

Advertising complaints bulletin

*Issue number: A03
17 February 2004*

Ofcom
OFFICE OF COMMUNICATIONS

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Introduction

Some of the following complaints were received by the legacy regulators prior to the commencement of Ofcom. Under the terms of the Communications Act 2003, they became the responsibility of Ofcom on 29 December 2003.

The Communications Act allows for the Codes of the legacy regulators to remain in force until such time as Ofcom has developed its own Codes. These will be published at the end of 2004 following a full public consultation.

The Codes currently in force for advertising are:

- **Advertising and Sponsorship Code**
Radio Authority
- **Advertising Standards Code**
Independent Television Commission
- **Rules on the Amount and Scheduling of Advertising**
Independent Television Commission

These are all available on the Ofcom website: www.ofcom.org.uk

The cases have been considered against the above Codes.

- Some advertisements will have breached the relevant Code (Upheld).
- Others will not have breached the Code (Not upheld).
- However, there may be occasions where Ofcom recognises that a broadcaster has taken appropriate action in response to an issue (for instance, the broadcaster may recognise that an error has occurred and taken responsible steps to rectify it). Ofcom will consider that these complaints have been resolved. But even when such action has been taken, Ofcom may still consider it appropriate to find that the advertisement breached the Code due to the seriousness of the issues involved.

The layout of the report reflects these distinctions.

Upheld cases

Harmful

Slots of Fun

Southampton Television (RSL)

Issue A viewer of Southampton Television – a restricted service licensee – complained that she had seen an advertisement for an amusement arcade around children’s programmes.

Apart from limited exceptions such as football pools, bingo and certain lotteries, advertising for betting and gaming is prohibited on commercial television.

Response Southampton Television apologised for scheduling the advertising around children’s programmes, but considered that it was acceptable to promote amusement arcades as long as advertisements did not emphasise the betting and gaming aspect of their business.

Decision The advertisement referred to ‘high percentage payouts,’ urged prospective players to ‘try your luck and have a great time’ and ended with the sight and sound of a gambling machine paying out a large win. These are all elements promoting a betting and gaming service. Such a service was prohibited from advertising on television at any time of day, not just around children’s programmes.

Complaint upheld. Breach of Advertising Standards Code Rule 3.1(c), which prohibits television advertising for betting and gaming.

Misleading

Goldshield Vitality

Metalean

Issue	<p>A viewer complained about an advertisement broadcast on Goldshield Vitality (now no longer transmitting) for a dietary supplement called Metalean Green Tea Extract. The product was designed to assist weight loss. The advertising referred to a study which had been carried out on another proprietary green tea extract, not Metalean. The viewer complained it was therefore misleading to attribute the test results and claims about weight loss to Metalean.</p>
Response	<p>The broadcaster provided a copy of the study, which made it clear that another green tea extract, not Metalean, had been used. However, it felt that the advertisement made it clear that the claims referred to green tea extract in general rather than Metalean and was therefore not misleading.</p> <p>The study concluded that “oral administration of the green tea extract... has the potential to influence body weight and body composition via changes in energy expenditure and substrate utilization.”</p> <p>Goldshield Vitality judge that the green tea extract in Metalean has been “standardised to the same nutrient market compounds, caffeine and epigallocatechin gallate”, as the proprietary green tea extract used in the study and in their view, the same claims could be made.</p>
Decision	<p>Ofcom referred the substantiation to the Medical Advisory Panel (MAP) for advice. It noted that the study did not support the claim that green tea extract increased weight loss, only that it had the potential to influence it.</p> <p>MAP advised Ofcom that the green tea extract used in Metalean was unlikely to differ significantly in its caffeine and epigallocatechin gallate content from that used in the published study. However, there was no evidence to support the claim that green tea extract affects the rate of weight loss and as such, claims attributing increased weight loss to green tea extract should not be made.</p> <p>We concluded that the advertising did not make it sufficiently clear that the test results referred to in the advertising were for generic green tea extract and not the advertised product. The overall impression was that the benefits had been established by virtue of the study for Metalean and that viewers could therefore be misled.</p>

We accepted that Metalean had been advertised as part of a weight loss regime which included advice on dieting and exercise. However, based on advice from MAP that claims about increased weight loss were not supported, it judged that they were capable of misleading and should not be made.

Complaint upheld. Breach of Advertising Standards Code Rule 5.1, (Misleading advertising) 8.4.2 (Requirement for medical advice).

