

In Breach

Early Bird

Various broadcasts on Tease Me/TMTN1¹ and Tease Me TV (Freeview), between 9 and 15 November 2010

The Pad

Tease Me 3/TMTN2², 10 November 2010 at 16:00 and 16 November 2010 at 12:30

Introduction

Early Bird is a televised daytime interactive chat advertisement which was broadcast on Tease Me/TMTN1 (Sky Channel 912) between 05:30 and 09:00 and also simulcast on Tease Me TV (Freeview channel 98) between the same times until 19 November 2010³. On both services the programme is broadcast without mandatory restricted access. Viewers are invited to contact onscreen female presenters via premium rate telephony services (“PRS”). The presenters generally dress and behave in a flirtatious manner. The licence for the service Tease Me/TMTN1 (Sky Channel 912) is held by Bang Channels Limited (“Bang Channels”). The licence for the service Tease Me TV (Freeview) is held by Bang Media (London) Limited (“Bang Media”) (together “Bang” or the “Licensees”).

The Pad is a televised daytime interactive chat advertisement which was broadcast as Tease Me 3/TMTN 2 (Sky Channel 959) without mandatory restricted access until 19 November 2010. Viewers are invited to contact onscreen female presenters via premium rate telephony services (“PRS”). The presenters generally dress and behave in a flirtatious manner. The licence for this service is held by Bang Channels.

As a result of monitoring the output of Tease Me/TMTN1, Tease Me 3/TMTN2 and Tease Me TV (Freeview) between 9 and 16 November 2010 Ofcom identified a number of occasions on which we provisionally considered that there were breaches of the relevant rules on broadcasting standards. In particular, Ofcom noted that the following broadcasts and their content.

Bang Channels: Tease Me/TMTN1 (Sky Channel 912)

Bang Media: Tease Me TV (Freeview Channel 98)

Early Bird, 9 November 2010 06:41 to 08:43

The female presenter was wearing a black bra, lace thong and black shoes. At various points throughout the broadcast she was seen gyrating her hips, stroking herself and mimicking sexual intercourse. She also adopted various sexual positions.

¹ The service Tease Me, as from around 12 November 2010, was labelled on the Sky EPG as TMTN1.

² The service Tease Me 3, as from around 12 November 2010, was labelled on the Sky EPG as TMTN2.

³ On 19 November 2010 Ofcom issued a formal Direction to Bang Channels Ltd and Bang Media (London) Ltd directing them to cease broadcasting immediately as it had evidence of material that it considered amounted to serious breaches of the BCAP Code. As a result of this Direction B SkyB removed the Tease Me/TMTN1 channel number 912 and Tease Me 3/TMTN2 channel number 959 from the Sky EPG, and the SDN/Freeview multiplex stopped carrying the Tease Me (Freeview) service. Correspondence from the Licensees had previously confirmed that material broadcast on Tease Me TV (Freeview) was a simulcast of content broadcast on Tease Me/TMTN1 and therefore identical.

Early Bird, 10 November 2010 05:46 to 08:33

The female presenter was wearing a black thong, lace black bra, red shoes and red suspenders. The presenter was shown with her legs open to camera, mimicking sexual intercourse. She was also shown stroking her inner thigh and breasts and gyrating her hips in a sexual manner.

A second presenter was shown from approximately 06:00 to 06:30. She was wearing a white thong and a white strap, with a pink lace trim across her breasts. During the 30 minutes she was shown stroking herself; jiggling her breasts to camera and gyrating her hips in a sexualised manner.

Early Bird, 11 November 2010 05:39 to 08:37

The presenter was wearing fishnet stockings, a black lace bodice and thong. The presenter was shown adopting various sexual positions mimicking sexual intercourse. While in those positions she was seen gyrating and thrusting her hips in a sexual manner.

Early Bird, 12 November 2010 05:31 to 08:04

The female presenter was wearing a black thong and bra, with leather gloves and boots. She was shown at various points, for prolonged periods, with her legs wide open to camera mimicking sexual intercourse. She was also seen stroking her breasts and jiggling her buttocks.

Early Bird, 13 November 2010 05:36 to 08:35

The first presenter was wearing nipple plasters, stockings and a black string outfit. She was shown adopting various sexual positions including on all fours and lying on her back with her legs wide open. Whilst in these positions she was shown gyrating her hips and stroking herself in a sexual manner.

