

CASE/0832/12/25

HEALTH PROFESSIONAL v MERCK SERONO

Allegations regarding promotional emails from a professional network for doctors in the UK

CASE SUMMARY

This case was in relation to an email newsletter sent by a professional network for doctors in the UK. The email contained a section with content from a number of pharmaceutical companies, including Merck Serono. Citing Clauses 3.6 and 15.6, the complainant alleged that the email constituted disguised promotion.

The outcome under the 2024 Code was:

Breach of Clause 3.6	Disguising promotional material or activities
Breach of Clause 15.6	Disguising promotional material or activities
No Breach of Clause 5.1	Requirement for companies 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 number of pharmaceutical companies was received from a health professional.

The case preparation manager determined that some allegations made by the complainant should not proceed. This decision was upheld by an independent referee.

The complaint was taken up against Merck Serono Limited in Case/0832/12/25. The corresponding cases against the other companies are: Case/0748/09/25, Case/0833/12/25, Case/0834/12/25, Case/0835/12/25, Case/0836/12/25, Case/0837/12/25 and Case/0838/12/25.

COMPLAINT

The complaint wording is reproduced below:

“[Redacted allegations that were not proceeded]
In addition, I received an email from [a professional network for doctors in the UK – “the third party”] titled ‘Raynaud’s phenomenon: red flags and when to refer’. One would think that by opening this email, the content would be about this topic. But no, when I

clicked on the email I was again presented with pharmaceutical industry advertising. In fact, there were two articles from [the third party] that seemed independent (but who knows!), including the article in the subject line, but an additional 6 pieces of pharmaceutical promotional content. At no point was I expecting to see all of this advertising. The subject line and the title of the email ('Clinical Bulletin') was totally misleading. This is another example of being forced / coerced into engaging with pharmaceutical promotional content when it is not expected/wanted. How do these companies ([named pharmaceutical companies]) think that it is OK to mislead doctors in this way? (See attached x2 screenshots labelled 'email')"

FURTHER INFORMATION FROM THE COMPLAINANT

The complainant's response to a request from the case preparation manager for further information is reproduced below:

"Thank you for your email on the 16th October. I decided to do a deep dive, as you suggested, into the ABPI Code, which I have found to be very illuminating. There seems to be 3 main issues, being [information about an allegation that was not proceeded], emails and [information about an allegation that was not proceeded]. To clarify, me consenting to promotional material is not the issue as I assume sometime in the past I have given consent.

I have not approached [the third party] about these complaints.

ABPI Code – relevant clauses

- **Transparency**
One of the four 'key principles' of the Code
- **Overarching Requirements**
 - [Information about an allegation that was not proceeded]
 - **3.6**
'Materials and activities must not be **disguised promotion.**'
 - **5.1**
'Companies must maintain **high standards** at all times.'
- **15.6**
'Promotional material and activities must not be disguised.'
- [Information about an allegation that was not proceeded]

All screengrabs below are new and recent examples from [the third party], in addition to the examples I submitted in my original complaint.

[Information about an allegation that was not proceeded]

Emails

The sender profile, subject line and lack of disclaimer makes the clinical bulletin email at screenshots 2 and 3 disguised promotion (**clause 15.6**) and is a breach of maintaining high standards (**clause 5.1**). There is a mix of independent content and promotional content but this is not evident from the outset. I have no problem being sent promotional information from time to time, however, I want to choose whether or not to engage and don't want to be duped into engaging with it. I saw on your website a recent case that cited all the same issues I have highlighted above – AUTH/3866/12/23.

[Information about an allegation that was not proceeded]

Screenshot 2

[Image showing a screenshot of an email as it would appear unopened in an inbox and a screenshot of the top portion of the opened email. Images accompanied by the description: "14/10/25 Another example of a 'Clinical Bulletin' with no indication there is pharmaceutical promotion within it from the subject line".]

Screenshot 3

[Image showing a screenshot of a section of the email with six content items. Image accompanies by the description: "14/10/25 Pharma sponsors within the 'Clinical Bulletin' and a list of four pharmaceutical companies, including Merck, relating to the six content items.]"

[Information about a redacted allegation that was not proceeded]"

FURTHER INFORMATION FROM THE COMPLAINANT

The complainant's response to a request from the case preparation for further information is reproduced below:

"Many thanks for your response. I completely understand that you need as much info as possible.

I will take each of your questions in order below. Please see my original complaint for detail of where I believe there to be breaches against your code, including specific clause numbers.

[Information about an allegation that was not proceeded]

Consent

I have consented to receive occasional promotional information, [information about an allegation that was not proceeded]

Please see below for the [third party's] consent language:

2.5. Use of your account data for marketing and communications purposes:

We will use your account data including your email address and/or postal address to send marketing and communications that is relevant to our products and services. This may, for example, include postal mailings about our products and services if you have not visited our website recently.

