

Advertising Standards Authority

Broadcast Advertising
Adjudications

6 April 2005



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ADVERTISER: Gazelle
BROADCASTER: Best Direct
Date: 6 April 2005
Media: Television

COMPLAINT:

During monitoring, BCAP noted an infomercial on Best Direct which advertised a Gazelle Freestyle Elite exercise machine. Tony Little, "America's personal trainer" demonstrated how to use the machine. During the demonstration, he explained what exercises you could do on the product saying "you have stretching. Everybody needs to stretch. It's called flexibility ... helps get rid of the itis-es^[1]".

There were also testimonials from customers who claimed dramatic results from using the product. These included "I went from 385 to 135" (i.e. 27 stones 7 lbs to 9 stone 9 lbs, so losing 17 stone 12 lbs). Another said "I weighed 340 pounds (24 stone 4 lbs) and was told that, you know, you better do something about it. I had seen Tony's Gazelle on TV and, you know, was somewhat skeptical, but I decided, you know, I have got to do something so I ordered the Gazelle. Through the Gazelle and through the exercise programme, through the workout programme, I've lost 134 pounds" (9 stone 8 lbs) other customers claimed to have lost 8 stone and 8 stone 3 lbs.

1. BCAP asked to see evidence for the claim that Gazelle Freestyle Elite "Helps get rid of the itis-es".
2. BCAP also noticed that there were several testimonials from people who appeared to be obese.

ADJUDICATION:

1. Upheld

Best Direct explained that there was no substantiation for this as they had never viewed it as a claim. They regarded it as a piece of editorial; a throwaway remark that was harmless because it carried no meaning. They edited out the statement. The Authority were concerned that viewers might be misled into believing the machine would help get rid of conditions such as arthritis.

2. Upheld

Best Direct agreed to remove the testimonials and references to weight loss achieved by people who were, or appeared to be, obese. Given that one of the testimonials was from a woman who weighed 27 stone 7 lbs, the Authority

^[1] The context indicated that "itis-es" was intended to refer to physical conditions whose names end in "...itis".

was concerned that these testimonials had not been noticed and considered by Best Direct's compliance procedures.

Best Direct said they had reviewed their internal procedures to ensure better compliance with the codes. The Authority noted that Best Direct had amended the advertising and concluded that the infomercial was in breach of rules 5.2.1 (Evidence) and 8.4.5 (Obesity).

ADVERTISER: GlaxoSmithKline UK Ltd

AGENCY: Ogilvy & Mather Advertising / M&C Saatchi

Date: 6 April 2005

Media: Poster and Television

No. of complaints: 1

COMPLAINT:

C & C (Ireland) Ltd objected to a poster and a television commercial for a fitness drink.

a. The poster was headlined "WATER DESIGNED FOR EXERCISE" and featured a human figure, formed of water, running. A photograph of a bottle of the drink appeared at the bottom of the poster; text next to the photograph stated "THE FITNESS WATER FROM LUCOZADE SPORT".

b. The television commercial featured a human figure, formed of water, in an environment where water was constantly falling like rain. The figure emerged from a sitting position in a small pool then ran, performed cartwheels and back flips, dived into a large pool and swam. A voiceover stated "Imagine if water did more. Imagine if Lucozade Sport re-designed water for exercise and for better hydration than water alone." The commercial ended with a scene that showed a bottle of the drink; text on the screen stated "THE FITNESS WATER" and a voiceover stated "Lucozade Sport Hydro Active: the fitness water".

The complainants, who believed the advertisers' product was a high calorie drink, objected that the use of the term "water" misleadingly implied the product was an unprocessed drink with zero calories.

ADJUDICATION: Complaint upheld

The advertisers said the claims "fitness water" and "water designed for exercise" suggested that more than water was on offer. They explained that the product was developed for people who exercised to improve their body shape, to lose weight or to maintain their current weight and who, therefore, required effective hydration but normally rejected conventional sports drinks because of their high calorie content; the product met the needs of those people because it tasted good, was low in calories and had been specifically designed to provide effective hydration. They said viewers would understand from the claim "Imagine if Lucozade Sport re-designed water for exercise" that the product was water that had been formulated for exercise needs. They explained that the product was flavoured because people tended to drink greater quantities of fluid during exercise, when the drink offered was flavoured than when plain water was offered; they also explained that they had added carefully controlled amounts of carbohydrate and sodium to water to make it suitable for people who were exercising by ensuring fast fluid

absorption and retention. The advertisers said the product was a hypotonic sports drink, which meant that it was designed to offer effective hydration; it was of a new product type of lightly flavoured, low-calorie drinks. They used the term "fitness water" in conjunction with the words "Lucozade Sport Hydro Active" to describe the new product type; that meant that the term "fitness water" would always be seen in the context of a brand name. They pointed out that they had been selling the product for a year and had not received complaints from consumers who were disappointed because they had expected it to be pure, natural water. They said Hydro Active fell into the broad product category of flavoured waters and fortified waters, which consumers were familiar with and which contained water with added ingredients, such as sweeteners, acidulants, carbohydrate, fruit juices and calcium. The advertisers sent details of the product's ingredients and its nutritional composition. They also sent details of the carbohydrate and calorie content of the product compared to that of a sample of flavoured mineral water drinks, energy drinks and carbonated soft drinks. They argued that, at 10 kcal per 100 ml, the product was a low calorie drink.

