CASE AUTH/3862/12/23

COMPLAINANT v GILEAD

Allegations about a third-party conference update email

CASE SUMMARY

This case concerned an email from a named medical publication and linked material which allegedly did not make Gilead's involvement clear and was disguised promotion.

The outcome under the 2021 Code was:

Breach of Clause 5.5	**Failing to be sufficiently clear as to the company's role and involvement**

No Breach of Clause 5.5	**Requirement to be sufficiently clear as to the company's role and involvement**
No Breach of Clause 15.6 (x2)	**Requirement that promotional materials and activities must not be disguised**
No Breach of Clause 5.1	**Requirement to maintain high standards at all times**

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 was received from an anonymous, contactable complainant about Gilead Sciences Ltd.

COMPLAINT

The complaint wording is reproduced below (with some typographical errors corrected):

> "I would like to complain about this email as well as the webpage it directs after I clicked on the link.
>
> This email is from '[named medical publication] clinical insights', suggesting it would be unbiased source of information and insights. With the subject line stating - GU cancers: ESMO 2023 Update.
>
> This gives me the impression of educational material and a good way to see what breaking news happened at ESMO. No where in the email body, subject line or email address is there mention of a pharmaceutical company. But at the very bottom of the

email, in small print, it states: this promotional communication is provided by [third-party medical publishing company].

Its nearly hidden and easy to be missed. And it does not say who paid for this promotion.

Clicking on the link, 'watch conference recap', I get directed to this webpage: [URL provided]

As you can see, it has two videos embedded on it. One is called key trial data and the second is information from industry. At the right side and bottom of the page are two banners sponsored by Gilead.

Funding/sponsorship/payment is not mentioned at all on the webpage. However, with those two videos linked to each other so clearly, one must have paid for the other. So its safe to assume Gilead is the paying company.

But without knowing for sure, its only guess work and that is not acceptable in the medical education arena.

I would also like to point out that several of the medicines mentioned in the text body have hyperlinks. I clicked on 3 of them and each one lead to a Gilead sponsored pop up. Another example of disguised marketing in the name of independent education. This is not transparent or acting with integrity."

When writing to Gilead, the PMCPA asked it to consider the requirements of Clauses 5.1, 5.5 and 15.6 of the Code.

GILEAD'S RESPONSE

The response from Gilead is reproduced below:

"The Complaint relates to the following:

- an email sent to the Complainant on 27 November 2023 by [third-party medical publishing company] Professional Services (from the email address: [email address provided] with the subject line 'Genitourinary Cancers: ESMO 2023 Update' (the '**[named medical publication] Email**');
- the webpage at [URL provided] to which the Complainant was directed upon clicking a link in the [named medical publication] Email which stated: 'Watch Conference ReCAP' (the '**[named medical publication] Conference ReCAP Webpage**');
- two videos that were shown on the [named medical publication] Conference ReCAP Webpage, the first entitled 'key trial data' ('**[named medical publication] ReCAP Video**') and the second entitled 'information from industry' ('**Gilead Video**');
- two Gilead banners on the [named medical publication] Conference ReCAP Webpage (the '**Gilead Banners**');
  and
- pop-ups that were displayed when the Complainant clicked on the hyperlinked names of non-Gilead medicinal products on the [named medical publication] Conference ReCAP Webpage (the '**Gilead Pop-Ups**').

Gilead Sciences Europe Limited('**GSEL**') has an agreement in place with [third-party medical publishing company] ('**[Third-party medical publishing company]**') regarding inclusion of the Gilead Video, Gilead Banners and Gilead Pop-Ups (which are part of a Gilead non-promotional disease education campaign in metastatic urothelial cancer) in the [Named medical publication] service. As GSEL is responsible for the Gilead Video, Gilead Banners and Gilead Pop-Ups, I am responding to the Complaint on behalf of GSEL.

For the reasons set out below, we do not believe that there has been a breach of the ABPI Code in respect of any matter raised in the Complaint.

I. Background

A. *Overview of [named medical publication] and Gilead's Agreement with [third-party medical publishing company]*

[Third-party medical publishing company] is a private, for-profit company that provides a variety of information and materials, including medical news, disease information, and continuing medical education (or CME) through its [named medical publication] service. This information is primarily available through the website at [URL provided] (the '**[named medical publication] Website**') but is also provided through mobile apps and emails, the latter of which [named medical publication] users must consent to receive.

