

COMPLAINANT v GRÜNENTHAL

Promotional Use of LinkedIn

A complainant, who described him/herself as a concerned UK health professional, complained about a LinkedIn post from the Grünenthal Group. The post, which had been 'liked' by a named individual, read: 'We're acquiring the global rights for Qutenza [capsaicin], a highly effective pain product which complements our existing pain portfolio and is a real alternative to the current standard of care.'

The complainant noted that the LinkedIn post in question would have been sent to health professionals and members of the public alike. The complainant considered that the post generally promoted with little or no company oversight.

The detailed response from Grünenthal is given below.

In the Panel's view, it was not unacceptable for companies to use LinkedIn accounts or for employees to use personal LinkedIn accounts. Whether the Code applied would take into account circumstances including: the content, 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 instructed 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 the LinkedIn post in question referred positively to a prescription only medicine, Qutenza, and its use in the treatment of pain. Grünenthal submitted that the LinkedIn post was placed by Grünenthal GmbH, based in Germany, without the UK company's knowledge and outside of its control; the individual who had 'liked' the LinkedIn post was employed in the UK organisation. The Panel considered that on the balance of probabilities the employee's 'like' had been disseminated to his/her connections on LinkedIn and that such dissemination was the subject of complaint.

The Panel noted Grünenthal's submission that the employee's LinkedIn network included individuals who were not health professionals or other relevant decision makers. The Panel considered that the proactive dissemination of the post to those who were not health professionals or other relevant decision makers constituted promotion of a prescription only medicine to the public. The Panel also considered that the positive statements in the post could have, on the balance of probabilities, encouraged members of the public to ask their health professional to prescribe Qutenza. Breaches of the Code were ruled as acknowledged by Grünenthal.

The Panel noted that the Code required a side-effect reporting statement to be included on material which related to a medicine and which was intended for patients taking that medicine. The Panel did not consider that the disseminated post was intended for patients taking Qutenza and therefore ruled no breach in that regard.

The Panel considered that the Grünenthal employee had disseminated promotional information about Qutenza to health professionals and/or other relevant decision makers within his/her network without prescribing information and other obligatory information. Breaches of the Code were ruled. The material should have been certified for such use. A breach of the Code was ruled as acknowledged by Grünenthal.

The Code stated that promotional material about prescription only medicines directed to a UK audience which was provided on the Internet must comply with all relevant requirements of the Code. The Panel noted its ruling of breaches of the Code and consequently ruled a further breach of the Code as acknowledged by Grünenthal.

The Panel noted that the Code stated that the telephone, text messages, email and the like must not be used for promotional purposes, except with the prior permission of the recipient. The Panel understood that when individuals joined LinkedIn they did so on the understanding that they might receive notification updates from people in their network. Such updates might include activities such as a connection's 'likes'. The Panel did not have before it the relevant LinkedIn terms and conditions accepted by the complainant or the employee's connections but considered it unlikely that those terms and conditions would have included an agreement to receive promotional material from pharmaceutical companies. In the Panel's view, on the balance of probabilities, the employee in question had not obtained prior permission from his/her connections on LinkedIn before disseminating promotional information. The Panel therefore ruled a breach of the Code as acknowledged by Grünenthal.

In the Panel's view, rulings of breaches of the Code did not in itself mean that a company had not met the training requirements set out in the Code. The Panel noted Grünenthal's submission that following the publication of Case AUTH/3038/4/18, it understood that 'liking' a post could be seen as a positive endorsement when done by an employee of a UK company and might come into the scope of the Code. The Panel noted Grünenthal's submission that whilst the complaint was received after the publication of Case AUTH/3038/4/18, the activity in question had occurred some time

before and that prior to receipt of the complaint the company had notified all staff on the learnings from Case AUTH/3038/4/18 but did not ask them to retrospectively assess their historic activity which remained on the Internet. The Panel noted the training the named employee had completed prior to his/her 'liking' the post in question and that the company had some UK social media guidance for employees at the time of the activity in question which was being updated following Case AUTH/3038/4/18. The Panel considered that the complainant had not shown, on the balance of probabilities, that a breach of the Code had occurred in this regard and no breach was ruled.

The Panel noted its comments and rulings above and considered that high standards had not been maintained and ruled a breach of the Code.

A complainant, who described him/herself as a concerned UK health professional, complained about a LinkedIn post from the Grünenthal Group. A screenshot of the post was provided which showed that the post had been 'liked' by a named individual. The post read: 'We're acquiring the global rights for Qutenza [capsaicin], a highly effective pain product which complements our existing pain portfolio and is a real alternative to the current standard of care. Read more: [link provided].'

