

COMPLAINANT v GLAXOSMITHKLINE

Tweet regarding Zejula

A complainant, who described him/herself as a 'concerned UK health professional', complained about a tweet regarding Zejula (niraparib tosylate monohydrate) published on GlaxoSmithKline's global corporate Twitter channel which appeared in his/her Twitter feed. Zejula was indicated as monotherapy for the maintenance treatment of adults with platinum-sensitive relapsed high grade serous epithelial ovarian, fallopian tube or primary peritoneal cancer who were in response to platinum-based chemotherapy.

The tweet was titled, 'Strengthening our pipeline remains our top priority and we have continued to make progress this quarter. Full details: [weblink] \$GSK' and included an image of a highlighted box with the following text:

'Pipeline highlights – Oncology

- Positive headline results from PRIMA trial for Zejula as 1L maintenance therapy for ovarian cancer regardless of biomarker status. Full results to be presented at an upcoming scientific conference.
- sNDA accepted by FDA for Zejula for priority review in late stage ovarian cancer following QUADRA trial'.

The complainant stated that he/she was at a loss to know how this would have been approved given that Twitter was for the general public. This promoted a medicine to the general public. If this was a promotional item – notwithstanding that promoting to the general public was illegal in the UK – then compulsory information such as generic name, prescribing information etc was missing. The complainant stated that this was clearly not financial results.

The detailed response from GlaxoSmithKline is given below.

The Panel noted GlaxoSmithKline's submission that the tweet at issue was the 8th in a thread of linked tweets published by its UK-based parent company to followers of its global corporate Twitter channel. The tweet announced key points from the company's Q2 2019 financial results and pipeline highlights to investors and the financial media alongside a press release published on the company's corporate website. The Panel further noted GlaxoSmithKline's submission that the tweet included a link to the press release and the tag '\$GSK' to signal that its content was stock related. According to GlaxoSmithKline, \$ tag (or 'cashtag') was introduced as a function on Twitter some years ago and allowed users to specifically search for financial and stock related information. In the Panel's view, members of the general public might not be aware that \$GSK meant that the tweet was solely intended for investors and the financial media.

The Panel noted GlaxoSmithKline's submission that the content published on its corporate Twitter account might be viewed by a broad audience, encompassing not only

investors and financial journalists. The Panel disagreed with GlaxoSmithKline's submission that this was no different to press releases and news updates made public on companies' corporate websites. The Panel further disagreed with GlaxoSmithKline's submission that a member of the public who searched for information about GlaxoSmithKline on Twitter and then proactively decided to follow a GlaxoSmithKline Twitter account could be provided with key financial information on Twitter in the same way as on a company website. In the Panel's view, information for the financial media and/or investors on a corporate website would feature within sections of the website which were clearly labelled for the intended audience; the content would not be immediately visible to all users of such a website and it would require the user to visit the website and search for it. Followers of GlaxoSmithKline's corporate Twitter account would receive all of the account's tweets and it was highly likely that such followers would include members of the public who were not journalists or investors.

The Panel noted GlaxoSmithKline's submission that certain social media platforms such as Twitter did not yet provide a means of exclusively targeting investors and financial audiences. When material was available to the public it needed to comply with the relevant requirements of the Code. Furthermore, the nature of Twitter was such that tweets could be broadly and quickly disseminated in the public domain.

The Panel noted GlaxoSmithKline's submission that the tweet identified the achievement of positive headline results from the unpublished PRIMA trial relating to an unlicensed indication for Zejula as well as an application to the FDA for a new Zejula indication based on data from a second published trial. The tweet at issue referred to Zejula in the treatment of ovarian cancer. Zejula was a prescription only medicine licensed in the UK. In that regard, the Panel considered that a prescription only medicine had been advertised to the public and ruled a breach of the Code.

In the Panel's view, Twitter was a means of providing information to the public; the tweet was not intended as advertising for a health professional audience and therefore the Panel considered that the allegations in relation to the requirements of the Code for promotion to health professionals were not relevant. The Panel therefore ruled no breach in that regard.

A complainant who described him/herself as a 'concerned UK health professional', complained about a tweet regarding Zejula (niraparib tosylate monohydrate) published on GlaxoSmithKline's global corporate Twitter channel which appeared in his/her Twitter feed. Zejula was indicated as monotherapy for the maintenance treatment of adult patients with platinum-sensitive relapsed high grade serous epithelial ovarian, fallopian tube or primary peritoneal cancer who were in response to platinum-based chemotherapy.