[Third-party medical publishing company] offers paid content opportunities, such as banners, videos and pop-ups, to third parties, including pharmaceutical companies. This paid content can be promotional or non-promotional and is situated next to [named medical publication's] original content. Paid content by pharmaceutical companies can be found widely throughout the [named medical publication] Website. Pursuant to [third-party medical publishing company's] [named medical publication] Editorial Policies, [named medical publication] content is *'developed independently of the advertising and promotional content available on [named medical publication], all of which is clearly labelled as such in accordance with the [third-party medical publishing company] Advertising Policy.'* The full [named medical publication] Editorial Policies are available at this link:[URL provided].

Consistent with the [named medical publication] Editorial Policies, [third-party medical publishing company] included certain paid Gilead content on the [named medical publication] Website, next to [third-party medical publishing company's] own independent, original [named medical publication] content providing a recap of clinical trial data presented at the conference hosted by the European Society for Medical Oncology from 20 to 24 October 2023 in Madrid, Spain ('**ESMO 2023**'). This paid content includes the Gilead Video (copy provided), the Gilead Banner (copy provided) and the Gilead Pop-Ups (copy provided), all of which relate to a non-promotional disease education campaign regarding metastatic urothelial cancer, intended for healthcare professionals only. Each of these materials is clearly marked as being associated with or sponsored by Gilead Sciences, Inc (the parent company of GSEL). The involvement of Gilead Sciences is therefore made clear in each material. (Complainant references two banners, yet only provided a screen capture of one banner. The Complainant may have thought that the thumbnail of the Gilead Video was a second banner. This thumbnail can be seen in [copy provided]).

II. Response to Complaint

A. Gilead Had No Role in the Development or Distribution of the [named medical publication] Email, Webpage and Video

The Complainant mistakenly asserts that the [named medical publication] Email, the [named medical publication] ReCAP Video and the [named medical publication] Conference ReCAP Webpage were specifically developed and/or financially sponsored by Gilead. On November 27, 2023, the Complainant received the [named medical publication] Email from [third-party medical publishing company's] Professional Services (from the email address: [provided], with the subject line, 'Genitourinary Cancers: ESMO 2023 Update.' . The [named medical publication] Email invited the recipient to access information on genitourinary trials discussed at ESMO 2023 by clicking on the button 'Watch Conference ReCAP'. The button directed recipients of the [named medical publication] Email to the [named medical publication] ReCAP Video hosted on the [named medical publication] Conference ReCAP Webpage (copy provided), which features content by [named medical publication] intended for oncology health care professionals. Gilead did not have any input into the sending of the [named medical publication] Email, nor did Gilead have any input into the content of the [named medical publication] Email, the [named medical publication] ReCAP Video or the [named medical publication] Conference ReCAP Webpage. (The scientific content of the [named medical publication] Email discussed key trials featured at ESMO 2023. None of the listed trials or non-proprietary drugs discussed in the Email included a Gilead product or trial, and therefore did not promote or even discuss a Gilead product.)

The Complainant also incorrectly asserts that the [named medical publication] Email, the [named medical publication] ReCAP Video and the [named medical publication] Conference ReCAP Webpage were specifically developed and financially sponsored by Gilead. As described above, all [named medical publication] content is developed solely by [named medical publication] pursuant to the [named medical publication] Editorial Policies. Where Gilead paid content was shown next to [named medical publication's] content, Gilead's responsibility for the Gilead paid content was explicitly disclosed.

As the Complainant notes, the bottom of the [named medical publication] Email states: '*This promotional communication is provided by [third-party medical publishing company] Professional Services*.' The Complainant appears to have interpreted that statement as indicating that the [named medical publication] Email is, or contains, promotional material developed and/or is sponsored by a pharmaceutical company. As explained above, Gilead did not sponsor the [named medical publication] Email or have any input into the content of the [named medical publication] Email. There is therefore no requirement that Gilead be mentioned in the [named medical publication] Email.