COMPLAINT

The complainant referred to companies using LinkedIn to promote products and noted that the LinkedIn post in question would have been sent to many people – health professionals and members of the public. The complainant considered that the post generally promoted with little or no company oversight and that Clauses 4.1, 4.2, 4.3, 4.4, 4.9, 7.10, 9.1, 9.9, 14.1, 14.6, 16.1, 26.1, 26.2, 26.3 and 28.1 should be considered. The complainant stated that because online platforms were new and exciting meant that more care should be taken, not less.

Grünenthal was asked to respond to the clauses cited by the complainant in relation to the requirements of the 2016 Code.

RESPONSE

Grünenthal explained that the LinkedIn post in question was placed by the global communications department of Grünenthal GmbH, in Germany, on 5 November 2018, without the UK company's knowledge and outside of its control. The post was intended to link to a press release hosted on the global website about the news that Grünenthal had recently acquired the global commercial rights to Qutenza. Grünenthal further explained that a current UK employee [named in the complainant's screen shot] 'liked' the post when it appeared within his/her LinkedIn feed. The employee did not actively seek the post, nor was he/she a targeted recipient, it seemed that it appeared in his/her feed as he/she had 'followed' the Grünenthal Group organisation within the tool.

Following the publication of Case AUTH/3038/4/18 in February 2019, Grünenthal understood that

'liking' a post (in addition to commenting on or sharing it), could be seen to be a positive endorsement when done by an employee of a UK company and could come into the scope of the Code. Case AUTH/3038/4/18 was a landmark case and on 28 February, Grünenthal notified all staff on the learnings from it. Additionally, a head office meeting on 19 March included a broad discussion with employees of the learnings. In addition, it was announced at that meeting that the internal policy 'Use of digital media in the conduct of business – UK & IE' would need to be updated to incorporate the new clarity on interpretation. The presentation from the meeting (copy provided) was shared with field based Compliance Champions to use with their local regional teams rather than providing it as an attachment to a centrally distributed email.

Seven new starters to the company did not attend the meeting on 19 March and email accounts had not necessarily been created for most of them on 29 February 2019, therefore a compliance member of staff specifically addressed this topic during the face-to-face new starter compliance training session on 25 March 2019. Grünenthal was thus confident that all current UK employees knew about the learnings from Case AUTH/3038/4/18.

In hindsight, and considered only upon receipt of this complaint, Grünenthal did not ask staff to retrospectively assess their historic activity on LinkedIn which remained current on the Internet, to edit anything that would fall out of scope of the new directions given by the company. Grünenthal had subsequently responded to this and an additional specific communication regarding historical activity on social media was sent to all staff on 1 April.

Grünenthal in the UK understood that linking the name of a product, with any of its indications, was likely to make a communication promotional (notwithstanding the exemptions detailed in Clause 1.2). The post in question was intended to provide a link to a company press release, however, the use of certain words in the LinkedIn post were likely to be deemed to promote Qutenza. In light of the information from Case AUTH/3038/4/18, the fact that a UK employee had 'liked' the post would be seen to be a positive endorsement of a promotional message to those in that employee's network, which included individuals who were not health professionals or other relevant decision makers.

Although Grünenthal had no confirmation that a member of the public had seen the post as a result of the UK employee 'liking' it, the company accepted that, whilst absolutely innocent in intent, there had been inadvertent and unintended breaches of Clauses 26.1, 26.2, 28.1 and 9.9. In turn, Grünenthal submitted that it must accept that there was a failure to certify the material as per Clause 14.1 as alleged.

With regard to Clause 4, Grünenthal stated that when it engaged in the development and approval of promotional material in the UK, it adhered fully to the Code, including the provision of prescribing information and other obligatory information. The LinkedIn post at issue was not developed by, nor with the authority of the UK company, and therefore

was not subject to local rigor. It was not developed as a promotional item according to local standards, it was only based on the technicality that a UK employee 'liked' the post, that it was deemed to be promotional. As such, the requirements of Clauses 4.1, 4.2, 4.3, 4.4 and 4.5 were not considered.

The LinkedIn post was not drafted to be a promotional communication, and the standards applicable in Germany did not interpret linking a product name and an indication likely to make a communication promotional, as it did in the UK.

The UK employee did not intend to 'like' the post in order to promote the medicine. There was no guidance available when the UK employee 'liked' the post to indicate that this could be interpreted as so, therefore Grünenthal disagreed that it had set out not to provide prescribing and other obligatory information required when drawing up promotional material.

Similar to the explanation above, Grünenthal did not consider that it had drawn up promotional material that exaggerated the properties of Qutenza. Although the company would not choose the wording in question for UK material, no superlatives were used and no statement of special merit was contained therein. Grünenthal therefore refuted the alleged breach of Clause 7.10.

