

Advertising Standards Authority

Broadcast Advertising Adjudications

12 January 2005



ADVERTISER: British Gas

AGENCY: Clemmow Hornby Inge

Date: 12 January 2005

Media: Television

No. of complaints: 4

COMPLAINT:

A British Gas advertisement showed various items breaking down in the home at inconvenient times. In one scene a radiator burst whilst a family was preparing for a wedding. The voiceover said "Whilst you can't predict when anything will go wrong, you can guarantee that it will be when you least need it". A British Gas van then pulled up beside the wedding car and an engineer stepped out. The voiceover said "And it's because of this that we at British Gas are there for you 24 hours a day, 365 days a year".

Four viewers complained that the advertisement misleadingly implied British Gas engineers were available for repairs at any time of the day or night, all year round. In their experience, that was not the case. One viewer was told that although British Gas endeavour to send an engineer within 24 hours of receiving a customer's call, in some cases it may take longer.

ADJUDICATION: Complaints upheld

British Gas said that its telephone helpline was available to customers 24 hours a day, every day of the year. It added that engineers were available to attend breakdowns 24 hours a day, every day of the year, on a priority system. Customers requesting an engineer would be prioritised according to the nature of the breakdown and their individual circumstances. It said that the uncontrollable water leak featured in the advertisement would be treated as a priority call by British Gas at all times. It felt viewers were unlikely to infer from the claim "we at British Gas are there for you 24 hours a day, 365 days a year" that an engineer would be made available to all customers 24 hours a day on any day of the year, regardless of the customer's problem. The advertising agency presented the same arguments.

The BACC said it approved the advertisement based on the evidence that the helpline and engineers were available 365 days a year. It did not, however, believe viewers would infer from the advertisement that an engineer was guaranteed to arrive the same day. Nor did it believe it would be reasonable to expect every request for an engineer to be met the same day regardless of importance.

We believed the visuals of the British Gas van pulling up outside the family home in a crisis situation along with the claim “we at British Gas are there for you 24 hours a day, 365 days a year” would give viewers the strong impression that an engineer would immediately respond to calls for assistance. We did not think it was clear that the claim referred only to the telephone helpline. Because British Gas were unable to guarantee this service all year round, the advertisement was found in breach of Rule 5.1 (Misleading advertising) and Rule 5.2.2 (Implied claims) of the CAP (Broadcast) TV Advertising Standards Code.

ADVERTISER: Ideal World
BROADCASTER: Ideal World
Date: 12 January 2005

Media: Television

No. of complaints: 1

COMPLAINT:

An advertisement for the Mustek DV5500 digital camera claimed that Ideal World had all available stock in the UK, so viewers would not be able to buy it anywhere else, and that the price at which it was offered was therefore unbeatable.

The complainant believed that it was misleading to claim that the camera was exclusive to Ideal World as it was in fact available elsewhere in the UK.

ADJUDICATION: Complaint upheld

Ideal World said that its supplier had secured the bulk of available UK stock, but that limited quantities of residual stock would have been available through other outlets. It agreed that it was incorrect of the presenter to claim that Ideal World had all the available stock in the UK and to make the related claim that the price was unbeatable.

We therefore found the advertising in breach of Rule 5.1 (Misleading advertising) of the CAP (Broadcast) TV Advertising Standards Code.

ADVERTISER: K&B Travel
BROADCASTER: CFM
Date: 12 January 2005

Media: Radio

No. of complaints: 1

COMPLAINT:

A radio advertisement for K&B Travel company was broadcast on CFM at 8.20 am. The presenter appeared to have difficulty pronouncing the name of a destination. He was heard to say "what the fucking ...". The advertisement then cut to a new broadcast.

A listener complained that the language used in the advertisement was offensive and unsuitable for transmission, particularly at a time when children could be listening.

ADJUDICATION: Complaint upheld

CFM said the advertisement was broadcast in error and apologised. The first take of the advertisement, in which the profanity was used, had not been deleted from its system, and was accidentally broadcast. CFM immediately realised and no more commercial breaks were played until the advertisement was removed.

We noted the human error. Nevertheless, some listeners were likely to consider the word "fucking" extremely offensive and inappropriate for broadcast at any time of day, but especially at a time when children could be listening on their way to school. We therefore found the advertisement in breach of Section 2, Rule 9 (Good Taste, Decency and Offence to Public Feeling) of the CAP (Broadcast) Radio Advertising Standards Code.

