

COMPLAINANT v ALLIANCE PHARMACEUTICALS

Promotion of Xonvea on LinkedIn

A complainant who described him/herself as a concerned UK health professional complained about a post from Alliance Pharmaceuticals received on his/her LinkedIn feed.

The post announced that Alliance Pharmaceuticals had launched Xonvea (doxylamine succinate 10mg/ pyridoxine hydrochloride 10mg) and described it as a new treatment indicated for nausea and vomiting of pregnancy (NVP) where conservative management had failed. The post included the brand name in logo format and linked to a press release headed 'Xonvea launch in the UK'. The opening paragraph stated that Alliance Pharma plc, 'announces that it has today launched Xonvea, its prescription product for the treatment of nausea and vomiting of pregnancy (NVP), in the UK. Xonvea is a new licensed medicine available in the UK for women with NVP where conservative management has failed'.

The complainant alleged that the post had been sent to all followers of the website and had been further disseminated by UK based employees liking the announcement. The complainant was concerned that it was an example of blatant promotion to the public.

The detailed response from Alliance is given below.

The Panel noted that the post at issue, which included a link to a press release was posted to the Alliance Pharmaceuticals Limited section on the LinkedIn site at the time Xonvea was launched in the UK. In the Panel's view, the two could not reasonably be separated and in that regard both elements were considered together.

The Panel noted Alliance Pharmaceuticals' submission that the post was newsworthy and would only be visible to LinkedIn users who had chosen to follow the company which included approximately 4000 users. During the uploading process the size of the Xonvea logo in the LinkedIn post was significantly increased. The Panel noted Alliance Pharmaceuticals' submission that this unintended change meant that the post could be considered promotional in nature, as would an Alliance employee liking it.

The Panel noted that the LinkedIn post announced to readers that Alliance Pharmaceuticals had launched Xonvea and described it as a new treatment indicated for nausea and vomiting of pregnancy (NVP) where conservative management had failed. The post linked to a press release which was headed Xonvea launch in the UK. The press release included a statement that 'there is no other licensed treatment for nausea and vomiting of pregnancy in the UK so this is excellent news

for patients and clinicians as it fulfils a significant unmet medical need' and 'Xonvea's combination of doxylamine and pyridoxine is recommended as a first-line pharmacotherapy in the USA and Canada and has been prescribed to over 33 million women in more than 40 years'. The Panel considered that these statements constituted product claims and could encourage members of the public to ask their health professional to prescribe a prescription only medicine. The Panel did not agree with Alliance Pharmaceuticals' view that it was simply the change in the size of the product logo on the LinkedIn post that meant the post was promotional.

Turning to the second allegation, the Panel noted Alliance Pharmaceuticals' submission that the post was also 'liked' by at least one Alliance UK employee and would therefore be seen by his/her followers on the LinkedIn site. The Panel considered it was likely that the Alliance employee's connections would include members of the public.

The Panel considered that, on the balance of probabilities, the Alliance Pharmaceuticals' LinkedIn account followers and the Alliance employees' connections to whom the post had been disseminated by virtue of the employees' 'like' would include members of the public.

The Panel considered that a prescription only medicine had been promoted to the public and might encourage members of the public to ask their health professionals to prescribe it. Breaches of the Code were ruled in relation to both the original LinkedIn post and associated press release on Alliance Pharmaceuticals' LinkedIn account and the further dissemination of this content due to Alliance Pharmaceuticals' employees' like of the post. The Panel considered that high standards had not been maintained and ruled a breach of the Code.

The Panel was concerned that the guidance in the company-wide email which was sent at the time of the Xonvea launch appeared to encourage 'liking' of a Xonvea social media post. The Panel considered that Alliance had failed to maintain high standards in this regard and a breach of the Code was ruled.

The Panel noted its comments and rulings above and, on balance, considered the circumstances did not warrant a ruling of a breach of Clause 2 which was used as a sign of particular censure.

A complainant who described him/herself as a concerned UK health professional complained about a post from Alliance Pharmaceuticals (ref AL/3484/10.18/0.001) received on his/her LinkedIn feed.

The post announced that Alliance Pharmaceuticals had launched Xonvea (doxylamine succinate 10mg/ pyridoxine hydrochloride 10mg) and described it as a new treatment indicated for nausea and vomiting of pregnancy (NVP) where conservative management had failed. The post included the brand name in logo format. The post linked to a press release which was headed 'Xonvea launch in the UK'. The opening paragraph stated that Alliance Pharma plc, 'announces that it has today launched Xonvea, its prescription product for the treatment of nausea and vomiting of pregnancy (NVP), in the UK. Xonvea is a new licensed medicine available in the UK for women with NVP where conservative management has failed'.

