

Advertising complaints bulletin

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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

Carphone Warehouse 95.8 Capital FM

Issue A commercial for the advertiser's 'Memory Master' service featured a man who recounted how he had lost a woman's email address and phone number when he lost his mobile phone. The advertisement then stated: "The Memory Master machine at the Carphone Warehouse will store all your numbers safely for you. So if you ever lose your phone, you don't lose the people in it."

A listener believed the advertisement implied that "all the phones numbers and email addresses in your phone can be stored, when in fact only the first 99 phone numbers (the ones on the SIM card) and none of the email addresses can be stored" by the advertiser.

Response The Radio Advertising Clearance Centre (RACC) said it did not believe the advertisement implied that emails would be stored by the advertiser, as "the reference to emails [was] part of the creative and... mentioned in a conversational way, rather than being linked directly to the Memory Master service." It added: "...we feel that listeners will have sufficient understanding of the product to realise that the memory service will be linked to the SIM card. ...We do not believe that listeners would expect the service to do more than save numbers on [it]."

The advertiser confirmed that its Memory Master Service "does not include email addresses or numbers stored on the actual phone." However, it added that it was "currently looking into providing this as a service."

Decision We agreed that the character's reference to email addresses was anecdotal and did not imply that their storage was part of the advertised service. However, the advertisement not only stated that the Memory Master machine would store all numbers but also assured listeners that they would not lose the people in their phone if they lost the phone itself. We therefore believed that listeners were likely to assume that all numbers were stored by the Memory Master machine, rather than a limit of the 99 on their SIM cards, and that the advertisement was likely to mislead. It therefore breached Section 2 Rules 3a and 3b (Misleadingness) of the Advertising and Sponsorship Code.

Conclusion The advertisement must not be broadcast again in its present form.

Misleading

Star Trek: The Collectors Edition GE Fabbri

Issue An advertisement for this magazine and DVD partwork claimed that “Now the whole of Star Trek can be yours...”, “Collect the whole of Star Trek on DVD...” It also said, “Every fortnight you get a new DVD to build up this historic collection from Captain Kirk’s first missions through the Picard years and beyond.” Two viewers complained that according to the magazine’s own website only the feature films and the series The Next Generation were to be included.

Response The advertiser apologised for any confusion its website had caused, and confirmed its intention to release all of the Star Trek series. It explained that for the first 70 issues the Star Trek films would be interspersed between DVDs of episodes of The Next Generation. Once The Next Generation had come to an end, another Star Trek series would be issued. No decision had been made as to which one this would be.

Decision We acknowledged that the plan was to eventually issue all of the films and Star Trek television series. However, it would take nearly three years before one of the other four Star Trek series would be available. The commercial gave the impression that DVDs from the various series would be issued which in time would form a complete collection. In reality, only The Next Generation (and the feature films) was available for the foreseeable future. The advertising therefore breached Advertising Standards Code Rule 5.1 Note 3 (Misleading advertising).

Conclusion **The advertisement must not be shown again in its present form.**

Misleading

The Sun free PC games offer TBWA\London

Issue	<p>An advertisement for The Sun PC game promotion offered £170 worth of PC games. It included a Simpsons Hit and Run game said to be a “limited edition exclusive”.</p> <p>Viewers who took advantage of the Simpsons offer complained that the game was no more than (and indeed labelled) a demo. It had far fewer features than the shop bought version.</p>
Response	<p>Initially the advertiser said the game was not a demo but was complete and compatible with what customers could buy in a shop. Later it admitted that the “limited edition exclusive” was “level one of the full retail version of the game,” which did not contain the entirety of the retail version.</p> <p>The advertiser said that the “demo” label had appeared in error. It implied that the version supplied was not playable, when in fact it was. Vivendi, the supplier, offered to supply News Group Newspapers Limited with full retail versions of the game for those viewers who have complained.</p> <p>The advertiser said that the reference “limited edition exclusive” was intended to make clear that the features on offer with the game supplied via The Sun offer were limited as compared to the features viewers would get with the retail version.</p> <p>BACC said it had been assured in writing at script stage that all games were full games and not just highlights.</p>
Decision	<p>We considered that there was insufficient advice to viewers that the Simpsons Hit and Run game had limited features compared to the shop bought version and that the advertising ought to have made that clear. We also regarded the term “Limited edition exclusive” to be commonly understood (and used) in respect of stock levels. It is not usually used to warn viewers that the product is of inferior quality as compared to other versions available elsewhere. The advertising was in breach of Advertising Standards Code Rules 5.1, 5.2.2 and 5.2.3.</p>
Conclusion	<p>The advertising must not be shown again in its current form.</p>