B. Gilead Video, Banners, and Pop-Ups Comply with the ABPI Code

Contrary to the Complainant's allegations, Gilead's sponsorship of the Gilead Video, Gilead Banner and Gilead Pop-Ups is transparent. The Gilead Banner states: *'This banner has been produced and funded by Gilead Sciences, Inc.'*. The screen capture provided by Complainant of the thumbnail image of the Gilead Video embedded on the [named medical publication] Conference ReCAP Webpage is clearly marked '*INFORMATION*

FROM INDUSTRY.' Additionally, before the Gilead Video content begins playing, the viewer is informed: *'This content has been produced by Gilead Sciences, Inc. It is intended for education purposes and health care professionals.'*. The statement: *'This non- promotional material has been produced and funded by Gilead Sciences, Inc.,'* is shown at the end of the Gilead Video. The two Gilead Pop-Ups each include the statements: *'Information from Industry'* and *'Produced by Gilead Sciences, Inc.'*.

C. The Gilead Pop-Ups Are Not Disguised Promotion

The Complainant's final concern is that they believe the display of Gilead Pop-Ups constitutes '*disguised marketing.*' The Gilead Pop-Ups are triggered if a [named medical publication] user clicks on hyperlinks embedded within the article featured on [named medical publication] Conference ReCAP Webpage. The Pop-Ups invite a [named medical publication] user to click on a '*Read More*' button, to either find out more about: (1) *'Which antigens and pathways are of interest in advanced UC research'*; or to (2) *'Explore cell-surface antigens and molecular pathways involved in advanced UC.'* Both (1) and (2) are non-promotional as they relate to urothelial cancer as a disease. If a [named medical publication] User clicks on the '*Read More*' button they would then be directed to Gilead's non-promotional disease education campaign on metastatic urothelial cancer. Neither the content of the Pop-Ups themselves, nor the content that they link to, promotes any Gilead medicinal product. Additionally, as stated above, the Gilead Pop- Ups were clearly marked as being *'INFORMATION FROM INDUSTRY'* and '*Produced by Gilead Sciences, Inc*.'. Thus, the Pop-Ups were not promotional and Gilead's involvement in them was not disguised.

III. Discussion of Requirements by ABPI Code Clauses 5.5, 15.6 and 5.1

As requested, Gilead addresses, bearing in mind the Complainant's concerns, the requirements Clauses 5.5, 15.6 and 5.1 of the ABPI Code:

A. Clause 5.5 – Requirement to indicate the involvement of a pharmaceutical company in materials relating to medicines, human health or diseases.

Clause 5.5 of the ABPI Code requires that *'Material relating to medicines and their uses, whether promotional or not, and information relating to human health or diseases which 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.'*

Applicability to Complaint: The Complainant makes several assertions that imply that Gilead has not indicated its sponsorship or involvement in developing the following materials: the [named medical publication] Email, the [named medical publication] ReCAP Video and the [named medical publication] Conference ReCAP Webpage. As described above, the [named medical publication] Email**,** the [named medical publication] ReCAP Video, and the [named medical publication] Conference ReCAP Webpage were created and disseminated solely by [named medical publication] as original content, pursuant to the [named medical publication] Editorial Policies. Because this original, non-promotional [named medical publication] content was not sponsored by Gilead, Clause 5.5 does not apply to the [named medical publication] Email, [named medical publication] ReCAP Video or the [named medical publication] Conference ReCAP Webpage.

The Gilead Video was clearly identified as content produced by Gilead, as were the Gilead Banner and the Gilead Pop-Ups. See below for the statements regarding industry sponsorship on each Gilead asset mentioned in the Complaint:

	Gilead Sponsorship Statement
Gilead Video – Thumbnail	INFORMATION FROM INDUSTRY
Gilead Video – Opening Screen	This content has been produced by Gilead Sciences, Inc. It is intended for education purposes and health care professionals only.
Gilead Video – Closing Screen	This non-promotional material has been produced and funded by Gilead Sciences, Inc. It is intended for healthcare professionals and is for reactive use only.
Gilead Banner	This banner has been produced and funded by Gilead Sciences, Inc. It is intended for medical education purposes and for healthcare professionals only.
Gilead Pop-Ups	Top Statement: Information from Industry Bottom Statement: Produced by Gilead Sciences Inc. Intended only for HCP's medical education.

Gilead's involvement in the production of these materials is clearly indicated, as shown above, and so the Gilead Video, Gilead Banners and Gilead Pop-Ups comply with Clause 5.5.

