

Advertising Standards Authority

Broadcast Advertising
Adjudications

2 March 2005



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ADVERTISER: Belvedere Hospital
AGENCY: KSA Film and Video Ltd
Date: 2 March 2005
Media: Television
No. of complaints: 1

COMPLAINT:

An advertisement for the Belvedere Private Hospital said that it had treated 25,000 customers for cosmetic surgery, with the most popular treatments being breast enlargement, rhino-plasti, tummy tuck, lipo-suction and Botox.

The complainant believed that Botox was available on prescription only and so could not be advertised on television.

ADJUDICATION: Complaint upheld

Rule 8.2.1(a) of the CAP (Broadcast) TV Advertising Standards Code prohibits television advertising for medicinal products or treatments that are available only on prescription. The Broadcast Advertising Clearance Centre (BACC) had not previously been aware that Botox was a prescription-only drug, but removed the advertisement from transmission as soon as we brought the matter to their attention. The advertisement must not appear again in that form.

ADVERTISER: ntl
BROADCASTER: Broadband UK
Date: 2 March 2005
Media: Television
No. of complaints: 1

COMPLAINT:

Broadband UK, a self-promotional channel for ntl, broadcast an advertisement for its family pack costing £19.50 per month, with free phonenumber rental for a year included in the offer.

A viewer contacted ntl and was told the offer did not apply to him because he already had an ntl phonenumber. He complained about the advertisement because he felt it should have made clear the offer was not available to existing ntl customers.

ADJUDICATION: Complaint upheld

The advertisers said the advertisement was no longer on air. It said that because the advertisement was broadcast on a Sky channel, it believed it was only likely to be seen by non-ntl customers and did not, therefore, need to state that limitation to the offer. It said that of its 2.6 million telephone customers, 900,000 did not subscribe to other ntl products. It also pointed out that on-screen text in the advertisement said "Full terms at ntl.com/terms", which it felt indicated that further terms and conditions were attached to the offer.

We noted the advertisement was broadcast on a Sky channel and acknowledged it was unlikely to be seen by ntl cable customers. However, we also noted ntl's 900,000 telephone – only customers might subscribe to Sky services. We believed a significant number of existing ntl customers could have seen the advertisement and were unlikely to have realised the offer did not apply to them. We felt it was a significant condition that should have been made clear in the advertisement. We therefore found the advertisement in breach of the CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising) and 5.2.3 (Qualifications). The advertisement must not be broadcast again in that form.

ADVERTISER: Rockstar Games

AGENCY: MJ Media

Date: 2 March 2005

Media: Television

No. of complaints: 8

COMPLAINT:

Two advertisements for the 18-rated computer game Grand Theft Auto: San Andreas contained extracts of the game. One version showed general scenes of violence and the use of guns. The second featured more detailed scenes of either violent or anti-social crime including spraying graffiti and the loading and use of guns in drive-by shootings.

We received eight complaints from viewers concerned that advertisements for an 18-rated game and featuring such footage were shown before 9 pm, when large numbers of children were likely to be viewing. Two complainants who saw the second version mentioned the C4 programme Scrapheap Challenge, broadcast at 6.30 pm, which they had been watching with their children (aged up to approximately seven years). They considered the material unsuitable at that time because of its violent content.

ADJUDICATION: Complaints upheld

The Broadcast Advertising Clearance Centre (BACC) said that the advertisements had been given the automatic requirement that 18-rated games should not be advertised around programmes made specifically for children, with the additional warning to the television companies for sensitive scheduling, bearing in mind that the game was only available for adults to buy. The BACC did not consider that the images featured in the advertisements warranted a blanket restriction to later times.

The advertiser, Rockstar Games, said that its policy was not to advertise the product around programmes where fewer than 50% of the audience was of the age required to buy it. This fitted in with the scheduling requirements that the BACC had imposed.

We were concerned about the threatening atmosphere of both advertisements. The scenes included the carrying, loading and use of guns as well as fighting and graffiti spraying. We could understand the parents' concerns that it was inappropriate for young children to see this level of violence in advertising for a product which was only available to adults. The advertising was shown in breaks around programmes which, although not designed specifically for children, were considered to be acceptable family viewing. Where complainants had mentioned the ages of their children, they had been up to 7 years. To reduce the likelihood that young children would

see the advertisements, we required that any future broadcasts of either should be limited to after 9 pm.

The advertisements were in breach of Rule 7.3.7 of the CAP (Broadcast) TV Advertising Standards Code and 4.2.3 of the CAP (Broadcast) Rules on the Scheduling of Advertising.

