

CASE AUTH/3479/2/21

COMPLAINANT v ALMIRALL

Alleged Promotion of a medicine on LinkedIn

A contactable complainant who described him/herself as a health professional complained about a LinkedIn post on his/her feed, which seemed to have been added by a senior executive from Almirall and 'liked' by a senior UK employee, which in his/her view was promotional in nature. The post read:

'Good news for psoriasis patients all over Europe! Almirall's in-licensed, high-affinity, monoclonal antibody has demonstrated long term efficacy and safety over 5 years in patients with moderate to severe psoriasis in an extension study announced in a session at the 29th Congress of the European Academy of Dermatology and Venereology (EADV). At Almirall, we are always striving to improve patients quality of life. #Almirall #EADV'

Below that statement was a photograph of a senior executive and a quotation:

'We are delighted and very proud that we are able to be the first anti-IL-23 to disclose a complete dataset of 5-year data on tildrakizumab.'

Whilst the LinkedIn post was an old one, the complainant had recently found similar posts on Ilumetri in his/her feed which made him/her question if they were appropriate. The complainant queried whether the LinkedIn post which seemed promotional had been checked for appropriateness and it did not seem to have safety information (prescribing information). The complainant found it bizarre that various individuals at Almirall kept 'liking' posts and queried if Almirall had rules.

The detailed response from Almirall is given below.

The Panel noted that the original LinkedIn post, which had been issued by Almirall's Spanish head office, had been 'liked' by a senior UK employee. The Panel considered that on the balance of probabilities, the UK employee had proactively disseminated the material to his/her connections on LinkedIn and had thus brought the post within the scope of the UK Code, as acknowledged by Almirall.

The Panel did not know how many connections on LinkedIn the employee in question had and what their professional status was; Almirall made no submission in that regard. On the balance of probabilities, not all of the employee's connections on LinkedIn would meet the Code's definition of a health professional or other relevant decision maker and therefore the information had likely been made available to members of the public. The Panel noted that tildrakizumab, a prescription only medicine, was named within the post, which further stated that it had demonstrated long term efficacy and safety over 5 years in patients with moderate to severe psoriasis in an extension study. The Panel thus

considered that a prescription only medicine had been promoted to the public and the wording of the LinkedIn post was such that it might encourage members of the public to ask their health professionals for tildrakizumab; breaches of the Code were ruled, as acknowledged by Almirall.

The Panel considered that in disseminating the LinkedIn post to his/her connections, the UK employee who had 'liked' the original LinkedIn post had, in effect, created his/her own piece of promotional material which had not been certified and a breach of the Code was ruled. The Panel did not consider that the LinkedIn post was educational material for the public and so in that regard no breach of the Code was ruled.

The Panel further considered that, given the senior employee's job title, his/her engagement with the LinkedIn post would also have likely disseminated the information to health professionals, thus promoting Ilumetri without the provision of prescribing information for the medicine as required and so a breach of the Code was ruled.

The Panel noted that Almirall's social media policy clearly explained that if an employee 'liked' (or shared) a social media post, that post was brought within the scope of the Code and would be regarded as proactive dissemination to a new audience. All UK employees were instructed not to reference, mention, refer to, link to, 'like', or undertake any other form of social media activity regarding an Almirall product.

The Panel was concerned that a senior Almirall employee had, in contravention of UK company policy, 'liked' the LinkedIn post in question resulting in, on the balance of probabilities, the subsequent proactive dissemination of information about a prescription only medicine to his/her LinkedIn connections; an action that resulted in rulings of breaches of the Code. In that regard, high standards had not been maintained. A breach of the Code was ruled as acknowledged by Almirall.

The Panel noted its comments and rulings above and considered that the rulings of breaches of the Code adequately covered this matter and an additional ruling of a breach of Clause 2 would be disproportionate in the particular circumstances of this case.

