



MCA Registered Office:
Unit 7 Boskrui Business Park
Bosbok Road
Randpark Ridge
2169
South Africa

THE EX-PARTE PANEL OF THE MARKETING CODE AUTHORITY OF SOUTH AFRICA

Ex Parte Case No: Ex0004

Date: 25 January 2016

In the matter requested by:

A. COMMITTEE MEMBERS

B. DETAILS OF NON-BINDING OPINION SOUGHT

is seeking a non-binding opinion with regards to certain promotional items and gifts. See Annexure A for the particular issues to be addressed in the non-binding opinion as well as details of the intended promotional items and gifts.

C. RELEVANT SECTIONS OF THE MARKETING CODE

Below an extract of the relevant section of the Marketing Code:

19 INDUCEMENTS, GIFTS AND PROMOTIONAL ITEMS, COMPETITIONS

Unit 7 Boskrui Business Park, Bosbok Road, Randpark Ridge, 2169
Mobile: 063 044 5200 / Email: info@marketingcode.co.za / www.marketingcode.co.za

Chairman: Ms Ann Marie Hosang-Archer Executive Officer: Dr Haseena Gani

19.1 Inducements

There should be no personal enrichment of healthcare professionals or other healthcare providers. No gift, benefit in kind, rebate, discount, kickback or any other pecuniary advantage shall be offered or given to members of the health professions, administrative staff, government officials, or the general public as an inducement to prescribe, lease, loan, supply, stock, dispense, administer or buy any health product, subject to the provisions of Clause 19.2. No donation should unjustifiably enrich healthcare professionals performing a health related service.

19.2 Promotional aids

19.2.1 Occasional items to healthcare professionals, appropriate administrative staff, sales and other staff are acceptable provided that they are:

19.2.1.1 Inexpensive and of modest intrinsic value i.e. within the cost limit set from time to time per annum by the MCA.

19.2.1.2 Not for personal use e.g. no entertainment CDs/DVD, electronic items for entertainment, tickets to attend sporting events or other forms of entertainment.

19.2.1.3 Educational and/or of scientific value, benefit the patient and/or be relevant to the practice.

19.2.1.4 No cash or cash equivalents are allowed.

19.2.2 It is permissible to brand promotional aids. The minimum information for a medicine as required under Clause 5 does not have to be included on a promotional aid provided that no promotional claims are made.

19.2.2.1 The items should be inexpensive and of minimal intrinsic value i.e. within the cost limit set from time to time per annum by the MCA.



19.2.3 *The following information may be included on such items:*

19.2.3.1 *The proprietary name of the product.*

19.2.3.2 *An indication that the name of the product is a trademark.*

19.2.3.3 *Relevant company name, company logo and/or product logo.*

19.3 ***Cultural courtesy gifts***

An inexpensive gift not related to the healthcare professionals' practice, the value of which will be determined by the MCA, may be given as a maximum of one gift per year to healthcare professionals, in recognition of significant national, cultural or religious days. The maximum value of the gift must be in line with the value of general gifts.

Below an extract from the Guideline to the Code of Marketing Practice:

Clause 37: ***Promotions, Gifts, Prizes and Inducements***

Note 1: ***Provision of medical and educational goods and services***

The provision of medical and educational goods and services which will enhance patient care or benefit the South African health system are acceptable. The provision of such goods and services must not be done in such a way as to be an inducement to prescribe, supply, administer or buy any health product or to recommend its use, prescription or purchase.

Appendix 1: Values / limits

Items of general utilities:

Modest: R 300 inclusive of VAT



Items of medical utilities:

For scientific medical reference books / journal and periodical

- individual practicing HCP or practices, the value should not exceed R 2 500 (inclusive of VAT)/year

- training or academic institutions, the value should not exceed R 10 000 (inclusive of VAT)/year

The value of medical devices should not exceed R300 (inclusive of VAT) / per item with a cap of R 2500 (inclusive of VAT)/ practice or institution.

D. ISSUES TO BE CONSIDERED

Dr Reddy's raised the following questions in relation to the items depicted in Annexure A hereto:

- 1. Is it permitted to give the non-branded items listed in Annexure A to Healthcare Professionals in view of the provisions of the Marketing Code and particularly Section 19?**

In terms of Section 19.1 of the Marketing Code, there should be no personal enrichment of healthcare professionals or other healthcare providers. It states further that no gift shall be offered or given to members of the health professions or administrative staff as an inducement to inter alia prescribe, supply, stock, dispense, administer or buy any health product, subject to the provisions of Clause 19.2 of the Marketing Code.

