

**CASE AUTH/3788/6/23**

## **COMPLAINANT v ASTRAZENECA**

**Allegations about promotion of an AstraZeneca microsite in a third-party email**

### **CASE SUMMARY**

This case was in relation to the ‘Sponsored’ section of an email newsletter, sent by a third-party publisher, which contained an advertisement for an AstraZeneca-sponsored promotional microsite. The complainant alleged that the email was not reviewed by AstraZeneca and, while the section at issue was labelled as ‘sponsored’, it did not specify who sponsored it or that the linked material (the microsite) was promotional.

The outcome under the 2021 Code was:

<b>Breach of Clause 3.6</b>	<b>Disguising promotional material or activities</b>
<b>Breach of Clause 5.5</b>	<b>Failing to be sufficiently clear as to the company’s role and involvement</b>
<b>Breach of Clause 8.1</b>	<b>Failing to certify promotional material</b>
<b>No Breach of Clause 5.1</b>	<b>Requirement to maintain high standards at all times</b>

**This summary is not intended to be read in isolation.  
For full details, please see the full case report below.**

### **FULL CASE REPORT**

A complaint about AstraZeneca UK Limited was received from a contactable complainant who described themselves as a health professional.

#### **COMPLAINT**

The complaint wording is reproduced below:

“At the base of this email in the sponsored section. In that is a link that directly takes to the promotional part of the site on the [named publication] website ([URL provided]).

This does state that it is sponsored, but does not specify who sponsored it, nor that the material it links to is promotional. As can be seen, the choice of wording is such it could be taken to be a general review of NICE guidelines.

Unlike the website itself, there is also no evidence that this email was reviewed by the company who have the link to their promotional email. The email itself does not specify that it contains links to promotional material.

Please review this additional “isolated incident” of AstraZeneca failing to maintain high standards.”

When writing to AstraZeneca, the PMCPA asked it to consider the requirements of Clauses 3.6, 5.1, 5.5 and 8.1 of the 2021 Code.

## **ASTRAZENECA’S RESPONSE**

The response from AstraZeneca is reproduced below:

“AstraZeneca takes compliance with the ABPI’s Code of Practice for the Pharmaceutical Industry (the “Code”) extremely seriously and is committed to maintaining high standards in relation to all information it provides about its products and in all related activities.

### **The Complaint**

The complainant made several allegations, summarised as the following;

1. The “[named publication] email newsletter” does not make the reader aware of the sponsoring company and that it contains links to promotional material and,
2. AstraZeneca has not reviewed the “[named publication] email newsletter” with link to the promotional email

The complainant alleges that failing to do the above means that AstraZeneca has failed to maintain high standards, a breach of Clause 5.1 of the Code.

AstraZeneca has been asked by the PMCPA to consider these allegations with respect to Clauses 3.6, 5.1, 5.5, and 8.1 of the Code.

We will address each of the complainant’s allegations according to the relevant clauses of the ABPI Code of Practice.

### **In summary**

We have investigated the allegations and it was discovered that our third-party agency [named publisher] had acted against the provisions set out in their Media Plan and Master Services Agreement and had sent the [named publication] email newsletter as indicated by the complainant, without prior oversight, approval and not in accordance with the certified materials that were agreed to be used to promote the “See Beyond Sugar” microsite. AstraZeneca has requested [named publisher] to stop any advertising outside of the agreement, and we have received confirmation from [named publisher] that this will not continue.

Please see subsequent pages for details on the rationale behind AstraZeneca’s decision making. Supporting material [was provided].

### **Background information on how a reader would navigate to the “See Beyond Sugar” Microsite**

The “See Beyond Sugar” microsite is hosted on the [named publication] website, which is owned by [named publisher]. AstraZeneca commissioned this page and associated media plan through a media buying agency, [named media buyer].

The “See Beyond Sugar” microsite may be accessed directly by healthcare professionals via the URL [URL provided] or via a banner on the “Sponsored” content page of [named publication, URL provided]. In addition, AstraZeneca have paid for adverts through a media plan, which includes two banner adverts, intended for the “[named publication] email newsletter”.

Each of these banner adverts states the nature of involvement of AstraZeneca as a sponsor of this promotional webpage.

