

Advertising Standards Authority

Broadcast Advertising
Adjudications

6 July 2005



ADVERTISERS IN THIS WEEKS REPORT

Body Reform	3
Bulldog Communications Ltd	6
Bulldog Communications Ltd	7
Coca-Cola Great Britain t/a Fanta Z	9
Department of Environment, Northern Ireland	11
Forest Gate Homeopathic Practice	13
Gems TV Product	16
Westland Horticulture Ltd	19

ADVERTISER: **Body Reform**

AGENCY: **Unknown**

Date: **26 July 2005**

Media: **Television**

COMPLAINT:

BCAP monitored a promotion for Body Reform on Ideal World. The Body Reform pack comprised one big bandage, two small bandages, two bottles of Herbal Body Contour Gel, a pot of Body Sculpture Thigh Cream and a tape measure. Studio volunteers had their waist, arms and thighs measured with a tape measure before the gel and bandages were applied. The bandages were removed after one hour and the volunteers were measured again. The claimed measurement reduction varied between one and four inches.

The presenter made several claims concerning the effectiveness of the product on inch reduction:

“We are going to so show people how easy it is for everybody to be able to lose inches and also, of course, tone and smooth the skin.”

“Body Reform are so confident you are going to lose inches with this system they give you your very own tape measure”.

“Do it three times a week at first for a month, then once a week after that ... Then after that you'll be thin.”

During a phone-in segment, a customer said “I lost 1½ inches off my stomach straight away. The thing I am very very pleased about – it doesn't go back”.

The presenter claimed the product would also reduce fat and cellulite:

“Use it where you've got excess fat. A little bit of fat. It doesn't work on muscle, it's just on fat, anywhere you've got a bit of fat you want to get rid of.”

“Also you're going to be toning and firming the whole of that skin area. So what are we targeting here girls? Cellulite absolutely, not just losing inches but actually targeting the problems of cellulite as well.”

“It doesn't really work on muscle it works better on fat and on soft fat. It's not just losing inches it's also getting rid of cellulite.”

“Where the cellulite collects, you know, the soft fat on the back of your thighs ... if you use it there it will smooth that skin. If you've got dimples, it gets rid of all that, and just smoothes it out ... badly packed fat, that's what we are talking about – getting rid of it, instantly, no diet, no exercise.”

A caller stated that “there was a marked improvement in the cellulite on my legs ... it was the only thing that made my legs look a lot smoother”.

The presenter explained that “You are also getting this absolutely fantastic Thigh Sculpting Cream as well. That is wonderful, because what this means is you can use it without the wraps if you want to and literally just put that all over your thighs again for inch loss. But also fantastic, I have to say, against the signs of cellulite”.

The Authority challenged whether:

1. the wrap would result in permanent measurement reduction;
2. the Body Sculpture Thigh cream would result in inch loss when used without the wraps;
3. Body Reform removed fat and
4. the Thigh cream reduced cellulite.

ADJUDICATION

1. Upheld

Ideal World stated that they did not have substantiation for any permanent effect of the product as they did not believe the promotion made such a claim. Ideal World argued that “the presenter stipulates that the inch loss can be maintained forever, not that the inch loss is permanent”. It is stated clearly that this can only be maintained if the product is used three times a week for the first month and once a week thereafter. “This is the same as saying if you do not maintain this regime, the inches lost will return. This is not, therefore, a claim for permanent effect”. They believed the public’s perception of a permanent claim for any product would not involve an open-ended continuing regime of the sort stipulated.

The Authority has not seen evidence that body wraps are capable of producing permanent measurement loss that could be maintained week by week. In addition, the Authority does not consider that body wraps are capable of temporarily altering the shape of the body so that it appears slimmer for any significant length of time. The Authority understands that wraps would alter body shape only in the same way as a tight belt or sauna might and so does not consider the measurement reduction to be effective for any length of time.

