

Advertising Standards Authority

**Broadcast Advertising
Adjudications**

31 August 2005



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ADVERTISER: Barclays Bank plc
AGENCY: Bartle Bogle Hegarty Ltd
Date: 31 August 2005
Media: Television
No. of complaints: 293

COMPLAINT

A TV ad for Barclays Bank had an ex-kids restriction to keep it away from programmes made specifically for children. It showed a man being stung in the mouth by a bee or wasp that had climbed into his can of drink. He jumped up in pain and ran towards a nearby lake. As he leant over a jetty his face was visibly swollen. He tried to splash his face but fell into the water emerging at the edge of the lake covered in weeds and mud and howling in pain. He then bumped into a bin. As he staggered towards a nearby restaurant people began to scream. The police arrived and shot a dart into his rear which made him collapse. One policeman then placed his foot on the body as another photographed the scene. The voiceover said "Statistically, you're more likely to be arrested than change your bank account".

1. The majority of the viewers said the ad was offensive to people who suffered from allergies because it made light of a potentially fatal situation.
2. 91 viewers said they felt personal distress from seeing the ad because either they or people they were close to suffered from allergies or anaphylaxis. 23 viewers said that they or people they knew had nearly died or actually died from an adverse reaction as shown.
3. Seven viewers said their children, ranging from ten months to eight years of age, were scared by the images of the man with the swollen face emerging from the lake or of the bee or wasp in the can. 12 viewers said that, because of the man's face and the way he was shot at, the ad was too horrific to be shown on TV either at all or without a further restriction.
4. Seven viewers said the way the police took photos of the man and stood on him towards the end of the ad reminded them of either "happy slapping" or alleged soldier activity in the Iraq war and was therefore unsuitable to be shown.

ADJUDICATION:

1. Complaints upheld

Bartle Bogle Hegarty (BBH) said the ad was intended to show an exaggerated sequence of different events which ended with the hero being mistaken for a "Swamp Thing" rather than a man. As a result he was arrested thus dramatising the statistic that you are more likely to be arrested than change your bank account. They said the intention was always to develop an amusing and light-hearted commercial not to offend or upset viewers. They apologised to viewers who may have been offended or distressed by the ad. They said the ad was off air and Barclays had made the decision not to run it again regardless of the outcome of our investigation.

The BACC said they very much regretted that a number of viewers had been offended by the ad. They said they had cleared the ad in good faith with no intention to offend. They said great care and effort had been taken prior to the commercial being approved to try and ensure the final copy was compliant with the CAP (Broadcast) TV Advertising Standards Code. They said they had reviewed seven separate versions of the pre-production script, considering at length both the factual claims and the tone of the execution. They considered that the final film was whimsical in the treatment of a bee sting, farcical in tone and generally light-hearted in its approach.

We welcomed the decision not to show the ad again and accepted that it was not intended to cause offence. However, we noted that many people face the reality that they might suffer a severe allergic reaction to a bee or wasp sting and therefore, despite the farcical turn of events, the ad was offensive to them.

2. Complaints upheld

BBH said they had tried to make the special effects as exaggerated and hyperbolic as possible precisely to avoid causing distress to people who suffer from allergies or anaphylaxis.

The BACC said they also regretted that a number of viewers had experienced personal distress from the ad. They said at no point did the viewer see the character in any genuine distress and the ad featured a catalogue of pantomime routines thoroughly devoid of realistic or gritty horror with an air of general pandemonium. They said the suspension of reality was reinforced by the farcical way all the other characters considered him to be a creature, rather than a man stung by a bee. They said that they believed the ad was a surreal and comic set of bizarre events which allowed viewers to suspend their belief. They said they did not think the ad actively made fun of being stung by a bee but that it showed it as something painful, especially for the character that ended up being mistaken for a monster.

We considered that a significant number of viewers who had experienced first-hand the seriousness of an acute adverse reaction to a bee or wasp sting were clearly distressed by seeing this ad and that it therefore breached the Code.

3. Complaints not upheld

The BACC said the ad had been given an ex-kids restriction because they considered that very young viewers could well be scared by the characters face becoming puffy and disfigured. They said they did not consider a later restriction necessary for three reasons. First the "monster" was firmly established from the beginning as a normal, middle-aged man who subsequently changed because of a bee sting which would be understood by all but the very young. Second, the "monster" appeared as more of a benevolent and bumbling character than an aggressive or predatory one. They said that, if anything, he was likely to attract pity rather than fear. Third the face of the character was not hugely disfigured and still retained its human-like features so it was more an unfortunate "Quasimodo"- type character than an actual monster. For these reasons they considered only very young viewers could possibly be scared.