The tweet was titled, 'Strengthening our pipeline remains our top priority and we have continued to make progress this quarter. Full details: [weblink] \$GSK' and included an image of a highlighted box with the following text:

'Pipeline highlights – Oncology

- Positive headline results from PRIMA trial for Zejula as 1L maintenance therapy for ovarian cancer regardless of biomarker status. Full results to be presented at an upcoming scientific conference.

- sNDA accepted by FDA for Zejula for priority review in late stage ovarian cancer following QUADRA trial’.

COMPLAINT

The complainant stated that he/she was at a loss to know how this would have been approved given that Twitter was for the general public. This promoted a medicine to the general public. The complainant queried whether the tweet had been approved by the appropriate people. Surely if it had been it would have never been used. If this was a promotional item – notwithstanding that promoting to the general public was illegal in the UK – then it was missing the compulsory items required of a promotional item – such as generic name, prescribing information etc. The complainant stated that this was clearly not financial results.

GlaxoSmithKline was asked to respond in relation to the requirements of Clauses 4.1, 4.3 and 26.1 of the Code.

RESPONSE

GlaxoSmithKline’s stated that the tweet related to the company’s Q2 2019 financial results, aimed at financial journalists and investors, and was not promotional. GlaxoSmithKline denied breaches of Clauses 4.1, 4.3 and 26.1.

GlaxoSmithKline explained that the tweet at issue was the 8th in a thread of linked tweets published on 24 July 2019 (the ‘Q2 Updates Thread’). Each tweet in the thread and each image that appeared in the revolving banner of the tweet at issue was provided.

The Q2 Updates Thread was published by GlaxoSmithKline’s UK-based parent company on the company’s global corporate Twitter channel (@GSK). The @GSK Twitter account was used to share information regarding its corporate activities. News updates around key events were published on the channel such as quarterly results and the annual report, progress against the R&D strategy, company support of key disease awareness days and other GlaxoSmithKline activities.

Information posted on the @GSK channel was solely published to followers of the @GSK channel who had proactively chosen to follow the company’s corporate account. There was no proactive targeting of the Q2 Updates Thread to any audience who did not currently follow @GSK on Twitter. GlaxoSmithKline was not aware of the status of individual followers, but data suggested that top interests among its followers included business and science news.

The Q2 Updates Thread was published to announce key points from GlaxoSmithKline’s Q2 2019 financial results and pipeline highlights to investors and the financial media alongside a press release published on GlaxoSmithKline’s corporate website. The first tweet in the thread stated: ‘#NEWS: We’ve just announced our Q2 2019 results, delivering sales and earnings growth’. Each tweet in the thread linked back to the first tweet when the viewer clicked on: ‘show this thread’. The tweet at issue also included a link to the press release (as did each tweet in the Q2 Updates Thread) and the tag ‘\$GSK’ to signal that its content was stock-related. The banner in the tweet at issue displayed GlaxoSmithKline’s key pipeline highlights for Q2 2019, not only relating to Zejula, as they appeared in the press release.

GlaxoSmithKline submitted that as for all stock-related announcements, the Q2 2019 financial results materials went through several rounds of approval including review by senior members of the legal team and members of the investor relations team. GlaxoSmithKline did not believe that such material required certification.

GlaxoSmithKline submitted that the tweet did not constitute advertising or promotional material for the purposes of Clauses 4.1, 4.3 and 26.1. The tweet formed part of a factual, accurate, informative announcement of GlaxoSmithKline's Q2 financial results, and was specifically excluded from the definition of 'promotion' as per Clause 1.2. The tweet was not published to promote the administration, consumption, prescription, purchase, recommendation, sale, supply or use of Zejula or any other prescription only medicines referenced in the tweet.

Clause 26.2 allowed for the provision of non-promotional information about prescription-only medicines to the public. In particular, the supplementary information to Clause 26.2 specifically permitted the provision of non-promotional information 'by dissemination of such information via press conferences, press announcements, television and radio reports, public relations activities *and the like*' (emphasis added) so long as it was factual, balanced and not made for the purposes of encouraging members of the public to ask their doctors or others to prescribe a specific prescription only medicine. This included financial information made available to shareholders, the Stock Exchange and the like by way of annual reports and announcements, taking into account the information needs of the target audience. Such non-promotional information could include information relating to both existing medicines and those not yet marketed, as well as published and unpublished studies.

