

CASE AUTH/3523/6/21

COMPLAINANT v NOVO NORDISK

Alleged advertising of pipeline products on LinkedIn

A complainant who described him/herself as a concerned UK health professional, complained about a post on LinkedIn by an individual contracted to work for Novo Nordisk A/S via a third-party company. The LinkedIn post stated, 'Novo Nordisk has an extensive early phase clinical pipeline, of over 14 research projects in Phase 1. Contributing to the design, interpretation and reporting of development studies', followed by various hashtags (#) and linked to a webpage titled 'R&D pipeline' on novonordisk.com.

The complainant alleged that the LinkedIn post appeared to be promoting the products to the general public and that LinkedIn was hardly the appropriate venue to be proactively disseminating this type of material.

The detailed response from Novo Nordisk is given below.

The Panel noted that the third-party employee in question resided in the UK. The Panel considered, on the balance of probabilities, that the majority of the individual's connections on LinkedIn would therefore be UK residents and therefore the post at issue was, on the balance of probabilities, directed mainly towards a UK audience. This proactive dissemination of information brought the LinkedIn post within the scope of the UK Code.

The Panel considered that, on the balance of probabilities, not all of the third-party 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 the link within the LinkedIn post in question was to a webpage within the Science & technology section of novonordisk.com and was titled 'R&D pipeline' and subtitled 'Taking life-changing innovations all the way'. The page stated, *inter alia*, 'At Novo Nordisk, our R&D pipeline reflects our long-standing commitment to driving change to defeat diabetes and other serious chronic conditions. Our scientists are currently working on novel and innovative treatments to address the unmet needs of people living with diabetes, obesity, haemophilia, growth disorders and non-alcoholic steatohepatitis (NASH)'. Following this, readers were invited to browse and access up-to-date trial information for Novo Nordisk's entire R&D pipeline by selecting a therapy area or by study phase; the products were listed, alongside their therapy area, according to whether they were in Phase 1, Phase 2, Phase 3, or 'Filed'. If readers clicked on a

product, a description of the class of medicine and its intended use was given with the option to click on a link to search for more clinical trials.

The Panel noted that Clauses 26.1 and 26.2 of the Code only applied to prescription only medicines. The Panel noted that the LinkedIn post referred to the early phase clinical pipeline and specifically referred to Phase 1; there was a link to the R&D pipeline webpage within the post. Whilst noting its view that the linked material was an integral part of the post, the Panel also noted that the complainant had not specifically referred to the linked webpage and had not identified any particular product but had made a very narrow allegation in relation to whether the post appeared to be promoting products to the general public. The complainant made no comment in relation to the legal status of any particular product. It was not for the Panel to infer reasons to support a complainant's complaint.

Whilst the Panel had some concerns about certain aspects of the linked webpage, based on the very narrow allegation and the reasons set out above, the Panel considered that the complainant had not established that the LinkedIn post at issue had advertised a prescription only medicine to the public or that the post might encourage a member of the public to ask his/her health professional to prescribe a specific prescription only medicine and no breaches of the Code were ruled in that regard. Further, the Panel considered that the complainant had not established that Novo Nordisk had failed to maintain high standards and no breach of the Code was ruled. Nor did it consider that the circumstances warranted a ruling of a breach of Clause 2 and no breach was ruled.

A complainant who described him/herself as a concerned UK health professional, complained about a post on LinkedIn by an individual contracted to work for Novo Nordisk A/S via a third-party company. The LinkedIn post stated, 'Novo Nordisk has an extensive early phase clinical pipeline, of over 14 research projects in Phase 1. Contributing to the design, interpretation and reporting of development studies', followed by #Formulation #InjectionFormulation #APIDevelopment #ResearchScientist #DevelopmentScientist #Diabetes #Obesity #NASH #Haemophilia, and linked to a webpage titled 'R&D pipeline' on novonordisk.com.

COMPLAINT

The complainant alleged that the LinkedIn post appeared to be promoting the products to the general public and that LinkedIn was hardly the appropriate venue to be proactively disseminating this type of material.

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

RESPONSE

Novo Nordisk submitted that the LinkedIn post provided by the complainant was made in June 2021 by an individual who was not an employee of Novo Nordisk; he/she was employed by a third-party agency that provided talent acquisition services, and was contracted to work for Novo Nordisk's headquarters, Novo Nordisk A/S, in Denmark. In respect of the work the individual in question carried out with the third-party agency for Novo Nordisk A/S, his/her main contact/reporting line was to a senior executive in talent acquisition who was also employed by Novo Nordisk A/S in Denmark.

