

**CASE AUTH/3410/10/20**

## **COMPLAINANT v IPSEN**

### **Promotion of Cabometyx on LinkedIn**

A contactable complainant alleged that an Ipsen employee had advertised Cabometyx (cabozantinib) on LinkedIn and in doing so had advertised a prescription only medicine to the public. Cabometyx was indicated, *inter alia*, for the treatment of renal cell carcinoma (RCC) in certain adults.

The images of the individual's LinkedIn profile provided by the complainant gave the employee's name and then stated '[Job title] Cabometyx RCC at Ipsen'. Similar information appeared under the heading 'Experience', in the individual's LinkedIn profile.

When writing to Ipsen, the Authority asked it to consider the requirements of Clauses 26.1 and 9.1 of the Code.

The detailed response from Ipsen is given below.

The Panel noted that LinkedIn was different to some other social media platforms in that it was a business and employment-orientated network and was primarily, although not exclusively, associated with an individual's professional heritage and current employment and interests; its application was not limited to the pharmaceutical industry or to health care. In the Panel's view, it was, of course, not unacceptable for company employees to use personal LinkedIn accounts; the Code would not automatically apply to all activity on a personal account. The Panel noted that compliance challenges arose when the personal use of social media by pharmaceutical company employees overlapped with their professional responsibilities or the interests of the company. The Panel noted that material could be disseminated or highlighted by an individual on LinkedIn in a number of ways, by posting, sharing, commenting or liking. In the Panel's view, activity conducted on social media that could potentially alert one's connections to the activity might be considered proactive dissemination of material. In addition, an individual's activity and associated content might appear in the individual's list of activities on his/her LinkedIn profile page which was visible to his/her connections; an individual's profile page was also potentially visible to others outside his/her network depending on the individual's security settings. Company employees should assume that such activity would, therefore, potentially be visible to both those who were health professionals or other relevant decision makers and those who were members of the public. In that regard, it was imperative that they acted with extreme caution when using all social media platforms, including LinkedIn, to discuss or highlight issues which impinged on their professional role or the commercial/research interests of their company. If an employee's personal use of social media was found to be in scope of the Code, the company would be held responsible. The Panel considered that companies should assume that the Code would apply to all work-related, personal LinkedIn posts/activity by their employees unless, for very clear reasons, it could be shown otherwise. Companies must have comprehensive and up to date social media policies that provide clear and

unequivocal guidance on what was, and what was not, acceptable and it was extremely important that employees were trained upon them and followed them.

The Panel noted that the Social Media Employee Guidelines provided by Ipsen was a two paged document dated September 2017 which appeared not to be UK specific; the employee had completed training on them in September 2020. The Panel noted that those guidelines specifically referred to the use of, among other things, LinkedIn and reminded readers that the promotion of prescription medicines was heavily regulated around the world and that they should be aware of specific country rules on advertising, promotion and appropriate information for the general public noting that direct-to-consumer advertising of prescription medicines was not allowed in most countries. In answer to the question 'What can I post on social media?', the guidelines stated 'You are permitted to use Social Media, provided that you do not speak on behalf of Ipsen, reveal Ipsen confidential information, nor discuss Ipsen's approved or investigational products'.

The Panel noted Ipsen's submission that the job title on its employee's LinkedIn profile, was created independently by the employee without Ipsen's knowledge, involvement or endorsement. According to Ipsen, the employee had altered his/her job title with the sole intention of updating his/her professional profile given his/her recent change in role. Ipsen had submitted that the statement was not intended to promote Cabometyx to the public; it was a genuine human error. The Panel, nonetheless, considered that the individual had clearly intended, and expected, his/her new job title to be read.

The Panel noted Ipsen's submission that it had ascertained that less than ten people viewed the job title update containing the brand name and indication. The Panel noted that those people were described by Ipsen as pharmaceutical industry professionals and included employees of pharmaceutical companies and agencies including one Ipsen employee.

The Panel disagreed with Ipsen's submission that pharmaceutical industry professionals were not necessarily deemed as members of the general public as demonstrated in conferences where they had access to promotional stands and symposia. The Panel considered that context was of the utmost importance; accessing information from promotional stands at a professional conference was entirely different from being able to view promotional information on a social media platform. The Panel considered that although pharmaceutical employees might use LinkedIn to learn more about a person's knowledge, skill and expertise, they were, nonetheless, accessing a social media platform that could be used by anyone of any profession or none and so the information available should be suitable for the general public.