Misleading

Fantasy Channel TVX Subscription Offer

Issue	An advertisement offered subscriptions to The Fantasy Channel (TVX). A viewer complained that the advertisement did not make it clear that there was a compulsory minimum subscription of 12 months.
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Response	The Fantasy Channel explained that customers were given this information when they telephoned to subscribe.
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Decision	We require that all important limitations and qualifications be made clear in the advertising itself. This is regardless of what information is given to a customer when he or she contacts an advertiser. As there was no indication in the advertisement that subscription was for at least 12 months, we found it to be in breach of Advertising Standards Code Rule 5.2.3 (Qualifications).
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Conclusion	We required that the advertising should not reappear without the important qualification to the offer being made clear in the advertisement.
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Misleading

Norstar Ideal World

Issue	<p>An infomercial offered Norstar magnet therapy products for sale.</p> <p>Ofcom has concluded an investigation into these products which was initiated by its predecessor the Independent Television Commission. There were concerns about the products' efficacy. A range of medical/veterinary claims were made or implied, which included assisting the opening of airways, "blocked" blood flow and the alleviation of eye strain. Ofcom has concluded the subsequent investigation.</p>
Response	<p>Ideal World submitted a wide range of documentation provided by the advertiser, which included "A Brief History of Research into Bioelectrical Phenomena" and reports of various clinical trials that had used magnetic field therapy.</p>
Decision	<p>Our expert – a member of our Medical Advisory Panel – said that the advertiser sought "to claim the successful treatment of a number of different conditions ... (but) without producing evidence that their product [was] indeed successful in their clinical contexts." He acknowledged that a submission containing "an extensive review of the scientific literature on magnetic therapy ... to some extent [added] <i>indirect</i> credence to some of [the advertiser's] clinical claims". However, he added that "the magnets used in these clinical experiments were seldom Norstar magnets and differed significantly in many respects from the [advertiser's] products." He therefore concluded that "not enough clinical research [had] been done with Norstar products", and believed "it [was] not scientifically acceptable to extrapolate the results obtained with one type or make of magnet with those of another type or make."</p> <p>We therefore believed that the advertiser's claims remained unsubstantiated and that the infomercial breached Rule 5.2 (Claims) of the Advertising Standards Code.</p>
Conclusion	<p>The advertised claims must not be broadcast again, unless substantiated by valid scientific evidence based on trials of the advertiser's own products.</p>

Misleading

Glist

Abbott Mead Vickers BBDO Ltd

Issue	An advertisement for Glist dishwasher detergent claimed that the product had a 'built in glass protection formula for a longer lasting shine.' It showed a woman removing from her dishwasher a glass that had gone cloudy over time, and asking whether there was a solution. She was then seen looking at the same kind of glass in perfect condition, saying 'see – it works.' A viewer complained that the advertisement directly implied the product could repair damage that had already been done to glassware. When he bought the product, the packaging said that the clouding effect was irreversible.
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Response	The Broadcast Advertising Clearance Centre – which had approved the advertisement for transmission - believed that the advertisement as a whole clearly spelt out that the product was able to avoid future rather than repair existing damage. The advertising agency conducted research and showed the advertisement to a group of 1,924 people. 1,193 (62%) expected the product to 'clean or shine dirty glasses.' The BACC and the agency stated that this meant that viewers would not assume the product could repair cloudy glasses.
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Decision	We judged that the advertisement implied that the detergent would reverse the clouding effect. Crucially the research does not contradict this, as it appears only to state the obvious, that Glist cleans glasses. Importantly, the advertiser's research did not ask the key question, under investigation, of whether Glist could reverse the clouding effect.
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We considered it was in breach of Advertising Standards Code Rule 5.1 (Misleading advertising).

