

Ofcom Content Sanctions Committee

Consideration of sanction against

Television Concepts Limited in respect of its service Look4Love (TLCs 746).

For

Breaches of seven rules in the BCAP TV Advertising Standards Code (incorporating Rules on the scheduling of television advertisements):

- Rule 4.2.3 Treatments unsuitable for children
- Rule 5.1 Misleading advertising
- Rule 5.4.2 Superimposed text
- Rule 6.1 Harm and offence
- Rule 7.3.1 Mental harm
- Rule 7.3.7 Use of scheduling restrictions
- Rule 11.1.2 Premium rate services

and

Breach of Television Licensable Content Service licence, Condition 17.1: Failure to comply with a direction from the Advertising Standards Authority (ASA) that the offending advertising be removed from the service, despite repeated requests and despite that direction being subsequently reinforced by Ofcom.

Decision

- To give notice to Television Concepts Limited that Ofcom intends to revoke its licence, 'Look4Love'; however in accordance with section 238 (2)(c) of the Communications Act 2003 ("the Act")¹, Ofcom is first required to specify a period in which Television Concepts Limited should take such steps to remedy the contravention or failure, and should only proceed to revocation if it considers that Television Concepts Limited has failed to take those steps within the specified period; and
- To impose a financial penalty of £175,000 (payable to HM Paymaster General) on Television Concepts Limited.

Summary

On the basis detailed in the Decision, under powers delegated from the Ofcom Board to Ofcom's Content Sanctions Committee ("the Committee"), Ofcom has decided:

- 1) Look4Love is a free-to-air service provided by Television Concepts Limited ("Television Concepts" or "the licensee").

¹ The Television Licensable Content Service licence (Condition 29) provides that failure to comply with a condition of the licence or with any direction issued by Ofcom (or by any body to whom Ofcom has contracted out functions), is a ground for revocation of the licence.

- 2) The licensee transmits adult material under the title “Babestar.tv Live XXX”. It features a number of women in various states of undress using sexual actions and promoting a premium rate chat line. It also broadcasts extremely explicit sexual language, including verbal “invitations” to anal and oral sex.
- 3) The Broadcast Committee of Advertising Practice (“BCAP”) monitored samples of the licensee’s advertising output and found it to be in serious breach of the relevant Code: the BCAP Television Advertising Standards Code (“the Advertising Code”)². In particular, sections concerning offence, protection of children, the promotion of sexually explicit premium rate services and misleading advertising were seriously breached. The Advertising Standards Authority (“the ASA”) considered the material was “unacceptable”, especially with respect to the language, images, and references to young girls. The ASA directed the licensee to suspend the material with immediate effect. The licensee failed to comply with this direction and subsequent instructions to comply from the ASA.
- 4) On 12 May 2006, the ASA referred the licensee to Ofcom, (under the terms of the Memorandum of Understanding between the ASA and Ofcom) for the consideration of the imposition of a statutory sanction for serious breaches of the Advertising Code and a failure to comply with the ASA’s direction.
- 5) Following the licensee’s apparent failure to comply, Ofcom also warned Television Concepts in writing that its failure to comply with a direction given by Ofcom (or any body to which Ofcom has contracted out its function e.g. the ASA) could result in the revocation of its licence.
- 6) Ofcom considered the breaches of the Advertising Code to be very serious. It considered the material transmitted by Television Concepts was seriously unacceptable on a licensed service in unencrypted form. In particular, the extreme explicitness of the language transmitted (see Annex 2³) was of such an adult sexual nature that it was wholly unsuitable for transmission on a free-to-air service.
- 7) In short, on 8 May 2006, Simon Woolnough (Managing Director of Television Concepts) was given a direction to suspend his advertisement with immediate effect; the ASA re-iterated this direction twice. Ofcom re-enforced the ASA’s direction three times, and notified the licensee, on 15 May 2006, that failure to comply with a direction is a ground for revocation. Nevertheless, the broadcaster admitted that it was not until 28 May 2006 that the material ceased to be broadcast. The licensee stated that he had been advised by a third party who was supplying his channel with material, that the material was suitable for broadcast on a free to air channel.
- 8) On the basis of the evidence provided, the Committee was very concerned that the licensee, Simon Woolnough, who was responsible for ensuring compliance with all relevant Codes in accordance with Television Concepts’ licence obligations, appeared to lack a proper understanding of what the relevant Code(s) required. Furthermore, having decided to accept the view of a third party supplier, he continued to transmit the material despite having been issued with a direction to suspend it, followed by repeated instructions from the ASA to comply with the direction and warnings from Ofcom. The Committee considered the licensee had failed to take proper responsibility for the compliance of the service in accordance with its licence obligations. The Committee was particularly concerned that the licensee was unable to provide it with any satisfactory explanation to why it had failed to comply with the ASA’s direction and repeated instructions, and warnings from Ofcom. Such failure, in Ofcom’s view, is unacceptable. Failure to comply with a direction is a most serious offence and is a specific ground for revocation under the licence.

