

**Advertising Standards Authority**

**Broadcast Advertising  
Adjudications**

7 September 2005



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**ADVERTISER:** Argos Ltd

**ADVERTISER:** Top Up TV

**AGENCY:** N/A

**Date:** 7 September 2005

**Media:** Television/Catalogue

**No. of complaints:** 2

**COMPLAINT:**

Ads for Top Up TV appeared on TV and in an Argos Catalogue. The TV ads were static images that appeared when non-subscribing viewers switched to a Top Up TV channel and also when each channel was off-air. A number of different catalogue and TV ads were shown. One version included the text "Watch Discovery Channel, UKTV Gold, Cartoon Network, British Eurosport, and much more on Top Up TV. Only £7.99 and a £20 connection fee. No annual contract." Another version listed all the available channels.

A consumer complained that the TV and catalogue ads were misleading as they did not make clear that the viewing times of the channels were limited. The maximum number of channels that could be accessed at any one time was five and the viewing times of these channels were restricted such that a channel could cut out mid-programme.

**ADJUDICATION:** Complaint upheld

Top Up TV said that, because all the ads directed consumers to a web site or telephone number to make further enquiries, none of them directly promoted the services but rather for further information about them. They said the ads did not make any claims (either directly or by implication) in relation to a continuous service. They confirmed that, in view of the complaint, future advertising would be amended to make clear the restrictions.

Argos said the ad had originally appeared in its January catalogue which was before the ASA had adjudicated on previous TV ads for Top Up TV regarding the same issue. They confirmed that future advertising would be amended to include this information and provided a copy of an amended ad that it intended to print in its July catalogue, which made clear the times of the channels.

We welcomed Top Up TV and Argos's decision to amend future ads following the complaint. We considered that the current ads did not give a clear indication that a maximum of only five channels could be viewed at any one time. Nor did they make sufficiently clear that the time the channels were available was less than the normal broadcast times for these channels. We considered these were significant conditions which should have been made clear. We did not accept that, by directing people to a telephone number or web site, the ads could legitimately omit an important condition of the service on the basis that this information would be passed on at a later date.

The TV advertising breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.2.3 (Qualifications) and should not be shown again without making the limitations clear.

The catalogue advertising breached CAP Code Clause 7.1 (Truthfulness).

**ADVERTISER:** Eli Lilly and Company Ltd t/a Lovelifematters

**AGENCY:** Norris Lincoln Adcom

**Date:** 7 September 2005

**Media:** Television

**No. of complaints:** 20

**COMPLAINT:**

Two ads for Lovelifematters.co.uk. The first featured shots of a couple on a beach and a voice-over that said: "Is your man one of the one in ten men with an erection problem? Do you realise it could be a sign of an underlying illness? And do you both realise that there are now over ten different treatments available for his erection problem? Contact LoveLife Matters for further information. After all, together you may find the right answer." The website address and a telephone number were onscreen throughout. The second, longer ad's voice-over said: "Is your man one of the 1 in 10 men with an erection problem? Do you both realise it could be a sign of an underlying illness? Do you want further information which could help you help him? And allow him to find a treatment that suits your relationship? Call 0800 ... or visit lovelifematters.co.uk for information especially for the woman whose man has an erection problem. After all, together you may find the right answer." Onscreen text faded in and out and read "One in ten men' 'Diabetes' 'High blood pressure' 'over ten different treatments are now available' and 'LoveLifeMatters. www.lovelifematters.co.uk. 0800 ... Free and confidential information about erection problems. Sponsored by Lilly ICOS"

Complainants raised three issues.

1. 17 were concerned about the scheduling of the ads. Most mentioned that they had been shown at a variety of times between 9:30 am to 3:45 pm and that it was inappropriate for ads of a sexual nature to be shown when children might be watching. Six of the complainants said that they had seen them with children who were under ten years of age. One complainant said they had seen one of the ads at 9:30 pm with their 12-year-old child; they felt that it should have been shown later.
2. One complainant said that they found the theme of the ads offensive.
3. Two complainants said that the ad promoted the use of prescription medicines and would discourage viewers from seeking medical advice for erectile dysfunction. They said that the ad did not give viewers information on all the options available.