The Panel noted Ipsen's submission that the employee's LinkedIn public profile visibility settings were set to 'off' and therefore contacts or followers who were not signed into LinkedIn, or members of the public who did not have a LinkedIn account, were unable to see the employee's profile or any information within it. The Panel, however, noted Ipsen's submission that whilst it understood that in order to see more information users would need to sign into LinkedIn, it recognised that there was some information available about the profile to anyone searching for the employee's name through an internet browser and such information included the employee's job title which included the name of a medicine and its indication.

The Panel considered that the statement '[Job title] Cabometyx RCC at Ipsen' promoted a medicine – both the name of the medicine and an indication had been given. Although, prompted by a colleague, the employee in question had acted quickly to change his/her job title on LinkedIn, the Panel was, nonetheless, concerned that the original statement had been placed on a publicly accessible social media site and could also be viewed upon searching the employee's name on an internet browser. The Panel considered that, on the balance of probabilities, a prescription only medicine had been promoted to the public and a breach of the Code was ruled.

The Panel noted its comments above and considered that it was thus unfortunate that Ipsen had been let down by one of its employees not following company guidelines on which he/she had been recently trained; an action that resulted in a medicine being promoted to the public. In that regard, high standards had not been maintained. A breach of the Code was ruled.

A contactable complainant complained about the promotion of Cabometyx (cabozantinib) on LinkedIn by an employee of Ipsen Limited.

The images of the individual's LinkedIn profile provided by the complainant gave the employee's name and then stated '[Job title] Cabometyx RCC at Ipsen'. Further, under the heading 'Experience', the individual's LinkedIn profile stated 'Ipsen [time period]' followed by '[job title] Cabometyx RCC Full-time [time period]' followed by his/her previous experience at Ipsen and at other pharmaceutical companies which included roles in oncology.

Cabometyx was indicated, *inter alia*, for the treatment of renal cell carcinoma (RCC) in certain adults.

## **COMPLAINT**

The complainant alleged that the individual had advertised Cabometyx next to his/her job title on LinkedIn which should not be allowed as it advertised a medicine to the public.

When writing to Ipsen, the Authority asked it to consider the requirements of Clauses 26.1 and 9.1 of the Code.

## **RESPONSE**

Ipsen stated that the LinkedIn account in question was a private account that was owned and managed solely by the Ipsen employee. The job title on the LinkedIn account was created independently by the employee without Ipsen's knowledge, involvement or endorsement. The employee stated that he/she had updated his/her job title from a previous role at Ipsen to '[job title] Cabometyx RCC' with the sole intention of updating his/her professional profile with his/her recent role change. It was not intended to be a promotional statement aimed at the general public as per Clause 26.1; rather a genuine human error. Ipsen recognised that that should not have happened, however, there were several significant mitigating factors to the case as outlined below:

### **Timeline and magnitude of events**

Ipsen stated that it had investigated with the employee in question and noted the timeline of the events that occurred in relation to his/her updated job title (details were provided).

- The employee was due to commence his/her new role on 1 November 2020.
- The employee updated his/her job title on LinkedIn on the evening of Friday, 30 October 2020.
- An Ipsen colleague subsequently alerted the employee to his/her error that same evening.

By later that Friday evening, the employee had corrected his/her job title to '[job title] Oncology'

The initial job title containing the product brand name and indication was only visible on the employee's LinkedIn profile for approximately three hours on a Friday late evening. It was a genuine human error that the employee swiftly rectified of his/her own accord, and importantly had done so before Ipsen received the complaint.

### **LinkedIn Audience**

The employee in question had access to a feature that provided a complete list of LinkedIn members that had viewed his/her profile on any given day. On review of both the account settings and information provided through that LinkedIn feature, the following details had been ascertained:

- On Friday, 30 October 2020 nine LinkedIn members had actively viewed the employee's LinkedIn profile during the whole day and therefore a maximum of nine people viewed the job title update containing the brand name and indication.
- These nine members were all pharmaceutical industry professionals and included one Ipsen employee.
- The employee's LinkedIn 'public profile visibility settings' were set to 'off', therefore contacts or followers who were not signed into LinkedIn or members of the public who did not have a LinkedIn account were unable to see the employee's profile or any information within it.
- There was limited information available (name, job title and company) about the employee's profile if actively searched for the employee through an internet browser. Ipsen understood that in order to see more information, the user would need to sign into LinkedIn through an active account.

Ipsen noted that LinkedIn was recognised as a professional networking site and was used for the purposes of networking with individuals on a professional basis. As such, it was highly likely that only those individuals with a professional interest in the employee's profile would proactively search for it as opposed to members of the general public. In addition, the content of the job title on LinkedIn was not a source of information sought by members of the public or health professionals about prescription only medicines; as such, Ipsen considered that it should not be deemed promotion to the public.

