

HOSPITAL DOCTOR v GLAXOSMITHKLINE

Invitation to exhibition stand

A hospital doctor complained about the strapline 'do more, feel better, live longer' on an invitation to visit GlaxoSmithKline's stands at the winter 2013 meeting of the British Thoracic Society (BTS). Whilst the complainant was sure that 'do more, feel better, live longer' was an appropriate aspiration for GlaxoSmithKline, he noted that none of the company's respiratory products made you live longer.

Whilst the complainant understood that this was an innocent combination of company logo with respiratory invitation, he thought it might be misinterpreted; in particular it inferred that GlaxoSmithKline's lead product Seretide [salmeterol/fluticasone propionate] could make you live longer when in fact the TORCH [Towards a Revolution in COPD Health] study showed that there was no such effect.

The detailed response from GlaxoSmithKline is given below.

The Panel noted that the flyer/invitation sent to the complainant was titled 'GSK Respiratory' and contained the GlaxoSmithKline logo with the strapline 'do more, feel better, live longer' in the top right hand corner. Below the title was the phrase '*Working to eradicate the patient impact of COPD & asthma*' followed by '*Taking a patient-centred approach to deliver a range of medicines to enable clinicians to tailor treatment to patients' needs*'. Beneath this was a text box that included, *inter alia*, an invitation to 'Come and talk to us on our exhibition stands:'. Stand numbers and details of their location were provided as well as contact details for further information.

The Panel noted GlaxoSmithKline's submission that the purpose of the flyer was to highlight its support and corporate presence at the meeting. The flyer clearly encouraged visiting the company's exhibition stands including the promotional stands.

The Panel noted GlaxoSmithKline's submission that in previous cases the Panel had accepted that, in the absence of a specific product claim, a corporate mission statement in a therapy area was non-promotional and that a corporate logo and strapline were independent from a product claim when there was sufficient separation between the two. The Panel considered that there were significant differences between those cases and that presently at issue. The Panel noted that each case was judged on its own merits.

Turning to this case, the Panel considered that in certain circumstances a corporate mission statement might be regarded as promotional: its content and context were relevant. The Panel noted GlaxoSmithKline's submission that the flyer

did not refer specifically to any product and that branding was corporate rather than product-specific. However, the Panel noted that the flyer was an invitation to visit, *inter alia*, GlaxoSmithKline's promotional stands and that it mentioned COPD and asthma.

The Panel noted GlaxoSmithKline's full corporate mission statement: 'to improve the quality of human life by helping people to do more, feel better and live longer'. The Panel considered that the abridged statement 'do more, feel better, live longer' as it appeared on the flyer in question was different. Context was also important.

The abridged mission statement appeared on a flyer which referred to GlaxoSmithKline respiratory and the patient impact of COPD and asthma and invited attendance at, *inter alia*, three promotional stands. Whilst the Panel accepted that 'do more' might be considered a statement of general corporate intent, 'feel better, live longer', within the context of an item headed GlaxoSmithKline respiratory and which referred to eradication of the patient impact of COPD and asthma, could refer to the effect of GlaxoSmithKline's respiratory product portfolio. Indeed this was the view of the complainant. In this regard the Panel noted that whilst the statement was physically separate from the main body of text, visually it had the same colour font and font style as the rest of the item and appeared to be an integral part of the whole. The Panel thus considered on balance, within the context of this particular item, that the statement was a claim for GlaxoSmithKline's respiratory portfolio, including Seretide.

The Panel noted that the complainant had the burden of proving his complaint on the balance of probabilities. The Panel noted the complainant's allegation that the claim 'do more, feel better, live longer' implied, *inter alia*, that Seretide could make you live longer. According to the complainant the TORCH study did not support this. The Panel considered that the claim was thus misleading in relation to Seretide and a breach of the Code was ruled.

Upon appeal from GlaxoSmithKline the Appeal Board acknowledged that in certain circumstances a corporate statement might be regarded as promotional.

The Appeal Board noted that the bright orange invitation was entitled 'GSK Respiratory' and in the top right-hand corner next to the GlaxoSmithKline corporate logo was the strapline 'do more, feel better, live longer'. The Appeal Board considered the positioning of the strapline to the right of the logo, and therefore on the outer right edge of the invitation, separated it from the body of the

invitation. The invitation/flyer invited readers to visit the company's promotional and medical exhibition stands. In that regard the Appeal Board noted GlaxoSmithKline's submission that its promotional stands at the meeting promoted Relvar Ellipta and not Seretide.