A contactable complainant who described him/herself as a health professional and who wished to remain anonymous, complained about the following LinkedIn post on his/her feed from Almirall Ltd which in his/her view was promotional in nature:

'Good news for psoriasis patients all over Europe! Almirall's in-licensed, high-affinity, monoclonal antibody has demonstrated long term efficacy and safety over 5 years in patients with moderate to severe psoriasis in an extension study announced in a session at the 29th Congress of the European Academy of Dermatology and Venereology (EADV). At Almirall, we are always striving to improve patients quality of life. #Almirall #EADV'

Below that statement was a photograph of a senior executive and a quotation:

'We are delighted and very proud that we are able to be the first anti-IL-23 to disclose a complete dataset of 5-year data on tildrakizumab.'

Tildrakizumab was marketed as Ilumetri and indicated for the treatment of adults with moderate to severe plaque psoriasis who were candidates for systemic therapy.

COMPLAINT

The complainant alleged that the LinkedIn post seemed to have been added by a senior executive from Ammirall but a senior UK employee had 'liked' the LinkedIn post which, the complainant understood, brought the post under the PMCPA's jurisdiction. The LinkedIn post was an old one, but the complainant had recently found similar posts on Ilumetri in his/her feed which made him/her question if they were appropriate. The complainant alleged that the LinkedIn post in question seemed promotional but he/she did not know if it had been checked for appropriateness (the complainant noted that he/she could not see any unique codes) and it did not seem to have safety information (the prescribing information). The complainant found it bizarre that various individuals at Ammirall kept 'liking' posts, and he/she questioned if Ammirall had some rules.

The complainant submitted that a representative from another pharmaceutical company once told him/her that it had structured directives regulating the way platforms like LinkedIn were used and so he/she queried why Ammirall was creating all this 'noise'.

When writing to Ammirall, the Authority asked it to consider the requirements of Clauses 4.1, 9.1, 14.1, 14.3, 26.1, 26.2 and 2 of the Code.

RESPONSE

Ammirall submitted that it took all allegations very seriously and it had investigated this matter thoroughly.

As a result of human error, Ammirall believed the Code had been breached. Accordingly, Ammirall accepted breaches of Clauses 26.1, 26.2 and 9.1 of the Code but it denied breaches of Clauses 4.1, 14.1, 14.3 and 2.

Ammirall was concerned about the nature of the complaint. The original LinkedIn post and the associated 'like' that had led to the complaint were placed in October 2020, six months earlier. While Ammirall clearly recognised that historical activities remained within scope of the Code, it submitted that it was obvious that the complainant did not have a genuine concern in relation to the actual LinkedIn post (or he/she would have raised it at the time) but was deliberately looking for reasons to bring a complaint. In other words, the complainant had deliberately interrogated the historical social media activity of the company and its employees. Ammirall found that invidious and disturbing behaviour.

Ammirall noted that all pharmaceutical companies operated within a global environment and the original LinkedIn post was issued by its Spanish head office. It featured a quotation and an image of a senior member of the Ammirall global medical team, who was not resident in the UK. The LinkedIn post did not mention the availability of a medicine within the UK and was originally outside the scope of the UK Code.

Ammirall submitted that the senior executive who placed the LinkedIn post was, of course, 'followed' by numerous staff throughout the world. In error, a UK employee 'liked' the LinkedIn

post and in doing so he/she forgot that this would, in effect, make the 'like' visible to a new group of his/her followers on LinkedIn.

Almirall submitted that it had clear policies regarding the use of social media; the current version was enacted in February 2020. The employee in question acted in contradiction to that UK social media policy. However, Almirall regarded that as an unfortunate human error; it was not a deliberate attempt to raise the profile of the content of the original LinkedIn post or the linked information. Almirall acknowledged that the content of the original LinkedIn post and its subsequent 'liking' meant the UK Code had been breached as it outlined below.

Original Post

Almirall submitted that the original LinkedIn post was posted in connection with the EADV congress which took place between 28 to 30 October 2020. The post comprised two separate elements. The first (text only) element announced the presentation of data at a scientific congress (EADV), the text read:

'Good news for psoriasis patients all over Europe! Almirall's in-licensed, high-affinity, monoclonal antibody has demonstrated long term efficacy and safety over 5 years in patients with moderate to severe psoriasis in an extension study announced in a session at the 29th Congress of the European Academy of Dermatology and Venereology (EADV). At Almirall, we are always striving to improve patients quality of life.'

The LinkedIn account had 74,668 followers.

