

JOURNALIST v BAYER

Tweets about Levitra and Sativex

A reporter with a healthcare publication provided a copy of an article from InPharm entitled 'Digital Pharma: Bayer UK's Twitter slip-up' which discussed two tweets posted by Bayer Healthcare about Levitra (vardenafil) and Sativex (delta-9-tetrahydrocannabinol and cannabidiol) and the Code.

The InPharm article stated that the tweets at issue were notable compared with other UK pharma twitter accounts which signed their tweets off by medical and legal departments and were confined to disease awareness or healthcare news from the mainstream press. The author noted that some of the approximately 500 Bayer twitter account followers were clearly members of the public. The article referred to the PMCPA guidance on the use of digital media.

The complainant raised a number of questions regarding the use of twitter and the Code.

The detailed response from Bayer is given below.

The Panel noted that the Code prohibited the advertising of prescription only medicines to the public. Information could be supplied directly or indirectly to the public but such information had to be factual and presented in a balanced way. It must not raise unfounded hopes of successful treatment or be misleading with respect to the safety of the product. Statements must not be made for the purpose of encouraging members of the public to ask their doctor to prescribe a specific prescription only medicine.

The Panel noted that social media, including twitter, could be used to provide information to the public so long as the material complied with the Code. In its guidance on digital communications (issued April 2011) and in relation to twitter, the Authority had stated that 'If a company wanted to promote a medicine via twitter it would have to ensure that if the medicine was prescription only, the audience was restricted to health professionals and that the message, in addition to any link to further information, complied with the Code. In addition companies would also have to ensure that recipients had agreed to receive the information. Given these restrictions and the character limit on twitter, it is highly unlikely that the use of this medium to promote prescription only medicines would meet the requirements of the Code'.

The Panel noted that the tweets at issue were taken from the headlines of certified press releases and were posted on the same days as the respective news releases. The tweets themselves

were not certified. The twitter account was accessible by members of the public.

The Levitra tweet did not cite the product's name but referred to its qualities, indication and launch. The Sativex tweet mentioned the brand name, indication and launch. The Panel considered that each tweet was in fact a public announcement about the launch of a prescription only medicine which promoted that medicine to the public and would encourage members of the public to ask their health professionals to prescribe it. Breaches of the Code were ruled in relation to each tweet as acknowledged by Bayer. The Panel considered that high standards had not been maintained. A further breach of the Code was ruled.

The Panel was concerned that material placed on twitter had not been certified. That the original press releases were certified was insufficient in this regard. If part of a certified document was reproduced in a different format or directed to a different audience the new material should be certified separately. The Panel was extremely concerned that controls within the company were such that uncertified information about the launch of prescription only medicines had been posted on twitter. A breach of Clause 2 was ruled.

A reporter with a healthcare publication provided a copy of an article from InPharm entitled 'Digital Pharma: Bayer UK's Twitter slip-up' which discussed tweets posted by Bayer Healthcare about Levitra (vardenafil) and Sativex (delta-9-tetrahydrocannabinol and cannabidiol) and the Code.

The article was subtitled 'There seems to be some confusion at Bayer UK over what communications can be sent over Twitter' and referred to two tweets: the first announced the launch of a new formulation of Levitra 'First & only melt-in-the-mouth erectile dysfunction treatment launched by Bayer today <http://tinyurl.com/6hfxymf>' and the second read 'Savitex launched in UK for the treatment of spasticity due to Multiple Sclerosis <http://tiny.cc/kiz2y>'. The tweets were posted on 22 March 2011 and 21 June 2010 respectively. The InPharm article stated that the tweets at issue were notable compared with other UK pharma twitter accounts which signed their tweets off by medical and legal departments and confined themselves to disease awareness or healthcare news from the mainstream press. The article noted that some of the approximately 500 Bayer twitter account followers were clearly members of the public and referred to the PMCPA guidance on the use of digital media.

COMPLAINT

The complainant questioned whether the Authority considered that the tweets breached the Code and whether it would take action. The complainant also asked how concerned the PMCPA was about the use of twitter and social media to promote pharmaceutical products and whether there was a need for a separate Code giving guidance about acceptable use of social media given the popularity of twitter, facebook etc.

When writing to Bayer Healthcare, the Authority asked it to respond in relation to Clauses 2, 9.1, 22.1 and 22.2 of the Code.

