

**CASE AUTH/3745/2/23**

**COMPLAINANT v TETRIS**

**Alleged promotion of a prescription only medicine to a member of the public**

**CASE SUMMARY**

This case was in relation to a sponsored message on LinkedIn that promoted Ogluo (glucagon). The complainant, who was not a health professional, alleged, among other things, that their receipt of the message constituted promotion of a prescription only medicine to the public.

The outcome under the 2021 Code was:

|                              |  |
|------------------------------|--|
| <b>Breach of Clause 5.1</b>  | <b>Failing to maintain high standards</b>  |
| <b>Breach of Clause 12.3</b> | <b>Failing to include the non-proprietary name of the medicine immediately adjacent to the brand name at its first appearance in an electronic advertisement</b> |
| <b>Breach of Clause 12.9</b> | <b>Failing to include the prominent adverse event reporting statement</b>  |
| <b>Breach of Clause 26.1</b> | <b>Promoting a prescription only medicine to the public</b>  |

**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 named, contactable complainant about Tetris Pharma. The complainant was an employee of Eli Lilly but stated they were complaining in their private capacity. To avoid this becoming a means of circumventing the normal procedures for inter-company complaints, the Case Preparation Manager informed the complainant that if they wished to proceed, Tetris Pharma would be informed that the complainant was an Eli Lilly employee and this information would be included in the case report. The complainant agreed to proceed.

**COMPLAINT**

The complainant stated that their complaint related to a sponsored message received via LinkedIn in February 2022 and which appeared in their messages. Screenshots showing the actual message and how it appeared in their message list were provided. The complainant stated that the individual who sent the message was not someone they were connected to on LinkedIn and they did not know them in any other environment. The complainant stated that the text of the message was as follows:

'Hello [first name of complainant].

I hope you are well.

I'm [named representative], Tetris Pharma's [job title], and I wanted to introduce you to Ogluo. Ogluo is a ready to use, ambient temperature pre-filled glucagon pen that is administered in 2-steps. Ogluo is stable at room temperature for 2 years meaning it can be kept in the bag or pocket for those emergency cases of severe hypoglycaemia. It's licensed from ages 2 years and up<sup>1</sup>. Given the ease of use it has the potential for health-economic benefits such as reducing ambulance call outs.

I came across your profile on LinkedIn and I think it would be interesting to have a chat to see which of your patients could benefit from having Ogluo. Are you available sometime this week?

Why Ogluo®?

A study shows the increased failure rate of administering glucagon emergency kits could potentially be attributed to the additional number of steps required as compared to the administration of Ogluo®.<sup>2</sup> This failure to administer glucagon would inherently impact the health economics associated with severe hypoglycaemia.

Click here to access the prescribing information: [URL provided]

Kind Regards,  
[named representative],  
[job title]

1 SpMC [sic] Ogluo

2 Human factor usability study Ogluo Valentine et al UK/Ogl/020a'

The complainant stated that the biggest issue was that they were not a healthcare professional, but they were sent this message promoting the use of a prescription only medicine.

The complainant stated that their assumption was that this message was targeted at individuals based on some kind of algorithm. They stated that their LinkedIn profile did not suggest anywhere that they were a healthcare professional, and it was clear that they worked for a pharmaceutical company. The complainant stated that their suspicion was that the algorithm was 'crude' and picked up their experiences that mentioned 'Medical' in their job titles. They suspected, therefore, that many other non-healthcare professionals could have received this message.

The complainant stated they had not investigated the message in detail but, in addition to the allegation that this was promotion to a member of the public, they also made allegations about two other issues:

- No non-proprietary name next to the most prominent mention of the brand name (that they would take to be the first mention)
- No adverse event reporting statement (the statement was on the linked prescribing information that was one click away).

When writing to Tetris Pharma, the PMCPA asked it to consider the requirements of Clauses 5.1, 12.3, 12.9 and 26.1 of the Code.

## RESPONSE

Tetris Pharma stated that it took compliance with the Code and other applicable laws and regulations very seriously and the PMCPA's letter was of great concern.

Tetris Pharma stated that on receipt of the complaint the company immediately stopped all ongoing LinkedIn sponsored message activity to ensure it could fully investigate this complaint and implement any learnings.

Tetris Pharma stated that the complaint related to a sponsored message received via LinkedIn. The message was allegedly received in February 2022 and appeared in the complainant's LinkedIn messages (the message was not viewed on their LinkedIn feed).