In addition, the Authority judged the demonstrations shown on screen to be inaccurate because the measurement reduction involved a tape measure. It seemed that in several cases the tape measure was being pulled more tightly after the wrap was removed than it had been for the “before” measurement. In addition, in some cases, the tape measure seemed to have slipped to a narrower part of the body. The Authority also understood from an independent consultant that tape measure readings are generally not regarded as adequate evidence as there is a tendency for people to brace their abdomen or pull it in.

2. Upheld

Ideal World did not have any evidence that the Body Sculpture Thigh cream would result in inch reduction when used on its own. The Authority judged the claim to be misleading.

3. Upheld

Ideal World did not have any evidence to substantiate the claim of fat reduction so the Authority judged the claim to be misleading.

4. Upheld

Ideal World did not have any evidence to substantiate the claim of cellulite reduction.

The ASA does not accept that cellulite is a distinct form of body fat. Like all fat, the only way that it can be removed is by reducing energy intake to below that of energy expenditure. To date, the ASA has not seen evidence to prove that any cosmetic cream

has been proven to reduce, or even to reduce the appearance of, cellulite. The Authority judged the claim to be misleading.

The Authority welcomed the broadcaster's action in withdrawing the promotion but nevertheless the Authority concluded the infomercial was in breach of the TV Advertising Standards Code Rule 5.1 (Misleading advertising), 5.2.1 (Evidence), 5.2.2 (Implications), 5.2.3 (Qualifications) and 5.4.4 (Testimonials) and recommended that future promotions for the product make the temporary effect of the product more apparent.

ADVERTISER: Bulldog Communications Ltd
AGENCY: WCRS Ltd
Date: 6 July 2005
Media: Radio
No. of complaints: 1

COMPLAINT:

A radio advertisement for a broadband service said "Bulldog broadband want to give you all the internet you can eat and the best service in town. How? Simple: Bulldog speaks to you like a person not a boffin, so it's more of 'two plus two equals four' and less of 'E=MC2'. We'll give you a super-fast 4 meg broadband so your downloads are more [sound of a speeding car] and less [sound of a car failing to start]. We'll also give you a great price super-value broadband so it's more [sound of a cash register] and less [sound of a woman sighing and bags dropping on the floor]. Bulldog 4 meg broadband for a faster net. Find out how you can get great value broadband for much less than you think: text 'Bulldog' to 81156 or visit bulldogbroadband.com for details. Limited availability. Conditions apply."

A listener, who was a Bulldog broadband customer, complained that the advertisement was misleading, because he had never experienced a download speed of 4 meg using the service.

ADJUDICATION: Complaint upheld

The Radio Advertising Clearance Centre (RACC) believed listeners would be aware that "4 meg" referred to the maximum download speed available in optimum conditions and that the speed of individual connections depended on factors such as the speed of a customer's hardware. It did not believe the advertisement was misleading.

The advertiser said the advertisement stated "conditions apply" and directed listeners to its website for further details. It said its website made clear the limitations on the 4 meg download speed. It said there was no industry standard on how download speed should be featured in advertisements and quoted examples of its competitors' advertising that showed that some speed claims were qualified with the words "up to" while others were not. It said there were a number of things that could affect customers' download speed such as software, hardware, modems and other equipment they might use. The advertiser said its latest radio advertising stated "up to 4 meg".

We noted there were several factors, such as the number of users using the service and technological limitations, which could influence the speed of the advertiser's broadband service and that as a result not all consumers would be able to achieve a super-fast download speed of 4 meg. We therefore believed that, without qualification, listeners were likely be misled by the claim. The advertisement was in breach of CAP (Broadcast) Radio Advertising Standards Code Section 2, Rule 3 (Misleadingness).

ADVERTISER: Bulldog Communications Ltd
AGENCY: WCRS Ltd
Date: 6 July 2005
Media: Radio
No. of complaints: 3

COMPLAINT:

A radio advertisement for a broadband service said "Bulldog is Britain's fastest broadband for under 20 quid. Four megabytes of unlimited access giving you more of what you want, whenever you want it ... at Bulldog we like to keep things simple. Giving you the fastest broadband for under 20 pounds. No limits. No strings. No waiting. For more information text 'Bulldog' to 81156. Limited availability. Visit bulldogbroadband.com for details. Offer available until 15 May. Terms and conditions apply."