B. *Clause 15.6 – Disguised Promotion.*

Clause 15.6 of the ABPI Code requires that '*Promotional material and activities must not be disguised'*. A breach of this clause requires two things: (i) an activity or material that promotes a medicinal product; and (ii) a failure to make clear that the activity or material is promotional. Further, the Supplemental Information provided in the ABPI Code regarding Clause 15.6 indicates that *'the identity of the responsible pharmaceutical company must be obvious.*'

Applicability to Complaint: The Complainant asserts that the Gilead Pop-Ups constitute 'disguised promotion.' As described above in II.C above, the Gilead Pop-Ups are non-promotional; they invite a [named medical publication] user to learn about scientific research topics of interest in advanced urothelial cancer, not about any specific product (i.e., '*Which antigens and pathways are of interest in advanced UC research'* and '*Explore cell-surface antigens and molecular pathways involved in advanced UC*'). Further, the Gilead Pop-Ups are placed above original, non-promotional [named medical publication] content that provides scientific information drug information about two non-Gilead products; 'nivolumab' and 'pembrolizumab'. The Pop-Ups do not promote or even mention a Gilead product. The statement makes it clear that the Gilead Pop-Up is *'[i]ntended only for HCP's medical education'*. In alignment with the Supplemental Information to Clause 15.6, Gilead clearly identifies itself as the producer of the Gilead Pop-Ups, even though the Gilead Pop-Ups are non-promotional. Therefore, Gilead has not violated Clause 15.6 of the ABPI Code.

C. *Clause 5.1 – High Standards.*

Clause 5.1 of the ABPI Code requires that *'High standards must be maintained at all times.'*

Applicability to Complaint: As there has not been a breach of Clauses 5.5 or 15.6, there has not been any failure to maintain high standards, nor any breach of Clause 5.1 of the ABPI Code."

Further response from Gilead

Further information was provided by Gilead in response to a request for additional information. The response from Gilead is reproduced below:

"The Information Requested asked for copies of the following documentation:

1. The agreement between Gilead and [Third-party medical publishing company] [named medical publication] (redacted where required) (the '**[Named medical publication] Agreement**');
2. The Gilead embedded video on the [named medical publication] Conference ReCAP webpage, together with details of the regulatory status at the time of any Gilead licensed or developmental products referred to in the video (the '**Gilead Video**');
3. The information or materials available via the 'Learn more' link in the Gilead banner advertisement (the '**Gilead Banner Information**');
4. The linked articles accessed via the Gilead Pop-Ups 'Read More' buttons (the '**Gilead Pop- Up Information**'); and
5. The approval certificates and meta-data from Gilead's approval system for the Gilead material on the webpage or accessed from it via links (the '**Gilead Certificates and Metadata**').

I am providing the above referenced information related to the Complaint on behalf of GSEL with explanation to assist in review.

1. **[Named medical publication] Agreement**

In the [named medical publication] Agreement that Gilead Sciences Europe Limited ('**GSEL**') entered into with [third-party medical publishing company] LLC ('**Third-party medical publishing company**') where Gilead purchased from [third-party medical publishing company] web banner advertising around a range of independent editorial content developed by [named medical publication] recapping the ESMO 2023 Congress (the '**Conference ReCAP program**'). The key portions of the [named medical publication] Agreement are Output 2: InfoSite and Output 3: Conference ReCAP described further below:

- **Output 2**: This portion of the [named medical publication] Agreement describes the development and hosting of a Gilead micro-website (the 'InfoSite') displaying non-promotional disease content on the [third-party medical publishing company] webserver. The InfoSite is the information made available via the 'Learn More' link on the Gilead Banner or the 'Read More' buttons on the Gilead Pop-Ups. Note: Drivers refers to the certain Banners and Pop-Ups that surround the independent [named medical publication] content.

- **Output 3**: This portion of the [named medical publication] Agreement describes the Conference ReCap program that Gilead purchased from [third-party medical publishing company], which provided for the inclusion the non-promotional Gilead Video, Gilead Banners and Gilead Pop-Ups (which are part of a Gilead non-promotional disease education campaign in advanced urothelial cancer) around the [third-party medical publishing company] independent editorial content regarding ESMO 2023. Please note Section 1, which describes the ReCAP video/content as being 'created under [third-party medical publishing company's] sole editorial control addressing research and advances on ESMO|Bladder/Genitourinary Cancers (Nonprostate)' and Section 2, which indicates that all Gilead provided content will be identified with 'Information from Industry' in accordance with [third-party medical publishing company] best practice and will be 'subject to the [third-party medical publishing company website] policies and any applicable [third-party medical publishing company] technical specifications.'