Grünenthal acknowledged that there had been a failure to certify material, as per the requirements of Clause 14.1, but considered that the allegation of a breach of Clause 14.6 with regard to the preservation of certificates was somewhat over-reaching. Under licence, Grünenthal used two well-established electronic approval tools, within which the certificates of all material requiring certification, whether promotional or non-promotional, were stored and easily accessible. There was no issue in Grünenthal's preservation of such documents, therefore, in its view, consideration of Clause 14.6 was out of scope with regard to the complaint, and the company denied any breach of that clause.

Grünenthal considered that as the LinkedIn post was not material intended for patients taking the medicine, Clause 26.3 was not applicable.

With regard to training obligations (Clause 16.1), and internal high standards related to commitment and adherence to the requirements of the Code, Grünenthal stated that it had two local quality documents related to interactions with social media 'Use of digital media in the conduct of business – UK & IE' and 'Acceptable use of email, Internet and social media UK & Ireland' (copies provided). In addition, there was a Global Code of Conduct that briefly referred to the use of social media and the Global Promotion & Marketing Policy.

There was specific discussion on the use of digital media by employees during face-to-face new starter compliance training with all new staff and staff who returned to work following an absence of six months or longer.

With specific reference to the UK employee who 'liked' the LinkedIn post, Grünenthal provided

details of his/her training record. The employee had been trained on the use of social media and the Grünenthal Global Code of Conduct.

Grünenthal thus considered that its employee had been trained in line with expectations outlined in the Code, and as noted earlier, the company continued to demonstrate ongoing high standards in its immediate internal communications about emerging learnings on application and interpretation of the Code. Whilst learnings from Case AUTH/3038/4/18 would be incorporated in an update to the 'Use of digital media in the conduct of business – UK & IE' policy, this had not yet been actioned. The case report was published on 26 February 2019, internally emailed on 28 February 2019, and in March Grünenthal had prioritised the submission of its disclosure of transfers of value. Grünenthal wanted to thoroughly review the full policy, rather than just updating one small piece. To do this properly required time and due consideration, and the company expected to have an update published by the end of April. Grünenthal submitted that this was discussed and planned before the company was notified of this complaint.

Grünenthal questioned the motivation behind this complaint. The company was fully committed to the principles of self-regulation, and it was aware that there was a genuine learning for it in terms of asking employees to retrospectively assess historical activity on LinkedIn whilst providing internal clarification on the rulings made in Case AUTH/3038/4/18, but it was entirely evident that the UK employee did not intend to promote a prescription only medicine to the public through 'liking' the LinkedIn post in question. Given what happened, Grünenthal submitted that it was right that it should be made aware of the matter, whether directly from an external party, or through the formal PMCPA complaints procedure. However, if the purpose of the complaint was to elicit redress, the issue could have been presented factually to the PMCPA for its consideration of applicable clauses, rather than the complainant listing fourteen clauses that he/she thought should be considered. Grünenthal hoped that in its response above, the Panel considered the allegations of so many additional clause breaches was excessive, unsubstantiated, and questionable in motive.

The screenshot provided by the complainant indicated that he/she viewed the LinkedIn post 3 weeks after it was published (circulated the week commencing 26 November 2018) but did not complain until 28 March 2019. Grünenthal queried why there was such a prolonged delay.

PANEL RULING

The Panel noted that LinkedIn 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. In the Panel's view, it was of course not unacceptable

for companies to use LinkedIn accounts or for employees to use personal LinkedIn accounts. The Code would not automatically apply to all activity on an 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 instructed 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 the LinkedIn post in question referred to a prescription only medicine, Qutenza, and its use in the treatment of pain. The post included positive statements including that Qutenza was 'highly effective' and an 'alternative to the current standard of care' and invited the reader to 'Read more' by weblink. The Panel noted Grünenthal's submission that the post was intended to link to a press release hosted on the global Grünenthal website about the news that Grünenthal had recently acquired the global commercial rights to Qutenza. Grünenthal did not provide a copy of this press release. Grünenthal submitted that the LinkedIn post was placed by Grünenthal GmbH, based in Germany, without the UK company's knowledge and outside of its control.

The Panel noted Grünenthal's submission that an employee within the UK organisation, named in the complainant's screenshot, 'liked' the post in question when it appeared within his/her LinkedIn feed. The Panel noted that an individual could endorse a post on LinkedIn in a number of ways including 'sharing', 'liking' or 'commenting'. 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. The Panel considered that on the balance of probabilities the employee's 'like' had been disseminated to his/her connections on LinkedIn and that such dissemination was the subject of complaint.