RESPONSE

Bayer stated that the two product-specific tweets in question for Levitra and Sativex were posted on 22 March 2011 and 21 June 2010 respectively. The tweets were taken from the headlines of certified news releases and were posted on the same days as the respective news releases. The tweets themselves were not certified.

Bayer's UK/Ireland twitter channel currently had approximately 550 'followers' the majority of whom had a special interest in Bayer's businesses: journalists, agencies, consultants and other service providers, students, competitors and other Bayer contacts. However, given that the provision of 'follower' details was discretionary, it was not possible to identify exactly who they represented. A list of 'followers' was provided.

On re-examining the tweets after receiving the complaint from the PMCPA and, in particular, in the context of the Panel's rulings in Case AUTH/2355/9/10 about a news story on a company website, Bayer accepted that the tweets constituted advertising to the public and an encouragement to request a specific medicine and therefore were in breach of Clauses 22.1 and 22.2.

As made clear in the Digital Communications Guidance, issued by the PMCPA, April 2011, it was an ongoing challenge for the pharmaceutical industry to decide how it could use digital media and still ensure it respected the long established restrictions on promoting its products. This complaint had greatly assisted Bayer to establish what use could be made of digital media by its pharmaceutical business. Together with the rest of the industry, Bayer was keen to continue to work with the PMCPA to ensure that it did its very best to use the constantly developing opportunities of new media to support high quality patient care within the boundaries established by the Code.

In accepting breaches of Clauses 22.1 and 22.2, for which Bayer extended its sincere apologies to the PMCPA, Bayer referred to the rulings in Case AUTH/2355/9/10 in the hope that its tweets were not such as to require the Panel to rule a breach of either Clauses 9.1 or 2.

PANEL RULING

The Panel noted that Clause 22.1 prohibited the advertising of prescription only medicines to the public. Clause 22.2 permitted information to be supplied directly or indirectly to the public but such information had to be factual and presented in a balanced way. It must not raise unfounded hopes of successful treatment or be misleading with respect to the safety of the product. Statements must not be made for the purpose of encouraging members of the public to ask their doctor to prescribe a specific prescription only medicine.

The Panel noted that the use of social media including twitter to provide information to the public was a legitimate activity so long as the material complied with the Code, particularly Clause 22.

In its guidance on digital communications (issued April 2011) and in relation to twitter, the Authority had stated that 'If a company wanted to promote a medicine via twitter it would have to ensure that if the medicine was prescription only, the audience was restricted to health professionals and that the message, in addition to any link to further information, complied with the Code. In addition companies would also have to ensure that recipients had agreed to receive the information. Given these restrictions and the character limit on twitter, it is highly unlikely that the use of this medium to promote prescription only medicines would meet the requirements of the Code'.

The Panel noted that the tweets were taken from the headlines of certified press releases and were posted on the same days as the respective news releases. The tweets themselves were not certified. The twitter account was accessible by members of the public.

The Levitra tweet did not cite the product's name but referred to its qualities, indication and launch. According to the article provided by the complainant the tweet was linked to the press release. Bayer had not commented on this. The Sativex tweet mentioned the brand name, indication and launch. The Panel considered that each tweet was in fact a public announcement about the launch of a prescription only medicine. The Panel considered that each tweet promoted a prescription only medicine to the public and would encourage members of the public to ask their health professionals to prescribe it. Breaches of Clauses 22.1 and 22.2 were ruled in relation to each tweet as acknowledged by Bayer. The Panel considered that high standards had not been maintained. A breach of Clause 9.1 was ruled.

The Panel considered that the circumstances of the present case were different to Case AUTH/2355/9/10 cited by Bayer wherein no breach of Clause 2 was ruled in relation to the short description of a press release on the open access homepage of

company website and the press release itself. Breaches of Clauses 9.1, 22.1 and 22.2 had been ruled. Case AUTH/2355/9/10 thus concerned material published in a different format. There was no allegation or comment in that case as to whether the material at issue had been certified. Turning to the present case, the Panel was concerned that material placed on twitter had not been certified. That the original press releases were certified was insufficient in this regard. If part of a certified document was reproduced in a different format or directed to a different audience the new material should be certified separately.

The Panel was extremely concerned that controls within the company were such that uncertified information about the launch of prescription only medicines had been posted on twitter. The nature of dialogue on twitter was such that tweets were broadly and quickly disseminated. A breach of Clause 2 was ruled.

Complaint received	28 April 2011
Case completed	3 June 2011