Novo Nordisk submitted that the individual in question was not employed nor contracted by the UK affiliate, Novo Nordisk Limited; he/she was not someone Novo Nordisk Limited had ever engaged with, and it was not familiar with him/her.

Further to Novo Nordisk's research on this case, it confirmed that the individual in question had over 5000 followers and connections via his/her LinkedIn profile. Those that followed his/her LinkedIn account were primarily individuals searching for career opportunities.

Novo Nordisk Limited did not instruct the individual in question to make the LinkedIn post, and it had no knowledge of it. The LinkedIn post was not certified. The LinkedIn post was liked by four people, none of whom were employed by Novo Nordisk Limited:

- One like was made by an individual employed by Novo Nordisk A/S.
- Two likes were made by employees of the third-party agency in question which was contracted to work for Novo Nordisk A/S.
- One like was made by an employee of the third-party agency in question who was contracted to work for a different pharmaceutical company.

Novo Nordisk submitted that the LinkedIn post was designed to seek engagement from potential Novo Nordisk job candidates in the individual's network. The LinkedIn post provided a link to a page on novonordisk.com which provided information on Novo Nordisk's research and development (R&D) pipeline. This website was owned and managed by Novo Nordisk A/S. Novo Nordisk Limited was in no way associated with the creation or maintenance of the content of this website.

Novo Nordisk submitted that, in summary, the LinkedIn post was not placed there by an employee of Novo Nordisk Limited, nor did the post make any reference to the availability or use of a medicine in the UK. This complaint was therefore out of scope of the ABPI Code.

In any event, hypothetically speaking, Novo Nordisk stated that if this complaint was deemed to be within the scope of the Code, there would be no breach of Clauses 26.1, 26.2, 9.1 or 2 of the Code. The LinkedIn post did not mention the name of any medicines and the website to which the post linked provided only factual information on potential future medicines and/or indications under investigation within the R&D pipeline. The content of the website page did not promote any medicines nor did the content encourage members of the public to ask for a specific medicine.

Novo Nordisk provided a copy of the UK's Social Media Policy and submitted that it was not assigned to the individual in question as he/she was not (and never had been) contracted to provide services to Novo Nordisk Limited.

Following a request for further information, Novo Nordisk submitted that at the time the post was made, the individual's LinkedIn profile indicated his/her residence as being in England. Novo Nordisk reiterated that he/she had never provided services to the UK affiliate. Novo Nordisk stated that it was unable to provide information on the demographic of the individual's LinkedIn connections in relation to their countries of residence as he/she was no longer providing service to Novo Nordisk A/S via the third-party agency in question so it was not possible to contact him/her for this detail. Furthermore, his/her connections on his/her LinkedIn profile were not visible to anyone who was not connected to him/her, so Novo Nordisk was unable to search for the information in this way.

PANEL RULING

The Panel noted that it was an established principle that pharmaceutical companies were responsible for the acts and omissions of their third parties which came within the scope of the Code, even if such acts and omissions were contrary to the instructions which they had been given. Furthermore, UK companies were responsible for the acts and omissions of their overseas affiliates that came within the scope of the Code. It therefore followed that Novo Nordisk Limited would be responsible for any acts or omissions of Novo Nordisk A/S and/or its third parties that came within the scope of the Code.

Firstly, the Panel had to decide whether the LinkedIn post in question, and associated material inextricably linked to it, were subject to the Code. The Panel considered that companies should assume that the Code would apply to, and that companies would be responsible for, all personal social media activity that fell within the scope of the Code by their employees and individuals working for the company via a third-party, unless, for very clear reasons, it could be shown otherwise. Any material associated with a social media post, for example a link within a post, would be regarded as being part of that post.

The Panel noted that the LinkedIn post at issue stated 'Novo Nordisk has an extensive early phase clinical pipeline, of over 14 research projects in Phase 1. Contributing to the design, interpretation and reporting of development studies' followed by #Formulation #InjectionFormulation #APIDevelopment #ResearchScientist #DevelopmentScientist #Diabetes #Obesity #NASH #Haemophilia', and linked to a webpage titled 'R&D pipeline' on novonordisk.com. The Panel noted Novo Nordisk's submission that the LinkedIn post had been posted by an employee of a third-party company that provided talent acquisition services and was contracted to work for Novo Nordisk's headquarters, Novo Nordisk A/S, in Denmark. The Panel noted that at the top of the LinkedIn post, immediately beneath the individual's name, it was stated 'Lead Sourcing Specialist at Novo Nordisk via [recruitment agency]'.