COMPLAINT

The complainant alleged that the advertisement and linked press release appeared in his/her LinkedIn feed and that the post had been sent to all followers of the website and had been further disseminated by UK based employees liking the announcement.

The complainant was concerned that it was an example of blatant promotion to the public.

When writing to Alliance Pharmaceuticals, the Authority asked it to consider the requirements of Clauses 2, 9.1, 26.1 and 26.2 of the Code.

RESPONSE

Alliance Pharmaceuticals submitted that the item was posted to the Alliance Pharmaceuticals Limited corporate website homepage and to LinkedIn as part of its corporate PR campaign at the time of launch of Xonvea in the UK. Alliance Pharmaceuticals did not consider that the certified content of the LinkedIn post or associated press release were promotional in nature; the content was based on a public press release with no promotional claims. It was posted to the Alliance Pharmaceuticals Limited section on the LinkedIn site as it was newsworthy and would have only been visible to LinkedIn users who had chosen to follow the company, currently approximately 4000 users. It would not have been visible to the whole LinkedIn community as per the complaint.

Alliance Pharmaceuticals submitted that its investigation, however, showed that the content which appeared on LinkedIn was significantly different to the approved final form which was unintentional. According to Alliance Pharmaceuticals the Xonvea logo was significantly increased in size during the uploading process which the company accepted could inadvertently create a different impression to some readers viewing the content.

Alliance Pharmaceuticals was currently reviewing its procedures to determine what corrective and preventative actions could be put in place to avoid a recurrence of the error. Alliance Pharmaceuticals intended to have an additional review (similar to printed hard copy) with any dynamic content to make absolutely sure that the online content was exactly what was intended at the approval stage.

Alliance Pharmaceuticals submitted that as per the complaint, the post was 'liked' by at least one Alliance employee and therefore seen by their followers on the LinkedIn site. LinkedIn was not able to share the data retrospectively because of the General Data Protection Regulation (GDPR) and Alliance Pharmaceuticals could therefore not investigate it any further. Alliance Pharmaceuticals explained that had the content been entirely non-promotional as intended, it did not believe that liking the post would have had any significant impact as the material was intended to be suitable for the public. Furthermore, at the time of the launch an email was sent company-wide providing guidance regarding how the company should manage social media activity including guidance on liking, sharing and commenting.

The messages beneath the post were written by two external advertising agencies, who had worked with Alliance previously, but had not worked on the Xonvea brand in at least the last three years.

Alliance Pharmaceuticals submitted that its current copy approval standard operating procedure (SOP) discussed how to approach the approval of digital media content. The company was already in the process of expanding on that with a specific SOP intended to provide more robust guidance to its teams regarding appropriate management of digital and social media. A current draft of the procedure to ensure staff had the appropriate guidance in this area was provided.

With regards to the clauses it was asked to consider, Alliance Pharmaceuticals stated that:

- Because of the dynamic nature of LinkedIn there had been a change to the certified final form of the item and the company accepted a breach of Clause 14.1.
- Although it was the company's intention that the post was to be a suitable corporate announcement of the launch of its product in the UK, it accepted that the change in the final form might have inadvertently given a different impression. Alliance Pharmaceuticals acknowledged that the final form would therefore be considered promotional in nature, as would an Alliance employee liking the post and it accepted a breach of Clause 26.1.
- It accepted that the change in the final form which led to inadvertent promotion to the public meant that the company had not maintained high standards in breach of Clause 9.1.
- Other than the change in size of the logo, the content was an appropriate simple announcement of the product launch linked to a press release that was also balanced and factual; it did not make any claims, nor did it raise unfounded hopes of successful treatment or encourage members of the public to ask for Xonvea. Alliance Pharmaceuticals therefore denied a breach of Clause 26.2.
- It had considered the examples of activities which were given as likely to be a breach of Clause 2 in the 2016 Code. Alliance Pharmaceuticals emphasised that there was no suggestion that

it had prejudiced patient safety or public health and it therefore did not consider the matter was sufficient to be considered a breach of Clause 2.

Alliance Pharmaceuticals submitted that in summary, although the item was intended to be part of a non-promotional PR campaign at the launch of its new product, it accepted that a mistake during the uploading process and the dynamic nature of LinkedIn led the company to inadvertently promote to members of the public. The company submitted that it would take steps to ensure its copy approval process was updated to prevent a recurrence and it was finalising its new social media policy to ensure its staff had up to date guidance on Code compliance in this challenging area.

