

**CASE AUTH/3338/4/20**

## **COMPLAINANT v VIIV**

### **Promotion of Dovato**

**A complainant who described him/herself as a concerned UK health professional, complained about an advertisement for Dovato (dolutegravir/lamivudine) placed by ViiV Healthcare UK Limited and hosted on the BMJ website. The advertisement consisted of a highlighted white box or 'tile' with the ViiV Healthcare corporate logo at the top followed by the brand name Dovato. At the bottom of the tile the reader was invited to click on a link to 'visit microsite'.**

**The complainant noted that the advertisement did not include the generic name of the medicine or include an inverted black triangle symbol. The complainant queried whether the advertisement had been certified along with the rest of the microsite.**

**The detailed response from ViiV is given below.**

**ViiV appeared to have been let down by the BMJ which included the product's brand name on the tile without submitting it to ViiV for approval. As there was no non-proprietary name immediately adjacent to the brand name, Dovato, the Panel ruled a breach of the Code as acknowledged by ViiV. The Panel further noted that the tile did not include the Dovato prescribing information or a link to it or a black triangle symbol and breaches of the Code were ruled as acknowledged by ViiV. As it had not been certified the Panel ruled a further breach of the Code as acknowledged by ViiV.**

A complainant who described him/herself as a concerned UK health professional, complained about an advertisement for Dovato (dolutegravir/lamivudine) placed by ViiV Healthcare UK Limited and hosted on the BMJ website. The advertisement consisted of a highlighted white box or 'tile' with the ViiV Healthcare corporate logo at the top followed by the brand name Dovato. At the bottom of the tile the reader was invited to click on a link to 'visit microsite'.

### **COMPLAINT**

The complainant noted that the advertisement did not include the generic name of the medicine or include an inverted black triangle symbol. There was also no unique identifying number present. The complainant queried whether the advertisement had been certified along with the rest of the microsite.

When writing to ViiV, the Authority asked it to consider the requirements of Clauses 4.1, 4.3, 4.10 and 14.1.

### **RESPONSE**

ViiV noted that it did not commission nor authorise the display of the brand name 'Dovato' on the digital banner/tile where the complainant observed it; the BMJ inserted the product name without the company's permission or that of the agency working on its behalf. ViiV stated that it intended the digital banner/tile to only include the corporate logo so as to make clear to health professionals that ViiV had sponsored some of the hosted materials on the BMJ online third-party website (Clause 9.10).

ViiV agreed that the digital banner/tile linking to the ViiV certified microsite included the brand name of one of its medicines. As such the material was subject to the requirements of the Code, which would have been applied had the company authorised the display. Specifically, the material should have had the prescribing information no more than one click away (Clause 4.1), it should have displayed the non-proprietary names immediately adjacent to the product name (Clause 4.3) and should have included a black triangle (which was required for Dovato when the tile was in first use but was no longer a requirement when the complaint was received) (Clause 4.10). Finally, ViiV noted that the material would have required certification (Clause 14.1).

ViiV submitted that once it received notification of the complaint, the digital banner/tile was removed by the BMJ the following day (28 April 2020). Separately, the digital content that the tile linked to was also 'turned off' that day to allow for the prescribing information to be updated to the latest version.

ViiV stated that essentially the BMJ made two errors in relation to the tile. Firstly, the third party included the product brand name when ViiV had asked the media agency only to include the company logo. Secondly, the BMJ linked the tile to the microsite thereby creating a driver to certified promotional material. ViiV had created its own drivers to the microsite content which were certified in accordance with Clause 14.1 and were intended to be the only mechanism by which health professionals could find the material, if they wished to access it.

ViiV stated that it had subsequently explained to the BMJ's online media agency that any such material, signposting or linking to the company's sponsored promotional material, required explicit approval by ViiV of the final copy prior to use so that it could ensure compliance with the Code.

ViiV stated that it was confident that the errors that occurred had now been rectified and that the BMJ would only host those tiles once they had received the company's approval of the final form. ViiV would decide whether and how to reactivate the tile in a compliant way in due course.

## **PANEL RULING**

The Panel noted that it was a well-established principle that a company was responsible for the acts or omissions of its agents or third parties working on its behalf which came within the scope of the Code. If this were not the case companies would be able to rely on such acts or omissions as a means of circumventing the requirements of the Code. ViiV was thus responsible for the inclusion of the Dovato brand name on the tile at issue by the BMJ irrespective of the fact that it had been inserted without the permission of ViiV or its agency. It was ViiV's intention that the tile should only include the corporate logo. The Panel noted however that it did not have copies of any correspondence between ViiV, its agency and the

BMJ, nor did it have a copy of the tile as certified by ViiV. Nonetheless, the Panel noted that the complainant bore the burden of proof.

The Panel noted that Clause 4.3 required the non-proprietary name of a medicine to appear immediately adjacent to the most prominent display of the brand name. On electronic advertisements the non-proprietary name should appear immediately adjacent to the brand name at its first appearance and the type size of the non-proprietary name must be such that the information was readily readable. The Panel noted that the tile contained the brand name of the medicine, Dovato, but not the non-proprietary name. The Panel noted ViiV did not intend the tile to include the product name. Nonetheless, ViiV appeared to have been let down by the BMJ which included the product's brand name on the tile without submitting it to ViiV for approval. Pharmaceutical companies were responsible for those acting with their authority. As there was no non-proprietary name immediately adjacent to the brand name, the Panel ruled a breach of Clause 4.3 as acknowledged by ViiV. The Panel further noted that the tile did not include the Dovato prescribing information or a clear and prominent direct single click link to it and therefore a breach of Clause 4.1 was ruled as acknowledged by ViiV. The Panel noted that the tile in question had not been certified as alleged and so the Panel ruled a breach of Clause 14.1 as acknowledged by ViiV.

The Panel noted ViiV's submission that whilst a black triangle was no longer a requirement for Dovato when the complaint was received, it was when the tile was first in use and was not included. The Panel was very concerned that the black triangle was not included when the tile was first published. The Panel noted that the Dovato SPC was updated to remove the black triangle on 27 April 2020 (reference emC, accessed 8 August 2020) and the complaint was received on the 25 April. The Panel therefore ruled a breach of Clause 4.10 as acknowledged by ViiV.

**Complaint received**      **26 April 2020**

**Case completed**        **21 September 2020**