2. **Gilead Video**

Attached to this email, you will find the Gilead Video, which is a disease awareness informational video that describes various potential molecular pathways involved in advanced urothelial cancer (e.g. TROP-2, NECTIN-4, PD-L1) and other solid tumours. This video provides only unbranded, non-promotional scientific information that may be of interest to HCPs and raises awareness regarding the high unmet treatment needs of patients with second line advanced urothelial cancer. The video does not include or reference any Gilead licensed or developmental products. Additionally, please see the [named medical publication] Editorial Article, which shows that the article does not reference any Gilead licensed or developmental products; and a statement provided by [named medical publication/third-party medical publishing company] to Gilead reinforcing the independence of the editorial drivers, ReCAP Webpage and ReCAP Video referenced in the initial Gilead response to this case.

3. **Gilead Banner Information Directs to InfoSite**

The InfoSite [pdf copy provided], is where a user will be taken upon clicking the 'Learn More' link in the Gilead Banner advertisement. The InfoSite provides non-promotional disease awareness information describing various potential molecular pathways involved in advanced urothelial cancer (e.g. TROP-2, NECTIN-4, PD-L1) and other solid tumours and raises awareness regarding the high unmet treatment needs of patients with second line advanced urothelial cancer.

4. **Gilead Pop-Up Information Directs to InfoSite**

The 'Read More' buttons on the Gilead Pop-ups link to specific sections of the InfoSite : 'High unmet need in advanced UC' and 'Why TROP-2?'. Notably, TROP-2 is highlighted as a mechanism of advanced UC disease because, as one of the most highly expressed cell-surface antigens in advanced urothelial cancers, it may play a role in the oncological processes involved of this type of solid tumour. The goal of this non-promotional Gilead campaign is to help educate HCP on cell surface proteins that may help address the high-unmet treatment needs of this patient population.

5. **Gilead Certificates and Metadata**

Certificates and meta data of the following requested items [provided]:

- Banners
- Pop-Ups (Drivers)
- Video
- InfoSite"

PANEL RULING

This complaint was submitted by a complainant who described themselves as a doctor based in the UK and concerned the receipt of an email from a named medical publication where the email address and subject line suggested to the complainant that they would be receiving an unbiased update regarding the European Society for Medical Oncology ('ESMO') conference in 2023 but the email ended with the statement "This promotional communication is provided by [named third- party medical publishing company]", but did not say who had paid for it.

The complainant alleged the email contained a link to a webpage including among other things two embedded videos one of which was labelled 'Information from Industry' and banners sponsored by Gilead.

The Panel noted that the PMCPA was dealing with a series of cases that involved the [third-party medical publishing company] in question and various companies. The allegations and evidence provided in each case differed and thus consequentially the rulings. Each case was considered independently on the evidence before each Panel.

The Panel noted that the agreement was between UK based Gilead Sciences Europe Ltd (GSEL) and the third-party medical publishing company. Gilead Sciences Ltd (GSL) was the ABPI member company, GSEL was neither an ABPI member company, nor was it a non-member company that complied with the Code. In such circumstances, GSL was responsible for the acts and omissions of its UK-based European affiliate that came within the scope of the ABPI Code. GSEL had responded to the complaint. The respondent company is referred to in this ruling as "Gilead" for ease of reference.

General comments on Email and linked website

The email in question dated 27 November 2023 was sent from an email address: [named medical publication] Clinical Insights< mailto:clinicalinsights@mail.[named medical publication].com. The email subject heading read 'Genitourinary Cancers: ESMO 2023 Update' and the body of the email was headed 'Have You Seen the Latest Genitourinary Cancer Data From ESMO 2023?'. Immediately below a pale blue box contained a statement that a named professor discussed the findings of recent trials and listed five clinical trials with the names of the medicines studied, below which was a prominent link labelled 'Watch Conference ReCAP'. This linked directly to the named medical publication's webpage consisting of the ReCAP video and other materials, rather than linking directly to the video as implied in the email. At the very bottom of the email was, among other things, options to unsubscribe and the statement, in very small font size, 'This promotional communication is provided by [third-party medical publishing company] Professional Services'.