### **Clause 8.1**

1. Upon investigation by AstraZeneca into the [named publication] email newsletter sent out by [named publisher] to the concerned healthcare professional, we acknowledge that the email in question was not certified and checked for its final form by a Nominated Medical Signatory in accordance with Clause 8.1 and AstraZeneca’s approval SOPs.
2. The [named publication] email newsletter in question was sent by [named publisher] outside of the pre-specified agreed materials.
3. To AstraZeneca’s disappointment, on this occasion [named publisher] had not informed AstraZeneca of its intent to promote uncertified content within [named publication] email newsletters.

Pharmaceutical companies are accountable for the activities of their third-party providers and hence for the above activity, therefore AstraZeneca unfortunately accepts a breach of Clause 8.1.

AstraZeneca will provide additional guidance across the business to prevent agencies acting on their own regard without prior consent, approval of all promotional materials, outside of the agreed work.

### **Clause 5.5**

The email newsletter has a very clear section titled, “Sponsored”. The prominent word “Sponsored” also appears at the outset of the advert and clearly differentiates this advert from the others in the newsletter, as containing third party content and is commonly used as such by [named publisher]. These are done as default for all sponsored pages for all pharmaceutical clients, across all [named publisher] brands. This means the end user is aware that this content is not owned by [named publication] and is able to decide whether to engage further.

Nevertheless, the website to which the healthcare professional clicks through does make it clear of the nature of AstraZeneca’s involvement with the statement, “This is a

promotional web page developed and funded by AstraZeneca for UK healthcare professionals only”.

We do recognise that it would've been clearer to the audience to have the specific sponsoring company clearly named. AstraZeneca believes that the [named publication] email newsletter clearly defines the content as sponsored, but not specific named involvement and AstraZeneca could have breached Clause 5.5 of the Code.

### **Allegation Clause 3.6**

AstraZeneca disagrees with the allegation that the materials ([named publication] email newsletter and [named publication] website) in question were disguised promotion for the following reasons:

1. Recipients of the [named publisher] [named publication] e-mails are aware that some content may be promotional prior to registering to receive the newsletter. They are informed prior to signing up that some newsletters may contain promotional materials from pharmaceutical companies; the following wording is included within the consent statement agreed to by users

*“The latest GP latest GP news, views, and practical advice, delivered to your inbox every morning. May contain promotional materials from pharmaceutical companies”.*

2. The email newsletter has a very clear section titled, “Sponsored”. The prominent word “Sponsored” also appears at the outset of the advert and clearly differentiates this advert from the others in the newsletter, as containing third party content and is commonly used as such by [named publisher]. These are done as default for all sponsored pages for all pharmaceutical clients, across all [named publisher] brands. This means the end user is aware that this content is not owned by [named publication] and is able to decide whether to engage further.
3. If the user decides to engage with the advert they are then taken to the sponsored “See Beyond Sugar” microsite webpage, and the top of the page bears the clear statement, *“This is a promotional web page developed and funded by AstraZeneca for UK healthcare professionals only”*, highlighting the promotional nature of the content, who sponsors the microsite and the intended audience.

AstraZeneca therefore believes that when the above three points are taken together that the materials and activities in this context are not disguised promotion, and that the provisions of clause 3.6 have been met. Therefore, AstraZeneca has not breached Clause 3.6 of the Code.

### **Allegation Clause 5.1**

Despite conducting due diligence, to AstraZeneca's disappointment, it was discovered that [named publisher] had acted in contravention of their engagement by [named media buyer] by sending the “[named publication] email newsletter” as identified by the complainant, without prior oversight, approval and not in accordance with the approved adverts set out by AstraZeneca.

AstraZeneca disagrees that the company has not maintained high standards at all times and is not in breach of Clause 5.1 for the following reasons:

1. AstraZeneca have the necessary contractual provisions in place to ensure that any approved supplier is rigorously vetted and must act in accordance with the high advertising standards required by AstraZeneca to meet its ABPI code obligations for the promotion of medicines to UK healthcare professionals, which includes the vetting, the review, and the certification of materials.

