

**Advertising Standards Authority**

Broadcast Advertising  
Adjudications

22 June 2005



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**ADVERTISER:** Kirkwood Fyfe Clinic  
**AGENCY:** AVC Media Productions  
**Date:** 22 June 2005  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

An advertisement for Kirkwood Fyfe Clinic broadcast on Grampian Television described the treatments it carried out. Among them were facial improvements, which included Botox.

The complainant believed that Botox was available on prescription only and so could not be advertised on television.

**ADJUDICATION:** Complaint upheld

CAP (Broadcast) TV Advertising Standards Code Rule 8.2.1(a) (Medicines/Unacceptable products) prohibits television advertising for medicinal products or treatments that are available only on prescription. Grampian Television said it was not aware when approving the advertisement in October 2004 that Botox was a prescription-only drug. We drew the broadcaster's attention to an ASA adjudication published in March 2005 which highlighted that. Grampian said it would undertake to ensure that the findings of published breaches were applied not only to future advertising but also to advertisements that it had approved previously, where relevant.

The advertisement must not be shown again in that form.

**ADVERTISER:** Metropolitan Police

**AGENCY:** Miles Calcraft Briginshaw Duffy Ltd

**Date:** 22 June 2005

**Media:** Radio

**No. of complaints:** 1

### **COMPLAINT**

A radio advertisement by the Metropolitan Police, which highlighted the issue of domestic violence, was broadcast on Capital FM. It featured a distressed woman who had locked herself in the bathroom after being attacked and having her ribs broken by her boyfriend. She was talking on the phone to a police operator while her boyfriend threatened to kill her.

A listener complained that he heard the advertisement at various times during the morning and that it was not suitable for broadcast when children could be listening.

### **ADJUDICATION:** Complaint upheld

The Radio Advertising Clearance Centre (RACC) said it had cleared the advertisement for broadcast on condition that it was carefully scheduled, for example away from breakfast time and drive-time slots to avoid it being heard by children under 16 years of age.

The advertiser said it had booked its advertising spots on Capital FM prior to the RACC clearing the advertisement. Once the RACC's scheduling restriction was known, the advertiser asked its media buying agency to ensure that the scheduling was amended to steer away from breakfast and evening drive times. It said the media buying agency had endeavored to move as many spots as possible away from drive times but that, unfortunately, approximately 8% of the spots booked on Capital remained within those times.

Capital FM said the scripts it had received did not show the scheduling restrictions advised by the RACC. It said the advertiser's media buying agency had contacted Capital FM to ask that the advertisement be steered away from breakfast and evening drive time but that at no point was it told that the advertisement had been given a restriction by the RACC. As a result it said that out of 138 spots on the station, 12 remained in either morning or evening drive times. Capital FM said that if it had been aware of the scheduling restriction it would have ensured that none of the spots were scheduled during drive times.

We noted that the content of the advertisement was capable of causing distress and we considered that it should not have been broadcast at times when children could have been listening. The RACC had applied an appropriate restriction. Although scheduling of advertising is the ultimate responsibility of the broadcaster we do expect stations to follow RACC scheduling warnings where appropriate. We noted that the broadcaster had not been made aware of the RACC's scheduling advice in this instance; nevertheless, we concluded that because it had been broadcast at times when children could have been

listening it was in breach of CAP (Broadcast) Radio Advertising Standards Code Section 1, Rule 4.3 (Scheduling) and Section 2, Rules 8 (Scheduling) and 11 (Children and Young Listeners).

**ADVERTISER:** Reckitt Benckiser plc  
**AGENCY:** Euro RSCG London  
**Date:** 22 June 2005  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

An advertisement for Finish Powerball 4-in-1 dishwasher tablets said 'We tested the leading 3-in-1 competitor against new Finish Powerball 4-in-1. The glass washed with 3-in-1 showed corrosion after less [sic] than 30 washes'.

A competitor, Henkel, who produced Glist 3-in-1 tablets, said that it was the leading 3-in-1 competitor. It provided evidence in support of its view that, in terms of the value of the tablets sold, Glist 3-in-1 was second only to Finish 4-in-1. It said that in its own tests there had been no corrosion difference between Finish 4-in-1 and Glist 3-in-1 even after 100 washes.

We asked for evidence to support the claims and for comments on the complaint and also whether, in the context of this particular advertisement, the leading competitor may have been interpreted by viewers as the next best in terms of efficacy of the product.

**ADJUDICATION:** Complaint upheld

The Broadcast Advertising Clearance Centre (BACC) said it had received evidence showing that the leading competitor was not Henkel and that it did show corrosion after fewer than 30 washes. The BACC said viewers would understand the term 'leading competitor' in terms of sale volumes and this was how it had interpreted such claims for a long time. It believed viewers would understand that the leading brands in a marketplace were the best selling.

