

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

Harmful

Tulsi/Baba/Paan Masala Chewing Tobacco ARY Digital

Issue A viewer complained that ARY Digital had broadcast prohibited tobacco advertising in breaks during coverage of a cricket match between India and Pakistan.

Response ARY explained that the advertisements were placed in India and were intended for its digital feed to the Indian subcontinent. Staff at the channel's Dubai facilities had included them in the digital feed to the UK by mistake. ARY apologised for the error, which it recognised was in breach, and said it had amended procedures for its staff to ensure that such a mistake would not happen again.

Decision We instructed ARY to remove the advertising immediately we received the complaint. It was a clear breach of Advertising Standards Code Rule 3.1(d) (Unacceptable categories – tobacco products), and for a similar reason to the one reported by the ITC (the previous regulator of commercial television) in June 2003.

Conclusion The advertising must not be broadcast again.

Misleading

DDAT Gower Productions Ltd

Issue An advertisement for DDAT – a diagnostic and treatment service for children affected by learning difficulties – said that its techniques achieved significant results. The complainant believed that there was no proof for this. The advertisement also contained a professional recommendation from a doctor. We were concerned that as an advertisement for a medicine or other treatment (which this service gave the impression of being) featured a medical doctor's recommendation.

Response The Broadcast Advertising Clearance Centre sought advice from an independent expert. He was satisfied with the basis of the claims.

He was also satisfied that although the treatment was medically supervised it was sufficiently different from medical treatment for, say, a disease. On this basis, the BACC did not think that the doctor's recommendation breached the Advertising Standards Code.

Decision A clerical error at the BACC meant that it could not provide us with the evidence to back up its position. When the BACC requested that the independent expert confirm his previous view, he did not. Instead he raised further questions about the validity of the treatment. We therefore found the advertising to be in breach of Advertising Standards Code Rules 5.2.1 (Evidence) and 8.1.1 (Assessment of medical claims). As the advertising also gave the impression that DDAT was a treatment, we also found it in breach of Rule 8.1.2 (Impressions of professional advice and support). Doctors and other medical professionals are not permitted to appear in advertisements giving the impression of professional advice or recommendations.

Conclusion The advertising is not currently on air. We required that it should not reappear unless BACC can show that it complies with the Advertising Standards Code.

Misleading

One Tel EHS Brann

Issue	An advertisement for One Tel said that a typical BT residential customer on the Standard tariff would save £81 per year by moving to One Tel's StandardUKTalk call package. BT complained that One Tel had exaggerated the amount of savings by deliberately making a comparison with a BT tariff that charged on a different basis from One Tel's StandardUKTalk. BT queried the basis on which it made its savings claims. BT believed that it would be fairer (but less advantageous to One Tel) for the advertising to compare StandardUKTalk with BT's Option 1 package.
Response	The Broadcast Advertising Clearance Centre believed that the comparison between BT Standard and One Tel StandardUKTalk was a fair one. It said that One Tel's call packages had been designed with BT's call packages in mind. Furthermore it was standard practice for competitors to make comparisons against BT Standard rates.
Decision	We found that the major feature of StandardUKTalk and BT Option 1 was that both packages charged a flat monthly fee in exchange for reduced per second call charges. However, BT Standard customers did not pay a set monthly fee, but consequently higher per second call charges. It would have therefore been fairer for One Tel to compare StandardUKTalk with BT Option 1. BT's objection to the comparison was justified. We therefore found that the advertising breached Advertising Standards Code Rule 5.3.1 (Accurate pricing).
Conclusion	We required that the advertising should not appear again in its present form.

Misleading

SMS Ringtone The Hits

Issue	We received a complaint from a viewer of The Hits channel who said that an advertisement for a premium rate ring tone service did not give the cost of the calls to use it. It is a code requirement that licensees abide by ICSTIS, (the regulator of premium rate telephone services), requirements. This requires that the likely call charges are displayed in any promotional material for a service.
Response	The service – using the short code 88222 – was run by The Hits. It said that the advertisement clearly stated the £3 cost of each ring tone.
Decision	When we looked at the advertisement, we found that the cost was given in on-screen text. However, it was far too small. The code requires such text to be at least 14 screen lines high – this was between 5 and 6 screen lines. We therefore found the advertising in breach of Advertising Standards Code Rules 5.4.2 (Superimposed text) and 11.1.1 (Premium rate telephone services).
Conclusion	We required that the advertising should not appear again until the cost of the service was sufficiently clear to viewers.

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

Licensee	Sales House	Comments/Explanation
five	five	Inappropriate Scheduling: Advertisement for a film release had a post 9pm restriction but, due to human error, was shown at 8.52pm

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

Station	Advertiser	Special category
2BR (Burnley)	New Image Beauty Clinic	Health and/or beauty treatments and claims