You can opt-out from any specific communications by using the unsubscribe facility in the communication itself or via the [third party's] website. We may also prompt you from time to time to revisit and update your communication preferences with the aim of ensuring that we only send you relevant and wanted communications.

We will also use your account data to serve you with targeted advertising on behalf our clients and other advertisers on our website.

The lawful basis for this processing is legitimate interests, namely:

our interests in providing marketing, advertising, communications, market research and recruitment-related services to our clients, providing relevant information to our members and operating our business and website

Emails from [the third party]

Your summation is correct. I believe the Clinical Bulletin is weekly, but the frequency of this email is not an issue to me. It was the fact that I believed I was accessing independent content, where in fact there were several links to pharma sponsored content.

[Information about which companies the complainant was complaining about]

Consent is not an issue here. I have consented to receive promotional information from 3rd parties, however I believe these emails are an example of disguised promotion. Please see my original complaint for detail.

[Information about an allegation that was not proceeded]

I hope I have answered your questions adequately. Please don't hesitate to get in contact if you have any more."

FURTHER INFORMATION FROM THE COMPLAINANT

The complainant's response to a request from the case preparation for further information is reproduced below:

"Thank you for your email. Let me comment on each of the 'allegations' in turn.

Allegation 2 – Email

Yes, I can confirm that I wish you to take up the complaint against those companies [redacted] I would like my name to be kept anonymous.

[Information about allegations that were not proceeded]

I also do not accept that it is my responsibility to raise and address this with [the third party]. [Information about an allegation that was not proceeded]"

When writing to Merck Serono, the PMCPA asked it to consider the requirements of Clauses 3.6, 15.6 and 5.1 of the 2024 Code.

MERCK SERONO'S RESPONSE

The response from Merck Serono is reproduced below:

"Thank you for your letter dated 6 February 2026, concerning alleged breaches of the ABPI's Code of Practice for the Pharmaceutical Industry (the '**Code**'). Merck Serono Limited ('**Merck**') seeks to both fully comply with and embody the Code, and we are disappointed that we have received a complaint regarding an email sent by [a professional network for doctors in the UK – "the third party"] which included information about our product TEPMETKO® (tepotinib) (the '**Complaint**').

The complainant alleges that emails received from [the third party] amount to disguised promotion: by clicking on the *Clinical Bulletin* emails they purportedly expected independent information; however, links to pharmaceutical company-sponsored information were also included. Although the Complaint is part of a wider rebuke of pharmaceutical company practices, the content relevant to Merck is included in an attachments from the complainant, received on 14 October 2025. You have asked Merck to consider Clause 3.6 (Materials and activities must not be disguised promotion); Clause 15.6 (Promotional material and activities must not be disguised) and Clause 5.1 (Companies must maintain high standards at all times).

At the centre of this matter is the material at issue; we attach a certified copy of the same and the contract between Merck and [named publisher], who are responsible for the online community [third-party platform].

We enclose the process for subscribers receiving *Clinical Bulletins*. We note that although consent to receive promotional material from pharmaceutical companies is not in issue, we nevertheless include details showing the form of consent to receive such emails from [the third party], which may contain promotional information about prescription-only medicines from the pharmaceutical industry. In the event subscribers have consented, they must (i) log into their online [third-party platform] account; (ii) visit their inbox within the platform; and (iii) review the *Clinical Bulletin*.

The *Clinical Bulletin* emails signpost to promotional articles hosted on [the third-party platform]. The *Clinical Bulletin* emails are sent only to those HCPs who have a matched speciality and have consented to receive them, as detailed above. The articles are hosted on a monthly basis and a signpost is included in the *Clinical Bulletin* emails, if appropriate, throughout that time, based on an agreed frequency of no more than one (1) per week.

Within the body of the example emails provided by the complainant there is the title *Clinical Bulletin*, and subsequently a blue banner stating '**HEALTHCARE**

INFORMATION Curated content funded or commissioned by the healthcare industry', under which the industry signpost materials are included. This format is the standard layout applied to all *Clinical Bulletin* emails sent by [the third party]. The signpost contains only the generic name, product name and indication, but contains no promotional claims. However, the signpost contains a link for the subscriber to click through to the full content of an article, which does contain promotional claims, answering the questions posed in the content of the signpost. Furthermore, in the body of the text in the signpost, it is clearly displayed in bold text that the material is related to '*promotional material from Merck, for UK HCPs only*'; it is important to note that only by proactively clicking the *Find out more* link will the subscriber be taken to the promotional material.

Merck would like to reassure you that we take compliance with the Code extremely seriously and have investigated the Complaint. Accordingly, given that (i) the subscriber has consented to receive *Clinical Bulletins*, which include promotional material from the industry; (ii) the Merck content within the *Clinical Bulletin* does not contain promotional claims; and (iii) the subscriber must proactively click to be taken to clearly identified promotional material, we submit this cannot be construed as disguised promotion. We appreciate the PMCPA's jurisdiction in this matter, but we believe that no breaches of the Code, specifically Clauses 3.6, 15.6 and 5.1, have taken place."