We accepted that, for the most part, only very young viewers would be scared by the images shown and that an ex-kids restriction was appropriate. Although we considered the

ad should not be shown again because it was offensive and had caused personal distress, we did not believe it was too gruesome or scary to be shown outside of children's programmes.

4. Complaints not upheld

BBH said that at the end of the ad the man was mistaken for the "Swamp Thing" which was why he was shot with a tranquiliser dart. They said the final scene was intended to emulate the idea of hunters having caught a celebrated monster.

The BACC said they did not consider the final sequence was reminiscent of either "happy slapping" or prisoner maltreatment by soldiers in Iraq. They said they were not aware of this pose having been struck in any alleged Iraqi prisoner maltreatment or "happy slapping" case. They said it was a pastiche of the classic pose taken by big game hunters once they have bagged their quarry on the savannah. It was an outlandish pose when juxtaposed in the municipal park setting and, as it was done humorously, it reinforced the comic dialogue running throughout the ad and they considered viewers would see it as such.

We accepted that by the time the policemen tranquilised and captured the man he had been clearly dramatised as a monster of some kind. We did not consider it was reminiscent of either "happy slapping" or the alleged maltreatment of Iraqi detainees by soldiers.

The ad breached CAP (Broadcast) TV Advertising Standards Code Rules 6.1 (Offence) and 6.4 (Personal distress) and should not be shown again.

ADVERTISER: Cereal Partners UK t/a Shreddies
AGENCY: McCann Erickson Advertising UK Ltd
Date: 31 August 2005
Media: Television
No. of complaints: 5

COMPLAINT:

A TV ad for Shreddies breakfast cereal showed a teacher in a classroom. The voiceover said "Today is the first day of school in Mrs Kelly's class." The ad then showed a number of children having breakfast at home as the voiceover said "These families have agreed to make Shreddies their school-day breakfasts. Shreddies have whole-grain carbohydrates. Studies show a breakfast like Shreddies helps give kids the mental energy they need to stay involved at school." The children were seen going into class. Mrs Kelly said "you can tell when they've had a good breakfast; they're engaged, they're enthusiastic." On-screen text said "School Fuel" and the voiceover said "Mrs Kelly saw it. You will too."

Viewers complained about a range of issues.

1. One viewer said that the ad implied children would be more intelligent if they had Shreddies for breakfast.
2. Three viewers said the ad implied that Shreddies was a healthy breakfast choice and better than other breakfasts but that, because of its high levels of sugar and salt, this was not the case.
3. Another viewer said the ad implied that teachers endorsed Shreddies.
4. We challenged whether the ad gave an exaggerated impression of the relevance of the "studies" to Shreddies.

ADJUDICATION:

1. Complaint not upheld

The BACC said the basic premise that a daily breakfast like Shreddies helped children concentrate had been accepted by them in 2002. They believed it was a misinterpretation to argue that the ad claimed eating the product would make children more intelligent. Cereal Partners UK (CPUK) said the ad did not include a claim of improved intelligence but one of engagement and involvement.

We accepted that the ad did not imply that children would be more intelligent by eating Shreddies.

2. Complaints not upheld

The BACC said evidence in support of the ad had been accepted previously in 2002 when it had been passed to their nutritional experts who had approved it. They said CPUK had never claimed an exclusive benefit for its product and they doubted many would question

the notion that breakfasts benefit children. They said that if CPMK had implied some unique benefit, the BACC would have expected rival advertisers to have challenged the advertising, which they had not. They said their nutritionists had accepted that, on balance, the moderate levels of salt and sugar did not outweigh the benefits of the product and the type of health-related claims made in the ad were acceptable.