**ADJUDICATION:**

1. Complaint not upheld

The BACC said that the ads were intended to promote a website and booklet to raise awareness of erectile dysfunction (ED) and to provide advice and information on the topic. They were targeted at women whose partners may have been suffering from ED. While they did not feel that the ads were harmful for younger children, they did not feel that they were appropriate for them to see because of the mild sexual content and brief reference to sexual function. They applied a timing restriction originally used when television

advertising for sanitary protection products was introduced. The restriction stated that the ads were "To be transmitted during the following times only: Weekdays 0900 hrs to 1600 hrs then post 2100 hrs. Weekends, public and school holidays post 2100 hrs." This restriction was intended to ensure that the ads would only be shown after the watershed and when children were at school. They felt that, though the ads may have been seen by pre-schoolers, they were unlikely to be comprehensible to them.

Eli Lilly and Company Ltd said that it regretted that children had seen the ads and that parents had been put in an awkward position by this but it had followed the guidance given to it by the BACC about the scheduling of the ads.

We considered that the scheduling restriction applied to the ad was intended to ensure that children of school-going age would not see it. While six of the complainants mentioned that their children had seen the ad and one noted that for many children the school-day now finishes before 4 pm, we considered that the restriction had been successful in minimising the risk that they would have been seen by children for whom they were unsuitable.

## 2. Complaint not upheld

The BACC said that they considered the subject of the ads to be acceptable to advertise as long as it was done responsibly and with appropriate scheduling restrictions. They pointed out that the ads were understated and gentle in its delivery and did not feature any graphic imagery. They did not feel that they were likely to cause serious or widespread offence.

Eli Lilly and Company Ltd said that the subject of ED had been taboo for many years; it felt that the potential benefits of making people aware of the condition justified the advertising.

We acknowledged the BACC's point that the ads did not contain any graphic material and that the subject was treated in a gentle manner. We did not consider that the subject was an unacceptable one for responsible advertising or that the ads had or were likely to cause serious or widespread offence.

## 3. Complaint not upheld

The BACC said that the ads promoted a website and booklet that offered information and advice to women whose partners suffered from ED and that none gave the impression that proper medical advice should not be sought. They said that the website and booklet explained what ED was and discussed more than ten possible treatments while actively encouraging readers and users to seek proper medical attention.

Eli Lilly and Company Ltd said that the ads encouraged viewers to request a booklet by calling a telephone number or visiting a website. It said that the website, booklet and teletext all mentioned the importance of encouraging men with ED to visit their doctor and that this was particularly emphasised in relation to treatment options.

We noted the point made by the BACC and the advertiser that the ads simply encouraged viewers to call a number or visit a website in order to get more information. The ads made no mention of particular treatment options nor did they suggest that sufferers should not seek proper medical attention. We did not consider the ads likely to give the impression

that a medical consultation would not be necessary for the treatment of the condition mentioned or that it would discourage consultation with a doctor.

The ads were investigated under CAP (Broadcast) TV Advertising Standards Code, rules 6.1 (Offence), 7.3.7 (Use of scheduling restrictions) and 8.2.6 (Conditions requiring medical attention) and CAP (Broadcast) Rules on the Scheduling of Advertising rule 4.2.3 (Treatments unsuitable for children) but were not found in breach.

**ADVERTISER:** Health Perception (UK) Ltd  
**AGENCY:** Can Communicate  
**Date:** 7 September 2005  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

An ad for Health Perception with a voice-over that said: 'Only one company, Health Perception, has the widest range of glucosamine products. So whichever you choose, tablets, gels, patches or liquid, there's one that's just right for you. And with the added assurance of strength and quality, no wonder we're the UK's best-selling glucosamine brand. But don't just take our word for it. Boots customers have just voted Health Perception's glucosamine their Number 1 choice.' The ad ended with a shot of a pack of Health Perception's Glucosamine 750mg Tablets.

The ad aired between 11 April and the second week of May.

Seven Seas complained that the advertiser's claim to be the best selling brand was incorrect. It claimed that sales figures from Information Resources Incorporated (IRI) showed that its Jointcare range, including Seven Seas Cod Liver Oil Plus Glucosamine, Glucosamine Sulphate, Glucosamine and Chondroitin, Projoint Formula and Jointcare Max, was the best selling in terms of value and volume in the four-week period ending 4 May 2005.

**ADJUDICATION:** Complaint upheld

The BACC said that it had cleared the ad on the basis of figures provided by Health Perception that showed that Health Perception had a 61.4% share by value of the glucosamine sector in the 52-week period up to the week ending 2 October 2004.

