

Report from the Code Complaints Committee (CCC)

Alcon Laboratories (Australia) Pty Ltd ('Alcon') lodged a complaint against Allergan Australia Pty Ltd ('Allergan') on 9 September 2009. The matter was lodged and heard under the 4th ed of the MTAA Code of Practice ('Code') on 13 October 2009.

Alcon alleged four breaches of the Code by Allergan. The complaint centered around Allergan's Eye Care Club website and the nature of the prizes on offer to the intended audience of pharmacy and optometrists assistants. Alcon rejected Allergan's defence that pharmacy and optometrists assistants could not be considered 'Other Professionals' and therefore exempt from the Code and proceeded to lodge a complaint. The use of the term 'new' on product pack shot was also in dispute.

Findings

CCC found that 'Other Professionals' is to be interpreted broadly. It should be taken broadly to include all persons with whom members deal with over their products in a commercial relationship. This includes optometry and pharmacy assistants.

CCC found a breach of 6.8 (a) (ii) by Allergan with respect to the prizes on offer in the competition. All prizes (except the first three draws) were found to be of excessive monetary value. No prizes were found to be of an educational nature or relevant to the practice of medicine.

Allergan was found to have used the term 'new' in breach of 5.1 (h).

Penalty

CCC required Allergan to put a notice on its Eye Care Club website detailing the findings of CCC. This notice was to remain on the website until the website was no longer required for the purposes of the competition.

A similar notice was to be placed on the Allergan Australia Pty Ltd website ('principal website') for 3 months from the date of initial appearance on the principal website.

CCC concluded that overall, Allergan's behaviour fell into the category of a minor breach of the Code. In accordance with the Code, no fine was imposed, although Allergan is required to pay costs.

Allergan accepted the findings of CCC and declined to lodge an appeal. Notices were placed on the Eye Care Club and principal Allergan website in accordance with CCC requirements in the week beginning 2 November 2009.

This notice has been placed on the MTAA website in accordance section 14 of the Code.



Brett Andrews
Secretary, Code Complaints Committee

9 November 2009