CPMK said Shreddies contained 16% sugar which meant less than 13 grams (g) of sugar per serving (i.e. 45 g plus 125 ml semi-skimmed milk) with 7 g of the sugar from Shreddies and 5.9g from the milk. They said that in the absence of externally agreed Guideline Daily Amounts (GDA), they labelled the GDA of total sugar for children aged 7-10 years as 90 g. Thus a bowl of Shreddies plus milk only provided 13% of the GDA for children aged 7-10 years. Considering a bowl of Shreddies represented a full meal, it was therefore a significantly low contribution to the daily intake of sugar. They added that, in terms of salt and sodium content, the Food Standards Agency (FSA) defined "a lot" as greater than 0.5 g sodium per 100 g whereas Shreddies provided 0.2g of sodium per 45 g portion (including milk). They said Shreddies provided just 218 kcal and thus compared favourably with other foods typically eaten for breakfast in the UK; it contained eight vitamins and iron at levels of over 25% of the Recommended Daily Amount; it was high in fibre and low in total fat and saturated fat; it contained complex carbohydrates and had 93% whole grain. They said that Shreddies was therefore one of the healthier breakfast cereals available and could play a positive role in a healthy eating diet. They said that the sugar and salt levels of Shreddies should be considered as served (with both Shreddies and milk as per the recommended serving size) as this was most relevant to consumers.

We considered that the ad implied Shreddies was a "good breakfast" and that, because of the references to "mental energy", it offered particular benefits for school-children. Publicly available information from the FSA suggested that foods with a sugar content of more than 10 g per 100 g and/or a salt content of more than 1.25 g per 100 g were considered to have "high" levels. We noted that when considered as a dry product (out of the box) Shreddies exceeded this level for sugar and was only just below for salt. However we also noted that Shreddies was recommended to be served with milk and the vast majority of people would eat it that way. When served with 125 ml semi-skimmed milk, the levels of sugar and salt offered by Shreddies were 7 g and 0.4 g respectively per 100 g and were therefore well below "high". We further noted that the product offered certain nutritional benefits (by having added nutrients and wholegrain) and was low in fat. We therefore considered the health implications of the ad were acceptable as Shreddies was not an unhealthy breakfast choice. We further noted that the number of calories in Shreddies compared favourably with other popular breakfast choices including toast with butter and jam; orange juice with a yoghurt and a banana; plus a number of other breakfast cereals.

3. Complaint not upheld

CPMK said at no stage during the commercial did Mrs Kelly endorse Shreddies but rather the benefits of a good breakfast, and said her comments were in no way a professional endorsement of the product but merely recognition that a good breakfast makes a noticeable difference to children's focus and engagement at school. They said they would make this more clear in future advertising.

We welcomed CPMK's response. We considered that viewers would interpret Mrs Kelly's statement "you can tell when they've had a good breakfast" as referring to breakfasts in general rather than endorsing Shreddies.

4. Upheld

CPUK said there were many studies highlighting how breakfast aided concentration. They had undertaken a proprietary study showing this and provided a copy for our investigation. They said they would make the evidence regarding Shreddies versus other breakfasts more clear in future advertising.

We welcomed CPUK's decision to amend future advertising. We noted there was only one element of the evidence provided which included Shreddies as part of the study. It involved 29 male and female children aged between nine and 16 years. Over four days the participants received four different breakfasts: a single bowl of Shreddies (45 g serving plus 125 ml semi-skimmed milk); a single bowl of Cheerios (30 g serving plus 125 ml of semi-skimmed milk); a 330 ml orange-flavoured drink containing 38.3 g glucose and nothing.

Other evidence, in support of the general effect of a high carbohydrate breakfast towards improving attentiveness and concentration, included a comparison between a low energy soft-drink and a yoghurt without reference to the effect of Shreddies. Other studies were based on the difference between having a breakfast or having a regular breakfast versus not having breakfast at all but the advertisers did not make clear what these breakfasts were. We believed viewers would have expected the comparison to be between a range of different types of breakfast rather than between having breakfast or having nothing. It was therefore likely to mislead viewers.

We accepted that the "mental energy" of the children who ate Shreddies appeared to be improved in comparison with those who had an orange-flavoured sugar drink or nothing at all, but considered this comparison should have been made clear to avoid misleading viewers as to the extent of the study.