The Appeal Board further noted that within GlaxoSmithKline orange was reserved for corporate branding; it was not linked to a promoted product. The Appeal Board noted that the invitation did not mention any specific medicines. The Appeal Board considered that the strapline 'do more, feel better, live longer' as it appeared in the top right-hand corner of the invitation/flyer in question did not relate to, or make any claims for, any particular medicine, including Seretide. The Appeal Board ruled no breach of the Code. The appeal was successful.

The Panel noted its finding above that the phrase 'do more, feel better, live longer' was a claim for GlaxoSmithKline's respiratory portfolio. However the complainant had not submitted any material or evidence to support his position in relation to the rest of the medicines in GlaxoSmithKline's respiratory portfolio. The Panel noted that the complainant bore the burden of proof and considered that he had not established his case on the balance of probabilities. Whilst the Panel was concerned about the phrase in question, in the absence of any evidence on this point and on this narrow ground alone the Panel did not consider the claim misleading or all embracing in relation to the rest of GlaxoSmithKline's respiratory portfolio. No breach of the Code was ruled.

A hospital doctor complained about an invitation (ref UK/COM/0199/13) which he had received from GlaxoSmithKline UK Limited to visit the company's stands at the winter meeting of the British Thoracic Society (BTS). The invitation stated 'Working to eradicate the patient impact of COPD [chronic obstructive pulmonary disease] & asthma', 'Taking a patient-centred approach to deliver a range of medicines to enable clinicians to tailor treatment to patients' needs'. No specific medicines were named. The recipient was then invited to visit the company stands details of which were provided.

COMPLAINT

The complainant noted that in the top right-hand corner of the invitation was the GlaxoSmithKline logo with the strapline 'do more, feel better, live longer'. Whilst the complainant was sure this was an appropriate aspiration for GlaxoSmithKline, the conjunction of these two statements on the same invitation was factually incorrect. None of the GlaxoSmithKline respiratory products made you live longer.

Whilst the complainant understood that this was an innocent combination of company logo with respiratory invitation, he thought it might be misinterpreted; in particular it inferred that GlaxoSmithKline's lead product Seretide [salmeterol/fluticasone propionate] could make you live longer

when in fact the TORCH [Towards a Revolution in COPD Health] study showed that there was no such effect.

When writing to GlaxoSmithKline, the Authority asked it to respond in relation to Clauses 7.2 and 7.10 of the Code.

RESPONSE

GlaxoSmithKline stated that the invitation in question was sent as a flyer to Thorax journal subscribers with its December 2013 issue (Volume 68; Issue 12). A copy of the final version along with its approval certificate was provided. The purpose of this flyer was to highlight GlaxoSmithKline's support and corporate presence at the winter 2013 Meeting of the British Thoracic Society. The flyer did not refer specifically to any GlaxoSmithKline product and therefore was specifically created with its corporate branding rather than a product-specific branding.

The flyer contained GlaxoSmithKline's corporate logo and strapline that included GlaxoSmithKline's corporate mission: to improve the quality of human life by helping people to do more, feel better and live longer. GlaxoSmithKline believed that it was sufficiently clear that the logo and associated corporate mission did not imply any benefit or claim about a particular product. In support of this, the positioning of the corporate logo and strapline (in the top right hand corner) was sufficiently separated from the main body of the text, further distinguishing this as a corporate mission. Since this mission strapline did not relate to any specific product and no product was referred to in the flyer, GlaxoSmithKline had not provided any prescribing information or summary of product characteristics (SPC).

Following the introduction of the new corporate logo, GlaxoSmithKline UK issued internal guidance to ensure its appropriate use and prevent any misunderstanding; this pre-dated the complaint. This guidance stated that the corporate mission strapline was not to be used on any communications or materials, including emails, detail aids, meeting slides etc, which contained information about a GlaxoSmithKline product that were used with external parties. This was issued to ensure that the corporate mission strapline was not misconstrued as a product-specific claim. The guidance on use with emails was subsequently clarified to exclude 1:1 correspondence emails as the sign off was positioned in such a way that it should not be misconstrued as a claim; an example of such sign-off was provided.

The exhibition stands referred to on the invitation would promote Relvar Ellipta (fluticasone furoate/vilanterol), which had blue and grey branding. These promotional stands contained corporate logos without the corporate mission statement in accordance with the GlaxoSmithKline internal guidance referred to above.

GlaxoSmithKline noted that a second flyer was placed in delegates' bags to raise awareness of its support for the meeting. Both flyers contained

GlaxoSmithKline's respiratory vision but the flyer for the delegate bag also referred to GlaxoSmithKline's stands. However, the two flyers were mixed up by the printers and this was why the certificate for the flyer in question had the wrong intended use. Investigation had revealed that the mailing house had delivered the wrong item to the journal publisher. The email correspondence confirming GlaxoSmithKline's original instructions to the printer relating to these items and an email confirming the error on the part of their provider were provided. GlaxoSmithKline was working with its suppliers to take the required action to prevent any similar episodes happening in the future.

