

Advertising Standards Authority

**Broadcast Advertising
Adjudications**

9 November 2005



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ADVERTISER: Department of Health / COI
LICENCEES: Capital FM / Radio City
Date: 9 November 2005
Media: Radio
No. of complaints: 4

COMPLAINT:

An anti-smoking ad on the radio began with the sound of a match being struck and a person smoking. A voiceover said: "A lot of men smoke after they've finished having sex. This man finished having sex two years ago. Smoking causes fatty deposits that restrict the flow of blood to your penis. You might not notice it yet but this damage is happening right now. So if you smoke you're already far more likely to become impotent. For help giving up call ... or visit stayinghard.info."

The Radio Advertising Clearance Centre (RACC) scheduling advice stated: "the ad should be scheduled away from times when children (i.e. 15 and below) may be listening: and post 19.00. Please avoid any programming that will appeal to children."

The complainants raised two issues.

1. Three listeners said that they heard the ad during the day on Capital FM in the school holidays. They said that they felt that the content of the ad was unsuitable for broadcast at times when children would be listening. Two said that their children, aged between six and ten years of age, had heard the ad.

2. One listener said that they heard the ad with their seven year old son at 7.45 pm during a sports show featuring a football match on Radio City on Merseyside. She felt that as the programme would be of particular appeal to children it was inappropriate to broadcast the ad during it.

ADJUDICATION:

1. Complaint upheld

Capital FM said that they had interpreted the RACC scheduling advice as meaning that the ad should be scheduled away from times when children were likely to be listening and should not be broadcast after 7 pm. They said that, applying this interpretation, they scheduled the ad between 9 am and 6 pm to avoid the possibility of children hearing it. They said that during the school holidays it would be inevitable that more children would be listening during this period.

We acknowledged that Capital FM had made an effort to schedule the ad in accordance with their interpretation of the RACC advice. However, the RACC advice was that the ad should only be broadcast after 7 pm and even then away from times when children were likely to be listening. Capital FM's interpretation was incorrect and resulted in inappropriate scheduling of the ad.

The scheduling of the ad on Capital FM breached CAP (Broadcast) Radio Advertising Standards Code section 2, rule 8 (Scheduling).

2. Complaint not upheld

Radio City said that the ad had been scheduled after 7 pm in line with the RACC advice. They said that the sports show had a target audience of males aged 25 years and above and they did not feel that it had a particular appeal to children.

We considered that Radio City had applied the RACC scheduling advice correctly and that they had considered the profile of the target audience when broadcasting the ad during the sports show.

The scheduling of the ad on Radio City was investigated under CAP (Broadcast) Radio Advertising Standards Code section 2, rule 8 (Scheduling) but was not found in breach.

ADVERTISER: GE Fabbri Ltd t/a Dad's Army DVD and Magazine Collection

AGENCY: GE Fabbri Ltd

Date: 9 November 2005

Media: Television

No. of complaints: 1

COMPLAINT:

An ad for the Dad's Army DVD and Magazine Collection said that viewers could collect "the complete series" on DVD.

A viewer believed this was misleading because some early episodes were missing from the BBC's archives and therefore could not form part of the collection.

ADJUDICATION: Complaint not upheld

The Broadcast Advertising Clearance Centre (BACC) said the collection being advertised was as complete as it was possible to be because it included all the episodes in existence. They did not believe it was misleading for the ad to claim to provide the complete series.

We considered the BACC's argument was a reasonable one, in that the collection would include all the episodes that it is possible to include.

The ad was investigated under CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.1 (Evidence), 5.2.2 (Implications) and 5.2.3 (Qualifications) but was not found in breach.

Advertiser: Golf TV Pro Shop Ltd

Broadcaster: Golf TV Pro Shop Ltd

Date: 9 November 2005

Media: Television

COMPLAINT:

On 1 January 2004, golf's governing bodies agreed a size limit for drivers with heads of 460 cc, plus 10 cc for measurement tolerance.

BCAP monitored an infomercial for the Northwestern Plus Ten Driver on Golf TV Pro Shop that claimed "this is the first professional quality driver to push the rules to the legal limit" and that it had "the largest beta titanium head".

