

Advertising complaints bulletin

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Ofcom
OFFICE OF COMMUNICATIONS

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Introduction

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.
- Others will not have breached the code.
- There may also be occasions when advertisements have breached the Codes but no action is necessary, since Ofcom recognises that a broadcaster has taken appropriate action in response to an issue (to rectify or bring about the rectifications of an error). Ofcom will consider that these complaints require no further action. Even when such action has been taken, Ofcom may still consider it appropriate to find the advertisement in breach of the Code due to the seriousness of the issues involved.

The layout of the report reflects these distinctions.

Breach of relevant Code

Misleading

Film trailer: The Hero SAB TV

Issue	A competitor channel complained that an advertisement, on SAB TV, said that the film <i>The Hero</i> was 'coming soon.' As the competitor held the sole rights to the film until 2006 it believed the claim was misleading.
Response	SAB TV believed the phrase 'coming soon' was justified as it had acquired the rights to the film after the competitors' rights expired in 2006 and would be showing it then. SAB TV had withdrawn the advertisement as soon as it became aware of the competitor's objection.
Decision	We concluded that viewers' interpretation of 'coming soon' would be a considerably shorter period than two years. It was also misleading for a broadcaster to imply that it had the rights to a film when in fact it did not. The advertisement was therefore in breach of Advertising Standards Code Rule 5.1 (Misleading advertising) on two counts.
Conclusion	<p>The advertising must remain off air until such a time as reasonable viewers would not be misled by the phrase 'coming soon.' Ideally, a period not exceeding four weeks.</p> <p>Ofcom was concerned to note that this was the fourth time it had found the licensee in breach of the Advertising Standards Code in less than two months. It is in dialogue with the channel on improvements that can be made to SAB TV's compliance procedures.</p>

Misleading

Lily Bulbs Ideal World

Issue	<p>As part of an 'Ideal World of Gardening' advertisement, a "pack of 75 mixed oriental lily bulbs" was offered for sale.</p> <p>A customer believed the advertisement was misleading, as the bulbs shown on screen were between six and eight inches in width, the package was described as mixed sizes and the advertiser had delivered him 75 bulbs that were all less than two inches.</p>
Response	<p>Ideal World said that "two bulbs in the sample are shown and described ... as being 'six inches' and 'seven inches' respectively" and "another bulb is noted as being 'three inches' in size. Visually it can be seen that the bulbs in the barrow are of various sizes and I would not say the impression given was that all seventy-five bulbs would be any particular size." However, the channel added that, "in view of the barrow of bulbs shown", it "had no doubt that [the complainant] would have felt disappointed if none of the lily bulbs he received were over two inches in length" and had offered the complainant a full refund.</p>
Decision	<p>The presenters' introduction to the lily bulb offer included: "You wait 'til you see the size of them." Later introduced as "a cartful", which was an accurate description of the sample shown, the presenters' reactions included, "look at the size of these", "...they're filling my hand, I can only lift two at a time" and "they're just awesome." While they referred to the dimensions quoted by the channel, and added, "some are big, some are small – it's a mixture", they also described them as "enormous" and "massive."</p> <p>A heavy emphasis was clearly placed on the size of the bulbs. While we acknowledged that Ideal World had offered the complainant a full refund, we agreed that the advertisement was misleading and in breach of Advertising Standards Code Rule 5.1.</p>
Conclusion	<p>The advertisement must not be shown again unless the available bulbs accurately reflect the size of the product shown and/or described on air.</p>

Offensive

Now magazine Heresy

Issue We received a complaint on behalf of the actress Jessie Wallace. A scripted verbal reference to her, made without her consent, appeared in an advertisement for *Now* magazine. She considered the reference was derogatory.

Response The Broadcast Advertising Clearance Centre believed that the reference – ‘(at 11.30pm) you were fabulously Jessie Wallace’ – was not derogatory.

Decision The Advertising Standards Code states that, with limited exceptions, no living person can be referred to without their permission.

Ofcom informed the BACC that Jessie Wallace had not given her consent for the advertisement and objected to it. The BACC felt that its initial approval had been justified. It did not consider the reference derogatory or offensive and didn’t think the actress would object. Once aware of the complaint, it abided by our instruction to withdraw the advertising pending the outcome of the investigation.

We found that the advertising had breached Advertising Standards Code Rule 6.5 (Protection of privacy and exploitation of the individual).

Conclusion We required that advertising making this reference to remain off air unless Jessie Wallace gave her permission for it to be used.

The following radio licensees failed to obtain central copy clearance (RACC approval) for the broadcast of a 'special category' of advertisement or sponsorship, in breach of Section 1 Rule 4.6 of the Advertising and Sponsorship Code:

Station	Advertiser	Special category
Wave 102 (Dundee)	MCB Opticians	Medical products (including medicines), treatments, services and establishments
96.3 QFM (Paisley)	Urban Escape	Health and/or beauty treatments and establishments