Misleading

Boots Triple Points

J Walter Thompson Group Ltd

Issue A viewer saw an advertisement on a Wednesday for the Boots Triple Points Offer, which said 'offer ends on Sunday'. After making a purchase at a Boots store on the Wednesday he was told that the offer only ran from Thursday to Sunday. The viewer complained that the advertisement did not make this limitation clear.

Response The agency explained that the advertisement should have gone on air in two blocks in separate weeks from 8pm on Wednesday to noon on Saturday. However, the media booker did not clarify the dates correctly and instead booked the advertisement to run as one block from Wednesday for a ten day period. Therefore, the advertisement was broadcast during a period when the offer was not running in store. The agency apologised for the mistake.

Decision We welcomed the agency's apology and acknowledged that the mistake had occurred through human error. Unfortunately because of the mistake the advertisement was misleading.

Complaint upheld. Breach of Advertising Standards Code Rule 5.2.3 (Qualifications).

Separation of advertisements and programmes

Your Guide To A Beautiful Body

Life TV

Issue A viewer saw a broadcast entitled 'Your Guide To A Beautiful Body' that looked like a programme but appeared to contain a number of advertisements for beauty products and services.

Rule 2.1.1 says: *"There must be a clear distinction between programmes and advertising"*

Response Life TV explained that it considered the broadcast to be a teleshopping advertisement and had broadcast it in one of their designated teleshopping windows.

Decision The broadcast did not qualify as teleshopping because it did not contain any offers for sale. The Rules on the Amount and Scheduling of Advertising (RASA) Rule 8.1 (a) defines teleshopping as follows:

"Teleshopping (also known as home shopping, advertorials, infomercials, etc.) is a form of advertising involving the direct offers to the public with a view to the supply of goods or services, including immovable property, or rights and obligations, in return for payment."

The broadcast was also not clearly identified as advertising as is required by Code Rule 2.1.1

Also the RASA Rule 7.1.1 and 7.1.2 state that:

7.1.1

Any advertisement that lasts longer than one minute should be particularly carefully assessed to ensure that there is no risk of confusion with programme material.

7.1.2

Except where the style makes it fully apparent that it is an advertisement, any advertisement that lasts longer than one minute must be flagged as such (e.g. by superimposed text) at the beginning, and at the end (if its character is not clearly established at the end).

This broadcast was not identified as advertising as required.

Complaint upheld. Breach of Advertising Standards Code Rule 2.1.1 and RASA 7.1.1, 7.1.2 and 8.1 (a).

Not Upheld cases

Offensive

British Heart Foundation

Euro RSCG WNEK Gosper

Issue An advertisement for the British Heart Foundation showed an artery with fatty deposits (atheroma) that had built up inside. It then showed a group of people smoking. The ash of their cigarettes was shown changing into the same fatty substance.

A total of 64 viewers complained that the images were distasteful and unnecessarily graphic and asked how such hard hitting scenes could be justified. Some questioned the effectiveness of the approach and asked whether there was medical evidence to back up the connection being made between smoking and heart disease.

Response The British Heart Foundation explained that the advertisement was designed to raise awareness of the link between smoking and coronary artery disease. It cited a British Medical Journal study conducted over a period of 40 years. This had shown how cigarette smoke enhances the build up of atheroma in coronary arteries. This in turn restricts blood flow and increases the risk of a heart attack. Similar awareness campaigns have aired in 26 countries throughout the world with overwhelmingly positive results.

The BHF's own research prior to running the campaign in the UK showed that the graphic imagery was an effective way to communicate with smokers and that the image of cigarette ash changing into the fatty substance helped reinforce the link in smokers' minds. It reported that the early signs of the effectiveness of the advertisement were encouraging, with an increase in calls to its smoking helpline and visits to its website.

Decision The BACC had approved the advertisement on the condition that it should not be shown before 9pm. In assessing such advertisements it's important to note the aims of the campaign and the reasoning behind the approach. Although it was clear that some viewers had found it objectionable, the importance of the message outweighed this. We do not believe that the content was generally unacceptable for transmission.

Complaints not upheld

The following table summarises complaints and interventions arising from breaches of the Rules on the Amount and Separation of Advertising:

Licensee	Sales House	Comments/Explanation
Grampian 2009239	Carlton	Artist separation – human error
C4 E4 2010576	C4 E4	Inappropriate Scheduling: A Foster’s advertisement was given a post 7.30pm restriction after complaints that it was unsuitable for broadcast before this time were upheld. However, the BACC did not update their system and the broadcasters scheduled it incorrectly on a few occasions before 7.30pm.