The infomercial said that "Impartial testing is essential for evaluating new golf clubs. Robotic testing is the most precise and unbiased way to rate performance especially for drivers ... On centre hits, the Plus Ten was 20 yards longer than the Titlelist Model 975D and eight yards longer than the Callaway Great Big Bertha II. On toe and heel hits the Plus Ten was also significantly longer. But the most amazing test results was the Plus Ten dispersion is only 3.4 feet off the centre line, 68% tighter dispersion than Titlelist, 66% tighter dispersion than Callaway. Taking this driver right up to the legal limit, means there will never be a club that's easier to hit long and straight, the US GA simply won't allow it."

The infomercial said "Robotic testing proves the Plus Ten is longer and straighter than the biggest names and the most expensive drivers on the market ... Even though the Plus Ten is longer and more accurate and made from the same premium materials and components, the Plus Ten is half the price of the big name drivers".

Testimonials reinforced the impression created by the testing stating:

"Am I going to go spend 400\$ on one of those overpriced drivers or am I going to go buy the Plus Ten which outperformed those overpriced drivers and pay less than half the money" and "When you combine the two, distance and accuracy you have an unbeatable combination and that's exactly what you get with the Plus Ten Driver".

The infomercial promoted the club as being the solution for average players saying "But real people, they don't have perfect swings, so we are going to put the Plus Ten to the test ... One by one, randomly selected recreational golfers, of various handicaps, were allowed to choose any one of the concealed drivers." (A graphic listed the following brands: Titlelist, Callaway, Taylor Made, Mizuno and Ping.) The presenter continued "Even without knowing which clubs they were comparing to the Plus Ten driver, the results were instantly apparent. While some golfers made decent shots with some of the most expensive well-known drivers on the market, most hit errant inconsistent drives that went way off target. But with Plus Ten the improvement was dramatic. Even before they knew which club they were hitting they instantly saw longer, straighter drives. For some, the longest straightest drives of their lives ... and when golfers peeled back the tape of the driver they liked most, time after time the name on the sole plate was the Northwestern Plus Ten."

Testimonials also claimed the Plus Ten performed better than other clubs: "The Plus Ten against my Taylor Made, I am going to guess probably 15 yards further. And about the Plus Ten versus the Mizuno, I am going to guess 20-25 yards further" and "The Plus Ten is at least 20 yards longer than the Titleist and the Ping. I've got both clubs. The Plus Ten is definitely longer than either one of them."

The infomercial said "Here at last is the answer to inconsistent and missed drives, the Plus Ten driver" and "The fastest way to improve is to play the Plus Ten driver. Without making any drastic swing changes you'll be hitting much longer and straighter drives."

The infomercial demonstrated how effective the driver was at dealing with miss-hit shots stating "To demonstrate just how large and forgiving the sweet spot on the Plus Ten is we took recreational golfers to the first tee and had them intentionally miss-hit their drives and measure their miss-hits using impact tape which showed exactly where the ball was hit on the face of the Plus Ten driver - off the toe, off the heel, on the top and on the bottom of the face. Even when they miss-hit the ball by more than the width of a golf ball their drives were still long and in the fairway."

Testimonials added to the impression that the driver would help with miss-hit shots stating: "The impact tape doesn't lie. And neither do these results. At 460 cc plus, this incredibly forgiving driver is nearly impossible to miss-hit."

"The Plus Ten here, what's so great about it is, when you address the ball you know it's so big, which gives you that confident feeling of knowing, hey, regardless of where I make contact with the ball it's going to be forgiving. I'm not going to miss-hit because it's too big to miss."

"Plus Ten is just better with miss-hits."

"I hit it off the toe, I hit it dead centre and I hit it off the heel. All of them left me in a position to go for the green."

"They all went in the fairway and within five or ten yards of each other. So all the miss-hits were almost as good as the ball hit right in the sweet spot".

A putter was offered as part of the package when purchasing the Plus Ten driver. The infomercial claimed that "The putter is scientifically balanced for truer putts time after time" and "Since you'll be using the new Plus Ten putter you'll be making more putts and saving strokes on the green."

The infomercial stated "Northwestern has put more golfers on the golf course than anybody in the world" and "The largest manufacturer of golf equipment in the US, Northwestern Golf."

BCAP challenged:

1. whether the Plus Ten driver was the first professional quality +460 cc club on the market;
2. whether the comparison with the Callaway and Titleist clubs was fair;
3. whether the Plus Ten driver was half the price of the big named drivers;
4. the results of the robotic testing;

5. whether the Plus Ten driver achieved longer and straighter drives than other more expensive drivers;
6. whether the Plus Ten driver was better than other clubs for miss-hits and “nearly impossible to miss-hit”;
7. whether a “scientifically designed” putter would enable more accurate shots and
8. whether Northwestern was the largest manufacturer of golf equipment in the US.