The advertiser said the leading competitor was not Henkel and provided evidence in support of its view that, during the period prior to the broadcast of the advertisement, another company sold more dishwasher tablets by volume than Henkel. It said market share by volume was the most suitable measurement for establishing the 'leading competitor' as it was the natural meaning of the term and would be understood by viewers to mean this. It said it was following accepted practice and that a decision against it on this point would be unfair and a change in policy. The advertiser added that if it had been made aware of the potential problem it could have added any required clarification from the outset.

We agreed with the advertiser and the BACC that it was acceptable to define 'leading competitor' by reference to sale volumes. However, we considered that 'leading competitor' could also reasonably be determined by the value of a product sold and the complainant's evidence demonstrated they were the leading competitor according to this criteria.

We considered that where the leading competitor was shown to be different when measured by value or volume, as was the case here, it would be necessary to clarify the measurement used. We also felt that, in the context of the advertisement, viewers might interpret the claim 'leading competitor' in terms of the efficacy of the products which further demonstrated that clarification was needed. We did not consider that clarification of the term 'leading competitor' represented a change in policy as the situation was quite specific to this advertisement. In this case, depending on how the term was defined the leading competitor would differ.

We noted that the BACC had requested evidence from Reckitt Benckiser in relation to the volume of tablets sold without any reference to the value. As a result of this, and in view of both the evidence from Henkel and the possibility that viewers would interpret it as a comparative claim in terms of efficacy, we did not accept that the advertisement made it sufficiently clear which competitor was being referred to. We further considered that, as the basis for the claim was not explained in the advertisement, viewers may have incorrectly assumed the comparison was with Glist.

The advertisement was in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising), 5.2.1 (Evidence) and 5.4.6 (Comparative advertising) and should not be shown again in its current form.

**ADVERTISER:** The Spectator (1828) Ltd

**AGENCY:** Clemmow Hornby Inge Ltd

**Date:** 22 June 2005

**Media:** Radio

**No. of complaints:** 33

**COMPLAINT:**

A radio advertisement for The Spectator magazine compared the physical public flaying of politicians in the Middle Ages with the present day literary public flaying that took place in The Spectator magazine. It described how the victims' skin would be scorched with burning sulphur, after which an incision would be made and the skin peeled off the body with red hot tongs. The advertisement ended with the line 'The Spectator. Getting under the skin of the election'.

Listeners complained that:

1. the descriptions of torture were sickening and disgusting for adults and
2. children had been upset by them (one instance reported by a Classic FM listener around 12 noon on 5 May and another by a LBC listener at 3.15 pm on the same day).

**ADJUDICATION:**

1. Complaints not upheld

The Radio Advertising Clearance Centre (RACC) had approved the advertising for transmission on Classic FM and LBC only, as the child audience was known to be extremely low for those stations. It had also advised the stations that the advertisement should be transmitted away from mealtimes. With those provisions in mind, it believed that the advertisement was acceptable. The advertising agency said the advertisement was recorded with an informative voice-over describing the scene and was not intended to be gratuitously gory.

We agreed. The complainants had found the description distasteful, but although it was detailed the tone was factual rather than sensational. We did not believe it was likely to cause serious or widespread offence.

2. Complaints not upheld

LBC said that 3.15 pm was before the majority of schools finished for the day and that, in any case, its under-16 years of age audience profile was rated as zero for that time of day.

Classic FM said that it had scheduled the advertisement away from times when children were likely to be listening, but thought it was otherwise suitable for transmission in that the description was historically accurate and of the kind typically found in school text books.

We believed the RACC's decision to approve the advertisement only for stations with an extremely low child audience profile should have been sufficient to avoid it causing

distress to children, and this was borne out by the relatively small number of complaints raising that point. We believed the RACC and the individual stations had acted responsibly.

The advertisement was investigated under CAP (Broadcast) Radio Advertising Standards Code Section 2, Rules 9 (Good Taste, Decency and Offence to Public Feeling), 11 (Children and Younger Listeners) and 8 (Scheduling) but was not found in breach.

**ADVERTISER:** Unilever Home and Personal Care UK Ltd

**AGENCY:** Lowe & Partners Ltd

**Date:** 22 June 2005

**Media:** Television

**No. of complaints:** 27

**COMPLAINT:**

An advertisement for Domestos Bleach Cleaning Spray featured a grey, monster-like creature (representing a germ) talking to the camera. The camera slowly panned in. The creature, talking slowly, said "this neighbourhood has always been safe. They tried cleaning it up but nobody could touch us in the shower corner. E-coli, staphylococcus and us guys were free to peddle misery." A close up of the creature's face showing its large mouth and teeth then flashed onscreen and it shouted "But now they hunt us down!" The monster then became animated, lunging and spitting at the camera, before continuing "We've become their prey. So here we are, cornered. We can almost hear the finger on the trigger. The finger of death." The product then appeared onscreen and the voiceover said "Domestos spray. Millions of germs will die." The advertisement did not carry a scheduling restriction.

27 viewers complained that this advertisement was unsuitable to be seen by children. 19 of these viewers said their children, aged between 18 months and five years old, were frightened by the advertisement. Some viewers said their children had nightmares after seeing it.