As part of its ongoing revalidation of its processes Alliance Pharmaceuticals had engaged with compliance companies to audit its existing copy approval processes. Depending on the outcome of that audit it proposed to make further refinements to its copy approval processes.

PANEL RULING

The Panel noted that LinkedIn was different to some other social media platforms in that it was a business and employment-orientated network and was primarily, although not exclusively, associated with an individual's professional heritage and current employment and interests. In the pharmaceutical industry, the Panel noted that an individual's network might, albeit not exclusively, be directly or indirectly associated with the healthcare industry.

The Panel noted that the complainant's allegations referred to both Alliance Pharmaceuticals' post on its LinkedIn account and the further dissemination of the content by its UK based employees liking the post. The Panel noted that material could be disseminated or highlighted by an individual on LinkedIn in a number of ways, including by posting, sharing, commenting or liking. The Panel further noted that the nature of LinkedIn was such that posts could be broadly and quickly disseminated making them available to other LinkedIn users.

The Panel further noted that there was no complaint about the comments written beneath the post by two agencies who had previously worked with Alliance. One of these comments stated, 'Congratulations a first. At last a product that can make a huge difference during pregnancy'. The Panel noted that companies were responsible for the acts and omissions of their third-party agencies. Alliance Pharmaceuticals' submitted that neither agency had worked on the Xonvea brand in at least the last 3 years. The Panel was unclear whether the agencies still worked with Alliance Pharmaceuticals in any capacity but did not consider this further as there was no relevant allegation.

The Panel noted that the post at issue, which included a link to a press release (both of which were referred to by the complainant), was posted to the Alliance Pharmaceuticals Limited section on the LinkedIn site as part of its corporate PR

campaign at the time Xonvea was launched in the UK. In the Panel's view given the LinkedIn post was inextricably linked to the press release, the two could not reasonably be separated and in that regard both elements were considered together.

The Panel noted Alliance Pharmaceuticals' submission that the post was newsworthy and would only be visible to LinkedIn users who had chosen to follow the company which included approximately 4000 users.

The Panel noted the company's submission that during the uploading process to the Alliance Pharmaceuticals Ltd LinkedIn account, the size of the Xonvea logo in the LinkedIn post was significantly increased. The Panel noted Alliance Pharmaceuticals' submission that this unintended change meant that the post could be considered promotional in nature, as would an Alliance employee liking it.

With regard to Alliance Pharmaceuticals' admission of a breach of Clause 14.1 because the final form of the LinkedIn post was different to what had been certified, there did not appear to be an allegation in this regard and hence this clause had not been raised by the case preparation manager. The Panel could, therefore, make no ruling in this regard. In the Panel's view, a robust certification procedure underpinned self-regulation and it was concerned that it appeared that Alliance Pharmaceuticals only became aware of this matter on notification of the complaint rather than as a result of its own due diligence.

The Panel noted Alliance Pharmaceuticals' submission that, other than the change in the size of the Xonvea logo, it considered the LinkedIn post was a non-promotional corporate announcement of the launch of its product in the UK and that had the content been entirely non-promotional as intended, liking the post would not have had any significant impact as the material was intended to be suitable for the public. This was reflected in the description of the intended audience in the approval certificate of the post and associated press release. The Panel further noted Alliance Pharmaceuticals' submission that the press release was balanced, factual, made no claims and did not raise unfounded hopes of successful treatment or encourage members of the public to ask for Xonvea.

The Panel noted that the supplementary information to Clause 26.2 allowed information to be made available in order to inform shareholders, the Stock Exchange and the like by way of annual reports and announcements etc which may relate to both existing medicines and those not yet marketed. Such information must be factual and presented in a balanced way. Business press releases should identify the business importance of the information. The Panel queried whether Alliance Pharmaceutical's intended post and press release was appropriate for an audience that would likely extend beyond the relevant media and financial and investment community as would, on the balance of probabilities, likely be the case with regards to Alliance Pharmaceutical's 4000 LinkedIn followers.

The Panel noted that the LinkedIn post announced to readers that Alliance Pharmaceuticals had launched Xonvea (doxylamine succinate 10mg/pyridoxine hydrochloride 10mg) and described it as a new treatment indicated for nausea and vomiting of pregnancy (NVP) where conservative management had failed. The post linked to a press release which was headed Xonvea launch in the UK. The press release similarly covered the launch of Xonvea in the UK and included a statement from Alliance Pharmaceuticals' CEO that 'there is no other licensed treatment for nausea and vomiting of pregnancy in the UK so this is excellent news for patients and clinicians as it fulfils a significant unmet medical need'. The press release further stated 'Xonvea's combination of doxylamine and pyridoxine is recommended as a first-line pharmacotherapy in the USA and Canada and has been prescribed to over 33 million women in more than 40 years'. The Panel considered that these statements constituted product claims and could encourage members of the public to ask their health professional to prescribe a prescription only medicine. The Panel did not agree with Alliance Pharmaceuticals' view that it was simply the change in the size of the product logo on the LinkedIn post that meant the post was promotional.