ADJUDICATION:

1. Upheld

The broadcaster explained that the Plus 10 driver was commercially available from 1 January 2004. The ASA understood that Adams Golf Ltd began selling the Redline 460 cc driver in January 2003. The broadcaster argued that the Adams’ club was not professional quality but were unable to provide evidence to support that. The ASA concluded that it was misleading to claim that the Plus Ten Driver was the “first professional quality driver to push the rules to the legal limit”.

2. Upheld

The broadcaster explained that “the narrative clearly identified the models used in the testing so that viewers were left in no doubt as to which clubs were being compared”. They argued that, because of the “prevalence of Titleist and Callaway clubs on the professional tour, models from their ranges were considered to be most relevant to viewers”. The Titleist 975D had been chosen because it suited a lower handicap golfer and because, at the time of the robotic test, Tiger Woods had just reverted to using it instead of his Nike-sponsored equipment. The Callaway Great Big Bertha II had been selected because it suited a higher handicap golfer. In addition the Great Big Bertha II had been selected because of the prominence of the Callaway brand and because the Great Big Bertha II Pro Series was the most popular driver on the PGA Tour and across the world's major professional tours combined. However, the ASA noted that the Great Big Bertha II Pro Series club was a different model to the Great Big Bertha II driver which was used in the robotic testing.

The ASA noted that the Titleist 975D was launched in 1998 and by the time of the testing in 2003 had been superseded by three newer versions. In fact, when the advertising was broadcast, the club was only available second-hand. The ASA understood that Tiger Woods had changed his driver again just over a month after testing was carried out and had selected a Nike driver with a head size of 335 cc, a considerably larger head size than the Titleist 975D’s 265 cc.

In any case, the ASA considered that because neither the Callaway nor the Titleist clubs were 460 cc drivers, it was not a fair like for like comparison. A 460 cc club was available before the infomercial was first broadcast, the Adams Redline driver, but the broadcaster explained they had not tested it because they considered that Adams Golf was not an iconic premium brand. The ASA understood that Adams sold \$11 million worth of drivers in 2003 and so considered that, because the Redline 460 cc driver had the same specifications as the Plus Ten, it would have been an appropriate choice for the testing, The ASA concluded that it was misleading to include such an “old” version from Titleist

and drivers that had substantially different head sizes when a closer comparison was available. The ASA advised that, if the broadcaster wished to use comparative claims of this kind, they should ensure that new testing is carried out each time comparable new drivers become available. For example the Nike Ignite 460 cc club that was launched November 2004.

3. Upheld

The broadcaster explained that the reference to the Plus Ten being half the price of the big named drivers was a generic reference to new drivers from big name manufacturers which tended to retail at \$400-500 (approximately £230-2287). The ASA considered that the following statement implied that the Plus 10 was half the price of the Titleist 975D and the Callaway Big Bertha II: "Robotic testing proves the Plus Ten is longer and straighter than the biggest names and the most expensive drivers on the market. On centre hits, the Plus Ten is 20 yards longer than the Titleist model 975D, 8 yards longer than the Callaway Big Bertha and with a dispersion of only 3.4 feet off the centre line. The Plus Ten has a 68% tighter dispersion than the Titleist and a 66% tighter dispersion than Callaway. Even though the Plus Ten is longer and more accurate and made from the same premium materials and components, the Plus Ten is half the price of the big name drivers"

As noted earlier, the Titleist was only available second-hand. The current recommended retail price for the Callaway Big Bertha II was £149 which was the same price as the Plus Ten Driver. The ASA concluded it was misleading to claim the Plus Ten driver was "half the price of the big name drivers".

4. Upheld

The broadcaster submitted evidence of robotic testing which was carried out by Golf Laboratories Inc. of San Diego, California. Golf Laboratories Inc's website stated that "to test clubs it is recommended to test against competitors in the same market as your product. The shaft flex and loft should be as close as possible. Length and swing weight should also be taken into consideration". The ASA agreed that, in order for testing to be fair, such variables should be controlled.