The Panel noted that the linked webpage provided by the complainant was headed '[named medical publication] Oncology'. The webpage featured adjacent thumbnail links to both the ReCAP video referred to in the email and one labelled 'Play On The Potential To Move Science Forward' immediately above which in small orange font appeared 'INFORMATION FROM INDUSTRY'. The statement 'Learn more about cell-surface antigens and other molecular pathways in advanced urothelial cancer' appeared on the thumbnail image of the video.

The 'ReCAP' video appeared to be playing in the screenshot provided by the complainant and therefore the display screen showed the title and authors of one of the trials and was located directly above the adjacent video links described previously. An article summarizing the ReCAP video appeared beneath the video links; this contained hyperlinked names of active ingredients in non-Gilead products. The hyperlinks took the viewer to non-Gilead content about the medicines over which a Gilead pop-up appeared which linked to articles about research topics in advanced urothelial cancer (UC). The pop-ups were labelled in small grey font 'Information from Industry' at the top, beneath which was the pop-up text and a link. In smaller light grey font 'Produced by Gilead Sciences, Inc. Intended only for HCP's medical education' appeared at the bottom of the pop-up. The text on one pop-up stated, 'Which antigens and pathways are of interest in advanced UC research?' and the other 'Explore cell-surface antigens and molecular pathways involved in advanced UC'. Beneath both these statements was a 'Learn more' button to click. The pop-ups linked to specific pages in what was described in the Work Order as a Gilead Info Site which was also the subject of the sponsorship. Gilead stated that these linked pages educated health professionals on cell surface proteins.

A Gilead banner advertisement headed Gilead Oncology with the Gilead logo sat to the right of the embedded videos section prominently titled 'The potential to move science forward' followed by 'Learn more about TROP-2, highly expressed in advanced UC tumours and other molecular pathways' and a link to 'LEARN MORE'. Below this was the statement in small font 'This banner has been produced and funded by Gilead Sciences, Inc. It is intended for medical education purposes and for healthcare professionals only'. The Panel noted that the banner advertisement linked to the Gilead Info Site.

The Panel noted Gilead provided two views of the webpage; a health professional view which appeared to be closely similar to the webpage provided by the complainant and a non-health professional view which appeared when accessing the named medical publication Conference ReCAP webpage under a non-health professional profile and which did not contain the Gilead banner advertisement or embedded Gilead video thumbnail. The Panel made its ruling on the version provided by the complainant.

Agreement between Gilead and third-party medical publishing company

The Panel considered the Work Order between Gilead and third-party medical publishing company which set out, among other things, the delineation between Gilead and the named medical publication's controlled content. While noting that it did not have the whole contract before it the Panel considered that the agreement related to a wider package of activities than the matters raised in the complaint. The Work Order covered the ReCAP site and the Info Site and the Panel noted that the ReCAP webpage and the pop-up boxes which linked to the Info Site were the subject of complaint. The Panel understood the Work Order covered, among other things, the 'ownership' of materials incorporated into the ReCAP webpage, the development and use of drivers to recruit visitors to the webpage and contractual performance guarantees but the Panel did not have details of all aspects of the Work Order.

In the Panel's view, the Work Order was clear that the named medical publication was responsible for recruiting the Conference ReCAP target audience using editorial drivers developed by themselves (which may include emails like the one at issue) in addition to the ReCAP video and associated article on the named medical publication Conference ReCAP webpage. The Panel noted the Work Order stated that the third-party medical publishing company would maintain sole and exclusive editorial control of these editorial drivers. The named medical publication would contract with an expert health professional who determined the content and structure of the ReCAP video to include trial data relating to a range of studies discussed at the conference.

The Work Order stipulated that Gilead-supplied materials and linked materials it had developed, and which the named medical publication required to be labelled as advertising or 'Information from industry', would be displayed around the Conference ReCAP video. The Work Order included mention of a Gilead-sponsored recontact email that could be sent by the third-party medical publishing company following a visit to the Conference ReCAp page and referred to its approval by Gilead, but the Panel noted it was not this email that was the subject of the complaint. The Panel noted that the Work Order provided for the provision of detailed monthly traffic reports and thus the sponsorship agreement was not entirely at arms' length.