The Broadcast Advertising Clearance Centre (BACC) said viewers were unlikely to infer from the television commercial that the product was pure water, because they would recognise "Lucozade Sport" as a sports drinks brand and would not expect pure water to be offered under that brand name. They believed viewers would infer merely that the advertisers had added something to water to improve its performance. They pointed out that the television commercial mentioned neither calories nor processing.

The Authority noted the product's ingredients were water, glucose syrup, citric acid, acidity regulators, flavouring, sweeteners and vitamins. It noted the product contained 10 kcal, 2 g carbohydrate and 35 mg sodium per 100 ml. The information submitted by the advertisers showed that the sample of flavoured mineral water drinks contained similar calorie and carbohydrate content to the advertisers' product, whereas the sample of energy drinks and carbonated soft drinks contained significantly higher calorie and carbohydrate content than the advertisers' product. The Authority considered that the product was not a high calorie drink. It considered, however, that the overall impression of the advertisements was that the product contained no calories or additives. Because it did, the Authority considered that the advertisements were misleading. It told the advertisers to avoid that impression in future.

The Authority concluded that the poster breached clause 7.1 of the CAP (Non-broadcast) Code and the television commercial breached clause 5.1 (misleading) of the CAP (Broadcast) Television Advertising Standards Code.

ADVERTISER: Jamba AG t/a Jamster and RingtoneKing

AGENCY: Lorena Medienagentur GmbH

Date: 6 April 2005

Media: National Press/Television

No. of complaints: 22

COMPLAINT:

Complaints were received about three advertisements for mobile phone ringtones; two advertisements appeared on television, one appeared in the national press.

a. One television advertisement listed three ringtones, each with its own order code A1, A2 and A3; the text at the top of the screen stated "Jamster Poly Club". The voiceover said "Wake up and get your favourite ringtone on your mobile now by texting A1, A2 or A3 to 88 888. For more information see Jamster.co.uk". The scrolling onscreen text stated "Up to 6 polytones&logos (+music/news)/week £3 (IE €4). Unsubscribe: text "stop". 16+ only. Normal operator charges. Tel. 0870 121 3186".

b. The other television advertisement featured an animated character called Crazy Frog; the text at the top of the screen stated "Jamster mobile club". The voiceover said "Go nuts with the Crazy Frog on your mobile now. Text 100 for the mono, 200 for the poly or 300 for the real crazy sound to 88 888." The scrolling onscreen text stated "Up to 5 monotones, polytones or realtones (+musicnews)/ week £3 (IE €4). Unsubscribe: text "stopgigasound" or "stop". 16+ only. Normal operator charges. Tel. 0870 121 3186."

c. The press advertisement was headlined "WHO'S HOT? AND WHAT'S NOT?" and featured the Crazy Frog and a cartoon of Tony Blair; lists of the advertiser's products appeared below under various headings. Text in the top right hand corner of the advertisement stated "from as little as 30p* in the Ringtoneking clubs! See below for details." That text was linked to small print at the bottom of the advertisement which stated "Callers must be 16+ and have bill payer's permission. Join any of the Ringtoneking clubs and download from the above content items each week or from www.ringtoneking.co.uk! The Picture Club: up to 6 pictures per week ... Club membership costs £3 (4€) per club weekly and will be billed by SMS. Weekly subscription will be automatically renewed if not cancelled. Related offers sent via SMS. Please allow up to 48 hours for delivery in extreme cases of network traffic. To unsubscribe text ... "stopclubpicture" (Picture Club) ... Sent texts and WAP/GPRS download charged at normal operator rate. Note: Named artists may have no connection with the featured ringtones & may not be the only artists who have recorded the song. PrePay users must have sufficient credit to receive order. If you have any problems contact customer care at 0870 121 73 97 (for Ireland call 1890 943 301) or

support@ringtoneking.co.uk Service provided by ilove GmbH, technical provider mobile365."

1. 21 viewers complained that the television advertisements did not make clear that sending a text to the advertised number would result in subscription to a service costing £3 a week.