The second presenter was wearing a black and red thong and bra with black fishnet stockings. She was seen lying on her back with her legs open to camera, gyrating her hips. She was also noted jiggling her breasts to camera.

Early Bird, 14 November 2010 07:18 to 07:39

The presenter was wearing a black lace bra and thong. She was shown lying on her back with her legs open stroking herself and slowly gyrating her hips in a sexual manner.

Early Bird, 15 November 2010 05:35 to 07:39

The presenter was wearing a turquoise bra and knickers with white stockings. She was shown adopting sexual positions such as lying on her side with her legs open heavily thrusting her hips and on her knees jiggling her breasts to camera.

Bang Channels: Tease Me 3 & TMTN 2 (Sky Channel 959)

The Pad, 10 November 2010, 16:00

The blonde female presenter was wearing a white shirt, tie, grey skirt, white thong and short socks and black shoes. She adopted certain positions including lying on her back with her legs wide open and on all fours. While in these positions she stroked her body, bottom and breasts, gyrated around on the floor with her legs wide open, touched around her crotch area and rubbed and massaged her breasts. The camera moved around the presenter's body and focused in on her face, breasts and bottom area.

The Pad, 16 November 2010, 12:30

The black haired presenter was wearing an all in one lace body stocking with an open section around the crotch area, a black bra and a pink thong. She adopted certain positions

including lying on her back with her legs wide open and pulled back, sitting up with her legs wide open, and on all fours with her bottom in the air. While in these positions the presenter repeatedly stroked and massaged her breasts, occasionally revealing her nipples due to the skimpy nature of her bra, rocked around on the floor while gyrating her hips, pulled her legs open wider and played with her body stocking, pulling it down and stroked around her genital area.

Request for comments

Since 1 September 2010 all PRS-based daytime and adult sex chat television services have no longer been regulated as editorial content but as long-form advertising i.e. teleshopping. From that date the relevant standards code for such services became The UK Code of Broadcast Advertising (“the BCAP Code”) rather than the Broadcasting Code. Whilst the regulation of other forms of advertising falls to BCAP, Ofcom has retained jurisdiction over the regulation of Participation TV, which includes adult chat and adult sex chat.

Ofcom reached a provisional decision that the broadcast material described above breached the BCAP Code, and wrote to the Licensees on 17 November 2010 providing them with an opportunity to make representations on these provisional decisions so Ofcom could take any comments into account before reaching a final determination. In particular the Licensees were asked to comment on how the broadcasts complied with the following rules of the BCAP Code:

Harm and Offence (section 4)

Rule 4.2: “Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

Scheduling (section 32)

Rule 32.3: “Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them.”

Given that the potential breaches were serious, successive and repeated, on every day during the period from 9 to 16 November, Ofcom gave a shorter than normal time period for Bang to provide comments, to ensure that Bang would not continue to breach the BCAP Code. As the provisional decision related to material that was the same or substantially similar in nature to material that had already been found to be in breach of the analogous rules in the Broadcasting Code, Ofcom did not consider that Bang would have any difficulty in making its representations expeditiously. Ofcom therefore asked for these comments to be provided within 24 hours, by 17:00 on Thursday 18 November 2010. Ofcom then received a request from Bang to extend this deadline by a further 24 hours until 17:00 on Friday 19 November 2010. This request for an extension was granted by Ofcom, but it was made clear to Bang that this was a “strict deadline beyond which representations will not be considered”.

Response

Ofcom received representations from Bang on the provisional decisions shortly before 17:00 on 19 November 2010. Bang stated that it had instructed all production and presenting staff to make immediate changes to the output. It also stated that it was “still in the process of verifying that Bang Channels was responsible for the content outlined in [Ofcom’s] letter by cross referencing against recorded output” and it would “revert further in due course”.

The Licensees' comments also confirmed that it was "unaware Bang Channels were in breach [sic] of the BCAP Code and [they] have been endeavouring to comply with Ofcom's guidance in respect of daytime programming". It continued that it is "conducting the necessary investigations" and "will revert with further comments in due course".

Given the clear deadline set out in Ofcom's letter of 17 November 2010, the fact that this deadline was extended by 24 hours at Bang's request, and the clear terms on which this extension was granted, Ofcom has proceeded to reach a decision on whether the relevant broadcasts breached the BCAP Code in light of the Licensee's representations.