PANEL RULING

The complainant provided copies of two emails sent by an online platform for medical doctors, which they alleged were disguised promotion. The first email was dated 9 September 2025 and the second was dated 14 October 2025.

The two emails were of the same style and format, being an email newsletter that contained advertising space. The Panel noted that the email dated 14 October contained information from Merck Serono. There was no content from Merck Serono within the email dated 9 September.

The subject line of the email dated 14 October was "NHS pension update and tips to ensure yours is in good shape". The sender was [third party]. Within the body of the email, there was first a coloured header with the email newsletter's 'Clinical Bulletin' logo and date. This was followed by two pieces of content consisting of an image, a headline, a short description of the linked article and a button to click to read more. The headline of the first item matched the subject line of the email. Beneath these two pieces of content was a coloured section header titled "HEALTHCARE INFORMATION" with the description "Curated content funded or commissioned by the healthcare industry." Within this section was six pieces of content consisting of a small thumbnail image, a headline and a description, which in some cases included a job code and links to prescribing information. It was not clear from the information provided to the Panel whether there was further content in the email beyond this point.

The information from Merck Serono was contained within this "HEALTHCARE INFORMATION" section of the email. It read:

How does the efficacy of TEPMETKO®▼ (tepotinib) compare with immunotherapy in the real world in the treatment of METex14 skipping NSCLC?^{1,2,8}

Compare progression-free survival from the VISION clinical trial (secondary endpoint), with real-world data in patients receiving immunotherapy, in the treatment of advanced

non-small cell lung cancer (NSCLC) with mesenchymal-epithelial transition factor gene exon 14 (*MET*ex14) skipping alterations.^{1,2,8} **Promotional information from Merck, for UK HCPs only. TEPMETKO® has a UK Conditional Marketing Authorisation.**

Find out more >

Prescribing information and adverse event reporting (hosted externally) >
UK-TEP-00070 July 2025

Merck Serono submitted that the signpost itself contained only the generic name, product name and indication, with no promotional claims; only by proactively clicking 'Find out more' would the reader be taken to promotional material. The Panel considered that the inclusion of the brand name, non-proprietary name and indication of Tepmetko and the reference to relevant trial results meant that the signpost itself was promotional for Tepmetko.

The Panel acknowledged Merck Serono's submission that the 'Clinical Bulletin' emails signpost to promotional articles hosted on [the third party's website] and were sent only to those health professionals who have a matched specialty and have consented to receive them. The Panel also acknowledged Merck Serono's submission that it was clearly displayed in the body of the signpost that the material was related to promotional material from Merck.

The Panel noted, however, that the complainant's allegation of disguised promotion was related to the email as a whole, not to the individual piece of content from Merck Serono. The complainant referred to the subject line, sender profile and overall title ('Clinical Bulletin') of the email and the lack of a disclaimer. The Panel noted that the complainant acknowledged that they had consented to receive promotional information from third parties, but that they wanted to be able to choose whether or not to engage with promotional information. When opening the email, the complainant had not expected to see advertising from pharmaceutical companies.

Clause 3.6 required that materials and activities must not be disguised promotion. Similarly, Clause 15.6 required that promotional material and activities must not be disguised. The supplementary information to Clause 15.6 stated, among other things, that promotional material must not imply that the contents are non-promotional, for example, that the contents provide information relating to safety.

The Panel considered that the combined effect of the email's subject line and the sender's email address were such that the promotional nature of the Merck Serono content within the "HEALTHCARE INFORMATION" section of the email was not clear at the outset and was disguised. The Panel particularly took into account that, although the recipient had opted in to receiving the 'Clinical Bulletin' which could include promotional information from pharmaceutical companies about prescription only medicines, neither the subject line nor the sender address referred to 'Clinical Bulletin' and it was likely that a range of emails might be sent by [the third party]. Also, the subject line was dependent on the headline of the first piece of content within the email, which was non-promotional content from the publisher. In the Panel's view, the impression to the reader was that the email would be about NHS pensions; there was no indication that the email also contained promotional material. The Panel ruled a **breach of Clause 3.6 and Clause 15.6**.

Clause 5.1 required that companies must maintain high standards at all times. While the Panel had some concerns that the company had not had sight of the sender email address or subject line when certifying the content that would be included within the 'Clinical Bulletin' email, the Panel did not consider that the matter at issue demonstrated that Merck Serono had failed to

maintain high standards. The Panel particularly took into account that the promotional material appeared within a distinct section of the email and was, itself, clearly labelled as promotional. The Panel ruled **no breach of Clause 5.1**.

Complaint received **25 September 2025**

Case completed **15 May 2026**