We ask you to take note of the following contractual provisions:

- A Master Service Agreement with [named media buyer] – This contractual agreement with [named media buyer], includes following clause(s):

*“All materials used in promotion must be pre-approved. AstraZeneca maintains defined regulatory approval processes to ensure that all promotional materials are reviewed by qualified AstraZeneca personnel and are medically and scientifically accurate, objective and compliant with regulatory requirements.*

*No AstraZeneca employee or vendor can use, publish or communicate promotional materials that have not been approved through the appropriate regulatory approval process”.*

- In addition, clause 3 of the that [sic] works agreement between AstraZeneca and [named media buyer], pursuant to which [named media buyer] engaged [named publisher], makes it clear that the “Works Agreement incorporates terms of the Master Services Agreement in accordance with clause 3 of the Master Services Agreement.”.
  - The agencies are trained on the ABPI code and on this occasion, [named publisher], who have been responsible for the dissemination of the email Newsletter in question have evidenced and confirmed their ongoing ABPI training provisions.
2. The promotion of the “See Beyond Sugar” microsite via the “[named publication] email newsletter” was always intended to be carried out through the approved banner adverts. Each of these adverts were certified by a Nominated Medical Signatory according to AstraZeneca’s SOP. AstraZeneca specifically instructed [named media buyer] and [named publisher] to only use the certified advertisements in the newsletters.

When taken together AstraZeneca believes it is not in breach of clause 5.1 as thorough due diligence was conducted in ensuring that the necessary contractual provisions with both [named publisher] and [named media buyer] were in place. On this occasion [named publisher] had not informed AstraZeneca of its intent to promote uncertified content within [named publication Newsletters outside of the media plan.

### **Summary of AstraZeneca’s position**

AstraZeneca believes its existing control mechanisms, including our contractual agreements and standard operating procedures, are robust and appropriately weighted to

maintain high standards in line with the ABPI code. However, we will take this opportunity to review our existing vendors and apply further scrutiny and, where necessary, provide additional guidance and training to further guard against the possibility of agencies mistakenly acting on their initiative without AstraZeneca's prior consent and in disregard of our SOPs, scope of work and signed work agreements.

In conclusion, AstraZeneca takes compliance with the Code extremely seriously and is committed to maintaining high standards in relation to all information it provides about its products and its activities. Finally, for the reasons provided above, AstraZeneca accepts breaches of clause 8.1 and possible breach of 5.5. To reiterate, AstraZeneca has requested [named publisher] to stop any advertising outside of the agreement, and have received confirmation from [named publisher] that this will not continue.

And for the reasons provided above, AstraZeneca refute that Clauses 3.6 and 5.1 of the Code have been breached."

## **PANEL RULING**

The complaint was about an email newsletter, sent by a third-party publisher. The email consisted of several 'content blocks' that were organised into sections; each block linked out to a particular webpage. The first section (and the primary content of the email) contained five content blocks for articles on the publisher's website which appeared to be independent and an advert from a non-pharmaceutical company. The subject line of the email related to the first of these articles and read "[Named health professional]: 'I am confident this plan will help to make primary care more sustainable'". The second section of the email was labelled "LATEST GP JOBS". The third section was labelled "SPONSORED" and was the subject of this complaint.

The sponsored section contained one content block, which read "Sponsored: See Beyond Sugar: Using NICE NG28 guidelines to improve outcomes for type 2 diabetes patients" and included a "See beyond sugar" logo and a button labelled "READ MORE". The button directed the reader to a microsite hosted on the publisher's website that was sponsored by AstraZeneca and contained promotional material for Forxiga (dapagliflozin). The Panel referred to this content block as 'the advert' for the purposes of this ruling.

AstraZeneca submitted that the 'See Beyond Sugar' microsite was hosted on the third-party publisher's website and that the third party had sent the email newsletter without prior oversight, approval and not in accordance with the certified materials that were agreed to be used to promote the microsite. The Panel considered it was an established principle under the Code that pharmaceutical companies are responsible for work undertaken by third parties on their behalf.

The Panel noted the microsite itself appeared to include a declaration at the top of the page that read "This is a promotional web page developed and funded by AstraZeneca for UK healthcare professionals only." The approved materials that were intended to promote the microsite but were not included in the email newsletter at issue incorporated a similar declaration that named AstraZeneca. The Panel noted the complainant's allegations related to the email itself, as opposed to the linked microsite, and made its rulings on the email accordingly.

The complainant alleged that, while the advert within the email was labelled "sponsored", it did not specify which company sponsored it nor that it linked to promotional material.