The tweet set out key pipeline milestones achieved by the company in Q2 2019 including regulatory approval updates and clinical trial updates. Specifically for oncology, the tweet identified the achievement of positive headline results from the as yet unpublished PRIMA trial relating to an unlicensed indication for Zejula, as well as an application for a supplemental New Drug Application(sNDA) to the US Food and Drug Administration (FDA) for a new indication for Zejula based on data from a second, published trial.

GlaxoSmithKline submitted that all information provided in the Q2 Updates Thread, including the tweet, was factual, accurate and balanced financial information, and was not intended to encourage members of the public to ask their health professionals to prescribe Zejula or any other prescription medicines mentioned in the thread. Non-promotional information intended for investor and financial audiences could include information about unlicensed medicines or indications and unpublished studies as per the supplementary information to Clause 26.2. Communicating pipeline developments and highlighting how the company was delivering on its R&D strategy and key performance indicators was integral to demonstrating the financial prospects of a pharmaceutical company to investors, potential investors, financial analysts, journalists and the like and to increasing shareholder confidence in the future of the company. Zejula, in particular, was considered by GlaxoSmithKline to be a significant driver of its future financial performance. Information related to the submission of a sNDA to the FDA and positive headline results of the PRIMA trial concerning new potential indications for Zejula was, therefore, of significant importance to financial and investment audiences and why quarterly updates to investors and journalists included reference to sales, earnings as well as pipeline updates as an indicator of the future financial prospects of the company. GlaxoSmithKline submitted it was normal for pharmaceutical companies to include pipeline highlights in their quarterly financial results made available to investors and journalists via public press releases

and the like, and all such information was categorised as non-promotional financial information for the purposes of the Code.

GlaxoSmithKline recognised that content published on the @GSK Twitter feed might be viewed by a broad audience, encompassing not only investors and financial journalists. This was no different to information made public on companies' corporate websites via published press releases and news updates. This information was made publicly available, to those that actively chose to visit these websites to access company news and updates, in the same way that in the age of social media, members of the public might actively follow a company's corporate Twitter account to receive this type of information. It was clear from the title of the tweet ('Strengthening our pipeline remains our top priority and we have continued to make progress this quarter' and 'Pipeline highlights – Oncology'), its placement within the Q2 2019 Updates Thread preceded by a cautionary statement tweet for investors, the '\$GSK' tag, and link to the press release, that the tweet was intended for financial and investor audiences to be read alongside the Q2 2019 financial results. The \$GSK tag was a commonly accepted way of targeting these audiences and allowing them to easily access all tweets related to GlaxoSmithKline's financial performance posted by GlaxoSmithKline as well as journalists and others in one place. The \$ tag (or 'cashtag') was introduced as a function on Twitter in 2012 consisting of the '\$' symbol followed by the stock-ticker symbol of a publicly-traded company. Clicking on the cashtag allowed users to specifically search for financial and stock-related information relating to the company, rather than more general information using the @ or # symbol. It was used widely both within the pharmaceutical industry as well as other industries.

As a publicly listed company, GlaxoSmithKline was expected, and in some cases required to make available factual information relating to licensed medicines as well as unlicensed products/indications in the pipeline for the purposes of informing its shareholders, the Stock Exchanges on which it was listed and other interested parties such as financial media of key business and financial developments. As ways of communicating evolved, social media was increasingly being used by investors and financial media to receive, access and search for such information and was often the preferred means of communicating to these globally-based audiences by many companies. Other industries such as fast moving consumer goods, energy and financial services (equally highly regulated industries) were able to make use of social media to communicate the financial prospects of their company to investors, financial journalists and the like. Effective use of social media channels such as Twitter had been shown to act as a powerful tool to ensure that investors, potential investors and analysts had access to the most relevant information for assessing a company's prospects as evidenced by recent research into use of social media by FTSE 100 companies to communicate their financial results.

GlaxoSmithKline submitted it was essential that UK-based pharmaceutical companies were able to use communication tools that were fast becoming the norm and preferred means of receiving such information. GlaxoSmithKline effectively made use of its public social media channels while maintaining compliance with the Code and regulatory requirements by communicating only non-promotional information, to interested parties that had actively chosen to follow its channels, and by targeting its audiences through available means. GlaxoSmithKline recognised that certain social media platforms such as Twitter did not yet provide a means of exclusively targeting investors and financial audiences, however, the company had used all existing methods available ('\$GSK' tags, threaded tweets, links to its corporate website for further information, explanatory titles etc) to target its intended audiences and make clear the context in which the tweet should be read. GlaxoSmithKline was aware of the PMCPA's guidance on Digital Communications, and in particular the PMCPA's view that use of Twitter to promote

prescription-only medicines was unlikely to meet the requirements of the Code.