Decision

Rule 4.2 of the BCAP Code (see introduction) is substantially equivalent to Rule 2.1 of the Broadcasting Code which provides that: "*Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.*" Rule 32.3 of the BCAP Code (also see introduction) is substantially equivalent to Rule 1.3 of the Broadcasting Code which provides: "*Children must also be protected by appropriate scheduling from material that is unsuitable for them.*"

Rule 32.3 makes clear that children should be protected by appropriate scheduling from material which is unsuitable for them. Appropriate scheduling is judged according to factors such as: the likely number of children in the audience; the likely age of those children; and whether the advertisement was broadcast during school time or during school holidays. It should be noted that the watershed starts at 21:00 and material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

Ofcom has already recorded numerous and repeated breaches of Rules 1.3 and 2.3 of the Broadcasting Code against both Bang Channels and Bang Media in respect of material deemed unsuitable for broadcast prior to the 9.00 p.m. watershed in order to ensure that children are protected from the risk of exposure to offensive and/or harmful material. See for example the following Ofcom Broadcast Bulletins:

Bulletin 165 (see: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb165/>)
Bulletin 168 (see: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb168/>)
Bulletin 169 (see: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb169/>)

Ofcom's previous findings have regularly made clear the seriousness and/or repeated nature of these breaches of the Broadcasting Code by Bang and other licensees.

Ofcom has further made clear in numerous previous published findings and guidance to Bang and to the adult sector generally what sort of material it considers to be unsuitable for inclusion in daytime interactive chat programmes without mandatory restricted access⁴. Some of these findings involved Bang Channels and Bang Media. In the context of daytime

⁴ Earlybird, Tease Me TV, 3 June 2010, 05:45 and 08:00, Broadcast Bulletin 164 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb164/>; Earlybird, Tease Me TV, 30 January, 20 March, 27 April 2010 and Earlybird, Tease Me, 21 April 2010 – all Findings in Broadcast Bulletin 163 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb163/>; Tease Me: Earlybird, Tease Me TV (Freeview), 15 February 2010, 05:30 and Tease Me: Earlybird, Tease Me TV (Freeview), 25 January 2010, 07:15 – both Findings in Broadcast Bulletin 158 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb158/>; The Pad, Tease Me, 26 February, 11:45, The Pad, Tease Me 3, 27 February 2010, 11:45, Tease Me: Earlybird, Tease Me TV (Freeview) 26 January 2010, 07:15 - all in Broadcast Bulletin 157 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb157/>; The Pad Tease Me, 6 November 2009, 12:00 to 13:00 and 14:00 to 15:00, Broadcast Bulletin 152 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb152/>; Elite Days, Finding in Broadcast Bulletin 151 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb151/>

interactive chat programmes where the female presenters generally dress and behave in a flirtatious manner for extended periods in order to solicit PRS calls, Ofcom has underlined that the presenters should not, for example, appear to mimic or simulate sexual acts or behave in an overtly sexual manner and clothing should be appropriate for the time of broadcast. These decisions were also summarised in a guidance letter sent by Ofcom to daytime and adult sex chat broadcasters (including the Licensees) in August 2009.

The various breaches of the BCAP Code set out in this decision are grouped by Licensee, dealing first with Bang Channels.

Bang Channels Ltd

Tease Me/TMTN1 (Sky Channel 912)

- *Early Bird, 9 November 2010 06:41 to 08:43*
- *Early Bird, 10 November 2010 05:46 to 08:33*
- *Early Bird, 11 November 2010 05:39 to 08:37*
- *Early Bird, 12 November 2010 05:31 to 08:04*
- *Early, Bird, 13 November 2010 05:36 to 08:35*
- *Early Bird, 14 November 2010 07:18 to 07:39*
- *Early Bird, 15 November 2010 05:35 to 07:39*

Tease Me 3 & TMTN 2 (Sky Channel 959)