² See Annex 1 for ASA Adjudication.

³ It should be noted that Annex 2 contains extremely graphic and sexually explicit language

- 9) Moreover, on the basis of the evidence provided to it, it also appeared to the Committee that the licensee's decision to ignore the ASA's direction was not due to an accident or misunderstanding – the licensee accepted that the requirements of the direction were clear. When faced with the option to become compliant he chose, instead, to continue to broadcast commercially profitable, but non-compliant material, so demonstrating a seriously reckless disregard for the regulator.
- 10) Those broadcasters which operate in this 'adult' market should be aware of the importance Ofcom attaches to compliance with the Codes with respect to protection of children, harm and offence and encryption. They should be aware that Ofcom will not tolerate deliberate and/or repeated breaches of the Codes, especially where those involved have been the subject to directions and/or warnings.
- 11) Taking into account all of the facts and matters to which the Committee refer (see full adjudication), the Committee decided that it should reflect the very serious and repeated nature of the Code and licence breaches by instituting the process for revocation of Television Concepts' licence for 'Look4Love' under section 238 of the Communications Act 2003.
- 12) The Committee also fined Television Concepts £175,000 (payable to HM Paymaster General).

Background

1. Look4Love (TLCS 746) was licensed as a teleshopping service on 11 April 2004. The licensee, Television Concepts Limited ("Television Concepts"), started transmitting on 25 January 2005. During the period under investigation, Look4Love remained classified as a "teleshopping" channel⁴.
2. The regulation of advertising standards is a function of Ofcom that has been contracted out to the Advertising Standards Authority ("the ASA") under the Deregulation and Contracting Out Act 1994.

Advertising Standards Authority (ASA) Investigation

3. The Broadcast Committee of Advertising Practice ("BCAP") monitored a sample of the output of Look4Love from 22.00 hours on 4 May 2006. The Monitoring Manager considered that the content raised a number of issues regarding compliance with the BCAP Television Advertising Standards Code ("the Advertising Code").
4. The output at that time was transmitted under the title "Babestar.tv Live XXX" which featured a number of women in various states of undress using sexual actions and extremely explicit sexual language to promote a premium rate chat line. This included apparent masturbation and verbal 'invitations' to both anal and oral sex. The ASA was also particularly concerned about references to taking advantage of a "barely legal" young girl.
5. In view of the seriousness of the issues, the ASA invoked its "fast track" procedures for handling the case. Under ASA complaints procedures, in exceptional circumstances, for example where public harm is likely to result from the continued transmission of a

⁴ It should be noted, for information, that Ofcom has subsequently approved a re-designation of Look4Love's licence from a teleshopping licence requiring compliance with the BCAP TV Advertising Standards Code to being an editorial licence requiring compliance with Ofcom's Broadcasting Code (for editorial material) as well as the BCAP TV Advertising Code (for advertising material). It was made clear to the licensee at the time of re-designation that any agreement to change the nature of the service would be strictly without prejudice to the referral from the ASA to Ofcom of the Look4Love TV service for consideration of a statutory sanction for breaches of the BCAP Television Advertising Standards Code and its licence.

commercial, the ASA will direct a broadcaster (or broadcasters) on the basis of a draft adjudication to suspend a commercial immediately pending investigation and adjudication by the ASA Council at a later date. The ASA will make such a direction only when it believes there is *prima facie* evidence of a serious breach of the codes. The ASA Chairman (or in his absence the senior independent member), in consultation with the Director General (or senior manager), one independent and one industry Council members, must have agreed to such a direction.