The Panel noted that the Work Order was explicit about Gilead approval of certain materials and silent in relation to others, the reasons for the difference was not always clear.

Declaration of involvement

The complainant had alleged there was no mention of Gilead funding, sponsorship or payment on the named medical publication Conference ReCAP webpage and email and also that the two embedded videos were clearly linked to each other such that 'one must have paid for the other' which the complainant assumed meant Gilead was 'the paying company'.

The Panel firstly had to decide what materials Gilead had any responsibility for or involvement in and whether a declaration of sponsorship ought to have appeared on the email and/or the webpage. Clause 5.5 required amongst other things material relating to medicines and their uses, whether promotional or not, and information relating to human health or diseases, which 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. In the Panel's view, Clause 5.5 was clear insofar as a declaration of involvement was required on material relating to medicines and diseases where a pharmaceutical company had any involvement regardless of whether that material was promotional or not.

Conference ReCAP Webpage

The Panel considered whether a declaration of sponsorship ought to have appeared on the webpage as a whole. Gilead submitted it did not have any input into the named medical publication's ReCAP video or the named medical publication Conference ReCAP Webpage, which it stated were neither specifically developed and/or financially sponsored by Gilead. In this regard Gilead submitted that where Gilead paid content was shown next to the named medical publication's content Gilead's responsibility for its paid content was explicitly disclosed. The Panel noted Gilead did not dispute that it had produced and funded the Gilead video and associated thumbnail, banner and pop-ups and linked material on the webpage and submitted

that Gilead's involvement in each of these elements was transparent. The Panel noted Gilead's submissions that all its sponsored content on the webpage and material linked from it was unbranded, non-promotional disease education material.

Having considered the agreement and the parties' submissions it was clear to the Panel that the Conference ReCAP webpage consisted of a combination of the named medical publication's developed content and Gilead owned content and that the ReCAP video and the editorial article accompanying it were not Gilead sponsored material. In the Panel's view, the ReCAP video and the editorial article were the most prominent elements on the webpage and the impression created was that this was the named medical publication's webpage rather than a Gilead one.

The Panel considered the clarity and prominence of the delineation between Gilead's and the named medical publication's materials; the Gilead sponsored material comprised the video entitled 'Play on the potential to move science forward' and its associated thumbnail, the banner and the embedded pop-ups. The Panel considered the complainant's comment regarding the two embedded videos and that 'one must have paid for the other' which they assumed meant Gilead was 'the paying company'. The Panel was unsure what the complainant meant by this and whether they were alleging that the ReCAP video should have included a statement in relation to Gilead funding. The Panel considered the two embedded videos which, in its view, appeared distinct from each other and noted its comment above in this regard. The Panel noted the complainant had identified the Gilead sponsored elements of the webpage in their complaint and therefore on this narrow ground they appeared to be aware of Gilead's involvement in the material.

Accordingly, the Panel ruled **no breach of Clause 5.5** in relation to the Conference ReCAP webpage as a whole.

Email

In relation to the email from the named medical publication, the complainant alleged the sender and subject line suggested that it would be an unbiased source of educational information and insights from the conference as there was no mention of Gilead's involvement within the email. The Panel noted it had been sent by the third party medical education publishing company Professional Services from the named medical publication's Clinical Insights email address.

In the Panel's view, noting the terms of the agreement, Gilead would have been aware from the outset that the named medical publication would develop drivers to recruit the target audience for the Conference ReCAP webpage including the sponsored and linked materials, and that these would likely include emails. The target audience was identified as physicians specialising in haematology/oncology or urology practising in Australia, New Zealand, Canada and Europe who had consented to receive such communications.

The Panel queried whether the email which drove recipients to Gilead's material could be described as an integral part of the contract or whether it could fairly be described as wholly at arm's length. To permit companies to have absolutely no responsibility in these particular circumstances might allow them to wholly circumvent the requirements of the Code. The Panel considered that relevant responsibilities, the applicability of which ought to be assessed on a case by case basis, might include a declaration of sponsorship and any impression given in relation to company materials.

The Panel considered the particular circumstances in this case; Gilead submitted it did not have any input into the content or sending of the third-party medical publishing company's email at issue which comprised a headline asking recipients if they had seen the latest genitourinary cancer data from ESMO 2023, the name of a professor and a list of the names of five clinical trials with the drugs studied in them that would be discussed in the Conference ReCAP video. The Panel noted the email sender was described as '[named medical publication] Clinical Insights' and the subject line stated 'Genitourinary Cancers: ESMO 2023 Update' creating the impression that this was a non-promotional educational update on recent trial data presented at the conference.