The Panel noted Clause 5.5 requires that material that is sponsored by a pharmaceutical company or in which a pharmaceutical company has any other involvement must clearly indicate the role of that pharmaceutical company. The supplementary information to Clause 5.5 includes that the wording of the declaration of involvement must be unambiguous so that readers are immediately able to understand the extent of the company's involvement and influence. This is particularly important when companies are involved in the production of material which is circulated by an otherwise wholly independent party. The declaration of sponsorship must be sufficiently prominent to ensure that readers of sponsored material are aware of it at the outset.

While the Panel noted that the microsite and approved materials appeared to include a declaration naming AstraZeneca, the Panel considered there was no similar declaration included within the email newsletter at issue. In this regard, the Panel noted the section containing the advert was labelled "SPONSORED" and the advert itself included the word "Sponsored" but there was no indication that the sponsor was AstraZeneca. There was no reference to AstraZeneca anywhere in the email. The Panel considered that this was insufficient to meet the requirements of Clause 5.5 and the sponsored material should have clearly stated the name of the pharmaceutical company involved. The Panel therefore ruled a **breach of Clause 5.5**.

In relation to the allegation that the advert did not state that the material it linked to was promotional, and that the email newsletter did not specify that it contained links to promotional material, the Panel noted that AstraZeneca was asked to consider the requirements of Clause 3.6, which required that materials must not be disguised promotion.

The Panel noted that the Code did not require promotional material to be labelled as such, however, it must not be disguised and the identity of the responsible pharmaceutical company must be obvious from the outset.

The Panel firstly considered the content of the advert within the email. The advert did not mention Forxiga or make any claims about a particular medicine and, in the Panel's view, the email newsletter was not in itself promotional.

The advert did, however, link through to AstraZeneca's promotional microsite. The Panel noted the complainant's allegation that "the choice of wording is such it could be taken to be a general review of NICE guidelines".

The Panel noted AstraZeneca's submission that the use of the word "sponsored" meant that the reader would be aware that this content was not owned by the email's publisher and would be able to decide whether to engage further. The Panel considered, however, that the word "sponsored" did not provide sufficient clarity as to whether the linked information was promotional or non-promotional.

The Panel disagreed with AstraZeneca's implication that recipients of the email newsletter would have known the linked microsite was promotional as a result of wording within the consent statement when signing up to receive this email newsletter from the third party ("May contain promotional materials including from pharmaceutical companies.").

While the Panel noted the microsite itself appeared to include a declaration naming AstraZeneca and the promotional nature of the site, in the Panel's view, it was not obvious that

the “Read more” link beneath the wording “Sponsored: See Beyond Sugar: Using NICE NG28 guidelines to improve outcomes for type 2 diabetes patients” in the advert would direct readers to a promotional microsite sponsored by AstraZeneca. The Panel considered that the absence of both a declaration of AstraZeneca’s involvement and a statement to indicate the linked material was promotional meant that the promotional nature of the Forxiga microsite was disguised. The Panel ruled a **breach of Clause 3.6**.

In relation to the complainant’s allegation that there was no evidence that the email had been reviewed, the Panel noted AstraZeneca’s submission that the publisher had acted against the provisions of the agreement in place with AstraZeneca and had included the advert in the email newsletter without the approval of AstraZeneca. The advert was not part of the package of certified materials that had been agreed for use to promote the ‘See Beyond Sugar’ microsite and AstraZeneca recognised that it had not certified the advert within the email newsletter as required by Clause 8.1. The Panel, noting the advert in the email linked to promotional material, ruled a **breach of Clause 8.1**, as acknowledged by AstraZeneca.

The Panel noted that the publisher did not appear to have contacted AstraZeneca with regard to the inclusion of the advert in the email newsletter. The Panel did not have the full details of AstraZeneca’s contract with either the media buyer or the publisher before it, but noted from the extract provided by AstraZeneca that its master service agreement required that all materials must be approved before use. The Panel considered that AstraZeneca appeared to have been let down by the publisher in this regard.

The Panel noted that the ‘See Beyond Sugar’ microsite and the materials approved for use to promote it all contained clear declarations of AstraZeneca’s involvement and the fact that the microsite contained promotional information. The Panel considered in the particular circumstances of this case, the matter at issue was adequately covered by the Panel’s rulings above, and the complainant had not demonstrated that AstraZeneca had failed to maintain high standards. The Panel ruled **no breach of Clause 5.1**.

**Complaint received**      **30 June 2023**

**Case completed**        **23 July 2024**