Conclusion	The advertisement must not be shown again in that form.
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Misleading

Top Up TV HCA Entertainment

Issue	<p>An advertisement claimed... “Top up TV boosts your current channel line-up with ten of the most popular digital channels...watch UK Gold, Discovery, E4.. and many more through your existing TV aerial”.</p> <p>Twelve viewers complained that they had understood the offer to mean that they would have full access to all ten channels. They were therefore disappointed to find that the times of day when the ten channels were available was limited by the provider.</p> <p>Viewers suggested that the advertising was misleading because this limitation to the service was not made clear.</p> <p>Advertising Code Rule 5.1 says:</p> <p style="padding-left: 40px;">No advertisement may directly or by implication mislead about any material fact or characteristic of a product or service.</p> <p style="padding-left: 40px;">Note 3 provides that even if everything stated is literally true, an advertisement may still mislead if it conceals significant facts or creates a false impression of relevant aspects of the product or service.</p>
Response	<p>BACC said “viewers do get all ten channels, they are just broadcast at different times of day”. It said that most satellite channels are not streamed continuously and that the “ad does not explicitly state you receive constant streaming”.</p>
Decision	<p>Although ten channels were listed as part of the package viewers would have a choice of a maximum of only five at any one time. This was then reduced to just two in the early hours of the morning. Importantly, of the five channels available, transmission times were less on Top Up TV than compared to other carriers (for example satellite or cable).</p> <p>We felt that the service was therefore limited and viewers should have been informed. The advertising breached Rule 5.1 of the Code.</p>
Conclusion	<p>The advertising may not be shown again in its current form.</p>

Harm and Offence

Somerfield

Key 103 FM (Manchester); Heart 106.2 (Greater London);
Forth FM (Edinburgh and East Central Scotland)

Issue A commercial featured a husband challenging his wife's repetitive routine of a set meal for each day of the week. While he wanted lasagne, he was told that, as it was Friday, he was to have faggots. He responded: "I've nothing against faggots, I just don't fancy them."

Three listeners were offended, as they believed the husband's response alluded to homosexuals, 'faggots' being a derogatory term for them.

Response The advertiser said: "The ad refers only to food products. 'Faggots' were chosen to demonstrate the idea because they are commonly perceived as an outdated and slightly comical product, not because of any possible allusions to homosexuality." It also chose to "reassure [us] that the ad was on air for only five days ... and ... [did] not plan to run the advert again."

The Radio Advertising Clearance Centre (RACC) confirmed that "the reference to faggots was clearly made in the context of food..." and added that the script was one of a number approved for a campaign to persuade people to shop regularly and "grab whatever you fancy, when you fancy it."

Decision Irrespective of the advertiser's denial of intent and the brevity of the campaign, we believed that the aired comment was likely to have been perceived at best as innuendo. The phrase "I've got nothing against faggots, I just don't fancy them" could clearly be seen in connection with homosexuality. As the term 'faggot', when used in this context, is a highly derogatory term, we believed that it was capable of causing serious offence. The advertisement had therefore breached Section 2 Rule 9 (Good Taste, Decency and Offence to Public Feeling) of the Advertising and Sponsorship Code.

Conclusion The advertisement must not be broadcast again in its present form.

No breach of relevant Code

Harm and Offence

Trojan Condoms Media Therapy Ltd

Issue An advertisement for Trojan condoms showed a close-up shot of a woman's moving head and gradually smiling face. Taken with the voiceover, "designed to give you both a warm sensation. New shared pleasure from Trojan condoms," the clear implication was that she and her partner were making love.

