

CASE AUTH/3853/11/23

COMPLAINANT v A. MENARINI

Alleged promotion to the public

CASE SUMMARY

This complaint was in relation to an X (formerly Twitter) post by an employee of an events business. The post included a photo of a diabetes conference, within which the wording “Invokana canagliflozin tablets” was visible on an exhibition stand in the foreground. The complainant alleged that this amounted to promotion of a prescription only medicine to the public.

The outcome under the 2021 Code was:

Breach of Clause 26.1	Promoting a prescription only medicine to the public
------------------------------	---

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 about A. Menarini Farmaceutica Internazionale SRL was received from a complainant who described themselves as a member of the public. The complainant could not be contacted on the email address they provided.

COMPLAINT

The complaint wording is reproduced below:

“I am diabetic and saw the attached on Twitter – I am not a doctor, I am an engineer.

I thought drugs companies were not allowed to promote their diabetic drugs to the public – the attached picture surely breaks this rule as I can clearly see the drugs promotion.”

When writing to A. Menarini, the PMCPA asked it to consider the requirements of Clauses 5.1 and 26.1 of the 2021 Code.

A. MENARINI'S RESPONSE

The response from A. Menarini is reproduced below:

"I am writing in response to a complaint you received under the Code of Practice for the Pharmaceutical Industry. A. Menarini Farmaceutica Internazionale S.r.l. (AMFI) takes its responsibility for compliance with all applicable laws and regulations including the ABPI Code of Practice very seriously and continuously endeavours to maintain these high standards in all its activities.

The complaint concerns a social media posting which included a photo of the exhibition hall at the [named conference] at [named London venue] where the AMFI stand and product logo are identifiable.

Background

An email from a member of the public regarding the above was received at the Reception UK Pharma AMFI email address. The complainant attached a screenshot of a personal X (formerly known as Twitter) account with a photo showing a panoramic view of the exhibition area of the [named London venue] where the [named conference] was taking place.

In the foreground of this picture, several exhibition stands are visible. Due to the positioning of the photographer in the gallery of the Exhibition Centre, it was possible to see the back wall of the AMFI stand showing the name of the company and the brand logo of an AMFI product. The owner of this personal X (formerly known as Twitter) account titled this tweet 'at the beautiful [named London venue]' without any reference to AMFI or the product.

Our interpretation was that this was a private picture showing a panoramic view of the event that was taking place at the [named London venue], for the [named conference] with no intention of promoting the exhibition stands or pharmaceutical products to the general public. Although no AMFI employees knew the owner of the X account, either professionally or privately, AMFI personnel investigated through LinkedIn and identified the account as a member of the staff as a [job title] of [named events business], the company that organised the [named conference]. AMFI contacted [named events business], by which time the owner of the personal X account had already deleted the post from [their] social platform. AMFI investigated with [named events business] and it was explained that this was a personal post, with the intention of showing a panoramic view of the event that [their] company had organised. The [job title] of [named events business] confirmed that [they] did not do it at the request of the organising team, or any of the pharmaceutical companies exhibiting at the event.

Response

Clause 5.1

It is a requirement of Clause 5.1 that: *'High standards must be maintained at all times'*.

A. Menarini Farmaceutica Internazionale S.r.l is committed to upholding the principles and details of the ABPI Code of Practice.

At the time of signing the contract with [named events business], AMFI confirmed with the company that all their employees, including the one who posted this picture on [their] personal X (formerly known as Twitter) account, were trained on the company compliance procedures that include specific reference to social media where it is clearly stated that they ‘must not tweet anything about a Pharma company’ ([AMFI provided the Panel with [compliance procedure] document and the training log showing the employee of the events business had logged in for the entire training session]). It was also confirmed this was a UK registered HCP only event and ticketed for UK registered HCPs only. The stand location was confirmed as closed off to the public and all entrants had identification badges which were scanned on entry to ensure compliance.

[Named events business] also informed AMFI that they are members of [named compliance programme] and their last set of training was held on the 8th of June of 2023 ([AMFI provided the Panel with the training log showing the employee of the events business had logged in for the entire training session]).

