

CASE AUTH/3361/6/20

ANONYMOUS v MERCK SHARP & DOHME

Meeting advertised on LinkedIn

An anonymous individual complained about the advertising of a pharmaceutical meeting through the LinkedIn profile of Merck Sharp & Dohme in the UK. The material in question invited UK health professionals and other relevant NHS stakeholders to join a panel of experts discussing the management of type 2 diabetes in patients with established cardiovascular disease. It was stated that the promotional meeting had been organized and funded by Merck Sharp & Dohme, whose products would be discussed.

The complainant stated that although the advertisement stated that the meeting was for 'health professionals and other relevant NHS stakeholders', it could be viewed by others and would encourage them to try and register for the meeting. The material had been brought to the complainant's attention by his/her brother who had diabetes; the advertisement had appeared on his LinkedIn feed and he was disappointed that he was unable to register for the meeting.

The complainant stated that he/she thought it was very important that patients' social media feeds were not targeted by pharmaceutical companies, especially if recipients were not allowed to attend the advertised meetings.

The detailed response from Merck Sharp & Dohme is given below.

The Panel noted Merck Sharp & Dohme's submission that the targeted LinkedIn post was only visible to those who met all of the pre-specified criteria using a LinkedIn algorithm; it would not appear on the Merck Sharp & Dohme UK LinkedIn feed which was visible to anyone. According to Merck Sharp & Dohme, the targeted post would only appear on the feed of recipients' networks if it was shared; this limited the risk of content appearing to those other than the original targeted audience. Merck Sharp & Dohme had also disabled the ability for viewers to comment on the targeted post.

The Panel noted the criteria used by Merck Sharp & Dohme to ensure that the targeted post was delivered to an appropriate audience. An algorithm was programmed to ensure that the post was sent to those from whose job titles (doctor, nurse practitioner etc), company industries (medical practice, hospital and health care and pharmaceuticals), skills set (diabetes care, diabetes nursing etc) and age (over 25) it could be reasonably assumed that they would have a professional interest in the subject matter of the meeting. The Panel noted that all four of the pre-specified criteria had to be met before the post was shown.

The Panel noted from the evidence provided that it appeared that four individuals, none of whom were health professionals had seen the advertisement but noted Merck Sharp & Dohme's submission, following correspondence with LinkedIn, that it appeared from the screenshot provided by the complainant that the complainant's brother might not have directly received the content from Merck Sharp & Dohme but rather from a targeted recipient having shared it.

The Panel noted that there was no evidence to show that Merck Sharp & Dohme was directly responsible for the complainant's brother being able to view the targeted LinkedIn post. The company had not failed to maintain high standards. The Panel ruled no breaches of the Code.

An anonymous individual complained about the advertising of a pharmaceutical meeting through the LinkedIn profile of Merck Sharp & Dohme in the UK. The complainant provided a link to the material in question (ref GB-NON-02728) which invited UK health professionals and other relevant NHS stakeholders to join a named professor and a live panel of experts discussing the management of type 2 diabetes in patients with established cardiovascular disease. It was stated that the promotional meeting had been organized and funded by Merck Sharp & Dohme, whose products would be discussed.

COMPLAINT

The complainant stated that although the advertisement stated that the meeting was for 'health professionals and other relevant NHS stakeholders', it could be viewed by those who were not health professionals and would encourage them to try and register for the meeting. The complainant queried if this was allowed. The material had been brought to the complainant's attention by his/her brother who had diabetes and was disappointed that there was a meeting going ahead – with an agenda and speakers he was interested in – but for which he was unable to register. The complainant's brother was annoyed that the advertisement had appeared on his LinkedIn feed when it was not available to him. The complainant stated that to get to the meeting agenda his/her brother had to click that he was a health professional (which was not so) as when he clicked the other option it took him to an unrelated Merck Sharp & Dohme page and he wanted to find out about the meeting.

The complainant stated that he/she thought it was very important that the social media feeds (LinkedIn, Twitter, etc) of patients such as his/her brother were not targeted by pharmaceutical companies, especially if recipients were not allowed to attend the meetings; it just led to disappointment and could not be right.

When writing to Merck Sharp & Dohme, the Authority asked it to consider the requirements of Clauses 9.1 and 11.1 of the Code.

RESPONSE

Merck Sharp & Dohme submitted that the LinkedIn post complied with the Code and disputed that it had breached the requirements for Clauses 9.1 and 11.1. In summary, Merck Sharp & Dohme noted the following:

- The material was a non-promotional LinkedIn sponsored and targeted post about a Merck Sharp & Dohme promotional meeting.

- The intended audience was clearly marked and there was no mention of product or medicine class.
- Health professionals/other relevant decision makers had to self-declare before registering for the event.
- There was a validation process in place for all registered meeting attendees.
- On receipt of the complaint, Merck Sharp & Dohme conducted a thorough internal investigation, which led it to believe that it had a robust system in place and therefore it decided to continue with the campaign. However, an extra step had been taken to further refine and restrict the company's targeting criteria for LinkedIn targeted posts.