Turning to the second allegation, the Panel noted Alliance Pharmaceuticals' submission that the post was also 'liked' by at least one Alliance UK employee and would therefore be seen by his/her followers on the LinkedIn site. The Panel considered it was likely that the Alliance employee's connections would include members of the public.

The Panel understood that if an individual 'liked' a post it increased the likelihood that the post would appear in his/her connections LinkedIn feeds thereby disseminating the material. In the Panel's view, activity conducted on social media that could potentially alert one's connections to the activity might be considered proactive dissemination of material. In addition, an individual's activity and associated content might appear in the individual's list of activities on his/her LinkedIn profile page which was visible to his/her connections; an individual's profile page was also potentially visible to others outside his/her network depending on the individual's security settings. In the Panel's view the act of liking the material amounted to proactive dissemination of the material.

In the Panel's view, it was of course not unacceptable for company employees to use personal LinkedIn accounts and the Code would not automatically apply to all activity on a personal account; whether the Code applied would be determined on a case-by-case basis taking into account all the circumstances including: the content, any direct or indirect reference to a product, how the information was disseminated on LinkedIn, the company's role in relation to the availability of the content and whether such activity was directed or encouraged by the company. If activity was found to be within the scope of the Code, the company would be held responsible.

The Panel noted that Clause 26.1 prohibited the promotion of prescription only medicines to the public. Clause 26.2 stated that information about prescription only medicines which was made available either directly or indirectly to the public must be factual, presented in a balanced way, must not raise unfounded hopes of successful treatment and must not encourage members of the public to ask their health professional to prescribe a specific prescription only medicine.

The Panel noted its comments above and considered that, on the balance of probabilities, the Alliance Pharmaceuticals' LinkedIn account followers and the Alliance employees' connections to whom the post had been disseminated by virtue of the employees' 'like' would include members of the public. The Panel noted the product claims within the press release and the branded logo in the LinkedIn post.

The Panel considered that a prescription only medicine had been promoted to the public and might encourage members of the public to ask their health professionals to prescribe it. Breaches of Clauses 26.1 and 26.2 were ruled in relation to both the original LinkedIn post and associated press release on Alliance Pharmaceuticals' LinkedIn account and the further dissemination of this content due to Alliance Pharmaceuticals' employees' like of the post. The Panel considered that high standards had not been maintained. A breach of Clause 9.1 was ruled.

The Panel was mindful of the complex issues that had to be addressed by companies when advising staff about social media use. The increasing use of social media, both in the personal and business capacity, presented compliance challenges. In addition, many social media platforms used algorithms and had settings which individuals and companies might not be fully aware of. In the Panel's view, companies should remain vigilant and ensure that they took reasonable steps to highlight the potential compliance issues that might arise from interacting on social media including 'liking' certain posts on LinkedIn given such posts could thereby potentially be pushed to their connections' feeds. The Panel was aware that the types of activity performed by the Alliance Pharmaceuticals' employees on LinkedIn was not uncommon across the industry. In the Panel's view, employees might feel inclined to endorse posts that were published by their company's corporate social media team or which related to their company and depending on the content such activity may or may not fall within the scope of the Code. It was therefore critical that companies provided clear and tailored guidance for its employees which was regularly reviewed.

The Panel noted Alliance Pharmaceuticals' submission that at the time of launch, an email was sent company-wide regarding how the company should manage social media activity, including guidance on liking, sharing and commenting. The Panel noted that the email included:

'Xonvea is a prescription-only medicine and as such we are not able to promote this to the

general public – this would include comments and shares on social media. For this reason please can I kindly ask that you abide by the following in terms of your social media accounts: 1. You are able to like a Xonvea related post.’

The Panel was concerned that the guidance in the company-wide email which was sent at the time of the Xonvea launch appeared to encourage ‘liking’ of a Xonvea social media post. The Panel considered that Alliance had failed to maintain high standards in this regard and a breach of Clause 9.1 was ruled.

The Panel noted its comments and rulings above and, on balance, considered the circumstances did not warrant a ruling of a breach of Clause 2 which was used as a sign of particular censure.

Complaint received **29 November 2018**

Case completed **20 March 2019**
