

COMPLAINANT v NOVAVAX

Alleged promotion of Nuvaxovid to the public

CASE SUMMARY

This case was in relation to an advertisement for a COVID-19 vaccine, Nuvaxovid, published on the P3 Pharmacy website. The complainant alleged that this advertisement was presented to them without them having to confirm that they were a health professional.

The outcome under the 2021 Code was:

No Breach of Clause 5.1	Requirement to maintain high standards at all times
No Breach of Clause 26.1	Requirement not to advertise prescription only medicines to the public

**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 a contactable complainant about Novavax UK Ltd.

COMPLAINT

The complaint wording is reproduced below:

'I was researching the P3Pharmacy awards and when I clicked the link of google I was presented with an advert for a vaccine. I am not a[n] HCP [healthcare professional], nor was I invited to confirm I was to be able to access this information.'

When writing to Novavax, the PMCPA asked it to consider the requirements of Clauses 5.1 and 26.1 of the Code.

NOVAVAX'S RESPONSE

The response from Novavax is reproduced below:

'After reviewing your letter, and the enclosed materials related to the complaint, we wish to respond as follows:

- The website that is the subject of the complaint is P3 pharmacy, an industry association news & information website, further including learning content, intended for healthcare professionals.
- P3 Pharmacy assured our advertising vendor that our advertisements would only be placed on sites that serve pharmacists, including requirements that website users must proactively confirm their pharmacist/healthcare professional status to access such sites.
- Our commercial team engaged our vendor with specific instructions that such advertisements be directed to and accessible only by HCPs/Pharmacists. Our vendor confirmed that advertisements on the Pharmacy Network (P3 Pharmacy) website would only be accessible to Healthcare Professionals (Pharmacists). Furthermore, we have again confirmed the proactive confirmation requirement with our ad placement vendor, and our vendor confirmed with P3 Pharmacy and their parent organization, The Pharmacy Network, about the proactive confirmation/intended audience requirements for their website, We were given assurances that their website had a requirement of a proactive confirmation that a user was a healthcare professional.
- Novavax's promotional materials are intended only for a limited/healthcare professional audience in compliance with all pharmaceutical promotional regulations. Novavax has an internal review and approval process for all materials intended for external use outside the company, and especially for any pharmaceutical promotional materials. This process is typical of such review and approval processes found in any pharmaceutical company, namely review by subject-matter qualified individuals from: medical affairs, regulatory, and legal (the review team). These individuals are specifically assigned to this task, and all have significant experience with such reviews and approvals, including in the UK and European markets. This process was followed completely for the advertisement that is the subject of this complaint. The review and approval trail is documented within our web based Veeva approval system, and the advertisement was approved with the explicit instructions for use only on websites that had requirements in place for healthcare professional identification. The ad was to be placed only behind such web-page requirements (such as pop-up confirmations).
- The requested supporting documents, including the documentation for the approval of the material in question, are provided with this letter. We have contacted The Pharmacy Network (P3Pharmacy) to collect all the details regarding the code complaint. The ad that was the subject of the complaint was served before the HCP login/registration page. The ad bookings with P3 should only have been served to users who were logged in and had confirmed that they were an HCP; however, P3 Pharmacy have informed us that there was an issue on their site. This should not have happened and is something The Pharmacy Network has rectified as a matter of urgency (see attached emails with vendor regarding the access restrictions, both emails dated 6 Jan 2023,

and confirmation from the placement agency of the technical issue with the P3 Pharmacy site; email dated 27 April). It is clear that the mistake lies on the vendor's side, as they admitted that the website wasn't functioning properly and that our advertisement was indeed intended to be shown only when a Pharmacists/HCP had created an account and confirmed their healthcare professional status within that account.

- We have now further evaluated the proactive confirmation of this vendor and their website, and, while it is indeed a requirement that a user affirm their professional status as a healthcare professional for accessing the website, we have decided to remove the advertisements from this website.'

PANEL RULING

The Panel noted the complainant's allegation that they were presented with an advertisement for a vaccine after clicking a link in a Google search, without having to confirm whether they were a health professional.

The Panel did not have a full screenshot of the webpage at issue but noted from a cropped screenshot provided by the complainant that the advertisement in question appeared to be a pop-up on the P3 Pharmacy website promoting Nuvaxovid (COVID-19 vaccine).

Nuvaxovid was a prescription only medicine. Clause 26.1 stated that prescription only medicines must not be advertised to the public.

The Panel noted that the requirements for access to promotional material on pharmaceutical company or company sponsored websites were different to the access requirements for advertisements placed in independently produced electronic journals intended for health professionals or other relevant decision makers. The different requirements were referred to in Clause 16 and its supplementary information, which included that prescription only medicines may be advertised in a relevant, independently produced electronic journal intended for health professionals or other relevant decision makers which can be accessed by members of the public.

The Panel noted that an email, dated 26 April, from the media agency to Novavax during its investigation of the complaint stated that The Pharmacy Network had confirmed that the network's collection of sites (including P3 Pharmacy) was intended exclusively for healthcare professionals. The email referred to a pop-up disclaimer that appeared when a visitor entered the site and which detailed the intended audience and the terms of use. A further email from the media agency to Novavax, dated 27 April, stated that, in error, the Nuvaxovid advertisement in question was served before the 'T&Cs notice' was accepted.

In the Panel's view, P3 Pharmacy could be considered an independently produced electronic journal intended for health professionals and other relevant decision makers; there was no requirement in the Code for visitors of such websites to confirm their health professional status. Based on the narrow allegation that the complainant was not asked to confirm that they were a health professional, the Panel ruled **no breach of Clause 26.1** of the Code.

It was not entirely clear to the Panel what had been agreed between Novavax, its media agency and the publisher in relation to the display of the advertisement in question. Novavax's response stated that the advertisement was intended to be shown only to health professionals that had

created an account and confirmed their status within that account. However, an email from the media agency to Novavax on 27 April stated that the advertisement was intended to be served only after the T&Cs were accepted, which the Panel understood to mean the pop-up disclaimer referred to above. Either way, it appeared the advertisement in question was displayed in a manner that the company had not expected it to be. While it was concerning that the advertisement was displayed differently to the company's expectations, bearing in mind the narrow allegation and the Panel's ruling of no breach above, the Panel consequently ruled **no breach of Clause 5.1**.

Complaint received **10 March 2023**

Case completed **30 May 2024**