- *The Pad, 10 November 2010, 16:00*
- *The Pad, 16 November 2010, 12:30*

The above broadcasts all contained similar material which raised similar issues under the BCAP Code rule 32.3. All of these broadcasts were transmitted without mandatory access restrictions, during the early morning or during the day when children may have been watching television, some unaccompanied by an adult, and featured female presenters wearing skimpy and revealing lingerie or clothing. For example, in some cases the female presenters wore clothing that offered minimal coverage of their breasts with just their nipples covered. The presenters were all shown acting in a sexualised manner – for example, by adopting various sexual positions for prolonged periods of time, such as: kneeling on all fours; lying on their front with their legs wide open; and lying on their side and back with her legs wide open. While in these positions the presenters repeatedly thrust and/or gyrated their buttocks and pelvis as though miming sexual intercourse, or shook their breasts to the camera. In addition, in many of these broadcasts the presenters repeatedly stroked their bodies in a sexually provocative manner, including their breasts, buttocks and upper and inner thighs and genital areas.

In Ofcom's view, the revealing clothing, and repeated actions and sexual positions of the presenters were intended to be sexually provocative in nature and the broadcast of such images was not suitable to advertise daytime chat and could not be justified by the context in which it was presented. In light of this behaviour, we have concluded that the material was clearly unsuitable for children. We also concluded that, given the scheduling of the material, it might cause widespread offence against generally accepted moral, social or cultural standards.

Bang claims that it was unaware of the breaches and is "endeavouring to comply with Ofcom's guidance in respect of daytime programming". In Ofcom's view, this is neither plausible nor relevant. Bang has had a large number of breaches of the Broadcasting Code recorded against it, and Ofcom has provided guidance both to the industry generally and to

Bang itself. Bang must therefore have been aware that the material broadcast was likely to breach the BCAP Code. In any event, it is not relevant to the making of a breach finding whether or not the licensee knew or did not know that the material broadcast was a breach of the relevant code. Neither is the attempt to comply or otherwise relevant to a finding that the relevant code has been breached. The intentions of the licensee in this respect are irrelevant to whether or not there is a breach of the Broadcasting Code.

Taking into account the factors above, Ofcom has concluded that the content of the nine broadcasts above was clearly unsuitable for children and not appropriately scheduled so as to offer adequate protection to them or ensure that the programming did not cause widespread offence against generally accepted moral, social or cultural standards. Therefore Ofcom concluded that this material breached Rules 4.2 and 32.3 of the BCAP Code.

Bang Media

Tease Me TV (Freeview Channel 98)

- *Early Bird, 9 November 2010 06:41 to 08:43*
- *Early Bird, 10 November 2010 05:46 to 08:33*
- *Early Bird, 11 November 2010 05:39 to 08:37*
- *Early Bird, 12 November 2010 05:31 to 08:04*
- *Early Bird, 13 November 2010 05:36 to 08:35*
- *Early Bird, 14 November 2010 07:18 to 07:39*
- *Early Bird, 15 November 2010 05:35 to 07:39*

The Licensees have confirmed that the material broadcast on Tease Me TV (Freeview) was a simulcast of that broadcast on Tease Me/ TMTN1 and therefore the content was identical. Given this, Ofcom's decision relating to the broadcasts on Tease Me/TMTN1 (as set out above) also relate to the content broadcast on Tease Me TV. The above broadcasts on Tease Me TV were therefore also in breach of Rules 4.2 and 32.3 of the BCAP Code.

Bang Channels: Tease Me/TMTN1 (Sky Channel 912); and Bang Media: Tease Me TV (Freeview Channel 98)

- **Early Bird, 9 November 2010 06:41 to 08:43 – breach of Rules 4.2 and 32.3**
- **Early Bird, 10 November 2010 05:46 to 08:33 – breach of Rules 4.2 and 32.3**
- **Early Bird, 11 November 2010 05:39 to 08:37 – breach of Rules 4.2 and 32.3**
- **Early Bird, 12 November 2010 05:31 to 08:04 – breach of Rules 4.2 and 32.3**
- **Early Bird, 13 November 2010 05:36 to 08:35 – breach of Rules 4.2 and 32.3**
- **Early Bird, 14 November 2010 07:18 to 07:39 – breach of Rules 4.2 and 32.3**
- **Early Bird, 15 November 2010 05:35 to 07:39 – breach of Rules 4.2 and 32.3**

Bang Channels: Tease Me 3 & TMTN 2 (Sky Channel 959)

- **The Pad, 10 November 2010, 16:00 – breach of Rules 4.2 and 32.3**
- **The Pad, 16 November 2010, 12:30 – breach of Rules 4.2 and 32.3**