6. On 8 May 2006, the ASA sent the licensee, by email, a draft adjudication and direction which instructed the licensee to suspend the offending advertising with immediate effect.
7. The draft adjudication identified five separate issues, which amounted to breaches of seven rules under the Advertising Code:
 - Rule 4.2.3 Treatments unsuitable for children
 - Rule 5.1 Misleading advertising
 - Rule 5.4.2 Superimposed text
 - Rule 6.1 Harm and offence
 - Rule 7.3.1 Mental harm
 - Rule 7.3.7 Use of scheduling restrictions
 - Rule 11.1.2 Premium rate services
8. In spite of the draft finding, Look4Love failed to comply with the ASA direction to suspend the offending advertising. Instead, it continued to transmit "Babestar.tv Live XXX" and included material very similar in nature to the output that the ASA considered to be in serious breach of the Code. Examples of the sexually explicit nature of the advertising transmitted on 10, 11 and 12 May 2006, transcribed by the ASA, are attached at Annex 2.
9. On 9 May 2006, the Managing Director of Television Concepts Limited, Simon Woolnough, sent an email to the ASA in response to the draft finding indicating that Look4Love no longer wished to be considered as a teleshopping channel but instead as a general entertainment channel (categorised by Ofcom as editorial/programming). The licensee claimed that as a general entertainment channel its output would be subject to Ofcom's Broadcasting Code, and not to the Advertising Code. Having indicated that it wished to change its status the channel asserted that its output should now be considered as "programming" rather than "advertising" and that it considered "Babestar.tv Live XXX" to be fully compliant with the Ofcom Broadcasting Code.
10. Further, Television Concepts also sought to transfer control of the channel, Look4Love, to a different company ("the company") with the intention of transmitting under that company's licence. This was brought to the attention of the ASA and Ofcom on 9 May 2006 by an email from that company (an existing Ofcom licensee) in which that company purported to have "*taken over the running of channel 916 known as Look4Love TV*" and to be broadcasting the offending material under a different licence in that company's name. issued for a different type of service. However, the material broadcast remained branded as Look4Love and continued to broadcast Look4Love output.
11. On 10 May 2006, Ofcom sent an email to both Simon Woolnough and the company advising them that Ofcom had received no request for changes to the content, name or nature of service for either the Television Concepts Limited licence or the company's new licence and that any change would need to be made in writing and would be dealt with in accordance with the normal licensing procedures.
12. On 10 May 2006, the ASA sent an email to Ofcom formally notifying Ofcom of Look4Love's failure to comply with a direction to remove the offending "Babestar.tv Live XXX" advertising and urged Ofcom to reinforce the ASA direction.

Ofcom Investigation

13. On 10 May 2006, Ofcom informed both Television Concepts and the company that the existing licensee (Television Concepts) must continue to operate using its existing licence and must continue to operate as a teleshopping channel until any licence issues were resolved through the proper licensing process. Television Concepts was also informed that it must comply with any rules governing advertising content and with any directions issued by the ASA.
14. On 12 May 2006, Ofcom received formal notification that the ASA had found the service Look4Love in breach of the Advertising Code (see Annex 1 for ASA adjudication). The ASA also formally referred the case (under the terms of the Memorandum of Understanding between the ASA and Ofcom) to Ofcom for the consideration of the imposition of statutory sanctions. In the view of the ASA, the breaches were considered extremely serious. The licensee also failed to comply with a direction issued by the ASA on 8 May 2006 (at 18.28) requiring the “Babestar.tv Live XXX” advertising to be removed and subsequent instructions to comply with that direction issued on 9 May 2006 (at 13.19 and 16.49).
15. Material similar to that which had been found in breach of the Advertising Code and was subject to the ASA’s direction was still being transmitted on 10, 11 and 12 May 2006.
16. On 15 May 2006 – eight days after the ASA’s direction had been issued, material similar to that which had been found in breach of the Advertising Code was still being transmitted on Look4Love. Ofcom informed Television Concepts that failure to comply with a direction issued by Ofcom (or any body to whom Ofcom has contracted out its functions under the deregulation and Contracting Out Act 1994) was a ground for revocation under its licence (section 238(1)(a) Communications Act 2003 and Condition 29 of Ofcom Television Licensable Content Service licence).
17. For a short period after the 15 May 2006 (when Ofcom had again re-enforced the ASA’s direction) the offending material was suspended. However, similar advertising (albeit in a “toned down version” according to Television Concepts) reappeared again on the service. The licensee continued to broadcast this material and only ceased its transmission on 28 May 2006.

Referral to Ofcom’s Content Sanctions Committee

18. Ofcom’s Executive viewed the Code breaches found by the ASA as extremely serious. The material Television Concepts was transmitting was considered seriously unacceptable in unencrypted form, either on a teleshopping or editorial licence. In particular, the extreme explicitness of the language transmitted (see Annex 2) was of an adult sex nature and was wholly unsuitable for transmission on a free-to-air service.
19. The licensee was also informed that the subsequent failure to comply with the ASA’s direction to suspend the advertising was so serious that it warranted consideration of the revocation of its licence.
20. At the beginning of the investigation, it appeared to the Executive that the licensee either had a fundamental lack of understanding of the requirements of the Advertising Code and its responsibilities under its licence, or simply ignored advice, warnings and a direction from the organisations that regulate it.
21. The licensee had explained to Ofcom that it had been approached by a third party supplier to use evening slots to transmit “babestar content”. Simon Woolnough stated that he was unaware, at that stage, that such material would not be permitted on a teleshopping licence - albeit he was at the time responsible for compliance of the service under Television

Concepts' licence.