By way of background, Merck Sharp & Dohme explained that in May 2020 it contracted an external media agency to support it with a third-party email and LinkedIn campaign to inform targeted health professionals, or other relevant decision makers, about an upcoming Merck Sharp & Dohme promotional event. The content was developed in-house by Merck Sharp & Dohme and the agency provided social media community management in the form of posting and monitoring the campaign on behalf of the company.

LinkedIn was chosen due to its professional employment orientated nature and the ability to confidently target health professionals and other relevant decision makers. Merck Sharp & Dohme stated that it understood LinkedIn conducted its own due diligence that validated professional profiles within its database.

Merck Sharp & Dohme explained that a targeted post was a sponsored post which was only visible to those that met pre-specified criteria; it would not appear on the Merck Sharp & Dohme UK LinkedIn feed which was visible to anyone. Unlike a standard LinkedIn post which allowed posts that were liked or shared by the individual to appear on the feed of their LinkedIn network, the targeted post would only appear on the feed of their network if it was shared. This functionality limited the risk of content appearing to those outside the original targeted audience due to the actions of the recipients as the action of sharing or liking was outside Merck Sharp & Dohme's scope of responsibility. In addition, Merck Sharp & Dohme decided to disable the ability for viewers to comment on the targeted post.

Merck Sharp & Dohme stated that to ensure the targeted post was delivered to the correct audience, the LinkedIn algorithm was programmed to only allow individuals within the UK who fitted into ALL of the following criteria: current job titles (health professionals or other relevant decision maker) AND company industry AND member skills, in addition to being aged 25 years or older. The targeting and segmentation of individuals on LinkedIn had been restricted via a triple redundancy algorithm for extra rigour, to further reduce the chances of inappropriate individuals seeing the content in their feeds from Merck Sharp & Dohme UK. Merck Sharp & Dohme stated that its filters and targeting criteria were restrictive to ensure members of the public did not receive the targeted post. It was reasonable to assume that those targeted by Merck Sharp & Dohme would be interested based on their job roles and interest in the diabetes/cardiovascular space. Merck Sharpe and Dohme provided more detail on the segmentation of the target audience selected.

Merck Sharp & Dohme stated that it had taken every step to control the targeting of the post, the company also noted that it had no control of the recirculation of the post to individuals outside of its target audience. With targeted posts this could happen when individuals shared the post which was a function which could not be disabled within LinkedIn. Merck Sharp & Dohme noted, however, that it had not encouraged the sharing of the post but it had ensured that the

comments section was disabled. This was no different from a promotional email or a hard copy leavepiece distributed to a health professional by a representative and the health professional forwarding it on their own volition, by email or leaving the material in a public area where it might be seen by the non-intended audience (eg the public).

Merck Sharp & Dohme stated that from the screenshot provided by the complainant, it was difficult to ascertain how it had appeared in the complainant's brother's feed as the screenshot was from the viewpoint of a non-registered LinkedIn account (shown by 'join now' and 'sign in' tabs). Also, the post said 'edited' rather than 'promoted' which could be seen in the certified version. A post which stated 'edited' rather than 'promoted' in some instances indicated that the content had been shared by an individual and suggested that the complainant's brother might not have directly received the content from Merck Sharp & Dohme but from a third party, although it would be impossible to determine this without understanding the individual's LinkedIn account in more detail. Merck Sharp & Dohme stated that the targeting and segmentation worked fully and perhaps the most likely scenario that occurred with the original targeted post in question was that the post appeared on the complainant's brother's feed as a result of someone sharing the targeted post. Merck Sharp & Dohme denied a breach of Clause 11.1.

Merck Sharp & Dohme stated that it took social media related activities very seriously. The company had several activities in place that supported knowledge upskilling of social media activities especially for those who developed and reviewed content for social media. Merck Sharp & Dohme employees were supported with social media training days, which covered the basics of different platforms and how they worked, social media lunchtime drop-in question and answer sessions and the sharing of PMCPA social media cases. A dedicated social media governance team, made up of internal stakeholders from external affairs, medical affairs, legal, customer engagement and social media community managers, ensured that all activities using the company's social media platforms complied with the Code. This group developed a thorough checklist to ensure all social media activities followed a strict process. This document contained the due diligence requirements that must be met before approving any material to be disseminated via social media (in this case, LinkedIn). Internally, Merck Sharp & Dohme had ensured there was a clear delineation for the uses of the LinkedIn platform.

The LinkedIn targeted post clearly stated that it was a promoted post by Merck Sharp & Dohme, the intended audience (health professionals or other relevant decision makers only) was clearly marked and the comments section was disabled. In addition, the post did not mention a product or class of medicine. Merck Sharp & Dohme provided material which depicted the user journey of its target audience registering for the meeting from a LinkedIn targeted post. When users clicked the 'Register' button they were taken to a Merck Sharp & Dohme landing page where they had to declare whether or not they were a health professional. Once users had identified themselves, they were either taken to the registration page of the meeting or a page on the corporate website where information about the diseases/products Merck Sharp & Dohme catered for could be found. When registering, health professionals had to enter their professional body details (eg GMC number) and other relevant decision makers had to enter verifiable contact details. Merck Sharp & Dohme had the following system in place as a checkpoint to prevent inappropriate individuals registering for the meeting:

- 1 After completing the Merck Sharp & Dohme Connect (website) registration process the customer profile data was matched against the company's internal validated customer database. This was done in real time.