ADVERTISER: Pakiza Rice
BROADCASTER: Zee TV
Date: 12 January 2005

Media: Television

No. of complaints: 1

COMPLAINT:

A competitor Veetee Rice Ltd complained about an advertising campaign for Pakiza Basmati rice, broadcast in Urdu. According to the complainant, the product was advertised as Pakistan's 'best' basmati rice. It believed that the advertiser was making unjustified superiority claims.

ADJUDICATION: Complaint upheld

The broadcaster, Zee TV, said the advertisement translated into English as 'finest quality basmati from Pakistan'. It said it was not designed to compare Pakiza to other brands or to denigrate them, but was simply acceptable advertising 'puffery'.

The advertiser, Pakiza, also said the advertisement translated as 'finest quality basmati from Pakistan' and did not claim to be the 'best'. It said if the ASA concluded that the advertisement made a superiority claim, it would not make such claims in the future unless objective substantiation was available.

Advertisers may be able to claim that there is 'nothing better' than their product. However, where the claim is that their product is the 'best' or the 'finest', it normally becomes a superiority claim requiring substantiation. As there was no substantiation for Pakiza being better than other brands, the advertising was in breach of Rules 5.1 (Misleading advertising) and 5.2.1 (Adequate objective evidence to support all claims) of the CAP (Broadcast) TV Advertising Standards Code.

The advertising may not be shown again unless there is suitable substantiation to support the claims.

ADVERTISER: SGR FM Recruitment

BROADCASTER: SGR FM

Date: 12 January 2005

Media: Radio

**No of
complaints: 1**

COMPLAINT:

A commercial to attract recruitment advertising to SGR FM Radio said, "If you have a job vacancy to fill, radio is pound for pound the most effective way to recruit your next member of staff. To advertise your vacancy on SGR FM call ..."

Media company Archant Suffolk said it was unaware of any comparative and ratified research to support the claim that "...radio is pound for pound the most effective way to recruit ...". It believed that, without substantiation, the commercial might have a serious financial impact on its own business, which included publishing local newspapers containing job advertisements.

ADJUDICATION: Complaint upheld

SGR FM said the commercial was written by OPUS Creative (GWR Radio Group Ltd). It was based on research by the Radio Advertising Bureau (RAB), which showed the increased effectiveness of radio advertising when used in tandem with television activity.

On investigating the concerns raised, SGR FM found the claim to have been out of context with the original research by RAB, and could therefore not be substantiated. SGR FM apologised and explained that it had not been its intention to air unsubstantiated claims. It said that in future, GWR's Recruitment Department would clear all recruitment advertising to avoid any similar incident.

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

ADVERTISER: Unilever Bestfoods UK Ltd

AGENCY: HHCL

Date: 12 January 2005

Media: Radio

**No of
complaints: 4**

COMPLAINT:

Radio advertisements for Pot Noodle featured different characters reading out instructions on how to make a Pot Noodle in an excited tone of voice. The more they read, the more excited they sounded, crying out passionately 'stir again, stir again' at the end.

In one advertisement women giggled and moaned. It ended with the voiceover "Pot Noodle. The curious cheerleader of all snacks." Another ended with the line "Pot Noodle. The lonely housewife of all snacks." Another featured a man and woman with German accents. It ended with the line "Pot Noodle. The filthy frauleine of all snacks."

Four listeners complained about the timing and content of the advertisements. They felt the advertisements were sexually suggestive and unsuitable for broadcast at breakfast time and in the early evening when their children were listening.

ADJUDICATION: Complaints upheld

The Radio Advertising Clearance Centre (RACC) said the initial scripts had gone through a number of rewrites following its advice to tone down the content. However, it did not issue scheduling advice because it judged that the innuendo in the advertisements as a whole, including the references at the end, was 'suitably oblique' and that children would therefore be unlikely to either understand or pick up on it.

The advertising agency said it did not intend to cause offence. The campaign was intended to position Pot Noodle as so irresistibly trashy that even the preparation got people excited. It acknowledged that the advertising parodied "dated soft pornography" but felt it was clear that it was Pot Noodle that was exciting people. It added that the stations selected for broadcast were in line with its target audience and, for the 'only mainstream station' on the schedule (95.8 Capital FM), it took the advertisements off air during the school run. 95.8 Capital FM said that it broadcast the advertisement at 7.05 am in error. The advertisement was intended to be broadcast during the advertising break before 7.00 am.