The ad was in breach of 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: Dial-a-Phone Ltd
AGENCY: Attinger Jack Advertising Ltd
Date: 31 August 2005
Media: Television
No. of complaints: 1

COMPLAINT:

A commercial for Dial-a-Phone offered line rental with Hutchinson 3G for £4.99 for 10 months with a cashback by redemption deal; 500 any time, any network voice minutes; 100 text messages; a free 6630 Nokia video phone; and three months free insurance. On-screen text explained there was free delivery, Saturday and special delivery subject to a surcharge; service dependent on coverage; subject to an insurance contract with Allianz Cornhill; offer applied to standard UK landlines and UK networks; cash back redemption at months 3, 6, 8, & 10; and subject to 18-month contract, payment by direct debit mandatory.

A viewer ordered two phones, but the following day was asked to pay £150 for each phone in order to have them connected. She believed the advertising was misleading as this was not mentioned in the commercial, or when she contacted Dial-a-Phone.

ADJUDICATION:

Complaint not upheld

Dial-a-Phone explained that because monthly line rental payments were made by direct debit, the network involved, in this case Hutchison 3G, looked at a customer's credit rating. (Monthly payments are made to the airtime provider, not Dial-a-Phone.) Dial-a-Phone said that most customers passed the network providers credit check. Occasionally, those who failed were offered the option of being connected for a year on payment of a £150 deposit. Rather than simply rejecting a customer's application, Dial-a-Phone endeavoured to help with this alternative option. Providing the account was not in arrears, a customer could have the payment credited back into their account or use it as airtime credit after the 12-month period. Over 95% of customers connected had not been asked to pay a deposit.

The BACC said that this had been a complicated offer to explain in a short commercial. They believed that all important qualifying disclaimers were included in the ad. Although it did not specifically refer to a credit check, the ad had explained that an 18-month contract and payment by direct debit was mandatory. The BACC believed that it was implicit from this information that a credit check was involved.

We noted that the ad had included all significant qualifications. However, a deposit requirement was not a condition attached to the offer. It was an alternative option offered to those not eligible as a result of a credit-rating check. The reference in the ad to "mandatory direct debit payments" and an "18 month contract" underlined a continuing financial commitment. We considered that generally viewers would expect any financial contract to involve a credit check.

The ad was investigated under CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising), 5.3.1 (Accurate pricing) and 5.3.2 (Pricing requirements) but was not found in breach.

ADVERTISER: Gems.TV
LICENSEE: Gems.TV
Date: 31 August 2005
Media: Television
No. of complaints: 1

COMPLAINT:

An hour-long TV advertising presentation about "healing gemstones" was shown on Gems.TV. Various gem products were promoted by a presenter who described their "healing" properties. He made a number of comments about the ability of gems to "align the body's chakras" along with comments to suggest this was not scientifically proven. Regarding one particular gemstone he said "if you've got any heart problems, perhaps chest problems up there, this may be for you ... this works for the heart, the circulatory and respiratory and physical pressure. It works on insomnia and it also helps out with difficulty in breathing. If that's you then this is for you right now. Now again I must say that's hearsay." A number of other conditions were also mentioned during the presentation including "drunkenness". Throughout the presentation the presenter made comments such as "please remember people, this is hearsay", and "we are a tele-shopping channel so I have to make these disclaimers".

A viewer complained that it was potentially harmful to suggest that Gems could heal ailments, alleviate the symptoms of certain medical conditions or combat drunkenness.

ADJUDICATION: Complaint upheld

Gems.TV said all gemstones were surrounded in myths and legends that date back to 1000 BC and there were hundreds of books detailing the mystical power of gems. They said all presenters were trained so that when they talked about the mythical powers of a gem they relayed the message that these were myths and not scientifically proven.

We looked at the entire presentation and considered that the overall effect was to suggest that the products could offer some medicinal benefit despite the disclaimers made by the presenter. We did not accept that the disclaimers were sufficient to alert all viewers to the fact that the health-related claims made in the advertising were unsubstantiated. We considered that vulnerable viewers, in particular, were likely to pay attention to the health claims over and above the disclaimers. Whilst we accepted that certain beliefs were held by some people surrounding the inherent spiritual properties of gemstones, we did not consider it was acceptable to advertise gem products by focusing on these or any other "healing" properties, as it was likely to mislead people about the potential effect of the gemstones. We considered it was a breach of the Code to suggest that serious medical conditions or the effects of drinking too much alcohol could be mediated by wearing jewellery, no matter how often the presenter relayed a message to contradict the claims made.

The advertising was in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising) and 10.13 (Vulnerable viewers) and should not be shown again.