22. Taking the above points into consideration, the Executive concluded that the Advertising Code breaches were themselves serious, but the failure to comply with a direction from the ASA - as required by Condition 17(1) of the TLCS licence - and further warnings from Ofcom was extremely serious. In accordance with its published procedures (Outline procedures for the consideration of statutory sanctions) the Executive recommended that the case be referred to Ofcom's Content Sanctions Committee ("the Committee").

The Hearing

23. Ofcom held an oral hearing on 15 November 2006 to give the Licensee a full opportunity to make representations before deciding whether the breaches by Television Concepts warranted the imposition of statutory sanctions, and if so at what level. Ofcom was addressed by the Managing Director of Television Concepts, Simon Woolnough.

Code Breaches

24. The licensee explained that Look4Love was originally designed to be a dating service using premium rate telephone services. However, although Simon Woolnough had never set out to be a broadcaster of adult material, he accepted a proposal by a third party supplier/broadcaster in February 2006 to broadcast adult material on Look4Love during the 22.00 to 05.30 slot as the existing service was incurring losses.
25. The licensee admitted that he had made a series of mistakes. Simon Woolnough said he felt at the time, he was compliant with his licence conditions and that the content was acceptable since it was being broadcast in an adult section of the Electronic Programme Guide which could be PIN protected and was broadcast after 22.00. Having said this, he admitted that he did not view the content that was to be provided until the night it was first broadcast. However, he had been aware prior to broadcast, of the type of material that was to be broadcast. It was clear from responses given to the Committee that at the time of the Code contraventions, he was not viewing the material to ensure its compliance or taking responsibility for its compliance: in response to the question about how much of the channel's output he was watching at the time of the contraventions, his response was "not a lot".
26. However, the licensee also agreed, during the course of giving evidence to the Committee, that what was being broadcast was "wholeheartedly...in breach of [his] teleshopping licence".
27. In answer to a question by the Committee, Simon Woolnough stated that he did not tell the supplier of the material that Look4Love was broadcasting under a teleshopping licence as it "never came up". Following receipt of the ASA's direction, he said he approached the supplier and suggested what he considered would be appropriate changes to the format to ensure compliance with Television Concepts' teleshopping licence. (The presenters would make direct offers for sale of the clothes they were wearing). However this idea was met with some reluctance on the part of the supplier who instead advocated applying for a change of licence.
28. The licensee went on to state that he had believed the supplier when he said that the material on "Babestar.tv Live XXX" was suitable for broadcast on a free to air channel and therefore did not seek further legal advice or guidance regarding this matter. However, he acknowledged that this had been a mistake, largely due to that fact that he had "wanted to believe" what he was being told i.e. that the material was compliant.

Failure to comply with direction

29. The licensee stated that he had not intentionally set out to ignore the ASA's direction and

subsequent warnings from Ofcom but accepted that there had been considerable delay on the licensee's part in removing the offending material. The licensee stated that he had not removed the offending material following the ASA direction because he believed from the initial correspondence that the issue was with the content being broadcast during the daytime and the use of premium rate telephone numbers. As the material was pre-recorded, a new tape had to be made which caused the delay in removing the offending advertising. The licensee claimed that he had not properly read the adjudication sent to him by the ASA and had not understood that the adjudication related to post-watershed (2100) material. This was despite the first sentence of the adjudication stating "*BCAP monitored a TV ad for 09090 26 00 00 at 10pm on Look4Love...*".

30. As indicated above, Simon Woolnough further stated that following the ASA direction, he contacted the supplier and the supplier said he would "tone it [the content] down". The licensee claimed that the supplier had agreed to tone down some of the content and that he would apply to broadcast the material on the same channel but under his own licence instead.
31. The licensee admitted that at no time had he taken any independent or expert compliance advice. Mr Woolnough had "simply taken the word" of the supplier that the actions taken were compliant - his understanding being that this advice was based on the supplier/broadcaster's own Compliance Officer. He said the supplier had more experience working in television broadcasting and he therefore had no reason to think that what he was saying was incorrect.