The complainant alleged that Tetris Pharma committed a number of breaches of the Code in both the sending and the content of the LinkedIn message. They further stated they were not a healthcare professional and, as such, should not have received the promotional message sent to them on LinkedIn as this was promoting the use of a prescription only medicine.

Tetris Pharma stated that it was aware of this campaign and that the message was being sent from the named representative's LinkedIn account. Tetris Pharma submitted that the message the complainant received was a targeted LinkedIn sponsored message where the message was targeted to a specific healthcare professional audience only – the message was not posted in any public domain; the message did not appear in any feed and only in the target recipients' LinkedIn inbox (similar to email but within the LinkedIn platform). By using this format, the message could not be liked or shared publicly like other LinkedIn paid media formats e.g. sponsored content. Tetris Pharma submitted that, by virtue of being a member of LinkedIn, the complainant would have accepted the LinkedIn Terms & Conditions i.e. they accepted to be contacted unless opted out.

Tetris Pharma refuted the allegation that the 'algorithm was crude'. Tetris Pharma submitted that a formal and well-tested process was applied that followed best practice. The targeting criteria developed had multiple criteria applied to ensure that the material was only provided to those groups of people whose need for or interest in it could be reasonably assumed. Tetris Pharma submitted that this was, to the best of its knowledge, more comprehensive than was generally applied, and was carried out to ensure, as far as was possible, that Tetris Pharma reached its intended audience of relevant healthcare professionals.

Tetris Pharma stated that the targeting criteria used were:

### Criteria 1

**1. Country:** Must be in the UK {dictated by their IP address}.

### **AND**

### Criteria 2

**2a. 'Job Titles (Current Jobs)' as self-declared by the LinkedIn member must be one of the following:** Doctor, Practitioner, Diabetes Educator, Clinical Director, Nursing Manager, Emergency Medicine Physician, Hospital Pharmacist, Nursing Specialist, Medical Doctor, Chief Pharmacist, Diabetes Clinical Nurse Specialist, Clinical Nurse Specialist, Nursing Consultant, Legal Nurse Consultant, Senior Nursing

Consultant, General Practitioner, Head of Nursing, Consultant, Emergency Medicine Physician Assistant, Clinical Pharmacist, Pharmacist, Registered Nurse, Endocrinologist.

**OR**

**2b. 'Company (Current Jobs)' as self-declared by the LinkedIn member must state one of the following:** European Society of Endocrinology, European Association for the Study of Diabetes, European Society for Paediatric Endocrinology, Endocrinology Specialists, Paediatric Endocrinology & Diabetes, Endocrinology Network, European Association for the Study of Diabetes {EASD}, BRITISH SOCIETY FOR PAEDIATRIC ENDOCRINOLOGY AND DIABETES.

**AND**

Criteria 3

**3a. 'Member Skills' as self-declared by the LinkedIn member must include at least one of the following:** Diabetes Care, Diabetes, Diabetes Management, Type 2 Diabetes, Type 1 Diabetes, Diabetes Nursing, Certified Diabetes Educator, Paediatric Endocrinology, Endocrinology, Hypoglycaemia, Endocrine Disorders, Emergency Medicine.

**OR**

**3b. 'Fields of Study' as self-declared by the LinkedIn member must include at least one of the following:** Endocrinology, Endocrinology, Diabetes and Metabolism Residency Program.'

Note: Company {above} as used on LinkedIn can apply to relevant organisations and professional associations. Despite there being some Companies {organisations} outside of the UK within this criteria, the targeting specified only people in those relevant Companies who are in the UK and who also meet the other necessary criteria, i.e. a relevant Member Skill or Field of Study.'

Tetris Pharma submitted that, in order to receive the message, the recipient would need to fulfil multiple criteria (a minimum of three criteria), of carefully selected and internally approved targeting. This approach was adopted in order to restrict the distribution of the message as far as reasonably possible and to ensure the message was only provided to those groups of people whose need for, or interest in, the message could reasonably be assumed.

Tetris Pharma submitted that the criteria applied meant the target audience must be in the UK **AND** must have one of the corresponding relevant healthcare professional job titles (current job title) or work at one of the targeted relevant companies (current company), **AND** they must also have member skills (self-declared on the individual's profile) related to the specific area of treatment or have studied in a relevant specialist field.

Tetris Pharma submitted that this message and responses were monitored every working day, during which time nothing was flagged during the course of the messages being sent that would have led it to believe it was not targeting the correct audience.