ADVERTISER: Samsung Electronics (UK) Ltd
AGENCY: Cheil Communications
Date: 31 August 2005
Media: Television
No. of complaints: 1

COMPLAINT:

A TV ad for the Samsung E720 mobile phone claimed "It features an MP3 player for your favourite tracks. An MP3 player with external controls. It has ... Bluetooth. Tap into a world of entertainment ..."

1. A viewer, who bought the phone and was told the software for downloading music was not yet finished, considered it misleading.
2. The Authority challenged whether the ad made clear the significant conditions attached to the product, and in particular the MP3 function.

ADJUDICATION:

1. Complaint not upheld

The BACC said they received confirmation, before approving the ad, that all the features mentioned were part of the phone and would be up and running from the launch date.

Samsung said the software to download MP3 tracks was available from launch. They could not explain the complainant's experience and believed the consumer was misinformed.

Although we were concerned by the complainant's experience, we were satisfied that the software was available from launch. We did not object to the ad on this point.

2. Upheld

The BACC said there were no technical issues or additional conditions attached to the product.

Samsung said the relevant software could be downloaded free of charge from any computer and that it was not necessary to purchase an additional cable in order to access it. They explained that the Bluetooth technology built into the phone enabled users to remotely download the necessary software without the use of cables and that a Wireless Access Point (WAP) function was also embedded in to the phone, which enabled direct access to the Internet where the software could also be downloaded.

We noted it was possible to download the relevant files free of charge from any computer using Bluetooth, provided users had a dongle. We also noted users could also download music files using the WAP function on the phone or with a USB cable, which was not provided with the phone. Although we noted the Bluetooth function was mentioned in the ad, we considered that it did not make clear enough that music could only be downloaded

via the Bluetooth function if users had a dongle or that users might need to buy an additional cable if they wanted to download music they had already stored on their PCs.

The ad was found to be in breach of the CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.2.3 (Qualifications).

ADVERTISER: Tiscali UK Ltd
AGENCY: Eardrum Ltd
Date: 31 August 2005
Media: Radio
No. of complaints: 3

COMPLAINT:

A radio ad for Tiscali Broadband said "When Tiscali cuts the cost of one megabyte superfast broadband, they don't do it by a tiny amount [sound of snipping scissors] they slash it from £15.99 to their lowest price ever! [sound of chainsaw cutting] Just £14.99 a month! Including modem and connection! Phew! With up to one meg broadband slashed to just £14.99, everyone in the land can afford broadband ... Requires BT line in Tiscali Broadband area. Minimum contract and conditions apply." The ad was broadcast on The Eagle FM, Ram FM and Classic FM.

1. Three listeners said the ad was misleading because the speed of Tiscali's broadband was up to one megabit per second rather than up to one megabyte per second.
2. One of the listeners also objected to the claim that Tiscali's broadband was "superfast", because he believed that the benchmark for broadband speed was two megabits per second.

ADJUDICATION:

The script cleared by the RACC contained the claim "up to one meg" rather than the claim "up to one megabyte"; the word 'meg' was amended to 'megabyte' at the production stage. Because the RACC did not clear the claim 'megabyte' we asked the broadcasters to respond to point 1.

1. Complaint upheld

Tiscali agreed with the listeners. It said it had made a genuine error and had taken the point on board. Tiscali said the ad had been amended prior to being contacted by us when a customer called Tiscali's call centre to highlight the problem. It apologised for the mistake.

GCap Media plc, responding on behalf of Ram FM and Classic FM, said it had not realised that the script cleared by the RACC did not match the voiceover that appeared in the ad itself. It said it would endeavour to catch any miss-matches between scripts and finalised ads to avoid similar problems in future.

The Eagle FM said it understood that Tiscali had made a mistake and that its broadband service should have been advertised as an up to one megabit per second service. It said the ad was a national one which it would expect to have been cleared by the RACC and that it had not had any input into the script.

We noted that Tiscali had made a mistake and welcomed the action it had taken. We were concerned that the ad that was broadcast did not match the script that had been cleared by the RACC. We welcomed GCap Media plc's assurance that it would try to avoid future problems by checking that RACC-cleared scripts matched final ads. We reminded both broadcasters of the requirements of CAP (Broadcast) Radio Advertising Standards Code Section 1, Rule 4.1 (Compliance) which states "All compliance matters (copy clearance, content, scheduling etc) are the ultimate responsibility of each Licensee. This is the case whether or not advertising also requires central clearance." We believed some listeners could be misled by the incorrect terminology but appreciated the prompt action taken by Tiscali.