Health Perception said the figures referred to by Seven Seas combined Seven Seas' sales of glucosamine products with its sales of Cod Liver Oil Plus Glucosamine. It said that without the sales figures for the Cod Liver Oil Plus Glucosamine, Seven Seas' sales were below those of Health Perception. Health Perception said that its sales in the IRI figures were of a range of products and, while not all of these were glucosamine products, 99% of the sales were.

We considered that the ad was for Health Perception' range of glucosamine products, rather than just for the product shown at the end and referred to as the number one choice of Boots customers. We noted that both the advertiser and the complainant referred to the set of IRI figures provided in support of the complaint and accepted them as an accurate representation of product sales, albeit disagreeing on how they should be interpreted. We noted that many of the individual products in both ranges consisted of glucosamine and a number of other substances. We considered that Seven Seas' Cod Liver Oil Plus Glucosamine would be regarded by viewers as a glucosamine product and that it was part of Seven Seas' Jointcare range of glucosamine products. The IRI figures showed that in

the sample period Seven Seas' range was the biggest seller by both volume and value. The figures originally submitted to the BACC were for a period which ended some time before the ad was first aired. They did not define what the 'glucosamine sector' was and they only showed market share by value. We did not consider them to be adequate substantiation for the claim 'We're the UK's best-selling glucosamine brand'. We considered that the claim had not been substantiated and was misleading.

The ad was in breach of the CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.2.1 (Evidence). It must not be shown again in its current form.

**ADVERTISER:** L'Oreal (UK) Ltd t/a Ambre Solaire  
**AGENCY:** Publicis Ltd  
**Date:** 7 September 2005  
**Media:** Television/Magazine  
**No. of complaints:** 1

**COMPLAINT:**

Advertising for Ambre Solaire in a range of broadcast and non-broadcast media claimed "no-one makes the sun safer".

A competitor, Boots plc, objected to the claim. They referred specifically to two ads for Ambre Solaire products. One was a TV ad for Clear Protect and the other was a magazine ad for Kids SPF 50+ Milk. Boots said the claim "no-one makes the sun safer" was misleading in both ads and in all Ambre Solaire advertising as it suggested that their products were as safe as any other product on the market which was not the case. Boots said that, according to their star rating, the advertised products had only three and four stars respectively and offered lower levels of UVA protection compared with other similar products (including all Boots Soltan products), which had achieved the maximum of five stars. Boots said that the level of UVA protection in total across the Ambre Solaire range was less than that provided by ranges such as Boots Soltan. They said a range that provided better UVA protection overall had to be safer and hence the Ambre Solaire claim that "no-one makes the sun safer" was inherently unsupportable.

**ADJUDICATION:** Complaint not upheld

Ambre Solaire said the claim "no-one makes the sun safer" related to the range of Ambre Solaire products and was valid for two reasons. The first was that the Boots star rating did not take into account photo-stability, which was related to a product's ability to retain its sun-protection levels during use (after it had been applied to skin). They said that when this was considered, alongside the UVA protection level, their products were likely to be as safe as other similar products. They said they had contested the addition of a fifth star to the star-rating system when it was proposed by Boots as they believed it would unfairly limit the number of stars their products would get despite the high level of lasting protection they offered. They said the second reason the claim was valid was that it was not only related to the protection levels offered by their products but also to the fact that, in their view, no other manufacturer had dedicated more than Ambre Solaire towards sun safety and it had an unsurpassed contribution to consumer safety in the sun.

Ambre Solaire provided scientific evidence in support which we sent to an expert. He said the evidence showed that a sun protection product with five stars according to the Boots star-rating system could potentially have poor photo-stability and therefore offer less protection during use than a lower rated product with high photo-stability as it would become less effective following application. He considered that Ambre Solaire's evidence supported the view that photo-stability was consumer-relevant as the level of protection declined quickly for products with poor photo-stability. He noted this could be combated with frequent re-application but said it was not clear how often consumers would re-apply.

He further noted that Ambre Solaire's range of products included one with the maximum level of UVA protection allowed to be claimed in Europe.

We accepted that the claim was based both on the level of protection afforded by the range of products and the efforts made by Ambre Solaire to promote awareness of sun-protection in general along with innovative product design. We considered that viewers were unlikely to think the claim related entirely to the specific products detailed in each ad and would accept it related to the entire range. We noted the Boots star-rating system did not take photo-stability into account. As our expert had considered this relevant to a product's ability to protect consumers we did not accept that the claim was rendered inaccurate just because other products scored more highly according to the Boots system. Ambre Solaire had also clearly shown themselves to be among the forefront of promoting sun protection and developing and using products to assist with the application of sun-protection products. These included wipes, trigger sprays and clear products. We therefore considered that, on balance, the claim was acceptable.