On 30 October 2020, the employee had 225 connections on LinkedIn and no followers. Although Ipsen recognised that the information updated by the employee on his/her profile could have potentially been viewed by all of those connections, Ipsen had ascertained that due to the employee's profile visibility settings, the short period of time that the information appeared on his/her profile and the fact that the update was made late on a Friday evening when UK traffic to the site was likely to be low, the update was in fact only actively viewed by nine people. Those nine people were all pharmaceutical industry professionals as described above and included one Ipsen employee. Pharmaceutical industry professionals were not necessarily deemed as members of the general public as demonstrated in national/international (virtual and physical) conferences where

such professionals had complete access to, and could interact with, promotional booths or stands alongside company organised promotional symposia.

### **Immediate actions**

Following notification of the complaint:

- Although the employee had already rectified the error that same evening of 30 October 2020, he/she was immediately notified upon receipt of this complaint.
- Ipsen had an in-depth discussion with the employee to reinforce why it was inappropriate to have a brand name and indication in his/her LinkedIn job title, and Ipsen set up an investigation to ascertain the facts around the update.
- A briefing was sent to all UK-based Ipsen employees on 10 November 2020 as a reminder of the requirements of social media as per the Code and to ensure similar errors were not made; specifically, that employees must not mention brand names or disease areas in their job titles on their private social media accounts. All UK-based employees were required to confirm that they had read and understood the briefing.

### **Record of employee's training**

- The employee had been trained on the Ipsen social media guidelines and was assigned those guidelines to read and understand on the internal Ipsen training platform; that training was completed in September 2020.
- In addition, the employee had received extensive training on the Code; details were provided.

### **Ipsen's commitment to the Code**

Ipsen stated that it was committed to adhering to the Code in all respects; maintaining high standards was integral to Ipsen's ways of working. Ipsen expected its employees to maintain those high standards in all their activities whilst respecting the requirements of the Code. Compliance was embedded within the Ipsen culture, as evidenced in the events that occurred following the job title update, ie the employee was swiftly alerted to his/her error by a colleague and he/she promptly rectified the mistake. Ipsen reiterated that those actions were taken independently and before the complaint was received:

- Ipsen ensured that all UK employees were trained on the Code, which was reflected in the annual Code training that was provided to the different functions.
- In 2019, Ipsen employees attended the in-house training run by the Authority and had training on the newly released 2019 Code.
- Ipsen was continually committed to raising awareness of the Code within the entire UK business and had arranged ongoing mandatory quarterly Code training sessions for all UK employees, of which two sessions had been run so far. The sessions focused on the recent Code cases along with their key learnings and provided an interactive element whereby employees could ask questions and understand how the Code could apply to their day-to-day activities and responsibilities.
- Ipsen had also subscribed to monthly Code webinars to further cement the Code knowledge of their employees.
- To further highlight Ipsen's commitment to compliance, in December 2019 Ipsen proactively set up a Compliance and Governance Committee consisting of UK and Ireland

head of business ethics and compliance, medical director, legal director, regulatory safety and quality director and business and customer excellence director. The committee would oversee all aspects of company compliance and governance for UK and Ireland.

- Ipsen encouraged all employees to think about compliance and the Code before they started any project or activity and wanted to ensure the route to attaining the necessary information was open and easily accessible for all. As such, in August 2020, the medical team introduced the 'Code Consensus Forum' which provided an opportunity for individuals to discuss new projects/concepts or raise current Code-related concerns or challenges in order to seek expert opinion and consensus from the entire cross-functional team across all therapy areas on a monthly basis.

### **Ipsen and social media**

Ipsen noted that it had a digital media policy to provide direction to employees on all use of digital channels, including the appropriate use of social media and maintenance of high standards in that regard.

The policy did not specifically cover interactions of Ipsen employees in their personal capacity on private social media accounts; instead those were governed by the Social Media Employee Guidelines that all employees were expected to follow.

The guidelines stated, *inter alia*:

- ...Direct-to-consumer advertising of prescription medications is not allowed... so make sure not to violate prescription drug promotion or advertising rules.'
- You are permitted to use Social Media, provided that you do not speak on behalf of Ipsen, reveal Ipsen confidential information, nor discuss Ipsen's approved or investigational products.'