2. One of the complainants made the same point about the press advertisement.

ADJUDICATION:

1. Complaints upheld

The BACC said that, in both advertisements, the voiceover inviting viewers to order a ringtone was not heard in isolation but was accompanied by visual information; it asserted that the advertisement should be considered as a whole and that its audio element should not take precedence over what appeared onscreen. It pointed out that some people believed that an advertisement's visuals had a greater impact on viewers than its voiceover. The BACC therefore maintained that the totality of the advertisement conveyed a very clear message and that viewers would not be misled.

Both the BACC and the advertiser asserted that the television advertisements' onscreen text, which stated "Up to 5 monotones, polytones or realtones (+music/news)/ week £3 (IE €4)" on the Crazy Frog advertisement and "Up to 6 polytones&logos (+music/news)/week £3 (IE €4)" on the other advertisement, made it clear that customers who responded to the advertisements would be subscribed to a service costing £3 a week. The advertiser asserted that the number of words that appeared in the onscreen text as well as their size, speed and placement were in line with the requirements of the CAP (Broadcast) TV Advertising Standards Code. It pointed to the fact that the advertisements respectively featured the prominent headings "Jamster Poly Club" and "Jamster Mobile Club" for the duration of the advertisements; it argued that these headings made clear that the service offered was a club that involved a membership agreement and an ongoing relationship with Jamster. The advertiser said that offering products like ringtones or wallpapers on a subscription only basis was established practice in a market that had become reasonably sophisticated. It asserted that Jamster had three million satisfied customers and that the complaints received by the ASA did not indicate that its advertising was misleading viewers.

We noted the advertiser's assertion that offering ringtones and wallpaper on a subscription only basis was an established practice, although we understood that many ringtone providers also offered individual ringtone or wallpaper downloads; we believed that in a market that offered both subscription only services and individual product purchases, the nature of the service offered should be made clear. We accepted that both television advertisements featured onscreen text that stated a weekly fee would be charged for subscribing to the service and that headings appeared onscreen saying either

"Jamster Poly Club" or "Jamster Mobile Club". We considered, however, that the voiceovers on both advertisements encouraged viewers to order a single ringtone rather than subscribing to an ongoing service by stating "get your favourite ringtone on your mobile now" and "go nuts with the Crazy Frog on your mobile now". While we accepted that an advertisement's voiceover did not necessarily take precedence over information presented visually, we did not believe that the onscreen text or the headings that referred to a club were sufficient to correct the misleading impression given by the voiceovers.

The TV advertisements were in breach of Rule 5.1 (Misleading advertising) of the CAP (Broadcast) TV Advertising Standards Code.

2. Complaint upheld

The advertiser asserted that it had amended its press advertising following two previous ASA investigations that had been resolved informally. It stated that several details about the terms of its service were added to the body copy of its advertising and that the lucidity of the advertising had been improved. It asserted that the nature of the service was made clear in the text appearing in the top right-hand corner, which referred to "the Ringtoneking clubs!" and pointed out that a large asterisk linked that text to small print giving detailed information regarding subscription and pricing. It argued that the fact they had heard of no other complaints on this issue since July 2004 and that press commitments and club membership had continued to increase indicated that consumers understood the nature of its subscription service. It added that 80% of its customers stayed in its clubs for far longer than a week. Nevertheless, the advertiser said that it would be carrying out an internal review of its press advertising and taking immediate steps to minimise the chances of complaints arising in future.

We noted that the advertiser had made amendments to its press advertising following previous ASA investigations and welcomed its intention to carry out a further review of its advertising in light of this complaint. We also noted that the advertisement's small print gave detailed information regarding subscription and pricing. However, the advertiser had provided written assurances in the past that the body copy of its advertising would make clear that a subscription service was being offered. We did not consider that they had made this clear and concluded that the advertisement was misleading.

The advertisement was in breach of Clause 7.1 (Truthfulness), 15.1 (Prices) and 15.3 (Prices) of the CAP Code.

ADVERTISER: Sky
AGENCY: Sky & HHCL/Red Cell
Date: 6 April 2005
Media: Television
No. of complaints: 3

COMPLAINT:

A number of commercials on Sky channels advertised Sky+ and Sky Multiroom with installation for Christmas. Most said "If you call now you could be installed by Christmas". Two others said "Call 0875 800 876 to book in time for Christmas", while a third said "If you call now you will be installed before Christmas."

Viewers said that they had tried to take advantage of the offer but were given installation dates in January.

ADJUDICATION: Complaint upheld

Sky explained that all the commercials played in Sky's promotional airtime, but only two of the advertisements had been cleared by the BACC.