A gallery note had now been added to the job bag of the flyer that was distributed in error in Thorax in order to document the error and to confirm that the content was still appropriate for use in Thorax. In addition, the flyer intended for Thorax would now be placed in the delegate's bag and had been recertified for such use.

GlaxoSmithKline noted that the Panel had previously accepted a corporate mission statement in a therapy area to be non-promotional in the absence of a specific product claim (Case AUTH/1920/11/06). The Panel had also previously accepted a corporate logo and strapline to be independent from a product claim when there was sufficient separation between the two (Case AUTH/2216/3/09).

GlaxoSmithKline was confident that in the absence of any product-specific claim and due to its clear separation from the main body of the text, GlaxoSmithKline's corporate logo and strapline on this flyer could clearly be identified as such and should not be considered a claim about a GlaxoSmithKline product. The flyer was also produced in line with corporate branding rather than product specific branding. Therefore, GlaxoSmithKline believed this flyer fell outside the scope of Clauses 7.2 or 7.10.

PANEL RULING

The Panel noted that the flyer/invitation sent to the complainant was titled 'GSK Respiratory' and contained the GlaxoSmithKline logo with the strapline 'do more, feel better, live longer' in the top right-hand corner. Below the title was the phrase '**Working to eradicate the patient impact of COPD & asthma**' followed by 'Taking a **patient-centred** approach to deliver a **range of medicines to enable clinicians** to tailor treatment to patients' needs'. Beneath this was a text box that included the following: 'We are delighted to be able to support and be in attendance at this year's winter BTS Meeting'. Followed by 'Come and talk to us on our exhibition stands:'. Stand numbers and details of their location were provided as well as contact details for further information.

The Panel noted GlaxoSmithKline's submission that the purpose of the flyer was to highlight its support and corporate presence at the Winter 2013 Meeting of the British Thoracic Society. The flyer clearly encouraged visiting the company's exhibition stands including the promotional stands.

The Panel noted GlaxoSmithKline's submission that in Case AUTH/1920/11/06 the Panel had accepted a corporate mission statement in a therapy area to be non-promotional in the absence of a specific product claim and in Case AUTH/2216/3/09 the Panel accepted a corporate logo and strapline to be independent from a product claim when there was sufficient separation between the two. The Panel considered that there were significant differences between these cases and that presently at issue. The Panel noted that each case was judged on its own merits.

Turning to the present case, Case AUTH/2681/11/13, the Panel considered that in certain circumstances a corporate mission statement might be regarded as promotional: both its content and context were relevant factors. The Panel noted GlaxoSmithKline's submission that the flyer did not refer specifically to any GlaxoSmithKline product and that it was created with its corporate branding rather than product-specific branding. However, the Panel noted that the flyer was an invitation to visit, *inter alia*, GlaxoSmithKline's promotional stands and mentioned COPD and asthma.

The Panel noted GlaxoSmithKline's full corporate mission statement: 'to improve the quality of human life by helping people to do more, feel better and live longer'. The Panel considered that the abridged mission statement 'do more, feel better, live longer' as it appeared on the flyer in question was different. Context was also important.

The abridged mission statement appeared on a flyer which referred to GlaxoSmithKline respiratory and the patient impact of COPD and asthma and invited attendance at, *inter alia*, three promotional stands. Whilst the Panel accepted that 'do more' might be considered a statement of general corporate intent, 'feel better, live longer', within the context of an item headed GlaxoSmithKline respiratory and which referred to eradication of the patient impact of COPD and asthma, could refer to the effect of GlaxoSmithKline's respiratory product portfolio. Indeed this was the view of the complainant. In this regard the Panel noted that whilst the phrase in question was physically separate from the main body of text, visually it had the same colour font and font style as the rest of the item and appeared to be an integral part of the whole. The Panel thus considered on balance, within the context of this particular item, that the phrase in question was a claim for GlaxoSmithKline's respiratory portfolio, including Seretide.

The Panel noted that the complainant had the burden of proving his complaint on the balance of probabilities. The Panel noted the complainant's allegation that the claim 'do more, feel better, live longer' implied, *inter alia*, that Seretide could make you live longer. According to the complainant the TORCH study did not support this. The Panel considered that the claim was thus misleading in relation to Seretide and a breach of Clause 7.2 was ruled.