Sanctions Decision

32. The licensee was aware (from both the previous correspondence and the meeting) that the Committee was considering a range of sanctions including a fine and/or revocation of the licence.
33. The licensee advised the Committee that a substantial fine would have a significant financial impact on the business. The licensee further stated that if the Committee felt it was appropriate to revoke the licence then Look4Love was likely to go out of business.
34. Having considered all the evidence and carefully listened to the licensee's representations, the view of the Committee was that the licensee had been persuaded to broadcast material under his licence without first checking to ensure it was compliant both with licence conditions and the relevant Codes. He had not therefore taken his licence obligations sufficiently seriously. The Committee considered that the licensee had had many opportunities to remedy the situation but had failed to take any effective responsible action. The licensee had persisted in this and had taken a seriously reckless approach as to whether or not the material was compliant in circumstances where the licensee was broadcasting a profitable service for the first time since the business started.
35. The Committee was not persuaded by the licensee's claims that this was simply a case of misreading the initial draft ASA adjudication and a misunderstanding of what was meant by the direction. The Committee considered that the ASA's adjudication was clear and the ASA's direction and subsequent repeated instructions to comply with it were unambiguous. Furthermore, following further intervention from Ofcom, Television Concepts could have been left in no doubt about the licensing position - the fact that it had to comply with the Advertising Code - and the seriousness of the situation. In particular, Ofcom's correspondence with the licensee dated and received on 10 May 2006 made it absolutely clear that Look4Love remained a teleshopping licence and that it must comply with the ASA directions. However, the licensee had failed to comply and continued to transmit the offending material.
36. The Committee considered that Simon Woolnough, had shown little responsibility and

awareness of compliance, despite being the person responsible, and had decided to rely on the advice provided from a third party without checking its veracity.

37. The Committee was concerned that the licensee was unable to provide it with any satisfactory explanation as to why it had failed to comply with the ASA's direction and Ofcom's warnings. In short from 8 May 2006, Simon Woolnough was given a direction to suspend his advertisement with immediate effect; the ASA gave further instructions on two occasions to comply with this direction. Ofcom re-enforced the ASA's direction three times, and notified the licensee, on 15 May 2006, that failure to comply with a direction is a ground for revocation. Nevertheless, as noted above, it was not until 28 May 2006, according to the broadcaster, that the material ceased to be broadcast. In the Committee's view, Simon Woolnough simply accepted and continued to accept the view of a third party despite receiving the direction and warnings from those who regulated it. Such failure to comply with a direction was, in Ofcom's view, unacceptable. The Committee did not consider the decision to ignore the direction as an accident or misunderstanding, but as an almost blatant disregard for the regulator.
38. On the points above, the Committee considered that both the breaches of the Advertising Code and the persistent and flagrant failure to comply with the ASA direction showed a complete disregard for the responsibility that goes with holding a broadcasting licence. On the basis of the evidence provided to it, the Committee considered that the licensee's decision to ignore the ASA's direction was not due to an accident or misunderstanding. The licensee had accepted that the requirements of the direction were clear and the Committee considered that the licensee had not taken its licence obligations seriously. When faced with the option to become compliant he chose, instead, to continue to broadcast commercially profitable, but non-compliant material, so demonstrating a seriously reckless disregard for the regulator.
39. The Committee referred to Ofcom's Penalty Guidelines⁵ which sets out a number of factors which it should take into account when determining the level of penalty to be imposed including:
 - "Any gain (financial or otherwise) made by the regulated body in breach..."
 - "The degree of harm caused..."
 - "The duration of the contravention"
 - "Repeated contraventions..."
 - "Continuation of the contraventions after either becoming aware of the contravention or being notified..."
 - "The extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur"
 - "The absence, ineffectiveness or repeated failure of internal mechanisms or procedures intended to prevent contravention..."
40. Having taken regard of the representations made and considered the relevant facts as outlined above, the Committee agreed:
 - To give notice to Television Concepts Limited that Ofcom intends to revoke its licence, Look4Love; however in accordance with section 238(2)(c) of the Communications Act 2003 ("the Act"), Ofcom is first required to specify a period in which Television Concepts Limited should take such steps to remedy the contravention or failure, and should only proceed to revocation if it considers that Television Concepts Limited has failed to take those steps within the specified period; and
 - To impose a financial penalty of £175,000 (payable to HM Paymaster General) on Television Concepts Limited.

⁵ Available at <http://www.ofcom.org.uk/about/account/pg/>

Revocation Procedure

41. Taking into account all of the facts and matters to which the Committee have referred, the Committee decided that it should reflect the very serious, repeated and reckless nature of the Code and licence breaches by instituting the process for revocation of Television Concepts Limited' licence under section 238 of the Communications Act 2003.
42. Ofcom is serving notice on Television Concepts Limited specifying in accordance with section 238(2) (c) that Ofcom will revoke Television Concepts Limited' licence unless Television Concepts Limited takes, within the times specified in the notice in relation to each step, steps to remedy its contraventions and failures.
43. Those steps will be to abide by the following directions:
 - 43.1 a direction with immediate effect requiring Television Concepts Limited to comply with the relevant standards codes, namely:
 - a) the BCAP Television Advertising Standards Code (incorporating the rules on the scheduling of television advertising) in particular, but without prejudice to the generality of the provisions in this Code, to comply with:

- Section 4.2.3	Treatments Unsuitable for Children
- Section 6	Harm and Offence
- Section 7	Children
- Section 11	Premium Rate Services
 - b) Ofcom's Broadcasting Code in particular, but without prejudice to the generality of the provisions in this Code, to comply with:

- Section One	Protection of the Under Eighteens (in particular, rules concerning Scheduling and content information Rule 1.1 - 1.7; offensive language Rules 1.4 -1.16; sex Rule 1.17; and adult sex material Rule 1.24)
- Section Two	Harm and Offence (in particular, generally accepted standards Rule 2.1 and 2.3)
- Section Ten	Commercial References (in particular rules concerning "Premium rate number" Rules 10.9 and 10.10)
 - 43.2 a direction requiring Television Concepts Limited by 42 days to put into operation and lodge with Ofcom effective written compliance arrangements to ensure compliance for the service broadcast under TLCS licence no 746 including written confirmation of the compliance structure within Television Concepts Limited with details of who is responsible within the licensee for compliance, the training in place and undertaken by that person or persons and the compliance manuals used for such training purposes.
44. It is Ofcom's intention to monitor within the next 28 days whether or not Television Concepts Limited has taken the remedial steps set out in the Notice of Revocation at 43.1 and whether, 42 days after service of the Notice of Revocation, the steps specified in 43.2 above have been taken with a view to revoking Television Concepts Limited's licence (TLCS 746) with immediate effect if satisfied in accordance with section 238(3) of the Act that Television Concepts Limited has not complied with any step within the time specified for that step and that it is necessary in the public interest to revoke the licence.

Members comprising the Committee for the decision are:

Philip Graf (Chairman)

Tim Suter
Kath Worrall

24 November 2006

Advertiser: Babestar.tv Live XXX

Broadcaster: Look4Love TV

Date: 24 May 2006

Media: Television

COMPLAINT:

BCAP monitored a TV ad for 09090 26 00 00 at 10 pm on Look4Love, an unencrypted channel. Several women wearing underwear were lounging on a mattress using sex toys. A young-looking woman with long blonde hair was shown sucking a lollipop. The voice-over stated "She is just 18. She is barely legal, if you like them young, take advantage of our young girl here at Babestar". The voice-over used crude explicit language, referred to young girls and frequently claimed "We are live here until 5.30 and guys you can get through to any babe right now".

BCAP challenged whether:

1. the ad complied with rule 11.1.2, which prohibits premium-rate services of a sexually explicit nature;
2. the ad would have a harmful influence on children;
3. would cause serious or widespread offence to adults;
4. the ad misleadingly implied the service was live and suggested that callers could speak to the women featured on screen and
5. the size of the superimposed text was legible.

ADJUDICATION:

1. Upheld

The broadcaster maintained that the material was editorial programming and therefore did not need to comply with the CAP (Broadcast) TV Advertising Standards Code.

Ofcom confirmed that the channel held a licence for a teleshopping service and was subject to the CAP (Broadcast) TV Advertising Standards Code. The ASA considered that the ad advertised a premium-rate service of a sexually explicit nature.

2. Upheld

The broadcaster explained that the advertising was shown after 10 pm in the adult area of the electronic programme guide. The channel could be blocked by parents with a PIN code. They added that a certificate "18" sign was on the lower portion of the screen at all times and warnings were given that it was a channel for over 18s.

We considered that the warnings made at the beginning of the broadcast, for example "this channel is for over 18s only. So if you're under 18 please switch over now", were

insufficient and did not absolve the channel from complying with the Code. We were concerned that, because the channel was unencrypted and the ad was shown at 10 pm, some children were likely to see it. We considered that the images and words used in the ad would have a harmful influence on children.

3. Upheld

The broadcaster explained that the channel was an adult channel broadcasting in the adult area of the electronic programme guide. They explained that adults looking for adult content would go to a channel beginning with 9, knowing that there they would find adult content.

We considered that the ad was unacceptable and were especially concerned by the crude language and references to young girls. We considered that the ad would cause both serious and widespread offence to adults.

4. Upheld

The broadcaster maintained that callers could speak to the women featured on screen. They argued that because it was programming and not advertising the material was not misleading.

We noted that a text message from "Ryan" was read out twice and several sections of the ad were repeated throughout the evening. We considered this demonstrated that the material was pre-recorded. We considered that, because the ad stated that the service was live and not pre-recorded and that callers would get through to the women featured on screen, the ad was misleading.

5. Upheld

To establish the exact height of the superimposed text, the ad was sent to the Ofcom Broadcast Technical Policy team, which confirmed that the text height was well below the minimum height required by the On-screen Text and Subtitling in Television Advertisements Guidance. We considered the superimposed text was too small to comply with the rule.

We were concerned that the broadcaster had made such serious breaches of the Code. We ordered them to remove the ad immediately. We noted the broadcaster had not complied with our direction. We referred Look4Love TV to Ofcom, which may instigate formal sanction procedures.