The Panel noted Novo Nordisk's submission that, in its view, the LinkedIn post did not fall within the scope of the Code as the post was not placed by an employee of Novo Nordisk Limited, nor did the post make any reference to the availability or use of a medicine in the UK. The Panel further noted Novo Nordisk's submission that the post had not been 'liked' by anyone employed by Novo Nordisk Limited.

The Panel noted that the individual in question, who worked as an employee for a third-party that provided services to Novo Nordisk A/S, resided in the UK. The Panel considered, on the balance of probabilities, that the majority of the individual's connections on LinkedIn would therefore be UK residents and therefore the LinkedIn post at issue was, on the balance of probabilities, directed mainly towards a UK audience.

The Panel considered that the proactive dissemination of information regarding Novo Nordisk's pipeline to, on the balance of probabilities, a UK audience, brought the LinkedIn post within the scope of the UK Code.

The Panel considered that on the balance of probabilities, not all of the third-party 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 the link within the LinkedIn post in question was to a webpage within the Science & technology section of novonordisk.com and was titled 'R&D pipeline' and subtitled 'Taking life-changing innovations all the way'. The page stated, *inter alia*, 'At Novo Nordisk, our R&D pipeline reflects our long-standing commitment to driving change to defeat diabetes and other serious chronic conditions. Our scientists are currently working on novel and innovative treatments to address the unmet needs of people living with diabetes, obesity, haemophilia, growth disorders and non-alcoholic steatohepatitis (NASH)'. The Panel noted that beneath this, readers were invited to browse and access up-to-date trial information for Novo Nordisk's entire R&D pipeline by selecting a therapy area or by study phase; the products were listed, alongside their therapy area, according to whether they were in Phase 1, Phase 2, Phase 3, or 'Filed'. If readers clicked on a product, a description of the class of medicine and its intended use was given with the option to click on a link to search for more clinical trials.

The Panel noted that Clauses 26.1 and 26.2 only applied to prescription only medicines. The Panel noted that the LinkedIn post referred to the early phase clinical pipeline and specifically referred to Phase 1; there was a link to the R&D pipeline webpage within the post. Whilst noting its view that the linked material was an integral part of the post, the Panel also noted that the complainant had not specifically referred to the linked webpage and had not identified any particular product but had made a very narrow allegation in relation to whether the post appeared to be promoting products to the general public. The complainant made no comment in relation to the legal status of any particular product. It was not for the Panel to infer reasons to support a complainant's complaint. It was for the complainant to make out his/her complaint on the balance of probabilities.

Whilst the Panel had some concerns about certain aspects of the linked webpage, based on the very narrow allegation and the reasons set out above, the Panel considered that the complainant had not established that the LinkedIn post at issue had advertised a prescription only medicine to the public or that the post might encourage a member of the public to ask his/her health professional to prescribe a specific prescription only medicine and no breach of Clauses 26.1 and 26.2 was ruled in that regard.

In the Panel's view, it was not necessarily unacceptable for a company to refer, in general terms, to its pipeline products on its corporate accounts. However, language, context, location, layout, intended audience and overall impression were important factors. Such references should not otherwise constitute promotion of an unlicensed medicine or unlicensed indication. The Panel queried whether a social media platform such as LinkedIn, with a varied audience, was the appropriate forum to share such information.

The Panel noted the circumstances of this case and in particular that the complainant had made a very narrow allegation in relation to whether the post appeared to be promoting products to the general public. The complainant had not provided any details and it was not for the Panel to infer reasons to support a complaint. The Panel considered that Novo Nordisk had been let down by an employee of a third-party agency working on behalf of its overseas head office resulting in the dissemination of information about Novo Nordisk's product pipeline. Nonetheless, noting its rulings of no breach in relation to promotion to the public above and the very narrow nature of the complaint, the Panel considered that the complainant bore the burden of proof and did not consider that he/she had established that Novo Nordisk had failed to maintain high standards and no breach of Clause 9.1 was ruled.

The Panel noted its rulings of no breach of the Code above and did not consider that the particular circumstances of this case warranted a ruling of a breach of Clause 2, which was a sign of particular censure and was reserved for such use. No breach of Clause 2 was ruled.

Complaint received **22 June 2021**

Case completed **18 May 2022**