Ipsen noted that although it was involved in Case AUTH 3276/10/19 which related to the use of social media, the specific circumstances surrounding that case and the current case were very different, and it was important to distinguish between them. In the previous case, a post was placed on the Ipsen corporate LinkedIn account which linked to a press release – the content of that post was created, approved and posted by Ipsen. However, in the current case, the update to the job title was made by an individual on his/her personal account without Ipsen's knowledge, involvement or endorsement.

Notwithstanding the above, Ipsen recognised that social media remained an area of ongoing attention and had implemented the following measures since the previous case:

- On 28 August 2020, all UK-based employees were informed of the previous LinkedIn Code case breach. They were provided with a summary of the case, the PMCPA ruling and the key learnings, along with a copy of the Social Media Employee Guidelines to keep and refer to when using social media.
- The Social Media Employee Guidelines were also assigned to all UK-based employees on 28 August 2020 on the internal Ipsen training platform as another reminder of the social media requirements. Employees were expected to read and document that they had understood the guidelines.
- A briefing was sent to all UK-based Ipsen employees on 10 November 2020 as a reminder of the requirements of social media as per the Code and to ensure similar errors

were not made; specifically, that employees must not mention brand names or disease areas in their job titles on their private social media accounts. All UK-based employees were required to confirm that they had read and understood the briefing.

- Ipsen was in the process of holding workshops for all UK employees specifically focussing on relevant social media Code cases and providing guidance on what was or was not permitted.
- Ipsen was in the process of creating a UK specific digital policy to cover social media activities from a UK perspective considering all applicable laws and regulations, including internal Ipsen policies and specifically the UK Code.
- Ipsen would train all UK employees on the digital policy in the form of mandatory face-to-face training sessions and modules to be assigned and completed on the Ipsen internal training platform.

### **Closing comments**

- Ipsen was committed to ensuring its activities regarding social media were carried out in a manner that was consistent with the requirements of the Code.
- The LinkedIn account in question was a private account that was owned and managed solely by the Ipsen employee. The job title on the LinkedIn account was created independently by the employee with no knowledge, involvement or endorsement by Ipsen.
- The sole intention of the job title update was for the Ipsen employee to update his/her professional credentials and under no circumstances was there any intent to promote.
- The erroneous use of a job title naming an Ipsen product and indication remained in place only for approximately three hours before being corrected.
- The content of the job title on LinkedIn was not a source of information sought by members of the public or health professionals about prescription only medicines; as such Ipsen believed it should not be deemed promotion to the public.
- Ipsen recognised that that should not have happened, however, only nine LinkedIn members had actively viewed the update, one of which was an Ipsen employee.
- The nine LinkedIn members that had actively viewed the updated job title were pharmaceutical industry professionals and not the general public.
- Compliance was embedded within the culture at Ipsen; demonstrated by the fact that the employee was alerted to his/her error by a colleague and he/she amended his/her job description within three hours and before Ipsen received the complaint.
- Ipsen had demonstrated that the robust processes and training it had in place, as outlined above, encouraged adherence to the Code for all employees and therefore provided clear evidence that Ipsen had upheld high standards in accordance with 9.1.

### **PANEL RULING**

The Panel noted that LinkedIn was different to some other social media platforms in that it was a business and employment-orientated network and was primarily, although not exclusively, associated with an individual's professional heritage and current employment and interests; its application was not limited to the pharmaceutical industry or to health care. In the Panel's view, it was, of course, not unacceptable for company employees to use personal LinkedIn accounts; the Code would not automatically apply to all activity on a personal account. The Panel noted that compliance challenges arose when the personal use of social media by pharmaceutical company employees overlapped with their professional responsibilities or the interests of the company. The Panel noted that material could be disseminated or highlighted by an individual on LinkedIn in a

number of ways, by posting, sharing, commenting or liking. The Panel understood that if an individual 'liked' a post it increased the likelihood that the post would appear in his/her connections' LinkedIn feeds, appearing as '[name] likes this'. In the Panel's view, activity conducted on social media that could potentially alert one's connections to the activity might be considered proactive dissemination of material. In addition, an individual's activity and associated content might appear in the individual's list of activities on his/her LinkedIn profile page which was visible to his/her connections; an individual's profile page was also potentially visible to others outside his/her network depending on the individual's security settings. Company employees should assume that such activity would, therefore, potentially be visible to both those who were health professionals or other relevant decision makers and those who were members of the public. In that regard, it was imperative that they acted with extreme caution when using all social media platforms, including LinkedIn, to discuss or highlight issues which impinged on their professional role or the commercial/research interests of their company. Whether the Code applied would be determined on a case-by-case basis, taking into account all of the circumstances including, among other things, content and distribution of the material. If an employee's personal use of social media was found to be in scope of the Code, the company would be held responsible. The Panel considered that companies should assume that the Code would apply to all work-related, personal LinkedIn posts/activity by their employees unless, for very clear reasons, it could be shown otherwise. Any material associated with a social media post, for example a link within a post, would be regarded as being part of that post. Companies must have comprehensive and up to date social media policies that provide clear and unequivocal guidance on what was, and what was not, acceptable and it was extremely important that employees were trained upon them and followed them.