The Panel noted Grünenthal's submission that the employee's network included individuals who were not health professionals or other relevant decision makers. The Panel considered that the proactive dissemination of the post, which contained statements about Qutenza, to those who were not health professionals or other relevant decision makers constituted promotion of a prescription only medicine to the public. A breach of Clause 26.1 was ruled as acknowledged by Grünenthal. Furthermore, the Panel considered that the positive statements in the post that Qutenza was 'highly effective' and an 'alternative to the current standard of care' could, on the balance of probabilities, have encouraged members of the public to ask their health professional to prescribe Qutenza. A breach of Clause 26.2 was ruled as acknowledged by Grünenthal.

The Panel noted that Clause 26.3 required a side-effect reporting statement to be included on material which related to a medicine and which was intended

for patients taking that medicine. The Panel did not consider that the disseminated post was intended for patients taking Qutenza and therefore ruled no breach of Clause 26.3.

The Panel considered, on the balance of probabilities, that the Grünenthal employee's connections on LinkedIn would also include UK health professionals or other relevant decision makers and therefore that the employee had disseminated promotional information about Qutenza to health professionals and/or other relevant decision makers within his/her network without prescribing information, the non-proprietary name adjacent to the brand name at its first appearance, or the adverse event reporting statement as required by the Code. Breaches of Clauses 4.1, 4.3 and 4.9 were ruled. The material should have been certified for such use. A breach of Clause 14.1 was ruled as acknowledged by Grünenthal.

The complainant raised Clauses 4.4 and 14.6. The Panel considered that these allegations were covered by the Panel's rulings of breaches of Clauses 4.1 and 14.1 respectively.

The Panel noted that Clause 28.1 stated that promotional material about prescription only medicines directed to a UK audience which is provided on the Internet must comply with all relevant requirements of the Code. The Panel noted its ruling of breaches of Clauses 4.1, 4.3, 4.9 and 14.1 above. The Panel consequently ruled a breach of Clause 28.1 as acknowledged by Grünenthal.

The Panel noted that the complainant had raised Clause 7.10 but considered that he/she had not stated why in his/her view the post in question was in breach of this clause or provided any evidence in this regard. It was not for the Panel to infer such matters and the complainant bore the burden of proof. The Panel therefore ruled no breach of Clause 7.10.

The Panel noted that Clause 9.9 stated that the telephone, text messages, email and the like must not be used for promotional purposes, except with the prior permission of the recipient. The Panel understood that when individuals joined LinkedIn they did so on the understanding that they might receive notification updates from people in their network. Such updates might include activities such as a connection's 'likes'. The Panel did not have before it the relevant LinkedIn terms and conditions accepted by the complainant or the employee's connections. The Panel considered that it was unlikely that such terms and conditions would have included an agreement to receive promotional material from pharmaceutical companies. In the Panel's view, on the balance of probabilities, the employee in question had not obtained prior permission from his/her connections on LinkedIn prior to disseminating promotional information about Qutenza. The Panel therefore ruled a breach of Clause 9.9 as acknowledged by Grünenthal.

The Panel was aware that the types of activity performed by the named employee on LinkedIn was not uncommon across the industry. In the Panel's

view, employees might feel inclined to endorse articles emanating from their company's corporate social media posts and depending on the content such activity might fall within the scope of the Code; companies therefore needed to issue specific and unambiguous guidance on personal and business use of social media. This was particularly important if UK employees were likely to follow the social media accounts of overseas affiliates which might have Codes, laws and regulations that differed to the UK. It was important that companies regularly reviewed such guidance.

In the Panel's view, rulings of breaches of the Code did not in itself mean that a company had not met the training requirements set out in Clause 16.1. Grünenthal submitted that following the publication of Case AUTH/3038/4/18, it subsequently understood that 'liking' a post could be seen to be a positive endorsement of the post when done by an employee of a UK company and might come into the scope of the Code. The Panel noted Grünenthal's submission that whilst the complaint was received after the publication of Case AUTH/3038/4/18, the activity in question had occurred some time before and that prior to receipt of the complaint

the company had notified all staff on the learnings from Case AUTH/3038/4/18 but did not ask its staff to retrospectively assess their historic activity which remained on the Internet. The Panel noted the training the named employee had completed prior to his/her 'liking' of the post in question which included 'Acceptable use of email, Internet and social media UK & Ireland' and 'Use of digital media in the conduct of business – UK & IE'. The Panel noted that the company had some UK social media guidance for employees at the time of the activity in question and that this was being updated following Case AUTH/3038/4/18. The Panel considered that the complainant had not shown, on the balance of probabilities, that a breach of Clause 16.1 had occurred, and no breach was ruled.

The Panel noted its comments and rulings above and considered that high standards had not been maintained and ruled a breach of Clause 9.1.

Complaint received	28 March 2019
Case completed	2 October 2019