2. Complaint upheld

Tiscali said that 45% of people who had internet access at home used dial-up internet which had a download speed of up to 56 kilobits per second. It said that, compared to dial up internet, its 'up to one megabit per second broadband service' was 20 times faster. It believed that many listeners would consider this to be "superfast". It said there was no industry benchmark of what constituted standard broadband speed and that it offered broadband products with a range of speeds from 150 kilobits per second to two megabits per second. It pointed out that several of its competitors offered broadband products with a speed of 512 kilobits per second. It speculated that about 60% of broadband internet customers would have a broadband speed of 512 kilobits per second or slower. It therefore believed that its broadband was "superfast" compared to many of the products available in the market.

The RACC said it cleared the claim "up to one meg superfast broadband". It believed that 'meg' was a common abbreviation for both megabit and megabyte and that, as a result, it did not believe the claim that the broadband was "superfast" was misleading.

We believed the claim that Tiscali's 'up to one megabit per second broadband service' was "superfast" would have been acceptable if the ad had stated the correct speed of the service. We felt that if listeners knew the service was up to one megabit per second they would not be misled by the claim "superfast". However, because the ad misleadingly stated that Tiscali's service had a speed of up to one megabyte per second rather than one megabit per second, we considered that the claim "superfast" was likely to mislead. Only if correctly qualified would it be acceptable.

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

BROADCASTER: TV Shop
Date: 20 April 2005
Media: Television

Complaint:

During routine monitoring, BCAP noted a TV Shop teleshopping infomercial that advertised a Guthy Renker “personal microdermabrasion product” called “Youthful Essence by Susan Lucci”. The infomercial was presented by Lucci, a US soap star. The product consisted of a thick moisturising cream containing finely ground crystals to be massaged over the skin with a battery-powered, hand-held sponge applicator.

Susan Lucci told viewers, “I first heard about a new cosmetic procedure called microdermabrasion from a group of women talking about their lunchtime peels – having their skin treated with crystals ... revealing ... younger-looking skin ... and without having any down time or need to hide while their skin heals”. The advertisement then showed a salon or medical microdermabrasion machine blasting crystals against a patient’s face and neck to remove the outer layer of skin.

The infomercial claimed:

- a. “Now you can have the benefits of microdermabrasion without the cost and hassle ...”;
- b. “You won’t pay \$10,000 for this machine and you won’t pay \$1,000 for microdermabrasion. If Youthful Essence were only \$600 or \$400 or even \$200, you’d be getting a bargain”;
- c. “That’s why Youthful Essence is the hottest form of microdermabrasion”;
- d. “We’re able to reduce fine lines, wrinkles, discoloration, age spots, acne scarring ... We’re firming the skin and we’re also polishing away the signs of ageing”;
- e. “Youthful Essence gives your skin immediate results after one application ... the appearance of fine lines is reduced, and age spots seem to fade” and
- f. “It’s gentle ... with no peeling or recovery time ... Experts call it a safe and healthy alternative ...”

Testimonials claimed:

- g. “I can’t believe ... that there’s not new lines every morning”;
- h. “I have less lines, I have more skin tone”;
- i. “I really feel that it’s changed the texture of my skin for good, not just a temporary thing”;
- j. “Youthful Essence has provided me an opportunity to stop the clock just a little bit and move it back”;

k. “My pores look smaller, my skin looks tighter, everything just looks lifted” and

l. Susan Lucci: “Over time it seems to have faded the look of sunspots and freckles ... I feel like I have put my skin in reverse. Youthful Essence ... does more than just exfoliate, it resurfaces ... the skin, yet I have none of the redness or irritation that I’d expect.”

BCAP challenged:

1. the implied claims that Youthful Essence causes physiological change to reduce fine lines, wrinkles, discolouration, age spots, pore size, acne scarring, sun spots and freckles, improve texture and firm and lift, enabling users to “stop the clock” on signs of ageing and reverse them;

2. the claims that the product resurfaces the skin, and reduces the appearance of fine lines, age spots and pore size after just one application;

3. the claim that the product causes no irritation, peeling, redness or damage and requires no recovery time and

4. the claim that Youthful Essence provides performance similar to that of salon or medical microdermabrasion and at a significantly lower cost.