1. Three listeners objected that the advertisement was misleading because the speed of the advertiser's broadband was four megabits per second rather than four megabytes per second. They said that a megabyte was composed of eight megabits and that the advertisement therefore implied that the broadband service was eight times faster than it actually was.

2. One of the listeners objected to the claim that the advertiser's broadband was available for under £20, because he believed customers had to purchase a phone line from the advertiser at a cost of £10.50 a month in order to use Bulldog broadband.

ADJUDICATION:

1. Complaint upheld

The advertiser said it had made a genuine mistake and acknowledged that the advertisement should have stated "megabits" rather than "megabytes". It said the advertisement had been pulled and replaced by a correct version.

We noted that the advertiser had made a mistake and welcomed the action it had taken. We believed some listeners could be misled by the incorrect terminology used in the advertisement and concluded that it was misleading.

2. Complaint upheld

The Radio Advertising Clearance Centre (RACC) said the advertisement made clear that there were conditions on the availability of broadband at the quoted price of "under 20 pounds" and that the advertisement advised listeners to check those conditions online or by sending a text message for more information. It said it was common for broadband services to require a phone line and that it did not believe it was misleading to quote a price which excluded the cost of that phone line.

The advertiser said a phone line was required for all broadband services and that its competitors did not include the cost of that phone line in their advertised prices. It said the

advertisement directed listeners towards its website where it was clearly stated that a Bulldog phone line was required.

We noted that in order to take up the advertised offer listeners would need to obtain a phone line from the advertiser. This would require the majority of listeners to change from their current telephone provider. We believed that this requirement represented a significant condition which should have been made clear in the advertisement. We agreed with the RACC and the advertiser that, like with other broadband services, the cost of the phone line did not need to be included in the price of the broadband service. However, the advertisement should have made clear that listeners would also require a phone line from Bulldog. Because the advertisement did not make that clear we concluded that it was misleading.

The advertisement was in breach of CAP (Broadcast) Radio Advertising Standards Code Section 2, Rule 3 (Misleadingness).

ADVERTISER: Coca-Cola Great Britain t/a Fanta Z
AGENCY: Mother Ltd
Date: 6 July 2005
Media: Television
No. of complaints: 272

COMPLAINT:

A commercial for Fanta Z opened with a young couple enjoying a picnic on a beach. They drank from their cans of Fanta light, but then calmly spat the drink out. Others were also shown spitting the drink out in similar ways.

The voice over explained "We all liked the idea of Fanta Light, but not everyone liked the taste. Goodbye Fanta Light, hello Fanta Z. Real Fanta taste, zero added sugar."

1. 272 viewers complained that the advertisement condoned spitting and encouraged bad manners and antisocial behaviour, particularly in children and young adults. Eight children, aged between two and four years, were reported to have copied the advertisement. A head teacher said that a number of children in the playground had also mimicked the commercial.
2. The majority said it was offensive because the images were disgusting.
3. Eight of the complainants thought it was inappropriate because spitting posed a health risk and could spread tuberculosis.

ADJUDICATION:

The advertiser said it had not intended to cause offence to viewers. It said the commercial turned around a series of classic drinking scenarios, focusing on a set of ironic, unexpected conclusions to communicate the zero added sugar content of the new Z range. It had purposefully created a highly fictitious and bold campaign to force a radical reappraisal of the low calorie soft drink. It explained that its target audience was 16-to 24-year-olds who would understand the ironic message. It said it worked closely with the Broadcast Advertising Clearance Centre (BACC) and relevant industry representatives to agree a media buying strategy that it felt was the right approach for the campaign. The advertiser added that it had only received six complaints directly, and after explaining its intentions had moved the callers' position from one of "negativity through to a neutral stance". Whilst it remained confident that it was correct and professional in its approach, it gave its assurance that it would amend the media scheduling of its 40-second commercial to comply with the ASA Council's ruling.