The Panel noted that the Social Media Employee Guidelines provided by Ipsen was a two paged document dated September 2017 which appeared not to be UK specific; the employee had completed training on them in September 2020. The Panel noted that those guidelines specifically referred to the use of, among other things, LinkedIn and reminded readers that the promotion of prescription medicines was heavily regulated around the world and that they should be aware of specific country rules on advertising, promotion and appropriate information for the general public noting that direct-to-consumer advertising of prescription medicines was not allowed in most countries. In answer to the question 'What can I post on social media?', the guidelines stated 'You are permitted to use Social Media, provided that you do not speak on behalf of Ipsen, reveal Ipsen confidential information, nor discuss Ipsen's approved or investigational products'. The Panel noted Ipsen's submission that it was in the process of creating a UK specific digital policy to cover social media activities from a UK perspective considering all applicable laws and regulations, including internal Ipsen policies and specifically the UK Code.

The Panel noted Ipsen's submission that the job title on its employee's LinkedIn profile, '[job title] Cabometyx RCC at Ipsen', was created independently by the employee without Ipsen's knowledge, involvement or endorsement. According to Ipsen, the employee had altered his/her job title with the sole intention of updating his/her professional profile given his/her recent change in role (details were provided). Ipsen had submitted that the statement was not intended to promote Cabometyx to the public; it was a genuine human error. The Panel, nonetheless, considered that the individual had clearly intended, and expected, his/her new job title to be read.

The Panel noted Ipsen's submission that the update was made late on a Friday evening when UK traffic to the site was likely to be low and the information only appeared on the employee's profile for a short period of time. The Panel further noted Ipsen's submission that the employee in question had a premium LinkedIn account meaning that he/she had access to a feature that provided a complete list of LinkedIn members that had viewed his/her profile on any given day. Using that



feature Ipsen had ascertained that nine LinkedIn members had actively viewed the employee's LinkedIn profile on Friday, 30 October 2020 and therefore a maximum of nine people viewed the job title update containing the brand name and indication. The Panel noted that those nine people were described by Ipsen as pharmaceutical industry professionals and included employees of pharmaceutical companies and agencies including one Ipsen employee.

The Panel disagreed with Ipsen's submission that pharmaceutical industry professionals were not necessarily deemed as members of the general public as demonstrated in conferences where they had access to promotional stands and symposia. The Panel considered that context was of the utmost importance; accessing information from promotional stands at a professional conference was entirely different from being able to view promotional information on a social media platform. The Panel considered that although pharmaceutical employees might use LinkedIn to learn more about a person's knowledge, skill and expertise, they were, nonetheless, accessing a social media platform that could be used by anyone of any profession or none and so the information available should be suitable for the general public.

The Panel noted Ipsen's submission that the employee's LinkedIn 'public profile visibility settings' were set to 'off' and therefore contacts or followers who were not signed into LinkedIn, or members of the public who did not have a LinkedIn account, were unable to see the employee's profile or any information within it. The Panel, however, noted Ipsen's submission that whilst it understood that in order to see more information users would need to sign into LinkedIn, it recognised that there was some information available about the profile to anyone searching for the employee's name through an internet browser and such information included the employee's job title which included the name of a medicine and its indication.

The Panel considered that the statement '[job title] Cabometyx RCC at Ipsen' promoted a medicine – both the name of the medicine and an indication had been given. Although, prompted by a colleague, the employee in question had acted quickly to change his/her job title on LinkedIn, the Panel was, nonetheless, concerned that the original statement had been placed on a publicly accessible social media site and could also be viewed upon searching the employee's name on an internet browser. The Panel considered that, on the balance of probabilities, a prescription only medicine had been promoted to the public and a breach of Clause 26.1 was ruled.

The Panel noted its comments above and considered that it was thus unfortunate that Ipsen had been let down by one of its employees not following company guidelines on which he/she had been recently trained; an action that resulted in a medicine being promoted to the public. In that regard, high standards had not been maintained. A breach of Clause 9.1 was ruled.

**Complaint received**      **30 October 2020**

**Case completed**         **2 June 2021**