The Panel noted its finding above that the phrase 'do more, feel better, live longer' was a claim for GlaxoSmithKline's respiratory portfolio. However the complainant had submitted no material and referred to no evidence to support his position in relation to the rest of the medicines in GlaxoSmithKline's respiratory portfolio. The Panel noted that the complainant bore the burden of proof and considered that he had not established his case on the balance of probabilities. Whilst the Panel was concerned about the phrase in question, in the absence of any evidence on this point and on this narrow ground alone the Panel did not consider the claim misleading or all embracing in relation to the rest of GlaxoSmithKline's respiratory portfolio. No breach of Clauses 7.2 and 7.10 was ruled.

APPEAL FROM GLAXOSMITHKLINE

GlaxoSmithKline strongly disagreed with the Panel's ruling that the corporate mission 'do more, feel better, live longer' was a claim for its respiratory portfolio, including Seretide. The company noted that the Panel ruled no breach in relation to the mission statement being a claim for its respiratory portfolio (excluding Seretide), as the complainant had not provided any material or evidence to support his position in this context. Nonetheless, it was not clear from the Panel's ruling or from the original complaint, why the corporate mission statement 'do more, feel better, live longer' was linked with Seretide as no evidence had been provided to establish such a connection.

GlaxoSmithKline appealed the ruling of a breach of Clause 7.2 on the grounds that 'do more, feel better, live longer' was not a claim and in that regard it noted that the corporate mission was created when GlaxoWellcome and SmithKlineBeecham merged in 2001. 'At GSK, our mission is to improve the quality of human life by enabling people to do more, feel better, live longer', with an abbreviated form 'do more, feel better, live longer'. This mission encompassed all of GlaxoSmithKline's divisions, including research & development, pharmaceuticals, vaccines and consumer health. This mission statement had been used as a strapline on the front cover of official documents such as the Annual Report and the Corporate Responsibility Report (images provided). This strapline along with GlaxoSmithKline's logo had also been used extensively on the title page and/or front slide of external presentations by the GlaxoSmithKline leadership team. The corporate mission also underpinned GlaxoSmithKline's values and behaviours and so it also featured on the internal Code of Conduct. GlaxoSmithKline noted that the complainant acknowledged that the strapline referred to GlaxoSmithKline's aspiration and that it was appropriate.

GlaxoSmithKline therefore submitted that the invitation stated its corporate commitment to contributing to improving the health of patients and was not a claim. As such, it fell outside the scope of Clause 7.2 of the Code.

GlaxoSmithKline also appealed the Panel's ruling on the grounds that there was inadequate evidence

to support the allegation that the corporate mission was linked to Seretide and in that regard noted that the Constitution and Procedure stipulated that the complainant had the burden of proving their complaint on the balance of probabilities. It was not evident from the complaint or from the Panel's assessment how the complainant had established an association between the corporate mission statement 'do more, feel better, live longer' on the invitation and Seretide.

GlaxoSmithKline submitted that in October 2013, before it received this complaint, new internal guidance was issued on the use of the corporate mission which clearly outlined that the strapline should not be used on any external communications or materials, including emails, detail aids, meeting slides etc where the content related to a medicine, vaccine or consumer product. GlaxoSmithKline UK staff were given this global guidance (email provided) to ensure that the corporate mission strapline would not be misconstrued as a product-specific promotional claim.

GlaxoSmithKline submitted that the invitation at issue was created in line with the internal guidance. There was no reference to any medicine. The corporate logo and strapline were positioned in the top right-hand corner to ensure they were sufficiently separated from the main body of the text, distinguishing this as a corporate mission. Furthermore, the invitation was specifically created with corporate branding (bright orange) rather than any product-specific branding. In that regard GlaxoSmithKline noted that Seretide had a distinctive purple branding (promotional materials were provided) which had been used over the last 14 years and would be familiar to respiratory physicians since Seretide had been the market leader in its class over the last decade. GlaxoSmithKline had no reason to believe that the bright orange corporate branding would ever be confused with or mislead towards Seretide by a health professional. Finally, the exhibition stands at the winter BTS meeting promoted Relvar Ellipta, a recently licensed respiratory medicine which carried a light blue and grey branding; Seretide was not promoted at these stands.

GlaxoSmithKline therefore asserted that there was inadequate evidence to establish a link between the corporate mission stated on the invitation and Seretide.

GlaxoSmithKline also noted that in Case AUTH/2216/3/09 the Panel had ruled that a corporate logo and strapline ('deliver more') was not a claim despite its appearance on promotional material which referred to a specific product; the Panel concluded that there was sufficient separation between the product logo and corporate logo. In addition, in Case AUTH/1920/11/06 the Panel considered the corporate mission 'you need to be able to count on the company that supplies your medicine' on disease awareness campaign materials directed at public to be non-promotional since no product-specific claim was made. GlaxoSmithKline submitted that the facts of these two cases were relevant to the present case.