We considered the ad breached the CAP (Broadcast) TV Advertising Standards Code rules 11.1.2 (Premium-rate telephone services), 7.3.1 (Mental harm), 7.3.7 (Use of scheduling restrictions), 4.2.3 (Treatments unsuitable for children), 6.1 (Offence), 5.1 (Misleading advertising) and 5.4.2 (a) (Superimposed text).

Please note that the following Annex contains extremely graphic and sexually explicit language

Annex 2

Selected Quotes from sampled Babestar.tv Live XXX output on 10, 11 and 12 May 2006

Selected Quotes from Babestar.tv Live XXX 10 May 2006

"She wants to play with your hard cock... do you want to start by slapping your cock against those tits then getting her to give you a deep throat blow-job then taking your cock out of her mouth and sticking it right up her arse is that what you want to do? She can take a good pounding up there. She really loves anal. From behind is her favourite position.

Are you into spanking?

We are all horny, wet and waiting for you

We love sexy babes with sexy arses and tits

Look at her playing with herself. Would you like to play with her? Would you like to get in between her legs?

She is so wet.

Would you like to get on top of her?

We will get you off

Her arse is in the air, what do you want to do with her?

Her smooth arse is waiting to be caressed.

She is bent over, what do you think that means?"

[Girls are masturbating (hands under knickers)]

"Let's get horny together

Well if you need her to do more then call her. She can get much dirtier on the phone than she can on the tv. But if you want us to get really dirty then you must call us. Especially if you have a hard on" [sound goes]

"Come on look at this arse guys I bet you want to play with it. It's waiting for you.

We are live until 5.30

Would you like to stroke her arse?

She wants your cock to be slapped on that smooth stroke able skin

If you've got a hard penis and you want to slap it on some smooth female skin then call 0909..... it will feel so nice

If you've got a hard penis and you want to put it (ummm) in her lips then you can

She needs to be satisfied by a penis of some kind.

She loves foreplay guys, She loves a slow build up

She needs your penis

We are horny females waiting for men with hard penises

If you want her to suck your throbbing penis then call her now.

She's sucking her fingers now but it's not really what she wants to do tonight, she wants to play with you and guess what she wants you to play with (starts masturbating).

Do you want to play with those breasts? Do you want to fondle them?

She doesn't want to be sucking those fingers she wants to be sucking something else.

Why do you think she's bouncing up and down? What do you think she's trying to tell you guys? It's quite obvious isn't it?

It's a nice bum for your penis

Do you want to slap that bum? Is that your fetish? Do you like spanking? Well she is in to spanking.

*She is gagging for your penis
Call this dirty horny girl now
We are all hot and horny tonight
You will have a great time and you will get off
We will be filthy on the phone much filthier than we can be on the phone.
So get out your penis and ejaculate all over Faye, you know you want to, it's going to feel so good.
She needs your cock up her arse.
She is gagging for a hard cock to be put inside her throat. If it's throbbing, if it's aching we will take it here.
We are better than the other channels, they are shit.
Just imagine sticking your cock right down her throat ... she can give you the best blow-job you have ever had. She is going to suck your cock just like a lollipop.
She's bent over for a reason guys, she wants you to stick your cock in there. Come on take that thong off her, bend her over, and pound that arse."*

[Knickers slip]

*"Get out your hard warm penis and maybe you want to slap it over these breasts
They are very pert breasts what do want to do with them? What do you think she wants you to do with them" [she squishes them together] "I bet you can guess can't you?
She is hungry for cock she wants you to put your cock in between those tits she will give you the tit wank of your life and then you want to stick your cock down her mouth suck that cock.
Give her face a good pounding. Are you into blow-jobs?
Do you want her to suck you off? Or do you want to bend her over and give her a good hard pounding start from the top and work your way down.
She is gagging for your cock tonight.
Slip that thong to one side and then stick your cock in there
She wants your cock her up her arse she loves it up there its her favourite position ...
she wants to bounce up and down on your cock
She will give you the blow job of your life.
Don't wank alone pick up the phone.
Unzip your trousers get your cock out and start wanking
Do you want to do her pussy or her arse?
Do you like anal, do you like hand jobs, do you like blow-jobs? Do you want her to wank you off with her feet?"*

[using a dildo]

*"Do you want her to hold her pussy open so you can slide your cock straight in?
She wants you to stick a few fingers up there.
She is lubed up she is willing and waiting"*

[Use of handcuffs]

Selected Quotes from Babestar.tv Live XXX 11 May 2006

*"She is waiting to get you off. She is a dirty horny woman and she wants you.
This woman loves shagging and she used to be a lesbian as well but she does have sex with men. She loves it.
This girl could do a lot more on the phone than she can do on the screen right now
She is waiting to get you guys off.
Rose is feeling very very horny*