We considered the broadcast ad under CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.2.1 (Evidence) but did not find it in breach.

We considered the magazine ad under CAP Code Clause 7.1 (Truthfulness) but did not find it in breach.

**ADVERTISER:** Mainway Express Ltd t/a Fastway Couriers (Central Scotland)

**LICENSEE:** Real Radio (Scotland)

**Date:** 7 September 2005

**Media:** Radio

**No. of complaints:** 1

**COMPLAINT:**

Three locally cleared radio ads on Real Radio (Scotland) offered Fastway Couriers franchise opportunities. One said "... As a franchise owner, not only would you be your own boss, you could earn over £50,000 per year ...". Another, "... Control your own destiny, control your own career and you could earn over £50,000 per year ..." The third stated "... become a Fastway Couriers franchise owner, control your own destiny and with the potential to earn over £50,000 per year it's practically a license to print money ..." All the commercials said "Listen out for upcoming seminars or call ..."

A listener queried whether it was possible to earn £50,000 a year from the courier franchise, and asked what this figure was based on.

**ADJUDICATION:**

Complaint upheld

Real Radio Ads said it had used "could" in the commercials, which it believed had not implied or inferred that potential franchise holders would earn £50,000 a year, only that it was possible. They said that "could" was widely used as an acceptable description for many advertised offers, and they believed radio audiences understood that this commonly used term did not imply any form of guarantee. They also pointed out that the commercials only asked listeners to call to find out more details, or to listen out for seminar details. To support the claim, Real Radio Ads supplied us with weekly statements for one of the Fastway Couriers franchisee, covering a 34-week period. These showed, after deductions, average earnings of over £1,000 per week. They strongly believed that there was no intent to give false or confusing information in the ads, and that there was no evidence to disprove their claim. Although they believed the ads were compliant, after receiving details of the complaint Real Radio Ads had, in agreement with Fastway Couriers, removed the ads and replaced them with two new ones approved by the RACC.

Although the commercials told listeners how to find out more details, the overriding message was the potential of earning £50,000 a year. We accept that 'could' in the ad implied a possibility, and listeners would understand this was not a guarantee. However, it still had to be a realistic possibility. We did not consider the evidence supplied to us had adequately shown this to be achievable. We noted it had shown one franchise holder earned over £35,000 during a 34-week period, but we considered that just one example was not sufficient evidence to back the claim that all franchise holders "could" potentially earn over £50,000 per year. We therefore considered that the claim had not been sufficiently substantiated.

The advertising breached CAP (Broadcast) Radio Advertising Standards Code Section 2 Rule 3 (Misleadingness).

**ADVERTISER:** Orange Personal Communications Services Ltd t/a Orange

**AGENCY:** Traffic Bureau

**Date:** 7 September 2005

**Media:** Television/Poster/National press/Internet

**No. of complaints:** 28

**COMPLAINT:**

Objections to a national press ad, a poster, an Internet promotion and a TV ad for texts and call minutes on a mobile phone plan.

a. The national press ad and poster were headlined "Double talk, double text". Text stated "Now all customers, old and new, can get double minutes and double texts for six months on Your Plan 120, 200 and 300 ... Existing customers now get great deals too. Orange customers call 343". Small print stated "Airtime offers only. 12 months minimum term contract. Conditions and exclusions apply, see [www.orange.co.uk/customers](http://www.orange.co.uk/customers) ...".

b. The Internet promotion was headlined "existing customer offers". Text stated "pay monthly Now all customers, old and new, can get double minutes and double texts for six months on Your Plan 120, 200 or 300. call 343 to get this offer".

c. The TV ad showed staff in a boardroom meeting. Onscreen text stated "Existing customers on 12 month contract must be in 9th month or more of contract to be eligible. Conditions & exclusions apply." A man said "All right folks, listen up. We need to take better care of our existing customers. Wise Man, any thoughts?" A Chinese man responded and a translator said "He says we should give all our existing customers great deals like we give our new customers." Onscreen text stated "Existing customers now get great deals too." Text on the closing screen stated "the future's bright the future's Orange.

The complainants objected that the ads were misleading and dishonest, because they did not make clear that existing customers must have completed a certain number of months of their contracts and must agree to sign-up to a further contract to take advantage of the offers.