GlaxoSmithKline submitted it did not use Twitter as a channel to promote its medicines to health professionals in line with this guidance, and its use of Twitter was limited to legitimate sharing of factual information regarding its corporate activities, as permitted under the Code.

GlaxoSmithKline asserted that a member of the public who went to a social media platform such as Twitter, searched for information about GlaxoSmithKline and then proactively decided to follow a GlaxoSmithKline Twitter account, could be provided with key financial information on that platform in the same way as on a company website, and this did not contravene requirements of the Code.

For the reasons above, GlaxoSmithKline submitted that the tweet did not constitute advertising to the public, and therefore did not require the prescribing information and non-proprietary name to be referenced. GlaxoSmithKline respectfully denied any breach of Clauses 4.1, 4.3 and 26.1 of the Code.

PANEL RULING

The Panel noted that the use of Twitter to provide information to the public was a legitimate activity for pharmaceutical companies as long as the material complied with the Code, particularly Clause 26. There were differences between the pharmaceutical industry and other industries in that prescription only medicines could not be advertised to the public whereas most of the advertising of products from other industries could be advertised to the public.

The Panel noted that the supplementary information to Clause 26.2, Financial Information, stated that information made available in order to inform shareholders, the Stock Exchange and the like by way of annual reports and announcements etc might relate to both existing medicines and those not yet marketed. Such information must be non-promotional, accurate, presented in a factual and balanced way and not misleading, taking into account the information needs of the target audience. Business press releases should identify the business importance of the information and should only be aimed at the intended financial and investment audience.

The Panel noted GlaxoSmithKline's submission that the tweet at issue was the 8th in a thread of linked tweets published by its UK-based parent company to followers of its global corporate Twitter channel. The tweet announced key points from GlaxoSmithKline's Q2 2019 financial results and pipeline highlights to investors and the financial media alongside a press release published on the company's corporate website. The Panel further noted GlaxoSmithKline's submission that the tweet included a link to the press release and the tag '\$GSK' to signal that its content was stock-related. According to GlaxoSmithKline, \$ tag (or 'cashtag') was introduced as a function on Twitter some years ago and allowed users to specifically search for financial and stock-related information relating to the company. In the Panel's view, members of the general public might not be aware that \$GSK meant that the tweet was solely intended for investors and the financial media.

The Panel noted GlaxoSmithKline's submission that the content published on its corporate Twitter account might be viewed by a broad audience, encompassing not only investors and financial journalists. The Panel disagreed with GlaxoSmithKline's submission that this was no different to press releases and news updates made public on companies' corporate websites. The Panel further disagreed with GlaxoSmithKline's submission that a member of the public who searched for information about GlaxoSmithKline on Twitter and then proactively decided to

follow a GlaxoSmithKline Twitter account could be provided with key financial information on Twitter in the same way as on a company website. In the Panel's view, information for the financial media and/or investors on a corporate website would feature within sections of the website which were clearly labelled for the intended audience; the content would not be immediately visible to all users of such a website and it would require the user to visit the website and search for it. The Panel noted that followers of GlaxoSmithKline's corporate Twitter account would receive all of the account's tweets and it was highly likely that such followers would include members of the public who were not journalists or investors.

The Panel noted GlaxoSmithKline's submission that certain social media platforms such as Twitter did not yet provide a means of exclusively targeting investors and financial audiences. When material was available to the public it needed to comply with the relevant requirements of the Code. Furthermore, the nature of Twitter was such that tweets could be broadly and quickly disseminated in the public domain.

The Panel noted GlaxoSmithKline's submission that the tweet at issue identified the achievement of positive headline results from the unpublished PRIMA trial relating to an unlicensed indication for Zejula as well as an application to the FDA for a new Zejula indication based on data from a second published trial. The tweet at issue referred to Zejula in the treatment of ovarian cancer. Zejula was a prescription only medicine licensed in the UK. In that regard, the Panel considered that a prescription only medicine had been advertised to the public and ruled a breach of Clause 26.1 of the Code.

In the Panel's view, Twitter was a means of providing information to the public; the tweet was not intended as advertising for a health professional audience and therefore the Panel considered that the allegations in relation to the requirements of the Code for promotion to health professionals were not relevant. The Panel therefore ruled no breach of Clauses 4.1 and 4.3.

Complaint received **26 July 2019**

Case completed **12 December 2019**