ADVERTISER: Tilda Basmati Rice

BROADCASTER: Zee TV

Date: 2 March 2005

Media: Television

No. of complaints 1

COMPLAINT:

A competitor, Veetee Rice Ltd, complained about a series of advertisements for Tilda Basmati rice. Each advertisement ended with the line 'doesn't your family deserve the best?'

The complainant believed that the advertiser was making an unjustified superiority claim.

ADJUDICATION: Complaint upheld

The broadcaster, Zee TV, said that Tilda was an established, premium brand and that 'doesn't your family deserve the best' was designed to be a generic statement rather than derogatory to other brands.

The advertiser believed a superiority claim was justified. It cited a non-broadcast adjudication by the ASA in 1996 on a claim that 'Tilda is undisputedly the finest Basmati that money can buy.' The ASA had required Tilda to remove the word 'undisputedly' but had allowed it to continue to use the claim to be the 'finest.' However, the ASA had interpreted 'finest' in that context as a top-parity (as opposed to a superiority) claim. It believed the substantiation, which gave details of Tilda's quality control measures, supported a top-parity claim but did not assess it in the context of a superiority claim. Tilda outlined its quality control measures; gave us information about its market share; and pointed to the results of its own market research. This had compared Tilda with three other brands and showed that Tilda had been rated better than those brands in subjective areas such as reliability and taste. Tilda believed that it was reasonable to expect a superiority claim to be based on a range of factors, and believed its survey demonstrated how Tilda could make a superiority claim based on that. However, in our view, the results did not prove conclusively that Tilda was rated better than all other brands in every respect.

Tilda also cited the results of a survey of Basmati rice by the Food Standards Agency. The survey looked at the non-Basmati content of a number of brands of Basmati rice, with the number of samples taken varying according to a brand's market share. Because of their lower market share, the results for some brands were based on testing one sample only while the results for larger brands such as Tilda and supermarket own-brands were based on a number of samples. The survey showed that in the 20 samples of Tilda rice tested, the non-Basmati content had either been nil or too small to measure.

However, the results did not show that Tilda Basmati was purer than other brands as others had achieved similar or better results.

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', it normally becomes a superiority claim requiring substantiation. Tilda believed that the evidence it had provided demonstrated that it could make a superiority claim based on a number of factors. However, in our view, the substantiation did not prove conclusively that Tilda was better in every respect than other brands of Basmati rice. We therefore believed 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: Top Up TV
AGENCY: HCA Entertainment
Date: 2 March 2005
Media: Television
No. of complaints: 13

COMPLAINT

Advertisements for subscription television service Top Up TV promoted two products. The first was a viewing card for the service. The second was called 'Top Up TV To Go' and included a viewing card, set top box, the connection fee and one month's viewing charge.

The advertisements for both products claimed to offer ten additional channels to the existing Freeview line-up and featured onscreen text which stated 'restricted channel streaming'. Advertisements for the viewing card alone also included the text '£7.99 A Month + £20 Connection Fee'.

Viewers complained that the advertisements were misleading. There were three separate issues raised:

1. Two viewers complained that the advertisements did not make clear that two months' subscription fees were payable in advance.
2. Seven viewers believed the text 'restricted channel streaming' was unclear and did not explain fully the limitations of the service. The maximum number of channels that could be accessed at any one time was five and the viewing times of these channels were restricted such that a channel could cut out mid-programme.
3. Four viewers believed it was not sufficiently clear from the advertisement that the £20 connection fee would also apply following a break in the service if they chose to cancel their subscription and then re-subscribe.

ADJUDICATION:

1. Complaints not upheld

The advertiser said that there was no obligation to purchase two months' subscription fees in advance and that two to four per cent of viewers each week chose not to pay for an additional month. However, it acknowledged that it requested the second month's payment from new subscribers early to ensure continuous coverage of the service.

We accepted that viewers were not obliged to pay for two months subscription fees in advance and that some had chosen not to. We therefore did not believe the advertisements were misleading in this regard. We also noted that

if a viewer chose to cancel the service within 30 days they would receive a refund of all payments made.

2. Complaints upheld

The Broadcast Advertising Clearance Centre (BACC) and the advertiser claimed the onscreen text regarding 'Restricted Channel Streaming' was sufficiently clear and had been added following an earlier Ofcom adjudication (Bulletin 13). The advertiser also claimed that customers would be advised further about the channel restrictions before any sale.