The BACC said it did not consider the commercial condoned or encouraged antisocial behaviour. It regarded the advertisement as fairly mild and harmless. The spitting was conducted in an amusingly polite and restrained manner, avoided expressions of disgust, and did not show a lack of consideration to others. It believed that the controlled adult behaviour was different from showing children spitting as a gesture of disrespect. However,

the BACC said it was conscious that an adult audience might have found it undesirable to show any depiction of spitting to a young child audience because of its associations with bad behaviour. It therefore gave the commercial a restriction to keep it away from programmes made for or aimed at children.

1. Complaints upheld

We agreed that viewers generally would understand the light-hearted intention of the commercial, but we were concerned that young children would see the actions as fun and easy to copy. Spitting is widely perceived as antisocial and we could understand why viewers would not want to see children copying this behaviour. Although the restriction applied by the BACC would keep the advertisement away from children's programmes, children would still be able to see it at other times of the day. We considered that it would be more suitable to restrict the advertisement to post 9 pm when the likelihood of children watching television alone would be reduced. We welcomed the advertiser's assurance that it would amend the advertisement's media scheduling to comply with this ruling. We concluded that the advertisement was in breach of CAP (Broadcast) TV Advertising Standards Code Rules 7.3.1 (Children - mental harm), 7.3.7 (Use of scheduling restrictions) and CAP (Broadcast) Rules on the Scheduling of Advertising Rule 4.2.3 (Treatments unsuitable for children) when scheduled before 9 pm.

2. Complaints not upheld

We did not consider that the images showing people spitting out the Fanta Light were likely to cause serious or widespread offence. We agreed it would not be to everyone's taste and noted that it had a strong effect on a relatively high number of viewers. We considered, however, that the actions were highly stylised and were unlikely to be seen by the majority of viewers as repulsive or sickening; the drink had not been spat out in disgust. The advertisement was not in breach of CAP (Broadcast) TV Advertising Standards Code Rule 6.1 (Offence).

3. Complaints not upheld

We noted that spitting could spread germs but considered that any emulation of the actions shown in the advertisement by young children was unlikely to be widespread enough to pose a significant health risk. We understood why viewers were concerned about the issue but did not consider that the advertisement was in breach of CAP (Broadcast) TV Advertising Standards Code Rules 6.7 (Health and Safety).

ADVERTISER: Department of Environment, Northern Ireland

BROADCASTER: Ulster TV

Date: 6 July 2005

Media: Television

No. of complaints: 2

COMPLAINT:

An advertisement promoting the use of seatbelts showed a teenage couple relaxing in a park. The instrumental from Samantha Mumba's "Body to Body" was playing as gentle background music. The couple got into the back of a friend's car but only the girl put her seatbelt on. The car pulled away and a voiceover said "This is Michael. Today, he's going to hit his girlfriend so hard she ends up with permanent brain damage". Michael's girlfriend was seen to grab his hand as another car collided with their vehicle head-on. The background music switched to a stronger beat and the impact of the crash threw Michael around the car in time with the music. He was hurled forward across the driver as another car hit them from behind. The second impact pushed him back again, breaking the neck of the front passenger. He then lurched sideways into his girlfriend's head in a slow motion shot. The car and passengers were covered in blood and broken glass. Body bags were shown being loaded into an ambulance and a paramedic said "Three dead in this vehicle. The girl is critical. They say the guy without the seatbelt did the damage". A voiceover and on-screen text said "No seatbelt, no excuse".

The advertisement was approved with the restriction that it should not be shown before 9 pm.

Two viewers complained because they saw the advertisement before the 9 pm watershed and felt it had been scheduled inappropriately. One viewer saw it at 8.30 pm during "The Bill". The other viewer saw it on a Sunday afternoon at 12.40 pm and 2.30 pm during the San Marino Grand Prix coverage, which he was watching with his 8-year-old son.