The Panel noted its comments regarding the terms of the Work Order and that Gilead was not named in the email and also that no Gilead products or trials were discussed in it, however, the email did link directly to a webpage containing Gilead sponsored material.

In the Panel's view, the Work Order was clear that the named medical publication might send emails to health professionals to drive traffic to the webpage which contained Gilead sponsored material and therefore Gilead did have some responsibility for the email and therefore the email could not be viewed in isolation from the webpage it linked to. Notwithstanding that neither the email nor webpage mentioned any Gilead medicines or developmental molecules transparency about company involvement in materials was of the utmost importance so that recipients of information were made aware of such involvement at the outset so they could decide whether or not to access the information. This applied whether the company material was promotional or non-promotional.

In this case the impression created on opening the email was that it linked directly to a non-promotional video which was not so. The Panel determined, on balance, and on the narrow basis that the email did not link directly to the Conference ReCAP video as implied, that the inclusion of a declaration of involvement on the email itself was required so that recipients would be aware that the linked material included Gilead sponsored content before clicking on the link.

Having considered all the circumstances of the case and, on balance, the Panel ruled a **breach of Clause 5.5** in relation to the email.

Disguised promotion

The Panel considered that the allegation of disguised promotion covered both the email and the pop-ups.

In relation to the email the complainant stated that the sender's email address suggested it would be an unbiased source of information and insights and the subject line gave the impression that the content was educational information and a good way to see breaking news at the conference. The complaint implied that the involvement of Gilead meant that it was promotional.

The Panel considered that it firstly had to decide whether the material was promotional and then if so whether its promotional nature was disguised bearing in mind that the complainant bore the burden of proof. In relation to whether the material was promotional, the Panel noted that the complainant referred to Gilead's involvement but made no comment on the promotional or non-promotional nature of the email and linked materials. The Panel noted that the materials did not mention Gilead medicines. The Panel noted the very broad definition of promotion at Clause

1.17 of the Code and further noted that material could be promotional without mention of a specific medicine. On balance, the Panel considered that the complainant had not made out their case in this regard, it was not for the Panel to infer reasons on behalf of the complainant. The Panel therefore ruled **no breach of Clause 15.6** with regards to the email.

In relation to the pop-ups the complainant alleged the body text of the medical publication's article on the Conference ReCAP webpage included medicine names with hyperlinks which led to embedded Gilead sponsored pop-ups and amounted 'to disguised marketing in the name of independent education'.

The Panel noted that the medicines named in the article were not Gilead medicines and that by clicking the hyperlinks the reader was taken to the pop-ups which in turn linked to articles about research topics in advanced urothelial cancer (UC) within the Gilead Info Site which was also the subject of the sponsorship.

The Panel noted both Gilead and the medical publication agreed the article was the medical publication's material and that Gilead had no editorial control over the content. The Panel considered whether including hyperlinks to the Gilead pop-ups affected this view or otherwise meant that the hyperlinks were disguised promotional material.

The Panel considered that it firstly had to decide whether the hyperlinks were promotional and then if so whether their promotional nature was disguised bearing in mind that the complainant bore the burden of proof. In relation to whether the hyperlinks were promotional, the Panel noted that the complainant referred to Gilead's involvement but made no comment on the promotional or non-promotional nature of the hyperlinks. The Panel noted that the materials did not mention Gilead medicines. The Panel noted the very broad definition of promotion at Clause 1.17 of the Code and further noted that material could be promotional without mention of a specific medicine. On balance, the Panel considered that the complainant had not made out their case in this regard, it was not for the Panel to infer reasons on behalf of the complainant. The Panel therefore ruled **no breach of Clause 15.6** in relation to the hyperlinks.

High Standards

The Panel noted its comments and rulings above; in its view the ruling of a breach of Clause 5.5 in relation to the email was proportionate and adequately dealt with that matter. The Panel considered that there were no additional factors which in its view warranted an additional finding in relation to a failure to maintain high standards and the Panel therefore ruled **no breach of Clause 5.1**.

Complaint received **12 December 2023**

Case completed **11 April 2025**