The message included a form which could be completed if the recipient wished to receive further information. Tetris Pharma received 15 validated requests via the form from relevant healthcare professionals requesting further information and four requests that Tetris Pharma was unable to validate, i.e. they did not provide enough information in the form to accurately identify their specific LinkedIn profile. Requests were received by completing a form (hosted within LinkedIn) after the recipient clicked 'I want to know more'. Tetris Pharma asked the Panel to note the 'I want to know more' button text here was not editable and was selected from a predefined list of options when setting up the campaign in LinkedIn.

Tetris Pharma stated that, considering the targeting criteria implemented, it struggled to understand how the complainant met the criteria to receive the message. Tetris Pharma was unable to ascertain exactly what information the complainant had in their LinkedIn profile which would have included them in the restrictive criteria to receive the message. Tetris Pharma stated that it understood that the name on the screenshot provided had been redacted by the PMCPA to ensure anonymity of the complainant and presumed the PMCPA had performed due diligence to ensure the message was in fact received by the person who submitted the complaint.

Tetris Pharma submitted that it believed it undertook diligent, reasonable and appropriate steps to ensure only the limited intended audience would receive the message. Tetris Pharma had received no other messages or complaints that would lead it to believe the audience targeted was not accurate or as specific as intended.

In the event a recipient believed they were not the intended audience for the message, Tetris Pharma submitted that LinkedIn users could subsequently opt out of receiving further messages within the LinkedIn platform or contact Tetris Pharma to investigate and resolve the issue. LinkedIn provided specific privacy features for LinkedIn users to block all sponsored content they received, to block InMail messages in particular (the format for this particular message), and to block a specific page or account in order to receive no further messages.

Tetris Pharma stated that LinkedIn did not facilitate a specific unsubscribe function within the initial message itself, unlike email platforms for example. Tetris Pharma submitted that it did include a specific message indicating to contact it if the recipient believed they were not the intended recipient.

Tetris Pharma stated that, given the information above, it did not accept that it had advertised a prescription only medicine to the public, as alleged, and it denied a breach of Clause 26.1.

Tetris Pharma noted that the complainant stated that the message did not display the non-proprietary name next to the most prominent mention of the brand name, in breach of Clause 12.3. Tetris Pharma submitted that, on investigation, this was missing on the final version which was certified however was present on previous variations – this was due to human error. Tetris Pharma identified that there was uncertainty during the review and approval process as to where and how the subject line would appear on LinkedIn; several variations were developed; however, ultimately, this key information was missing from the version which was certified and sent. Tetris Pharma provided the PMCPA with a screenshot of a previous variation its documentation where the non-proprietary name was included in the subject line of the message to support its statement.

In light of the complaint, Tetris Pharma submitted that it had audited and reviewed its processes and improved them by clarifying in the company's internal approval documentation where and how each item would appear on the platform; this would ensure this did not occur again in the future. Tetris Pharma stated that it was disappointed that the non-proprietary name was missing from the first or most prominent mention of the product in the message and, regrettably, accepted this was a breach of Clause 12.3 as alleged.

Tetris Pharma noted that the complainant stated that there was no adverse event reporting statement; they acknowledged that this was provided on the linked prescribing information that was one click away. Tetris Pharma submitted that at the time these LinkedIn messages were sent, it understood that having the adverse event reporting as an integrated part of the prescribing information, which was one click away, was compliant with the Code. The PMCPA guidance published subsequent to the sending of the message advised that this was not so. Tetris Pharma stated that it did not believe this was sufficiently clear in the current edition of the Code. However, given the recent published guidance, Tetris Pharma regrettably accepted that not having the adverse event reporting statement within the body of the LinkedIn message was a breach of Clause 12.9.

In response to the case preparation manager's request to know how many LinkedIn connections the representative had, Tetris Pharma submitted that the account had over 400 followers as of March 2023 (historic data was not available). However, Tetris Pharma wished to clarify that there was no correlation between the representative's followers or connections and those the message was sent to – as such, this information was irrelevant. Tetris Pharma submitted that the individuals who received the message were sent it through a private one-to-one message on LinkedIn, separate to the representative's account. Tetris Pharma submitted that those in receipt of the message were qualified by LinkedIn as meeting Tetris Pharma's comprehensive healthcare professional targeting criteria. Tetris Pharma therefore understood the follower size of the representative's account to be irrelevant to this complaint.

