringer Ingelheim submitted that it was customary at a pharmaceutical congress for the exhibition hall itself not to be visible to the public, and for physical screens to be in place at the entrance. Access into the congress itself was controlled, and only possible with a pass scanned by security guards every time re-entry into the exhibition hall was required. To sign up to exhibit on this basis was consistent with the Code.

In reviewing its actions on the day of the event, the Alliance considered what actions would have been expected of it under the Code. The Code would expect representatives to arrive promptly, review arrangements, and take immediate corrective action if any concerns were identified. As described above, that was done. Boehringer Ingelheim submitted that a risk-averse course of action designed to maintain the high standards expected by the Code was taken. As conscientious members of the ABPI, it also alerted the potential risk to other pharmaceutical exhibitors near the entrance.

Having reviewed the photographs provided by the complainant, the Alliance did not accept that the photos provided were taken from the Boulevard coffee stand (outside the congress entrance), but instead from within the congress entrance/badge scanning area. The first photo appeared

zoomed in, due to the distorted pixels, and was not what the naked eye would see from standing at the coffee stand in the Boulevard. Given that the Alliance staff were concerned of the potential risk of being seen from outside the exhibition hall, the Alliance staff also took a photo of the stand as seen from the Boulevard, specifically from the coffee stand mentioned by the complainant, and a copy was provided. Boehringer Ingelheim submitted that the messaging on the Alliance stand panels was not legible from the coffee stand in the Boulevard.

As stated above, Boehringer Ingelheim doubted whether any promotional material was actually visible to the public on the day. It did not believe that the evidence provided by the complainant demonstrated this to be so. From other companies' lack of action on the day (ie that no other exhibitors covered their panels), Boehringer Ingelheim also assumed that other exhibitors thought that their promotional material was not visible to the general public.

The Alliance submitted that it had not breached Clause 26.1 of the Code and that its response on the day was consistent with the requirements of Clause 9.1.

PANEL RULING

The Panel examined the photographs provided by the complainant and respondent.

The complainant provided three photographs. In comparing the photographs it appeared that from one of them the information on the Alliance stand could not be read. It appeared that the other two were taken zooming in on the Alliance stand where some of the material could be read. The photographs provided by the complainant did not appear to include the coffee area.

The photograph provided by the Alliance included the coffee area and appeared to be as seen by the public. The entrance to the conference which appeared to be marked by the banner welcoming delegates was clearly very close to the communal coffee area. There appeared to be a very short distance between the communal coffee area and the congress.

The Panel noted Boehringer Ingelheim's submission that it had attempted to take the stands down when it realised that they might be seen from the public area and when this was not possible the stands were covered on 7 June and remained so for the rest of the congress. It was not clear what time the stands were covered. The email providing contact numbers for a member of staff attending the conference which asked for someone from Ethics and Compliance to call to discuss the situation was timed at 11.58.

The Panel was unsure why the complainant referred to children reading the stand when the other events that day were for adults. The first day of the conference was a Friday so it was less likely that there would be children in the Excel centre when the stand was uncovered. There was no evidence to support the complainant's comment. The other events that day were held in different areas according to Boehringer Ingelheim's submission.

The Panel considered it was very important that exhibition stands promoting prescription only medicines were not in areas which were accessed by the public. It was difficult when facilities were shared. Boehringer Ingelheim submitted that at the congress in question delegates' congress badges were scanned by security prior to admission to the congress and exhibition area. The Panel noted the actions taken by Boehringer Ingelheim in covering the exhibition panels because there was concern that someone passing through the Boulevard might see parts of the exhibition panels on the Alliance stand. They would have been uncovered for some time

whilst the company was deciding what action to take. The Panel noted the company's submission about the complainant's photographs. The time these were taken was not known but the registration desk looked busy. The photograph provided by the Alliance from the coffee area showed a clear banner welcoming attendees to the CPC and from this photograph it was difficult to read the information on the Alliance exhibition stand which could be seen from the public coffee area. It appeared that a member of the public would have to enter the conference area to read the stands.

The Panel considered that members of the public in the communal coffee area would have been able to see the exhibition. On the evidence provided, the Panel did not consider that the complainant had established on the balance of probabilities that members of the public were able to read the information on the Alliance stand from the coffee area. No breach of Clause 26.1 was ruled. The Panel did not consider that the Alliance had failed to maintain high standards and no breach of Clause 9.1 was also ruled.

Complaint received **27 July 2019**

Case completed **5 December 2019**