ADJUDICATION: Complaint not upheld

UTV said it had taken a responsible view of the transmission of the advertisement; its purpose was to save lives, not sell products. It considered the programme environment more important than the times at which the advertisement was transmitted. It said it broadcast the advertisement during The Bill and the Grand Prix because research showed those programmes were likely to be watched by the target audience of young males. Research also showed children were significantly less likely to be watching them than other individuals. It added that viewers in Northern Ireland were used to a much more shocking and realistic genre of advertising than viewers in Great Britain as a result of the Government's 1987 – 1999 anti-terrorist campaigns. It pointed out that those campaigns featured horrific images of kneecappings, brutal beatings, shootings and murders in front of children. It understood the need to avoid shocking viewers, but believed that careful scheduling would ensure the message got across to as many people as possible without causing offence.

The agency submitted an analysis it had carried out based on actual road casualty statistics in Northern Ireland. The analysis showed young males in Northern Ireland aged between 17 and 24 years were far more likely than any other group to travel in a car without wearing a seatbelt and be responsible for fatal or serious injury collisions. Males aged 25-34 were the next most likely group to cause collisions and not wear seatbelts. 83% of 17- to 24-year-olds believed the Department of Environment's (DOE) television advertisements were an influential factor in saving lives on Northern Ireland's roads; and 65% of 17- to 24-year-olds said they were very influenced by this particular advertisement. Since it was first shown in 2001, the number of people wearing seatbelts in Northern Ireland had increased, especially for backseat passengers aged 14-29, and by April 2004 the figure had risen from 46% to 64% in this age group. The agency further submitted an Advertising Offence Survey for Northern Ireland that was carried out, in 2002 by Millward Brown, a global market research company. Of 1011 adults in the sample 10% agreed strongly that road safety advertisements that showed shocking road deaths were offensive, 11% tended to agree they were offensive, but 67% disagreed that they were offensive. The agency also submitted a letter from Millward Brown summarizing its findings concerning the effect of the DOE's advertising campaign on children. It said that research conducted amongst children aged 5-12 showed they could remember each of the executions used in the campaign and were able to quote extensively from the scripts, sing the lyrics from the music and remember the names of the characters used. It also said Millward Brown found that the campaign had been seen by these children well after 9 pm. The agency stated that this indicated that the DOE's post 9 pm advertisements had infiltrated the consciousness of children with profound educational benefits, without any evidence of distress or offence.

We acknowledged that the advertisement was graphic and some parents might consider it inappropriate for viewing by young children. However, we accepted UTV's argument that in this case, the programme environment was more important than the time at which the advertisement was broadcast. Research showed it was far more likely to be viewed by 17- to -34-year-old males than by children when shown during *The Bill* and the Grand Prix. We noted that research submitted by the agency showed it was influencing viewers in Northern Ireland, particularly the target audience, to wear seatbelts. Provided the programme environment was selected carefully, we did not consider it inappropriate to show this advertisement in Northern Ireland before 9 pm.

The advertisement was investigated under CAP (Broadcast) TV Advertising Standards Code Rules 6.1 (Offence), 7.3.6 (Distress - children) and 7.3.7 (Use of scheduling restrictions) but was not found in breach.

ADVERTISER: Forest Gate Homeopathic Practice

BROADCASTER: Vectone TV and Bangla TV

Date: 6 July 2005

Media: Television

No. of complaints: 1

COMPLAINT:

Two similar advertisements for Forest Gate Homeopathic Practice were shown: one on Vectone TV and the other on Bangla TV. Both advertisements depicted various people being treated in the practice. The treatments included an eye and an oral examination plus what appeared to be a blood-pressure check. One of the men conducting treatments wore a stethoscope and in one of the advertisements appeared to give the 'patient' some medicine. In the other, people were shown walking inside the practice and waiting. Both advertisements featured a close-up shot of a certificate from the British Institute of Homeopathy in the name of Alim Uddin. A man was shown in both advertisements opening a medicine cabinet full of bottles and packets. This was followed by close-up shots of packets of pills and bottles. At the end of both advertisements on-screen text said "Consultant - MD Alim Uddin B.S.Y (D.HOM) F.B.I.H" The voiceover for both advertisements was in Bengali and according to the translation provided by Vectone TV said:

- a. Introducing new methods to your health care.
- b. Forest Gate Homeopathic Practice.
- c. British degree holders and experienced Bangladeshi homeopathic doctors are available to cure all kinds of chronic diseases.
- d. This treatment is fully scientific, based on natural methods and free of side-effects. That's why it's safe and effective for all.
- e. So don't waste your time, visit "Forest Gate Homeopathic Practice" today.

A viewer complained that:

1. the certificate shown did not permit Alim Uddin to practice homeopathy and the advertisements suggested otherwise.

The Authority challenged whether the advertisements:

2. gave the impression of professional advice;
3. referred to the approval of a particular product or its ingredients;

4. made medicinal and therapeutic claims regarding the treatments;
5. claimed that viewers would be cured by the treatments;
6. suggested that there were no side-effects from the treatments;
7. claimed the effects of the treatments were guaranteed and
8. suggested the treatments were safe or effective because they were “natural”.

ADJUDICATION:

Vectone TV said it had withdrawn the version of the advertisement shown on its channel pending the outcome of our investigation. Neither licensee commented on the points raised.

1. Complaint upheld

We were advised by the Health Professions Council and the General Medical Council that there were nine regulatory bodies in total that covered health related services in the United Kingdom. None of these regulated homeopathy and as such homeopathic practitioners did not require any particular qualification to set up a homeopathic practice. We were also advised by the British Homeopathic Association that, although their own members were required to be registered with a statutory professional body, there were no specific regulatory requirements for homeopathic practitioners to have any particular qualifications or be affiliated with a statutory body. We understood that a certificate was not required to practice homeopathy. We considered the advertisement was likely to give the misleading impression that a certificate was required and might also mislead as to Mr Alim Uddin's professional status.

2. Upheld

We considered the advertisement implied the men providing the treatment were “doctors” offering professional advice. The inclusion of the certificate along with the voiceover which referred to them as “doctors” added to this impression and it therefore breached the Advertising Standards Code.

3. Upheld

The advertisements appeared to approve the medicinal-type products shown. They depicted one of the “doctors” reaching inside a cabinet full of packets followed by close-up shots during which time it was possible to see the label and brand name of the products. This was not permitted by the Code.

4. Upheld

The advertising claimed “to cure all kind of chronic diseases”. We considered this to be a medicinal and therapeutic claim which was not permitted by the Code.

5. Upheld

Unless allowed by a marketing authorisation, claims that a medicinal product can cure an ailment are unacceptable. We understood that no such authorisation existed for homeopathic medicinal products and therefore considered the advertisement in breach.

6. Upheld

The Code stated that “no advertisement for a medicinal product may suggest it has no side effects”. We considered that the claim “free of side-effects” breached the Code.

7. Upheld

We considered that, by claiming the treatments were “effective for all” and that “doctors are available to cure all kinds of chronic diseases” the advertisements implied the effect of the treatments would be guaranteed. This was not permitted by the Code.

8. Upheld

The Code does not permit advertisements for a medicinal product to suggest that its safety or efficacy are due to it being “natural”. We therefore considered the claim “based on natural methods ... that's why it's safe and effective for all” breached the Code.

The advertising was found to be in breach of CAP (Broadcast) TV Advertising Standard Code Rules 5.1 (Misleading advertising), 8.1.2 (Impressions of professional advice and support), 8.2.2 (b) (Homeopathic medicinal products), 8.2.8 (Guarantee of efficacy), 8.2.9 (Cure), 8.2.12 (Side effects) and 8.2.14 ('Natural' products) and should not be shown again in its current form.