Clause 19.2 of the Marketing Code deals specifically with promotional aids which are in terms of the Marketing Code defined as non-monetary items given away free of charge to promote a company or product.

It is the view of the Committee that none of the items listed in Annexure A constitute promotional aids as contemplated by Section 19.2 of the Marketing Code but are brands that can be considered gifts as contemplated by Section 19.1 of the Marketing Code.



2. With reference to the use of the word "Occasional" in Section 19.2.1 of the Marketing Code, please define occasional in a number per annum.

The term "occasional" is not defined in the Marketing Code. It is therefore necessary to consider dictionary definitions which could mean any of the following:- at infrequent or irregular intervals; or now and then; or sometimes but not often; or from time to time.

3. Section 19.2.3 of the Marketing Code deals with branding of the items. Is it therefore intended that promotional items should generally be branded?

In terms of Section 19.2.2 of the Marketing Code, it is *permissible* to brand promotional aids. Section 19.2.3 of the Marketing Code refers to information that *may* be included in promotional aids.

E. NON-BINDING OPINION

1. Considering the nature and value of the gifts under consideration and the fact that there is no indication that the items are intended as cultural courtesy gifts in recognition of significant national or cultural or religious days, it may very well be considered an inducement to members of the health professions. The reason being that much cheaper non-branded alternative products are available. The intended gifts can also not be considered cultural courtesy gifts as contemplated by Section 19.3 of the Marketing Code.
2. The Committee is of the view that it would be both inappropriate and irresponsible to define "occasional" in a number per annum as circumstances may differ which would in turn determine what is appropriate in such circumstances.
3. In terms of the Marketing Code, it is not intended that promotional items should generally be branded. However, unless the promotional aid in question can directly be linked to the product to be promoted, it would be a futile exercise to give out promotional aids and to claim that such is intended to promote a product. It therefore goes without saying that promotional aids



not directly linked to the product being promoted should be branded in order to qualify as a promotional aid.

F. All three members of the Committee concur with this non-binding opinion which may or may not be accepted or rejected by

Signed at MIDRAND On this 25TH day of JANUARY 2016

[Handwritten mark]

.....

Signed at WOODHEAD On this 25TH day of JANUARY 2016

.....


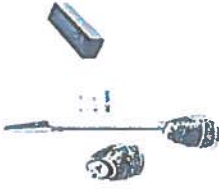
Signed at..... On this day of.....2016

.....

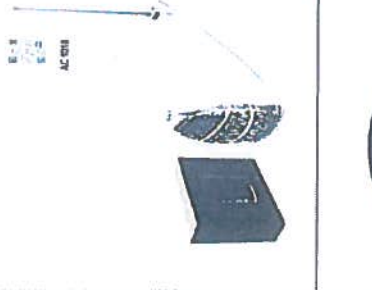


ANNEXURE "A"

**OPINION REQUIRED WITH REGARDS TO PROMOTIONAL ITEMS AND GIFTS
SECTION 19: INDUCEMENTS, GIFTS AND PROMOTIONAL ITEMS**



1. Could you please advise whether we are permitted to give the following, non-branded items to HCPs in view of the provisions of the Marketing Code and particularly *Section 19*.

Sr	Item Description	Costs (incl VAT)	Picture	Frequency p.a	Permitted Yes/No
1	Set of 2 JC Penny teaspoons	R285.00		4 sets (8 teaspoons)	
2	Andy Cartwright photo peg	R116.00		1	



ANNEXURE "A"

No	Item Description	Costs (incl VAT)	Picture	Frequency p.a	Permitted ratio
3	Andy Cartwright message spike	R1116.00		1	
4	Andy Cartwright condiment dish	R250.00		1	
5	Andy Cartwright Vuvuzela pen	R214.00		1	

ANNEXURE "A"

Nr	Item Description	Costs (excl VAT)	Picture	Frequency p.a	Particular Year/No
6	Andy Cartwright Notepad holder	R250.00		1	
7	Andy Cartwright Business card holder	R175.00		1	

ANNEXURE "A"

Slr	Item Description	Costs (excl VAT)	Picture	Frequency p.a.	Planned Year(s)
8	Ritzenhoff drinking glasses	R272.23		6 glasses	
9	Le Creuset cup and saucer set	R160.16		6 sets	

2. Section 19.2.1 of the Code states "Occasional" items may be given to HCPs. Could you please define occasional in a number per annum.

3. Section 19.2.3 of the Code deals with branding of the items. Is the intention that promotional items should generally be branded?