ADJUDICATION:

1. Upheld

The Authority noted the advertising agency for the product distributor had previously obtained approval to broadcast the infomercial from the BACC. The agency said it was not aware of any complaints about the product.

TV Shop provided the results of a trial on 31 subjects. The Authority sent the test results to an expert for analysis.

The trial tested the product’s effect on fine lines, wrinkles, discoloration, age spots and acne scarring. Subjects were graded for each of those parameters on a four-point scale from none (0) to severe (3) and tested 15 minutes after first use and at four and eight weeks. The Authority considered that longer-term fully controlled scientific trials were necessary to substantiate the claims made. The Authority noted the trial did not include controls to ensure that results were not influenced by bias or random chance.

At the end of the eight-week test period, 65% of those tested showed no change to the appearance of fine lines and wrinkles and the remaining 35% showed a change of one grade only.

Of those tested, 80% showed no change to the appearance of age spots and all other subjects showed a negligible change. No subjects had severe age spots (i.e. a score of 3) at the start of the trial meaning that the results were not valid for such users. Freckles and sun spots were not tested for.

Of those tested, 55% showed no reduced pore size; 45% showed very slight change. According to the grading used, the group tested had better than average pore size before testing; no-one had grade 3. The Authority therefore questioned whether the group was representative and whether the trial allowed a significant scope for change.

80% of subjects showed no improvement in the appearance of acne scarring; 20% showed an effect of up to one grade only.

In skin elasticity or firmness tests, although 74% of those tested had a positive change, 26% experienced worsening after eight weeks. Between weeks four and eight, 48% had an improvement and 52% a worsening effect. The Authority's skincare consultant advised that that cast doubt on the reproducibility and reliability of the tests.

The BACC consultant noted the statistics and found that "the skin changes have been shown in the clinical studies with a level of statistical significance albeit only a minority of users actually showed a benefit in some parameters ..." However, the Authority considered that the level of benefits shown meant that the results were not statistically significant.

The BACC consultant stated that the claim to fade the look of sunspots and freckles "overstates the factual information". He nevertheless advised that the claims to reduce the appearance of fine lines and pore size were "okay" and that the claim to reduce the appearance of age spots from the sun was "probably okay". The BACC said that the reference to freckles was in the context of a testimonial and clearly an expression of subjective opinion. The Authority noted this statement was likely to be interpreted as a factual claim and therefore had to be substantiated.

The BACC's skincare consultant considered that "stopping the clock on signs of ageing was "an unlikely occurrence" and had "not been proven as longer term studies would be needed". He also found that "I have put my skin in reverse" was "an extreme statement for the effects of exfoliation". On the other hand, the BACC considered references to stopping and reversing the signs of ageing were "clearly expressions of subjective opinion". The Authority noted statements likely to be interpreted as factual claims had to be substantiated.

The BACC said all references to permanent line reduction and similar claims had been amended except one, which it said could not be edited easily for technical reasons and was unlikely to mislead in the context of a 30-minute infomercial. It later stated that other than this one, there were "no references, direct or indirect, to imply the effects of the product are permanent ... reinforced by the references to ... 'regular use'". The Authority disagreed that the infomercial contained only one dubious claim and reminded the BACC that even one was unacceptable.

The Authority also considered the term "lifts" used in the context of the other claims implied a link with cosmetic surgery and was misleading.

The Authority considered that the evidence did not support the claims and concluded that the infomercial breached the BCAP TV Advertising Standards Code rules 5.1 (Misleading), 5.2.1 (Evidence) and 5.4.4 (Testimonials).

2. Upheld

The BACC's consultant found that "resurfacing the skin" was "an overstatement. It is happening to a degree. Desquamation encourages new skin cells to develop and migrate to the surface". The BACC maintained that "the product does contribute to a change in the outward aspect of the skin" in this way and that the terms resurface and resurfacing, "though scientifically subjective are more likely to be understood by viewers". The Authority accepted that exfoliation could reveal new skin cells but, because it stated that Youthful Essence "does more than just exfoliate, it resurfaces ... the skin" found this use of the term "resurfacing" to be misleading.

The test results showed that no participants experienced a change in the appearance of fine lines, age spots or pore size after one treatment.