ADVERTISER: Gems TV Product
BROADCASTER: Gems.tv
Date: 6 July 2005
Media: Television
No. of complaints: 1

COMPLAINT:

A blue sapphire and diamond gold ring was advertised on teleshopping channel Gems.tv as part of a reverse auction where the price of an item falls rather than rises and everybody pays the final on-screen price. A presenter displayed the ring and talked about it as the on-screen price fell from its “start price” which appeared continuously on-screen as £705. She said:

“This is beautiful. Watch the way the colour changes ... it's electric blue at the base which moves up through the gemstone”.

“We're talking about sapphire that could come at, possibly in my opinion, for about £800, £750 on the high street for a single piece of jewellery”.

“You are looking at a very expensive piece of jewellery”.

“This price is nothing compared to what you would pay on a high street, and I know that all gemstone collectors will know this already”.

A viewer, whose wife had purchased the ring, believed the advertising was misleading for the following reasons:

1. presenters always make a point of calling the sale a 'game' which has certain advantages as customers do not have the same rights as a normal sale;
2. the sapphire received was not of the quality shown in the advertisement and
3. the presenter expressed an opinion on value but said it was a personal view. As a representative of a company they should only give advice if able to do so as a representative.

The Authority challenged:

4. whether the high street value mentioned by the presenter, which closely matched the item's “start price”, implied it had a particular value.

ADJUDICATION:

1. Complaint not upheld

Gems.tv said customers had exactly the same rights as in a normal sale and it used a reverse auction format to create fun, exciting and watchable television whilst introducing the concept of scarcity, which encouraged viewers to order before the end of a game so that they did not miss out. It said all products were backed by a full unconditional money back guarantee as set out in the distance selling directive.

We considered that even though it referred to its advertising presentations as games, Gems.tv was still subject to all relevant regulations. We did not regard the advertising misleading on this point.

2. Complaint upheld

Gems.tv said the gemstone jewellery demonstrated by presenters on Gems.tv was selected at random from those available. It said the very nature of gemstones meant they would not all be the same but that it endeavoured to ensure the quality of the entire batch of jewellery was as close to being the same as possible.

We considered that viewers would expect to receive a ring of similar size, colour and quality to the one advertised. It was clear that the sapphire in the ring sent to the complainant was cloudy and not as bright as the one advertised and we fully understood the disappointment caused. We acknowledged that the advertiser made attempts to ensure the rings were of similar quality but considered that, in this instance, at least one ring was of a poorer quality to that advertised and the advertisement was therefore misleading.

3. Complaint upheld

Gems.tv said all its presenters were trained to learn about gem stones. It said that if presenters wished to give a personal opinion on an item it was their right to do so. It provided evidence intended to support the estimated value given by the presenter which included photographs of apparently similar rings on sale in high street shops along with online store prices.

We considered that a presenter's 'personal opinion' still had the potential to mislead viewers if presented in such a way as to give the impression that a claim was being made. In those circumstances it would be treated as a claim and would require substantiation in support. Although in this case the presenter gave her 'personal opinion' the overall impression created by the advertising was that the ring was worth between £750 and £800 on the high street. We requested evidence to support the claim but had no way of determining whether the photographs provided showed items of an equivalent quality to the advertised product. In the absence of this or any independent evidence showing the value of the ring sold by Gems.tv we did not accept the substantiation offered. As the presenter's comments regarding the likely value of the ring were not satisfactorily substantiated we considered the comments to be misleading.

4. Upheld

Gems.tv said it started its games at or around the price it would expect a similar item to retail for although it added the presenter "never makes reference to that fact as we are not allowed to imply a value or a worth".

We recognised that Gems.tv was entitled to set a starting price for their reverse auctions. However, in this case we considered the presenter implied a value or worth to the start

price by comparing it to the amount that, viewers might expect to pay for similar rings on the high street. We did not receive satisfactory evidence to demonstrate that the start price was comparable to high street prices for similar rings and therefore considered the advertising misleading.