**ADJUDICATION:** Complaints upheld

The Broadcast Advertising Clearance Centre (BACC) said it did not believe the advertisement should carry a scheduling restriction. It said that one of the advertiser's previous advertisements, also carrying no scheduling restriction, had featured a similar animated germ and hadn't drawn any complaints. It said it was difficult to gauge how young children would react to animated characters such as the one featured in the advertisement and pointed out that Harry Potter and Roald Dahl books and films often contained similar sorts of characters which did not frighten children. It acknowledged that some children had been upset, but believed that a majority of young viewers did not seem to find the characters frightening.

The advertiser said it decided to schedule the advertisement away from programmes aimed specifically at a child audience, despite the fact that the BACC had not imposed any scheduling restrictions. It said that that decision was made at the last minute and that as a result three spots remained scheduled during children's programming. The advertiser said it was not its intention to cause distress.

We welcomed the advertiser's attempt to schedule the advertisement sensitively. We considered, however, that the complaints we received showed the advertisement was likely to frighten some young viewers and should therefore have carried a scheduling restriction to ensure it did not appear in or around programmes made for or specifically

targeted at children. Because it did not, the advertisement was found in breach of CAP (Broadcast) TV Advertising Standards Code Rules 7.3.6 (Distress - children) and 7.3.7 (Use of scheduling restrictions). The advertisement should not be shown again in or around children's programmes.

**ADVERTISER:** UTV Internet  
**BROADCASTER:** Ulster Television  
**Date:** 22 June 2005  
**Media:** Television  
**No. of complaints:** 2

**COMPLAINT:**

An advertisement for broadband showed a presenter standing next to a large billboard, which said "100% Availability". He approached a passerby and asked "Do you know that UTV Internet can provide 100% of homes in Northern Ireland with broadband Internet?". On-screen text at the end of the advertisement said "100% availability to all BT landline customers in 2005".

Two viewers complained because they understood some parts of Northern Ireland were not yet able to receive broadband Internet.

**ADJUDICATION:** Complaints upheld

UTV Internet said that all exchanges in Northern Ireland were broadband enabled, which meant 98.5% of the population had access to broadband. It pointed out that BT was obliged to provide broadband services to all homes and businesses in Northern Ireland by the end of 2005 as part of an agreement with the Department of Enterprise, Trade and Investment (DETI) in Northern Ireland. It said consumers were able to use other Internet service providers, including UTV Internet, to avail of broadband as part of the same agreement. It sent a DETI press release, which said that Northern Ireland was on track to providing broadband access to every household and business by the end of 2005. It added that it was now able to process applications for broadband services to any household in Northern Ireland with a BT landline and delivery of the service would be completed in 2005 in all cases.

Whilst we acknowledged UTV Internet's intention to provide every household and business with access to broadband by the end of 2005, the advertisement claimed "100% availability" and "UTV can provide 100% of homes in Northern Ireland with broadband Internet". We considered that viewers were likely to think those claims meant all homes and businesses in Northern Ireland currently had access to broadband. Because only 98.5% of the population could currently receive broadband, we considered the absolute claims misleading. We noted that on-screen text at the end of the advertisement said 100% availability would be achieved in 2005, but we believed that text did not clarify that 100% availability had not yet been achieved and, even had it done so, would have contradicted rather than qualified the main message of the advertisement.

We found the advertisement in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising), 5.2.3 (Qualifications) and 5.4.2 (Superimposed text).

**ADVERTISER:** Warner Home Video (UK) Ltd  
**AGENCY:** Lip Sync Productions  
**Date:** 22 June 2005  
**Media:** Television  
**No. of complaints:** 2

**COMPLAINT:**

An advertisement for a DVD box set claimed it contained the complete first season of the television series Hustle.

Viewers complained because they found that each episode was seven minutes shorter than the original versions broadcast on BBC1.

**ADJUDICATION:** Complaints upheld

The advertiser explained that due to error, a shorter version made for BBC Worldwide was used for DVD replication. When it realised it had used the wrong version it had already manufactured 35,000 units. It pointed out that it made clear on the DVD packaging that each episode was 52 minutes long. It added that it was producing a new batch of DVDs containing the full 58–59 minute episodes broadcast on BBC1 and intended to replace the shorter version at no extra cost for any disappointed customers.

The BACC said that as soon as it was aware of the production error it made sure the advertisement was removed from broadcast.

We accepted that the advertiser had not intended to distribute a DVD containing the shorter versions of each episode and noted the immediate steps taken by the BACC to remove the advertisement from broadcast. However, the advertisement did not make clear the DVD box set contained an edited version of the series. We considered viewers were likely to interpret the claim the "complete first season" of the series to mean it contained the full, unedited version broadcast on BBC1 in the UK. We considered the advertisement misleading and welcomed its withdrawal.

We found the advertisement in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising) and 5.2.3 (Qualifications).