The broadcaster did not supply details on the length of the shafts used in the testing. "Swing weight" is an indication of how heavy a club will feel when swung. It is not the same as the total weight of the club. It is a measurement of the club's "moment of inertia" about a point 14 inches from the butt end of the grip. Different swing weights are offered to accommodate different golfers' swings. The swing weight for the Plus Ten was D-5.5 whereas for the Titleist it was D-2 and for the Callaway it was D-1.5. The ASA understood that all the clubs in the test were available with a swing weight of D-4 so it should have been possible to use clubs with the same swing weight. Furthermore, the Plus Ten that was sold by Golf TV Pro Shop had a swing weight of only D.4. And the ASA understood that the specifications for the Titleist club used in the testing were for a non-standard club. The ASA considered that for the testing to have been a fair evaluation of the performance of the clubs, the swing weights should have been the same.

The broadcaster explained that the swing speed for the testing was 100 mph because that was the standard head speed for stiff-shafted drivers. However, the ASA noted that there was a regular flex shaft available for the Plus Ten so it would have been possible to test the drivers at 90 mph which is the typical swing speed of average golfers. This might have produced different results. The ASA considered that it was important to test the driver at the speed that it was likely to be used. However, for future reference, the ASA advised

that a proper evaluation of the driver's capabilities would require testing the drivers at a variety of different speeds because no golfer can swing at the same speed each time.

The ASA understood from an article on www.pga.com that players with a swing speed of 100 mph should use a "loft" of between 9.5 and 11 degrees. In the testing the Callaway driver had a loft of nine and the Titleist had a loft of 8.5 while the Plus Ten had a loft of ten. The ASA judged that the loft of the Callaway and Titleist drivers had been incorrectly chosen for the swing speed used and for comparison with the Plus Ten's loft.

The ASA therefore concluded that, because the testing was not conducted in accordance with recognised best practice, the results did not substantiate the claims.

5. Upheld

The broadcaster was able to submit evidence of the tests in which recreational golfers compared the Plus Ten with brands such as the Taylor Made, Mizuno and Ping. The ASA noted that two of the clubs tested were not on the market at the time of testing. In addition, each player was only given two attempts with each club and the ASA was not supplied with any evidence on the clubs' specifications.

Two players claimed to have hit 20 yards further with the Plus Ten. In one case there was no evidence to support this. In the other case, the two "attempts" produced contradictory results. In the first attempt three other clubs performed better; in the second the Plus Ten showed only an 11 yard benefit when compared to the worst performer and four yards when compared to second best performer.

The ASA judged the testing was insufficiently rigorous to substantiate the claims that the club enabled players to hit further and straighter drives.

6. Upheld

The broadcaster explained that "the results of the robotic tests show that the dispersion rates of the Plus Ten on the toe and heel hits would still have landed the ball in the fairway on virtually all golf courses. This in our view, substantiates the comments about the accuracy of miss-hits."

The ASA judged that the robotic testing showed the Plus Ten Driver was less accurate for miss-hit shots. On toe-hits, the Titleist had 61% and the Callaway 42% better dispersion. On heel-hits, the Titleist had 48% and the Callaway 67% better dispersion. The ASA consulted an expert who explained that "variations of 35 and 40 feet for the Plus Ten compared with 12 to 20 feet variations for Callaway and Titleist drivers on toe and heel hits is very significant, as these are the shots that cause problems on the golf course". The ASA concluded that the claims relating to miss-hits gave a misleading impression of the club's performance.

7. Upheld

The broadcaster stated that the putter was "face balanced. This means that when the putter is at its central balancing position (a point four to six inches usually from the head – nearer the head as the head is heavier) that the face lies flat across the horizontal plane. This means that when the putter is laid into the playing position it sits as near to square to the target line as is possible". No other evidence was offered.

The ASA's consultant explained that in 1974, a putter known as the Branding Iron was the first to claim face balancing as an aid to successful putting. The club experienced only modest success in the market as it was found that face balancing had little effect on the performance of the club against other putters. This was because accurate lining up (aiming) of the club at the address position was influenced by the position of the golfer's hands rather than the face balancing. In other words, different individuals, having a variety of address positions, causing the supposed automatic lining up to be inconsistent. The ASA concluded the claim of "saving strokes on the green" had not been adequately substantiated.