The advertisement was in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising) and 5.2.1 (Evidence). The licensee was reminded to comply with the Code in its future advertising.

ADVERTISER: Westland Horticulture Ltd

AGENCY: BDH\TBWA Ltd

Date: 6 July 2005

Media: Television

No. of complaints: 3

COMPLAINT:

An advertisement for Westland Multi Purpose Compost with Added John Innes compared plants grown in the Westland product with plants grown in leading competitors' products. Four weeks after planting, the Westland plants were shown in flower whereas those grown in the competitors' products were not.

We received complaints from two leading competitors and a member of the public. The issues raised were:

1. the plants chosen – pansies – did not have high nutrition requirements and would grow just as well in any growing medium. The growth depicted in the advertising was therefore unrepresentative of the predicted performance to be expected with other plants;
2. early flowering as depicted in the advertisement could have been as a result of poor growing conditions;
3. the four-week timescale was unrepresentative. After six to eight weeks the competitor plants would have caught up, meaning that viewers would get a misleading impression of what the Westland product could achieve;
4. the advertisement misleadingly implied that Westland had out-performed its leading competitors by a huge margin and unfairly denigrated their products and
5. the results shown contradicted a report published in Gardening Which Jan/Feb 2005, which did not show Westland outperforming its competitors.

ADJUDICATION:

The Broadcast Advertising Clearance Centre (BACC) had taken expert advice when approving the advertisement. The advice had been that the comparative test was independent and sufficiently vigorous to show that the Westland plants had scored significantly ahead of their competitors.

1. Complaint not upheld

The advertiser said that pansies were a major flower crop sold by garden centres and that it was reasonable for an advertisement to feature them. The company that had conducted the trial for them said pansies were susceptible to root damage and infection if nutrient levels were too high. Growers therefore typically used growing medium with lower nutrient content.

We believed it was sufficiently clear that the advertisement was comparing a single type of plant grown in its own and competitors' products and doubted that viewers would necessarily assume that the same results would be obtained for every other variety of plant. We did not consider the advertisement misleading on this point.

2. Complaint not upheld

The advertiser said that stressed plants may indeed flower earlier as an escape mechanism. However, the plants would be smaller, less vigorous and would lack colour. It said that the trial had been randomised and it would not have been possible to influence particular plants in that way.

From the evidence presented, we could see no reason to believe that the plants shown to flower had done so because of poor growing conditions. We did not consider the advertisement misleading on this point.

3. Complaint not upheld

The advertiser said four weeks was sufficient time to achieve the effects shown in the advertisement. The company that had conducted the trial said it was the plants that developed best in that establishment period that would perform best overall.

We believed it was sufficiently clear that the advertisement was making a comparison after the first four weeks of growing only. We did not consider the advertisement misleading on this point.

4. Complaint upheld

The advertiser said that the independent trial had shown that at the end of the four-week trial plants grown in the advertised product were the most advanced and were visually larger than the next best examples. On the 0.00 to 5.00 scale used in the trial, the Westland plants had rated 4.75, and its nearest competitors had rated 4.53. The advertiser said that the difference of 0.23 that this represented was significant and would be noticeable when buying plants. However, it also said the difference did not necessarily mean that all the Westland plants flowered.

The evidence received did not sufficiently back up the significant growth difference shown in the advertisement; all the Westland plants were shown in full flower yet those grown in the leading competitors' products were not. We found the advertisement misleading on this point and considered that because the claims had not been proven, the advertisement unfairly denigrated its leading competitors' products.

5. Complaint not upheld

The advertiser said the Gardening Which trial had been carried out in 2004 on compost purchased that year and since then it had reformulated its product.

We did not believe it was valid to compare the Which results with the results claimed in the advertisement because the formulation of the product used had changed. We did not consider the advertisement misleading on this point.

On point 4, the advertising was in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising), 5.2.1 (Evidence), 5.2.2 (Implications) and 5.4.3

(Denigration). It must not be shown again unless there is sufficient substantiation to back up the claims made.