The product was not named, but it was identifiable by being described as 'Almirall's ... monoclonal antibody'. The second element comprised a photograph of a senior executive, accompanied by a quotation about the study; the quotation named the product and stated:

'#Almirall #EADV

We are delighted and very proud that we are able to be the first anti-IL-23 to disclose a complete dataset of 5-year data on tildrakizumab.'

The LinkedIn post had 332 likes and 15 comments.

The original post was not certified because it was regarded as a corporate announcement and certification was not a requirement for such matters in Spain.

Actions taken by Almirall:

- Almirall was notified of the complaint on 2 March 2021
- The same day, the employee who 'liked' the original post reviewed his/her social media channel and removed all references to the LinkedIn post
- By the next day the original global LinkedIn post had been deleted to remove the likelihood of other issues arising from employees in the UK, or elsewhere, sharing or 'liking' the post
- On the afternoon of 3 March, the UK company was due to have a training on the updated Meetings, Events & Hospitality SOP, and a refresher on the responsible use

of social media. It went ahead as planned and the whole UK team had a refresher on the UK Social Media Policy.

Potential breaches

Almirall accepted the breaches related to Clauses 26.1 and 26.2. The LinkedIn post should not have been 'liked', but as a direct result, the associated product was, unintentionally, promoted to the public. Almirall recognised this was a failure to maintain high standards and accordingly it also accepted the breach of Clause 9.1.

However, Almirall denied breaches of Clauses 14.1, 14.3, 4.1 and 2.

Almirall submitted that it was patently obvious that the LinkedIn post could never be certified for release in the UK. Human error led directly to it being made visible to the UK public, but had the post been submitted for certification, it would have been rejected. Therefore, it was not possible for Almirall to certify the content for either public information (Clause 14.3) or health professional promotion (Clause 14.1). It was counter-intuitive to rule Almirall in breach for something that would never have been capable of being certified. Accordingly, Almirall denied the breaches of Clauses 14.1 and 14.3.

Almirall submitted that, similarly, ruling it in breach for the absence of prescribing information would also be counter-intuitive. While Almirall accepted it had become promotion to the public within the meaning of the UK Code, it was most definitely not deliberate; nor should it be regarded as deliberate promotion to health professionals. A social media post would never have been approved as promotional material and, therefore, prescribing information would never be added to a social media post. Almirall submitted that to rule it in breach, for not adding prescribing information to something that could never have prescribing information added, was counter-intuitive. Accordingly, Almirall denied a breach of Clause 4.1.

As indicated above, Almirall regarded this matter as human error. The employee concerned did not place fresh inappropriate content onto social media; he/she erroneously hit the 'like' button. While clearly in breach of the Code and Almirall's policies, it was an unfortunate action rather than a deliberate planned activity. Within 24 hours of being made aware of the issue, the content was removed from the employee's social media channel and from the Almirall Spanish-run corporate channel. Almirall had a strict social media policy in place and it had taken the opportunity to remind all employees how easy it was to make a human mistake that had consequences in relation to the Code. Almirall did not regard this error as an action that brought the industry into disrepute and it denied a breach of Clause 2.

PANEL RULING

The Panel noted that material could be disseminated or highlighted by an individual on LinkedIn in a number of ways, for example, by posting, sharing, commenting or 'liking'. 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, appearing as '[name] likes this'. 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. Company employees should assume that such activity would therefore, potentially, be visible to both those who were health professionals or other relevant decision makers and those who were members of the public. Whether the Code applied would be determined on a case-by-case basis, taking into account all of the circumstances including, among other things, content and distribution of the material. If an employee's personal use of social media was found to be in scope of the Code, the company would be held responsible. The Panel considered that companies should assume that the Code would apply to all work-related, personal LinkedIn posts/activity by their employees unless, for very clear reasons, it could be shown otherwise. Companies must have comprehensive and up to date social media policies that provide clear and unequivocal guidance on what was, and what was not, acceptable and it was extremely important that employees were trained upon them and followed them.

The Panel understood that employees might feel inclined to endorse articles related to their senior colleagues on LinkedIn or their company's corporate/global social media posts but noted that depending on the content such activity might or might not fall within the scope of the Code; companies would be well advised to cover the possibility of that activity in their social media policies. 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.