*She is gagging for it this girl
She is a very horny woman waiting for a horny man like you
She wants to get you off
Woman kisses another woman "oh she tastes so good"
Look at this sexy little bum
She will get you off in seconds
We've got loads of free pictures. Anything you want believe me text 89006 we can take any pictures you want. We don't charge you for these pictures by the way."*

[Woman puts camera phone down her knickers]

*"She doesn't want to be sucking that lolly all night.
Here right now live because we are live until 5.30 ... We guarantee you will get through to a live babe here at Babestar.tv we are live 'til 5.30 seven days a week from 10 until 5.30.
She's horny, she's filthy."*

[Girl licks phone and mouths "fuck me"]

"Call this dirty sexy woman right now. She wants to get you off... so give it to her right now."

[Woman licks dildo. Woman spits on her breasts]

*"This girl is pure filth, she is gagging for it.
This girl really really needs to be fucked up the arse.
She wants you to do her right now.
This woman is waiting with her legs open waiting for you to do her as you please do whatever you want.
Get your manhood out, get dialling, get it in your hand ready" [legs wide open wearing a g-string].
"This girl is here, right now, live so call her and you will be speaking to her.
We get a lot harder on the phones than we do on the telly.
If you want some dirty talk, call me, or maybe you just want a casual quickie you can still call me, if you've got any troubles or desires or fantasies give me a call right now.
I will give you some sexy filthy talk
We are all sleazy girls and we will give you 60 seconds until you explode. And wherever you want to explode, you can.
Uncut, full-on sex chat. 100% pure pure filth.
Waiting to get you off for a hard core session. Plays with dildo, between legs and in mouth."*

*"She is gagging for it. She will get you off hard and fast. Pinkie wants to get you off.
We are the horniest women on tv.
You could be speaking to Bailey in a matter of seconds.
She loves a bit of lesbian action.
She is a horny woman waiting to take your cock right now.
Come on boys do you want to do this girl?
Ones you don't normally see on the telly
You know what she wants, you, a man, with your aching throbbing cock right now [rubs dildo between breasts] do call her and you will have a fantastic time, a night to remember... she is gagging for it and is feeling so horny.
She is waiting to suck your cock dry.
She is a cheap slag.*

*If you want a sleazy girl then call rose. She will give you 100% pure filth. She doesn't want to play with that all night she wants the real thing.
This is Pinkie's tight bum.
She's filthy this girl. She wants to get you off in seconds."*

[“fuck me” mouthed]

“So give it to her hard and fast”.....

Quotes from Babestar.tv Live XXX 12 May 2006

*“She is waiting for a horny man, she loves anal action, she certainly does.
She doesn't want to play with herself all night, she wants to play with you.
She is so horny tonight.
She is gagging for it that's why she's getting her tits out.
Do you want to climb on top of her or climb behind her?
She can do things on the phone that she can't do on the phone
She wants it straight in there
We are live until 530
Look she's wiggling that bum again.
If you want free pics on your mobile text BABE to 89006 to your mobile and you can have them for free... things we can't show on the tv.
She will give you 100% pure filth. If you want some dirty filthy sex chat give her a call.
She really wants to get down and dirty.
She will get you off hard and fast.
She prefers anal action... she does lesbian things too.
She just wants to lick it.
She wants to suck something that you've got.”*

“Look at her boobs, would you like to get in-between them.” [rubs dildo between them & her legs]

*“She wants you to pick up that phone, unzip, and give her a call
Do you want to take her from behind, do you want to lie on top of her, do you want to give her a French kiss or do you want to stick something else in her mouth apart from your tongue what would you like to stick in that mouth she will take anything you have to offer she doesn't want that lollipop she wants you tonight.”*

*“If you've got a big hard cock then you can slap it on Kat's tits. That's what she likes.
She likes it rough, she likes it hard. She really wants it. 0909... get your cock out and give us a call. Umm ... She wants you to put your cock in between those tits.
She wants to suck something as well.
She is sucking on that lollipop but she wants to be sucking on something else. That is a nice hard cock boys.”*

*“If you've got a hard cock and it's throbbing and its aching then why not slap it around Kat's tits right now.
I can smell her wet pussy from here, it is dripping.
Where is your favourite position? Doggie from behind.
She is waiting for your cock. Where do you want to stick it boys? Stick it wherever you want.
Don't let her suck that dildo or lolly all night... She wants to be sucking you... She wants to get you off in seconds.”*

"She will make you cum hard and fast."

*"She really wants to suck on something manly. A male intrusion would do her right.
You want to unzip and have some fun don't you guys.*

*She is a horny woman waiting for a horny man with a nice hard intrusion to slap
around those tits.*

She likes it hard and fast."