

Advertising complaints bulletin

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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

From 1 November, the Advertising Standards Authority (ASA) took responsibility for dealing with complaints about television and radio advertising.

However, the following decisions were made by Ofcom prior to the transfer of advertising regulation to the ASA.

Breach of relevant Code

Misleading

CSL Suites Equinox Film/TV Production

Issue	<p>An advertisement for CSL said that its sofas came with a five year guarantee.</p> <p>A viewer complained that the guarantee was restricted to the structure of the furniture only, but the advertisement did not state this.</p>
Response	<p>In 2002, the Independent Television Commission upheld a complaint against a CSL advertisement that did not state the guarantee was limited to the structure only. Since then, the BACC has ensured that where CSL's advertising referred to this guarantee, the limitation was made clear.</p> <p>A change in BACC staff meant that the issue was not picked up in this latest advertising. The BACC apologised for the error and withdrew the advertising.</p>
Decision	<p>Viewers would assume that the guarantee applied to all parts of the furniture and not just its structure. Even though the advertisement was in breach of Advertising Standards Code Rule 5.2.3 (Qualifications), we recognise that this was not intentional and down to an error.</p>
Conclusion	<p>No further action is needed since the original advertisement has been withdrawn.</p>

Misleading

ntl Telephone Line Rental ntl

Issue	An ntl advertisement for its telephone service claimed that it was the “UK’s cheapest line rental at £9.50 per month.” A viewer disputed this as his line rental was charged at £5.25 a month.
Response	ntl told us that when the advertisement first went on air on 1 June 2004, it had established that the information had been correct. The advertisement was pulled on 24 September when we contacted ntl with the viewers concerns.
Decision	<p>Absolute claims in advertising, such as those used here, should be treated with great caution (Advertising Standards Code Rule 5.2.1 Note 3). Licensees should be aware that actions by competitors, or changes in the market, can easily make absolute claims invalid. Therefore, constant checks need to be made to ensure that substantiation for any claim is still valid.</p> <p>As ntl’s line rental was no longer “the cheapest in the UK”, the advertising was in breach of Advertising Standards Code Rule 5.2.1. (Evidence)</p>
Conclusion	The advertisement must not be shown again without evidence to back the claim.

Misleading

Top 10 Deals Thomas Cook TV

Issue On Sunday 12th September, within a section called 'Top 10 Deals', Thomas Cook TV advertised "14 nights per family" holiday for £779 for a 4* hotel in Cuba ("price based on 2 adults sharing a twin room"). The viewer called only to discover that the advertisement should say per person - and not per family. The operator at the call centre said as this was a rolling advertisement they could not take it off air. The viewer was concerned that Thomas Cook was showing a knowingly misleading advertisement.

Response Thomas Cook TV said the error was picked up internally by the channel through its own monitoring and compliance procedures at the start of business on Monday 13 September and a correction was made immediately.

It said it had specially designed systems in place to allow information to be updated quickly if there were any necessary changes during the time a programme was on air. It added that its staff were aware of this and if the viewer was told otherwise then this was incorrect, for which it apologised. Steps were taken to remind staff of the procedures in place.

Decision Although we acknowledged the quick action taken by the advertiser, at the time of broadcast, the advertising was in breach of Advertising Standards Code Rules 5.1 (Misleading Advertising) and 5.3.1 (Accurate pricing).

Conclusion No further action since the advertisement has been withdrawn.

Misleading

Travel City Direct Teletext

Issue A Florida Fly-drive holiday for June 2005 departing from Newcastle was advertised by Travel City for £219. However, when a viewer contacted the advertiser, he was told there was no holiday at that price. It continued to be advertised at that price, and was further reduced to £209 a few days later. When the viewer contacted Travel City again, he was told the holiday was not available at that price either.

Response Travel City checked its flight/product pricing documents for the period and was unable to find any Newcastle departures for the advertised price. It believed the on screen figure was the result of a typing error while loading the fares on to Teletext. Travel City told us that it has a policy in place to spot any discrepancies regarding advertised prices, but on this occasion it appeared not to have worked. It took immediate action to ensure that this did not happen again.

Decision Although the result of an error, the fly-drive holiday was not available at the advertised price for the time the advertisement was on air. It was therefore misleading and in breach of Advertising Standards Code Rule 5.1 (Misleading advertising).

Conclusion No further action, as the advertisement is no longer on air.

Misleading

Icicle Fairy Lights QVC

Issue QVC advertised a set of 180 Icicle Fairy lights on a cable which had a total length of 21 metres for use indoors or outdoors. A viewer complained that when she purchased the lights she was sent a box with only 48 icicles, not the 180 she expected.

Response QVC's response was that the product did contain 180 lights as each icicle contained 3 or 4 light emitting diodes resulting in 45-60 illuminated icicles. They did not believe their presentation was misleading but they would ensure that future presentations made it absolutely clear that there was a distinction between the number of icicles and lights.

Decision We did not find any explanation in the advertisement that there were 3 or 4 lights in each icicle and that therefore the set would only comprise of 45-60 icicles. The emphasis was on the length of the cable and the amount of light the set would give. We believe that these descriptions, added to the repeated references of "you get a set of 180 of these icicle fairy lights", were likely to lead viewers to believe they would receive 180 fairy lights. We therefore found the advertising to be in breach of Rule 5.1 (Misleading Advertising) of the Advertising Standards Code.

Conclusion The advertising must not be shown again in its current form.

Misleading

Rapid White TV Shop

Issue

A viewer complained that after he purchased Rapid White teeth whitening product, on the understanding that he would receive a 30 day money back guarantee. However, he was told his guarantee did not apply as he had opened the packaging.

Upon further investigation we noted that various claims were made in the advertisement about the product's efficacy; "in just three days your teeth are three shades whiter – guaranteed", "you'll see results in just days instead of months – we guarantee it". We also asked TV Shop to substantiate these claims.

Ofcom also queried the claim "this unbeatable offer for £24.99" as the product was sold cheaper elsewhere.

Response

TV Shop said that although the advertisement stated that there was a 30 day guarantee this was qualified further by saying "terms and conditions apply, see invoice"

It explained that it had added a disclaimer "speed and degree of whitening will vary by individual" to qualify the claim "up to three shades lighter – guaranteed" because its pilot study had shown that one person out of the 25 studied had experienced no tooth whitening after 14 days use.

TV Shop said that it could not defend its claim "this unbeatable offer" given that the product could be bought elsewhere at a lower price.

Decision

The advertisement emphasised the effectiveness of the product and so viewers would understand the guarantee to mean – "satisfaction with our product, or your money back". We therefore did not feel that it was sufficiently clear to viewers that the packaging had to be left unopened in order to qualify for a money back guarantee.

The use of the word "guaranteed" contradicted the disclaimer "speed and degree of whitening will vary by individual" and could not be used when in fact the product was not guaranteed to work for everyone. In addition we were concerned that the advertisement's claims were based on a pilot study in which there were only 25 participants.

To claim that the Rapid White price offer was “unbeatable” was misleading as it was available elsewhere at a lower price. We therefore found the advertising to be in breach of Rules 5.1 (Misleading Advertising) and 5.2.1 (Adequate objective evidence to support all claims) of the Advertising Standards Code.

Conclusion

The advertising must not be shown again in its current form.