8. Upheld

The broadcaster explained that the statement was made "in the context of the heritage of Northwestern Golf and its long experience in designing golf clubs in the USA ... Northwestern Golf is considered the largest manufacturer of golf equipment in the USA as a result of its 75 years in operation and annual, multi-million production of clubs. As Northwestern Golf is not as well known to UK consumers ... we thought it was important to provide some background to the company. We do not consider this statement could materially mislead a viewer into purchasing the Plus Ten Driver". In January, the broadcaster re-edited the infomercial to "tighten the proposition" and this statement was removed. The ASA acknowledged this revision but concluded the infomercial had been misleading as there was no evidence to show that Northwestern was the largest manufacturer of golf equipment in the US.

The advertising was in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising) and 5.2.1 (Evidence), 5.3.1 (Accurate Pricing), 5.4.4 (Testimonials), 5.4.6 (Comparative Advertising) and should not be shown again in its current form.

ADVERTISER: Price-drop TV
LICENSEE: Price-drop TV
Date: 9 November 2005
Media: Television
No. of complaints: 1

COMPLAINT:

A promotion on Price-drop TV shown on Friday 2 until Sunday 4 September said "For the cutting edge in portable entertainment, join us on Sunday night at 10. This 7-inch LCD widescreen TV is easy to carry around and ideal for keeping in the kitchen or bedroom. For this versatile piece of technology, drop in for this 7-inch LCD widescreen TV Sunday at 10pm on Price-drop TV." On-screen text said "7 inch widescreen LCD television Sunday 10pm."

A viewer said she watched on the Sunday from 10 pm but the LCD TVs were not offered for sale. She believed the promotion had been misleading.

ADJUDICATION: Complaint upheld

Price-drop TV explained that a Warehouse Clearance weekend was inserted into the schedule at the last minute for the weekend of 3/4 September and that during this Warehouse Clearance the LCD TVs, scheduled for Sunday 4 September, were dropped from the line up. Unfortunately due to an internal communication breakdown the promotion for the LCD TVs was not removed from air and continued to play until Sunday 4 September. Price-drop TV said the mistake had happened due to the late change, but acknowledged that they should have spotted it earlier. They had now put measures in place to ensure the same kind of error did not happen again.

We appreciated that the error occurred because of a late change to the planned schedule, and we were reassured that action had been taken to prevent a similar mistake in the future. None the less, for a number of days right up until the date of the planned advertised auction a misleading promotion was broadcast.

The promotion breached CAP (Broadcast) TV Advertising Standards Code rule 5.1 (Misleading advertising).

ADVERTISER: TV Warehouse
LICENSEE: TV Warehouse
Date: 9 November 2005
Media: Television
No. of complaints: 1

COMPLAINT:

Teleshopping channel TV Warehouse promoted the Shark steam cleaner. It was sold with an optional "deluxe accessory kit" which was also promoted in the ad. The voiceover said "When you call why not ask about our deluxe accessory kit? This triangle multi-surface brush for tiles, worktops and hard-to-reach floor areas. This extended reach angle concentrator for bathrooms; even steam-cleaning engines. This wallpaper tool for stripping walls and removing stickers. And this small, brass brush for cleaning barbeque grills." The accessories were shown at various times throughout the 30-minute promotion and, each time, on-screen text said "Ask our operator about ordering these Deluxe Accessories."

A viewer complained that she had ordered the Shark steam cleaner in May along with the deluxe accessory kit but had not received the extended angle concentrator which she had specifically wanted. She said the ad was therefore misleading as it implied the accessory would be provided.

ADJUDICATION: Complaint upheld

TV Warehouse said the extended angle concentrator had been unavailable for some time but that every viewer who ordered it would be sent a replacement once stocks became available. They provided evidence to show that, from August, the script for their telephone operators to use when orders for the accessories were taken had been amended to make clear that the extended angle concentrator was unavailable and that it would be sent as soon as stocks became available. They said the ad made clear that it was necessary to "ask our operator" and therefore it was not claiming to always provide everything showed in the ad.

We noted that TV Warehouse had provided all viewers with the product as advertised but only once stocks became available. They had not amended the ad whilst the extended angle concentrator was unavailable and had only changed their telephone ordering script in August, despite the viewer ordering in May. We considered that the ad implied the deluxe accessory kit would be provided with an extended angle concentrator and, as this was not the case for several months, the ad was misleading.

The ad breached CAP (Broadcast) TV Advertising Standards Code rule 5.1 (Misleading advertising) and 5.2.3 (Qualifications) and should not be shown again in its current form unless all the accessories can be supplied.