Notwithstanding the fact it had accepted breaches of Clause 12.3 and Clause 12.9, Tetris Pharma did not believe that it had not maintained high standards and therefore denied it had breached Clause 5.1.

Tetris Pharma stated that it had made every effort to ensure the targeted promotional messages sent on the LinkedIn platform were only received by those it was intended for, i.e. appropriate health professionals, and was thus of a highly targeted standard.

## **PANEL RULING**

The complaint was regarding a sponsored message on LinkedIn. The Panel noted that a sponsored message was a LinkedIn advertising format where a message was sent to a target audience and appeared in the 'Messaging' area of the LinkedIn website. The Panel noted that the sender of a sponsored message did not need to be 'connected' to the recipients.

The complainant stated that they had received a sponsored message from a Tetris Pharma employee. The message was promotional material for Ogluo (glucagon), as accepted by Tetris Pharma. The complainant alleged that this was promotion of a prescription only medicine to the public, as they were not a health professional.

The Panel noted that Tetris Pharma did not provide a full copy of the sponsored message. Tetris had provided snapshots of content, including what it said was from a previous variation in the approval system. The complainant had provided a screenshot from their LinkedIn account and reproduced wording from the message in their complaint and it was this content that the Panel ruled upon.

The Panel accepted the complainant's statement that they were not a health professional and confirmed from the screenshot provided that the complainant had received the sponsored message.

Tetris Pharma submitted that the message was targeted to a specific healthcare professional audience only and refuted the complainant's allegation that the targeting algorithm was 'crude'. Tetris Pharma submitted that in order to receive the message, the recipient would need to fulfil a minimum of three criteria – relating to their location, self-declared job title or current company, and self-declared skills or fields of study.

The Panel took account of the information provided by Tetris Pharma regarding the targeting criteria for the sponsored message. The Panel noted that the criteria for 'Job Title' included terms that were not specific to health professionals, for example, 'Consultant'. While the Panel acknowledged that the inclusion of additional criteria around 'Member Skills' and 'Fields of Study' would lessen the likelihood of non-health professionals being included in the audience, it considered that it was still possible that individuals who were not health professionals might fulfil some combination of all the required criteria and therefore receive the sponsored message, as evidenced by the complainant.

The Panel determined that the sponsored message promoted a prescription only medicine and had, on the balance of probabilities, been distributed to an audience that included non-health professionals, i.e. members of the public. The Panel therefore ruled **a breach of Clause 26.1**.

The Panel noted that Clause 12.3 required that for electronic advertisements the non-proprietary name must appear immediately adjacent to the brand name at its first appearance. The Panel noted the subject line of the sponsored message was 'Hypoglycaemia portable rescue medication'. The medicine was mentioned by brand name multiple times within the message. The first mention appeared to be within the sentence '... I wanted to introduce you to Ogluo'. The non-proprietary name (glucagon) did not appear next to the brand name at its first appearance and the Panel therefore ruled **a breach of Clause 12.3**, as acknowledged by Tetris Pharma.

The Panel noted that Clause 12.9 required that all promotional material must include the prominent adverse events reporting statement. Tetris Pharma submitted that the adverse event reporting statement was within the linked prescribing information that was one click away. The Panel determined from the content and information provided by both parties that the adverse event reporting statement was not within the body of the promotional message. The Panel therefore ruled **a breach of Clause 12.9**, as acknowledged by Tetris Pharma.

The Panel noted its rulings of breaches of the Code above, including in relation to promotion of a prescription only medicine to the public, which was a serious matter in itself. The Panel considered that Tetris Pharma had failed to maintain high standards and **a breach of Clause 5.1** was ruled.

\* \* \* \* \*

During the consideration of this case, the Panel was concerned that Tetris Pharma had considered that the complainant, by virtue of being a member of LinkedIn, had accepted to be contacted with promotional material about a prescription only medicine. The Panel did not have a copy of the terms and conditions that the complainant had accepted on LinkedIn but noted that the current LinkedIn advertising policies (accessed March 2024) stated, among other things, that advertisements for prescription drugs must target healthcare-related professionals **within US or Canada only**. The Panel requested that Tetris Pharma review the LinkedIn policies, terms and conditions to ensure that its UK-related activities complied with the platform's requirements as well as all applicable codes, laws and regulations.

**Complaint received**      **8 February 2023**

**Case completed**        **3 April 2024**