- 2 Registrants that did not match details in the company's database then had their profile data validated by manual interrogation.
- 3 Profiles that could not be confirmed were rejected and access to Merck Sharp & Dohme Connect was revoked; profiles that needed this extra step took less than three days to return.

Merck Sharp & Dohme trusted that the measures taken highlighted the rigour applied to ensure high standards were maintained throughout this activity.

Merck Sharp & Dohme stated that it would like to gain further clarity on the complainant's relationship to the pharmaceutical industry and understand how he/she saw this post. The company stated that the complainant acknowledged the relevant target audience had been clearly displayed and his/her inability to register for the meeting subsequently which confirmed that the Merck Sharp & Dohme registration process worked, despite inaccurately identifying him/herself as a health professional. The post itself gave a top line summary about what the meeting was about, it did not have any mention of the detailed agenda or the subsequent speakers (only a picture of the Chair at the time). This was to ensure that only appropriate individuals saw the information after identifying themselves on the company's website.

Merck Sharp & Dohme confirmed that the material was no longer in use and had expired on 11 June 2020. It was superseded by an updated version (due to a change in speaker) before the complaint was received. For the purposes of transparency, while Merck Sharp & Dohme did not take this matter lightly and after a thorough internal investigation, it decided not to withdraw the whole campaign. Merck Sharp & Dohme stated that the system it had in place was robust and the appropriate due diligence had been done. All things considered the company had taken an extra step to further ensure the content only reached its targeted audience and removed 'Pharmaceuticals' from the segmentation criteria for the latest targeted post currently in circulation.

In summary, Merck Sharp & Dohme denied that the LinkedIn sponsored post breached the requirements for Clauses 11.1 and 9.1. Whilst the company recognised the disappointment the member of public might have faced, for which it sincerely apologised, that did not, in its view, amount to any breach of the Code.

PANEL RULING

The Panel noted that Clause 11.1 stated that material should only be sent or distributed to those categories of persons whose need for, or interest in, it could reasonably be assumed.

The Panel noted Merck Sharp & Dohme's submission that the targeted LinkedIn post about a promotional meeting was only visible to those who met all of the pre-specified criteria using a LinkedIn algorithm; it would not appear on the Merck Sharp & Dohme UK LinkedIn feed which was visible to anyone. According to Merck Sharp & Dohme, unlike a standard LinkedIn post which allowed posts that were liked or shared by individuals to appear on the feed of their LinkedIn networks, a targeted post would only appear on the feed of their networks if it was shared. This functionality limited the risk of content appearing to those outside the original targeted audience due to the recipients sharing it which was outside Merck Sharp & Dohme's control. In addition, Merck Sharp & Dohme had disabled the ability for viewers to comment on the targeted post.

The Panel noted the criteria used by Merck Sharp & Dohme to ensure that the targeted post was delivered to an appropriate audience. The LinkedIn algorithm was programmed to ensure that the post was sent to those from whose job titles (doctor, nurse practitioner, pharmacist etc), company industries (medical practice, hospital and health care and pharmaceuticals), skills set (diabetes care, diabetes nursing, budget setting etc etc) and age (over 25) it could be reasonably assumed that they would have a professional interest in the subject matter of the meeting. The Panel noted that although the criteria used also included those in the pharmaceutical industry, the criteria and the fact that all four of the pre-specified criteria had to be met before the post was shown, would ensure that the LinkedIn post was only sent to health professionals within the industry. The Panel noted that Merck Sharp & Dohme had since removed 'pharmaceuticals' from the segmentation criteria for the latest targeted post currently in circulation.

The Panel noted from the evidence provided that it appeared that four individuals, none of whom were health professionals had seen the advertisement but noted Merck Sharp & Dohme's submission, following correspondence with LinkedIn, that it appeared from the screenshot provided by the complainant that the complainant's brother might not have directly received the content from Merck Sharp & Dohme but rather from a targeted recipient having shared it.

The Panel noted that there was no evidence to show that Merck Sharp & Dohme was directly responsible for the complainant's brother being able to view the targeted LinkedIn post in question and therefore no breach of Clause 11.1 was ruled.

The Panel noted the processes Merck Sharp & Dohme had in place for sending the LinkedIn post to a targeted audience and to prevent inappropriate individuals registering for the meeting from the post. On the evidence before it, the Panel did not consider that Merck Sharp & Dohme had failed to maintain high standards and no breach of Clause 9.1 was ruled.

Complaint received **8 June 2020**

Case completed **4 February 2021**