Finally, GlaxoSmithKline appealed on the basis that 'do more, feel better, live longer' could be substantiated and submitted that if the PMCPA wished to consider the case on the narrow point on which it had ruled, notwithstanding the above, as quoted by the complainant, GlaxoSmithKline had supported respiratory medicine over the years and had brought several medicines to the bedside in order to address patients' needs in this therapy area. For example, Ventolin (salbutamol sulphate) still formed a significant part of GlaxoSmithKline's respiratory portfolio. Ventolin was a 'rescue' medicine for chronic asthma patients in order to treat as well as prevent asthma exacerbations which carried a significant risk of mortality. Ventolin had also been recommended by guidelines as the initial therapy for life-threatening acute asthma attacks (British Guideline on the Management of Asthma: A national clinical guideline, May 2008, Revised January 2012).

GlaxoSmithKline submitted that it was generally accepted that Ventolin had saved lives over the years especially in the acute care setting. Therefore, the complainant's allegation 'none of the GlaxoSmithKline respiratory products make you live longer' was factually incorrect. Furthermore, whilst GlaxoSmithKline acknowledged the complainant's argument that the TORCH study did not show reduced mortality with Seretide, an independent Cochrane review published in November 2013 concluded there was significant reduction in mortality with Seretide compared with placebo when the results of TORCH study were pooled with data from other studies (Nannini *et al* 2013). In addition, GlaxoSmithKline's portfolio of medicines could be shown to support the abridged mission statement of 'do more, feel better, live longer'.

GlaxoSmithKline submitted that the use of the abridged mission statement coupled with the GlaxoSmithKline's logo on the invitation, which did not refer to any medicine, was use of its corporate logo and did not constitute a claim for its respiratory portfolio including Seretide. As such, the invitation did not breach Clause 7.2 of the Code.

COMMENTS FROM THE COMPLAINANT

The complainant reiterated that in his view the invitation was confusing because when taken in conjunction with the corporate logo, which contained the phrase 'feel better, live longer', it might be interpreted in relationship to GlaxoSmithKline's market leading product, Seretide. The Panel did not support the complaint in relation to the other products in GlaxoSmithKline respiratory portfolio since he had not provided evidence to support this contention. The complainant understood that he must provide the balance of evidence, however it was perhaps a little unreasonable to expect someone to comprehensively review the published literature concerning all of the respiratory

products in the market leading pharmaceutical company in this therapeutic area. The complainant had therefore restricted his review to the eMC list of GlaxoSmithKline respiratory products. The summaries of product characteristics claimed symptomatic relief only and made no claims concerning longevity. The complainant was unaware of any published evidence which would support any such claims.

The complainant therefore alleged that the use of the corporate strapline on an invitation to discuss the respiratory portfolio inferred a claim which was not substantiated by the published evidence. Had, as the Panel suggested, the previous approved corporate strapline been clearly distinguished, either through colour or some other typographical mechanism, then the complainant would have no problem with its use. Such corporate aspirations were indeed laudable. It was the close conjunction which might have confused the complainant's colleagues which was the problem.

APPEAL BOARD RULING

The Appeal Board acknowledged that in certain circumstances a corporate statement might be regarded as promotional.

The Appeal Board noted that the bright orange invitation/flyer at issue was entitled 'GSK Respiratory' and in the top right-hand corner next to the GlaxoSmithKline corporate logo was the strapline 'do more, feel better, live longer'. The Appeal Board considered the positioning of the strapline to the right of the logo, and therefore on the outer right edge of the invitation, separated it from the body of the invitation. The invitation/flyer advised that GlaxoSmithKline would support and attend the winter BTS meeting and it invited readers to visit the company's promotional and medical exhibition stands. In that regard the Appeal Board noted GlaxoSmithKline's submission that its promotional stands at the meeting promoted Relvar Ellipta and not Seretide.

The Appeal Board further noted that within GlaxoSmithKline orange was reserved for corporate branding; it was not linked to a promoted product. The Appeal Board noted that the invitation did not mention any specific medicines. The Appeal Board considered that the strapline 'do more, feel better, live longer' as it appeared in the top right-hand of the invitation/flyer in question did not relate to, or make any claims for, any particular medicine, including Seretide. The Appeal Board ruled no breach of Clause 7.2. The appeal was successful.

Complaint received **25 November 2013**

Case completed **19 February 2014**