High standards were maintained and consequently, A Menarini Farmaceutica Internazionale S.r.l denies any breach of Clause 5.1.

Clause 26.1

It is a requirement of clause 26.1 that: ‘Prescription only medicines must not be advertised to the public. This prohibition does not apply to vaccination and other campaigns carried out by companies and approved by the health ministers’.

The X (formerly known as Twitter) account where the above mentioned picture was posted was set up for personal use by an employee of [named events business]. When [they] posted that picture [they] only wanted to show a panoramic view of the event that was taking place at the [named London venue] with no intention of advertising any medication to the general public.

No AMFI employee requested the owner of that X (formerly known as Twitter) private account to post that picture since as previously stated no AMFI employee had any professional or private relationship with the employee. AMFI applied due diligence in contracting [named events business] and feel that this was a human error on the part of the [named events business] employee. The employee deleted the post as soon as [they were] aware of this error.

A. Menarini Farmaceutica Internazionale S.r.l did not promote any drug to the general public and therefore, categorically denies any breach of Clause 26.1.”

PANEL RULING

The subject of this complaint was an X (previously Twitter) post by an employee of an events business. The post included a photo looking down on the exhibition area of a conference with the caption “*Great opening at [conference-specific hashtag]. At the [named London venue]*”. The conference-specific hashtag comprised an acronym and the year. The complaint alleged that the photo in the X post had the effect of promoting a diabetes drug to the public.

The Panel took account of the fact that a number of exhibition stands could be seen in the photo. However, it was clear that only one stand positioned closest to the photographer included content

that was legible within the photo. The stand had an A. Menarini logo and the legible words “*Invokana canagliflozin tablets*” in the form of the Invokana logo. Noting that Invokana was a prescription only medicine for type 2 diabetes, the Panel interpreted the complaint as alleging that Invokana had been advertised to the public via the X post.

The Panel accepted A. Menarini’s submission that the X post was not made by an A. Menarini employee and nor was it made at its request. This was a post from the events business employee’s personal account. The Panel noted, however, that there was a contractual arrangement between A. Menarini and the events business in relation to A. Menarini’s involvement in the conference. Professional congress organisers were included in the definition of ‘third party’ given in Clause 1.24 of the Code. The Panel considered that A. Menarini was responsible for the acts and omissions of the events business which came within the scope of the Code, even if they acted contrary to the instructions which they had been given, in accordance with Clause 1.24.

The Panel noted that both the brand name and non-proprietary name of A. Menarini’s medicine were legible in the photograph. There was no additional information about the medicine in the photograph – there were no associated graphics or images and there were no claims presented. There was no direct mention of Invokana or its indication within the text of the post. However, the Panel considered that, because this was a diabetes conference, a conference-specific hashtag (even one that used an acronym) would inevitably direct readers to a linked hashtag feed that would mention diabetes.

The Panel concluded that the combination of:

(a) the brand name and non-proprietary name of the medicine being legible in the photo, and
(b) a hashtag that would take users to diabetes-related content,
meant that the name of a prescription only medicine plus its indication had been posted on a public social media platform by a third party, for which A. Menarini was responsible in this context.

In the circumstances of this case, the Panel concluded that, on balance, the X post constituted advertising of Invokana to the public, and therefore ruled **a breach of Clause 26.1**.

The Panel acknowledged that the materials provided by A. Menarini demonstrated that the events business was obliged to comply with the Code, and that its staff had been trained in the Code as recently as five months before the receipt of the complaint. The Panel considered that A. Menarini had been let down by the third party. The Panel noted that A. Menarini had acted quickly once it became aware of the X post. It took steps to identify the person that had created the X post and ensured that it was taken down promptly. Taking these points into account, the Panel did not consider that there was evidence that A. Menarini had failed to maintain high standards. The Panel therefore ruled **no breach of Clause 5.1**.

Complaint received **15 November 2023**

Case completed **20 January 2025**