We received complaints from 209 viewers who felt that the portrayal of what was in effect a simulated orgasm was unnecessarily and overly explicit, and inappropriate for the programmes around which it was shown. These included *Hell's Kitchen*, a new series of *Big Brother* and some unusually late, 10pm showings of *Coronation Street*. Some complainants could accept condom advertising in the context of a safe-sex message, but thought it was offensive or irresponsible to connect the product with enjoyment of sex.

Response The BACC had approved the advertisement with a post-9pm restriction and a requirement for sensitive scheduling. The BACC advised the advertiser to avoid scheduling around Coronation Street in future, regardless of the time it was shown, but believed it was acceptable at other times after 9pm.

Decision Condom advertising is relatively uncommon on mainstream channels, and it is especially unusual for it to focus on a sex act, as this one does. We felt while the advertisement was strongly suggestive it was not explicit, and didn't think it was out of place after 9pm. We believe that the BACC's decision to apply a post-9pm restriction with a requirement for sensitive scheduling was correct and appropriate.

The advertising did not breach the Advertising Standards Code.

Conclusion No further action.

Misleading

DFS Advertising

PWLC

Issue A viewer complained that DFS advertising was misleading for continually advertising its sales with “Ends Sunday” only to be followed the next week with advertising which said the sale had been extended.

An advertisement for DFS’s Double Discount sale claimed the sale ended 4 January. DFS decided to extend this sale until 18 January. An advertisement was broadcast between 7 and 10 January which explained that the sale had been extended and said “It’s the last few days for double the discount at DFS.” The following week, advertisements were broadcast which explained again that the sale had been extended and that it ended that Sunday. Ofcom asked why the first advertisement said “it’s the last few days” when, depending on when it would have been seen, there were between 8 and 12 days left of the sale.

DFS also had a Single Discount sale, which was to end 1 February. An advertisement was broadcast between 21 and 25 January and said “It’s the last few days to save in the sale at DFS.” The following week advertisements were broadcast which explained it was the last chance to save in the sale as it ended that Sunday. Again, Ofcom asked why the first advertisement said it’s the last few days to save in the sale when, depending on when it was seen, there were between 7 and 12 days left.

Response DFS said that Double Discount products featured as an integral part of its over-all winter sale which started on 1 December 2003. It said that viewers who saw the first commercial (for either the Double Discount or Single Discount sale) would understand two things. First, the sale had been extended and second, the offer was in its last few days. It regarded 12 days as a comparatively short time-span during the life of the winter sale. And, in the context of the length of the sale as a whole, it felt the final 14 days were the ‘last few days’ and that the public would understand this. It also said that the follow-up commercials made it quite clear when the end date of the sale was.

The BACC agreed with the advertiser’s response and said it felt that the term last few days would be understood by most viewers.

Decision

We felt that viewers would interpret the phrase “the last few days” as meaning less than a week when in fact it denoted, in this advertisement, a longer period. This was misleading and gave viewers the impression that the sales ended sooner than they actually did, which could have influenced their purchasing decisions.

We also do not accept that the understanding of “few” in the phrase “last few days” of a sale would or should be dependent on how long the sale as a whole, lasted. This would, in any event, be dependent on viewers having seen previous advertisements for the sale (which could not be guaranteed).

Nevertheless, we accept that neither Ofcom nor its predecessor had been asked to investigate this issue, in this context, before. Accordingly, we acknowledge that the advertiser had a certain expectation based on its previous unchallenged custom and practice of what was acceptable.

Guidance: *However, we require that future advertising which includes the term ‘few days’ in any form, may only do so if it refers to a period of less than a week. Similarly, care should be taken when using the term ‘few’ in whatever reference so as not to give the impression of a smaller number than is actually meant.*

Conclusion

No further action but guidance given.