Essex FM and Mercia FM said they would consider future advertisements of a similar nature more carefully. They defended their decision not to apply scheduling restrictions saying the RACC cleared the advertisements without such advice.

Forth One also said that its decision not to apply scheduling restrictions was mainly as a result of the RACC having cleared the advertisements without such advice. It said that it received only one complaint during the six-week run of the advertising.

We accepted that the advertising agency had taken steps to reduce the likelihood of children hearing the advertisements by excluding the advertisements from air during the school run on one station, 98.5 Capital FM. However, we felt the advertisements were sexually suggestive and this made them inappropriate for broadcast on any of the stations at times when children could be listening. They therefore breached Section Two, Rule 8 (Scheduling - children) of the CAP (Broadcast) Radio Advertising Standards Code.

ADVERTISER: UTV Talk

Date: 12 January 2005

Media: Television

**No of
complaints: 1**

COMPLAINT:

A series of advertisements for UTV Talk - a telephone service offered by UTV to customers in Northern Ireland - said that the normal BT or Eircom line rental charge of £10.50 per month applied. Subscribers to the UTV advertised package would then receive free evening and weekend calls to landlines in the UK and Eire, plus 10% off peak and international calls and 5% off calls to mobile numbers, compared with the tariffs offered by BT to its standard residential customers. On screen text read: line rental as standard BT or Eircom rates; redial after 59 minutes to avoid charges; excludes calls to Channel Isles, internet and mobile. Terms and conditions apply. Three of the six advertisements ended with the caption 'free evening and weekend calls', while three ended with 'talk is free with UTV'.

A competitor complained that:

1. the advertisements were similar in style to programmes (they took the form of a studio chat show, a weather bulletin and a cookery demonstration);
2. the wording suggested that subscribers needed to pay line rental to BT;
3. the advertisements that ended with the caption 'talk is free with UTV' implied that more calls were free than was really the case;
4. it was wrong to describe as 'free' an element that was included in the cost of the package.

ADJUDICATION:

1. Complaint not upheld

Rule 2.1.2(b) of the CAP (Broadcast) Television Code states that advertisements must not 'use a situation, performance or style reminiscent of a programme in a way that might confuse viewers as to whether they are watching a programme or an advertisement.'

We felt that the commercial nature of the broadcasts was quickly established and that the advertisements appeared in the clearly defined context of an advertising break. Therefore, there was no realistic likelihood of viewers being misled in the way the complainant suggested.

2. Complaint not upheld

The advertising merely made comparisons with BT price tariffs. There was no claim or implication that line rental was payable to BT.

3. and 4. Complaint upheld

Rule 5.2.4(b) of the CAP (Broadcast) Television Code states that 'no element of an offer may be described as "free" if viewers are likely to be misled as to whether it is genuinely additional to the offer'. We acknowledge that there was no charge in addition to the £10.50/month standard BT or Eircom line rental cost for evening and weekend calls within the UK and Eire. However, we felt that the evening and weekend calls were included in the package at no extra cost but were not actually free. We felt it was misleading to describe them as free and upheld the complaint on that point.

***(see note at end of report on use of the word "free")**

ADVERTISER: Vodafone
AGENCY: J Walter Thompson
Date: 12 January 2005
Media: Television
No of complaints: 1

COMPLAINT:

An advertisement for Vodafone's business mobile phone plan showed the manager of a bakery receiving a number of trivial phone calls from his staff. The voiceover at the start of the advertisement said "Like most small firms, we have to make dozens of absolutely vital calls everyday". The onscreen text stated "Call duration limit, minimum contract, line rental, fair usage, terms and conditions apply. UK calls only exc Isle of Man and Channel Islands. Up to 100 handsets depending on price plan." At the end of the advertisement, the voiceover said "Those mobile calls we make to the people we work with, wouldn't it help if they were free? With Vodafone Perfect Fit For Business, they are. Vodafone. Free calls between your company mobiles". The final frame showed the advertisers' logo and the text "FREE CALLS BETWEEN YOUR COMPANY MOBILES".

T-mobile objected that the claim "free calls between your company mobiles" was misleading, because the price of those calls was included in the monthly fee charged as part of the advertiser's Perfect Fit for Business price plan.