The Panel considered that any material associated with a LinkedIn post, for example a picture within a post, would be regarded as being part of that post and it made its rulings in that regard.

The Panel noted that the LinkedIn post at issue read:

'Good news for psoriasis patients all over Europe! Almirall's in-licensed, high-affinity, monoclonal antibody has demonstrated long term efficacy and safety over 5 years in patients with moderate to severe psoriasis in an extension study announced in a session at the 29th Congress of the European Academy of Dermatology and venereology (EADV). At Almirall, we are always striving to improve patients quality of life. #Almirall #EADV'.

The Panel noted that beneath the text was a photograph of a senior global executive and a quotation which read:

'We are delighted and very proud that we are able to be the first anti-IL-23 to disclose a complete dataset of 5-year data on tildrakizumab.'

The Panel noted that the original LinkedIn post, which had been issued by Almirall's Spanish head office, had been 'liked' by a senior UK employee. The Panel considered that the UK employee's engagement with the post, on the balance of probabilities, had proactively disseminated the material to his/her connections on LinkedIn and had thus brought the post within the scope of the UK Code, as acknowledged by Almirall.

The Panel noted Almirall's submission that human error had led to the LinkedIn post being made visible to a UK audience and that had the post been submitted for certification, it would have been rejected. Nonetheless, the Panel had to consider the allegations made by the complainant and make its rulings accordingly.

The Panel did not know how many connections on LinkedIn the employee in question had and what their professional status was; Almirall made no submission in that regard. On the balance of probabilities, not all of the employee's connections on LinkedIn would meet the Code's definition of a health professional or other relevant decision maker and therefore the information had likely been made available to members of the public. The Panel noted that tildrakizumab, a prescription only medicine, was named within the post, which further stated that it had demonstrated long term efficacy and safety over 5 years in patients with moderate to severe psoriasis in an extension study. The Panel thus considered that a prescription only medicine had been promoted to the public; a breach of Clause 26.1 was ruled as acknowledged by Almirall. The Panel considered that the wording of the LinkedIn post was such that it might encourage members of the public to ask their health professionals for tildrakizumab; a breach of Clause 26.2 was ruled as acknowledged by Almirall.

The Panel considered that in disseminating the LinkedIn post to his/her connections, the UK employee who had 'liked' the original LinkedIn post had, in effect, created his/her own piece of promotional material which had not been certified and a breach of Clause 14.1 was ruled. The Panel did not consider that the LinkedIn post was educational material for the public and so in that regard Clause 14.3 did not apply. No breach of Clause 14.3 was ruled.

The Panel further considered that, given the senior employee's job title, his/her engagement with the LinkedIn post would also have likely disseminated the information to health professionals, thus promoting Ilumetri without the provision of prescribing information for the medicine as required and so a breach of Clause 4.1 was ruled.

The Panel noted that Almirall had a Social Media Policy (dated 2020) which clearly explained that if an employee 'liked' (or shared) a social media post, that post was brought within the scope of the Code and would be regarded as proactive dissemination to a new audience. All UK employees were instructed not to reference, mention, refer to, link to, 'like', or undertake any other form of social media activity regarding an Almirall product. The Panel noted that Almirall had stated that, following receipt of this complaint, staff had received refresher training on the UK Social Media Policy; the company had made no submission about when the employee in question had previously been trained on the policy.

The Panel was concerned that a senior Almirall employee had, in contravention of UK company policy, 'liked' the LinkedIn post in question resulting in, on the balance of probabilities, the subsequent proactive dissemination of information about a prescription only medicine to his/her LinkedIn connections; an action that resulted in rulings of breaches of the Code. In that regard, high standards had not been maintained. A breach of Clause 9.1 was ruled as acknowledged by Almirall.

The Panel noted its comments and rulings above and considered that the rulings of breaches of the Code adequately covered this matter and an additional ruling of a breach of Clause 2 would be disproportionate in the particular circumstances of this case. A ruling of a breach of Clause 2 was used as a sign of particular censure and reserved for such use. The Panel, on balance, ruled no breach of Clause 2.

Complaint received **25 February 2021**

Case completed **11 October 2021**