The Authority considered that the evidence did not support the claims. It concluded that the claims infringed BCAP TV Advertising Standards Code rules 5.1 (Misleading), 5.2.1 (Evidence) and 5.4.4 (Testimonials).

3. Upheld

The BACC's consultant considered that no irritation, peeling, redness, damage or recovery time was recorded over the test period.

When he reviewed the evidence, the Authority's consultant noted that the trial showed a worsening of skin flakiness after every test, 57% of users experienced an increase in reddening at eight weeks and 40% showed a darkening of the skin. The BACC consultant responded that flakiness and reddening of the skin "is a specialised measurement of the state of the skin and it would be misleading to refer to it as an indicator or irritation".

The advertiser said that they believed they were justified in including testimonials whose experience of using Youthful Essence was that there were no after effects. The Authority noted substantiation was required for all testimonial claims likely to be interpreted as factual.

The Authority considered that claims for no redness or peeling were comparable to the parameters for which reddening and flakiness were tested. The Authority considered that the evidence did not substantiate the claims made.

Furthermore, the Authority judged that the references to "no ... damage or recovery time" were misleading by linking the claims for the product to salon or medical microdermabrasion and implying that the product was powerful enough to make recovery time a possibility.

The Authority concluded that the claims breached BCAP TV Advertising Standards Code rules 5.1 (Misleading) and 5.2.1 (Evidence).

4. Upheld

The BACC highlighted its consultant's advice that "it would appear that this product is a new form of microdermabrasion whatever that is. It seems to be a more efficient method of exfoliation".

The BACC considered that Youthful Essence and professional microdermabrasion were based on the same principle of applying crystals to the skin, that the professional technique of using airflow to blast and then vacuum away the crystals and the Youthful Essence technique of using a battery-operated sponge applicator were similar and that equal benefits would be produced. The BACC concluded that comparing the costs of the two techniques was therefore not misleading.

The Authority noted TV Shop did not provide evidence for the performance of Youthful Essence in relation to salon or medical microdermabrasion. It considered that the tests did not provide convincing data that the product had a significant positive effect on the skin condition parameters measured and on most of the people treated. The Authority concluded that the performance comparisons made in the infomercial were invalid and that the cost comparisons were therefore misleading.

The Authority concluded that the claim breached BCAP TV Advertising Standards Code rules 5.1 (Misleading) and 5.2.1 (Evidence).

The Authority concluded that the infomercial breached BCAP TV Advertising Standards Code rules 5.1 (Misleading), 5.2.1 (Evidence), and 5.4.4 (Testimonials).

ADVERTISER: Virgin Money Ltd
LICENSEE: ITV
Date: 31 August 2005
Media: Television
No. of complaints: 1

COMPLAINT:

A TV ad for Virgin Money Life Insurance was shown in the middle of a commercial break during the ITV lunchtime news on 8 July 2005 the main feature of which was the London Underground bombings of the previous day. The ad showed a woman who said "Have you made a plan for the future? If not you should do it now. The unexpected could be just around the corner and when it happens it'll be too late."

A viewer said it was inappropriate to show the advertisement at such a sensitive time.

ADJUDICATION: Complaint upheld

ITV said they accepted that the transmission was inappropriate given the events of the preceding day. They said they took their responsibilities under the Rules on the Scheduling of Advertising very seriously and apologised for any offence or distress caused. They said they had made extensive arrangements to try and minimise the chance of showing any ads that might have caused offence or distress following the events of 7 July. They confirmed that immediate action was taken by ITV broadcast centres to preview any upcoming breaks. They said all commercial airtime was dropped on 7 July as soon as the full extent of the incident was realised. They said they previewed over 600 commercials which resulted in around 30 campaigns being pulled off air at least until Monday 11 July. They also said that warning notices were put on ITV News programmes to assist ITV schedulers with identifying unsuitable products. They said this incident arose from human error and the pressures under which ITV staff were working at the time

We welcomed ITV's detailed response and accepted that they had taken extensive steps to avoid showing inappropriate ads. However, regrettably, this ad slipped through and we agreed with the viewer and ITV that it ought not to have been shown at such a sensitive time when many people would be more aware of their own mortality. ITV breached CAP (Broadcast) Rules on the Scheduling of Advertising, Rule 4.1.2 (Particular separation of advertisements and programmes).