ADJUDICATION: Complaint upheld

Vodafone believed that its use of the word "free" was justified. It explained that the Perfect Fit for Business (PF4B) Sharetime price plan had recently replaced the GroupSaver price plan and that the claim to offer "free" calls between company mobiles was based on a comparison between those two plans. It said that the PF4B Sharetime price plan and the GroupSaver price plan offered customers similar prices in return for similar benefits. It asserted, however, that the PF4B Sharetime price plan offered additional and unlimited "free" internal calls between company mobiles, while the GroupSaver price plan did not. The advertiser argued that these internal calls were provided "free" over and above the "inclusive" minute allowance available on both business plans. It said that the calls could legitimately be described as "free" rather than "inclusive", because they were unlimited and because the introduction of the new PF4B Sharetime price plan offered customers an additional benefit without leading to an increase in price compared to the GroupSaver price plan. In addition, the advertiser sent the results of an online survey of 900 business people and consumers; the survey reported that more respondents found the sentence "On the Vodafone Perfect Fit for Business tariff, all calls between company mobiles in the same

company are free" easier to understand than the sentence "On the Vodafone Perfect Fit for Business tariff, all calls between mobiles in the same company are inclusive".

The BACC endorsed the advertiser's defence and on that basis approved the advertisement for transmission.

We noted that the PF4B Sharetime price plan made no individual charges for calls between company mobiles, whereas its predecessor, the GroupSaver price plan, charged for those calls. We noted that the introduction of the new PF4B Sharetime plan had not led to an increase in price compared to the GroupSaver price plan, despite offering additional unlimited internal calls between company mobiles at no extra cost. We also noted that the survey sent by the advertiser showed more respondents found it easier to understand the word "free" than the word "inclusive". However, the online survey asked respondents about a different claim to the one that appeared in the advertisement. Because customers on the PF4B Sharetime price plan would still have to pay a monthly charge to the advertiser, we considered that internal calls between company mobiles were "inclusive" and not "free". We concluded that the claim was misleading.

The advertisement was found to be in breach of the CAP (Broadcast) Television Advertising Standards Code.

***(see note at end of report on use of the word "free")**

Following the above rulings on UTV and Vodafone the following note has been drawn up on the use of the word “free” in broadcast advertising:

Note on use of the word ‘Free’

This Note advises on changes to the interpretation of the rules governing the use of the term *free* that result from recent ASA adjudications against Vodafone and UTV Talk television commercials.

The broadcast code rules have, until now, been interpreted to allow use of the word *free* in, for example, advertising for internet or phone service packages to describe elements of the package that are included for an overall sum of money but for which no extra charge is made.

These adjudications have established a new policy. It is still acceptable to say there is no additional cost to the customer for a package-element that is included in the package price, but not that the element is *free*. For example, advertisements must not state that calls are *free* when the user is paying a monthly charge. In that case, the calls could be described as *inclusive*.

This judgement applies even where, for example, an advertiser argues that a certain category of phone calls is provided *free* over and above the *inclusive* minute allowance available within their package and even though the number of calls in that category is unlimited.

Because this is a significant change in interpretation of the radio and TV code rules, broadcasters have six months from 12 January 2005 in which to amend any advertisements affected by this decision.

The full relevant rules in the broadcast Codes are:

Radio 2.20: Use of the word ‘Free’

Advertisements must not describe products or samples as *free* unless they are supplied at no cost or no extra cost (other than postage or carriage) to the recipient.

A trial product may be described as ‘free’ provided that any subsequent financial obligations from the customer are specified in the advertisement, e.g. the cost of returning the product in the case of dissatisfaction or the cost of the product at the end of the trial period.

Television 5.2.4: Use of the word ‘free’

(a) Advertisements must not describe an offer as ‘free’ if there are costs to consumers other than actual postage or carriage, non-premium rate telephone charges or reasonable travel required to collect the offer. Advertising must make clear the extent of the consumer’s liability for any costs

Notes to 5.2.4(a):

(1) *Trials can be described as free even if the customer has to pay the costs of returning the goods, provided this is made clear in the advertising.*

(2) Making clear the extent of liability would include, for example, explaining the need to collect tokens, or to travel a considerable distance to redeem an offer.

b) No element of an offer may be described as 'free' if viewers are likely to be misled as to whether it is genuinely additional to the offer.