We believed the text 'Restricted Channel Streaming' would be meaningless to most people. The advertisements did not give a clear indication that a maximum of only five channels could be viewed at any one time. Nor did it make sufficiently clear that the time the channels were available was less than the normal broadcast times for these channels.

3. Complaints not upheld

The advertiser said it was standard industry practice to mention a connection fee without stating that this fee was also payable on reconnection. It said most viewers would understand that if they decided to stop receiving the service they would have to pay the connection fee again to reconnect. The advertiser provided details of other advertisers, products and services (e.g. broadband, TV and telephone packages) that required a fee to reconnect. It said it did not believe that advertisements for these products and services referred to a reconnection fee.

We noted that Top Up TV did not require customers to sign a long-term contract. The advertisements did not emphasise the advantages of this, or stress the flexibility it might offer viewers. We therefore felt that most viewers would appreciate that the connection fee would also apply following a break in the service.

Regarding the onscreen text, we found the advertisements to be in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising) and 5.4.2 (Superimposed text) and should not be shown again in their current form.

ADVERTISER: www.pokerstars.net

BROADCASTER: **CNBC**

Date: **23 February 2005**

Media: **Television**

No. of complaints: **1**

COMPLAINT:

An advertisement for a website, www.pokerstars.net, broadcast on CNBC at 12.15 pm, featured Chris MoneyMaker the 2003 World Series Poker Champion and Greg Raymer the 2004 champion. They described how they had played poker online to develop their poker skills and that others could do the same free of charge by using the software on www.pokerstars.net. They added that they had won 2.5 million dollars and 5 million dollars from their respective tournaments and said that they had played poker online to sharpen their skills before they entered and won these tournaments.

A viewer believed it was wrong for the service to advertise when children could see it and questioned whether it was an acceptable advertisement under the CAP (Broadcast) TV Advertising Standards Code.

ADJUDICATION: Complaint upheld

Rule 3.1 of the CAP (Broadcast) TV Advertising Standards Code (Unacceptable categories) prohibits advertisements for products or services 'coming within the recognised character of, or specifically concerned with', among other things, betting and gaming.

CNBC said that the normal definition of betting and gaming was where money was staked in order to win money or prizes. The [pokerstars.net](http://www.pokerstars.net) website, however, only taught people how to play the game. No money was exchanged when using the website and no prizes were given. CNBC did not believe that the advertisement encouraged people to play for money and did not believe that the website fell into the category of products for which advertising was prohibited.

The advertisement made it clear that the purpose of the website was to teach the game and that no money was exchanged. However, the message put across by Chris MoneyMaker (whose name alone implied you could win money) and Greg Raymer was that by learning to play poker it was possible to win large amounts of money.

CNBC responded to our draft recommendation that the advertisement was in breach, saying that 'the argument that the advertisement breaches the said rule rests on the premise that the message "put across" by the two poker stars was that by learning to play poker you could win large amounts of money and that the name of one of the players, Chris MoneyMaker "implied you could win money." ' CNBC said it was unclear as to what was meant by 'put across.' It

said that if the ASA intended this to mean a direct message, then that was factually incorrect. 'The poker stars did not state that by learning poker you could win large amounts of money or any money. The poker stars established their credentials by explaining who they were and then discussed why they recommended the site: because it allowed one to "make notes and track statistics." It is usual for a star to endorse products or services and in this instance there is a kudos attached to using software on which real stars learnt to play. The fact that the poker stars are successful in terms of winning money may be said to show that the games played on the site assist one to be a good player, not necessarily that one will win money as it is perfectly open to people to play poker for no money.' CNBC continued: 'your remarks re the name of Chris MoneyMaker suggest that you consider the name to be contrived. This is his real name and the one he has had from birth. I am not sure how you can abstract from someone's real name that it is being used to promote gambling? The connection between his name and winning money from poker is purely co-incidental'.

The wording of rule 3.1 is clear, stating that advertisements are unacceptable if they come 'within the recognised character of, or (are) specifically concerned with,' among other things, betting and gaming. Notwithstanding the points CNBC have made above, the advertisement links playing poker online without exchanging money with the possibility of winning large amounts of money. We could not accept that the advertisement did not promote playing poker for money. Regardless of the time it was shown and whether children were likely to see it, it was in breach of Rule 3.1(c) (Unacceptable categories) of the CAP (Broadcast) TV Advertising Standards Code and should not be shown again in that form. We did not say that Chris MoneyMaker's name was not genuine. However, in the context of an advertisement which we believe has the effect of promoting betting and gaming, we believe viewers are likely to make a connection between his name and the service being advertised.