**ADJUDICATION:** Complaints upheld

Orange said existing customers had to be in the last three months of their contract to take advantage of the offers and those who took advantage of the offers had to sign-up to a further minimum term contract of 12 months if they did not require a handset upgrade, or a contract of 18 months if they did require a handset upgrade. Customers who took up the offers were sent a text message about their new contract period and had 14 days to cancel. As a result of the complaints, Orange had amended the national press ad and poster; the revised version stated "Now our customers, old and new, can get double minutes and double texts ... Existing customers on 12 month contract must be in 10th month or more to be eligible. 12 month minimum term contract applies ...". They amended the Internet promotion to state "our customers" instead of "all our customers" and created links to text that stated " ... now you can get Double talk, double text if you are in at least

the last three months of your contract with us ... subject to a 12 month minimum term contract". They amended the onscreen text in the TV ad to state "Existing customers on 12 month contract must be in 10th month or more of contract to be eligible. Conditions & exclusions apply." Orange asserted that, because the ads did not refer to a handset upgrade, it was not necessary to mention in the ads that customers who took advantage of the offers were bound to an 18-month contract if they required a handset upgrade. They said, if the ad referred specifically to the offer of a handset, they would make clear that the minimum term contract for existing customers was 18 months. Orange said they would be happy to amend the ads to make clear that customers on a minimum term contract must be in the last three months of their contract to be eligible for the offers.

The BACC said the onscreen text "Existing customers on 12 month contract must be in 9th month or more of contract to be eligible. Conditions & exclusions apply" made the basis of the offer clear. They believed it was unnecessary to state in the TV ad that customers who took advantage of the offers had to sign up to a further contract of 12-months minimum, because customers would be aware that, at the end of 12 months, their contract had to be renewed if the service was to continue.

We considered that the original ads implied all existing customers were entitled to receive the offers available to new customers. We considered that a significant proportion of Orange customers on a minimum term contract would not be in the last three months of their contract and would therefore be excluded from the offers. We also considered that the condition that customers who took advantage of the offers had to sign up to a further contract of 12 months minimum was an important one. We considered that the ads did not make the restrictions and conditions of the offers clear and were misleading.

We noted the changes Orange had made to the ads but considered that, although the revised ads were an improvement on the original ones, they still did not go far enough. We told Orange to make clear the conditional nature of the offers for existing customers by removing the word "can" from the headline claim "Now our customers, old and new, can get double minutes and double texts ..." and replacing it with "could", and by using the word "could" in the TV ad when referring to the deals available for existing customers. We welcomed Orange's willingness to amend the ads and told them to make clear that all customers on a minimum term contract must be in the last three months of their contract to be eligible for the offers. We also considered that the text "12 months minimum term contract applies" and "subject to a 12-month minimum term contract" could misleadingly suggest to some readers that the offer applied only to customers on a 12 month minimum term contract. We told Orange to state instead that, to qualify for the offer, customers must sign a new contract with a minimum term of 12 months. We told Orange to asterisk those conditions to the headline claims in the national press ad, poster and Internet promotion and to make those conditions clear in the TV ad.

The national press ad, poster and Internet promotion breached CAP Code clauses 6.1 (Honesty), 7.1 (Truthfulness), 27.4 (Sales promotion rules) and 34.1 (Significant conditions for promotions).

The TV ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.4.2 (Superimposed text).

**ADVERTISER:** Thomas Cook t/a Orchid Travel  
**LICENSEE:** Teletext  
**Date:** 7 September 2005  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

An ad on Teletext featured a holiday at the Atlantis hotel in Vilamoura, departing from Stansted airport on the 7 July 2005, for £315.

A viewer, who called to enquire about the holiday and was told it would cost £459, objected that the holiday was not available at the advertised price.

**ADJUDICATION:** Complaint upheld

Thomas Cook said they could not provide evidence that the holiday was available at the advertised price. Instead, they submitted an example of a holiday booking, departing from Gatwick airport but going to the Atlantis hotel in Vilamoura, which showed that that holiday had been sold for £341. They acknowledged that the example booking they submitted as evidence did not match the advertised holiday but said it was a more feasible price than the £459 that the viewer said she had been quoted.

We did not consider that the booking details that had been supplied to us were adequate, because they referred to a holiday departing from a different airport and showed that that holiday had been sold for £341. No evidence was provided to show the advertised holiday was available for £315. We concluded that the ad was misleading and in breach of CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.3.1 (Accurate pricing).