Sky said that it carefully monitored the daily installation lead-time to ensure that the promos would not run once it knew that it could no longer deliver pre-Christmas installation. On the weekend of 5 December it became aware that pre-Christmas installation would not be possible for large areas of the country from Tuesday 7 December. It therefore took all the advertising off air on the Tuesday. Prior to that date only a limited number of areas had been affected. Sky pointed out that the promotions said "If you call now you could be installed by Christmas." It felt the wording in the advertising enabled it to continue with the campaign until the 7th, as before then the offer could still have been taken up by a majority of the country. Sky said the three complaints were the only ones during the whole campaign it was aware.

We agreed that the advertisements that used 'could' made clear the possibility that December installation might not be possible. However, the Sky promotion that said "When you take Sky Multiroom, Sky+ is only £149 ... If you call now you will be installed before Christmas" and the two commercials approved by the BACC, which said "Call 0875 800 876 to book in time for Christmas", made an absolute claim of installation by Christmas. The BACC said it had been assured by the advertiser that the commercials it approved would be removed from air before any possibility that Sky could not fulfill the offer. Even before the advertising was taken off on 7 December, the installation promise could not be met in some areas of the country.

We believed that these three advertisements made an absolute claim of pre-Christmas installation, which the advertiser was unable to meet. The

advertising breached CAP (Broadcast) TV Advertising Standards Code Rule 5.1 (Misleading advertising).

ADVERTISER: **Texstyle World**

AGENCY: **Scottish Media Group**

Date: **6 April 2005**

Media: **Television**

No. of complaints: 1

COMPLAINT:

A locally cleared commercial for Texstyle World offered "up to 60% off ready made curtains".

A viewer complained that when she went into her local store she was advised by a member of staff that one of the six pairs of curtains shown in the advertisement was not included in the offer.

ADJUDICATION: Complaint upheld

The advertiser said that all the curtains featured in the advertisement had been reduced, with two of the sets reduced by 60%. It believed that there must have been some confusion in the store the viewer visited, as the curtains she wanted were reduced, although not by 60%. It was willing, if stock allowed, to offer the viewer the curtains for the price at the time the sale was advertised.

The advertiser explained that over 10% of all ready-made curtains had a saving of 60%. It said that throughout the range, there had also been a large percentage of curtains with savings of less than 60%, which were half price or had 10% off, but not all ready-made curtains were included in the sale. Scottish Media Group was not made aware of any limitations or exclusions to the offer at the time it made the commercial.

We appreciated that there may have been a misunderstanding in the store, which the advertiser said it was investigating. We also acknowledged that the advertising made it clear that the savings were "up to 60%" and believed that viewers would not have expected a 60% reduction on all ready-made sale curtains. However, the advertising did fail to explain that only selected ready-made curtains were on sale.

The commercial therefore breached CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising) and 5.2.3 (Qualifications).

ADVERTISER: Winsor Pilates

BROADCASTER: Best Direct

Date: 6 April 2005

Media: Television

COMPLAINT:

During routine monitoring of Best Direct in December, BCAP noticed that weight loss claims were made for an exercise machine. Rule 8.4.3 requires that advertisements which refer to specific amounts of weight that have been lost by individuals must also state the period over which that loss was achieved. The Best Direct advertising did not carry the latter information.

Best Direct acknowledged that the advertisement did not comply with the rule and agreed to add the relevant on-screen captions.

Despite this, during some further routine monitoring of the channel in January, BCAP found infomercials for a Winsor Pilates exercise tape and for a different exercise machine, neither of which had captions stating the period over which the weight loss had been achieved.

Once again, Best Direct agreed to make the relevant changes.

Further monitoring has indicated that some claims appear not to comply with this or other elements of the weight loss rules.

BCAP was concerned about these issues:

1. The presenter's weight loss was presented correctly at one point in the half hour advertisement but, when it was referred to again at the end, the caption was missing.
2. There was a testimonial from a woman who claimed "With Winsor Pilates I lost almost forty pounds in probably about two and a half months". This equates to 4 lbs per week.
3. The use of a testimonial from what appeared to be an obese person. (She lost 4 stone 10 lbs, having been size 22 in US clothing sizes.)

ADJUDICATION:

Best Direct maintained that they had not realised that BCAP's comments on captions for weight loss for the other exercise machine should have been implemented for all their products. They added that both infomercials had aired on a wide variety of channels for over two years. They said that both infomercials had been reviewed by an independent consultant and had been through their own compliance process. They added that "given the length of

time the infomercials have been broadcast without complaint and the compliance steps we have taken, we have had no reason to review content”.

1. Upheld

Best Direct explained that this was an oversight from the original re-edit and said that they would add the caption.

2. Upheld

Best Direct explained that they had debated the use of the testimonial “on the basis that the wording used by the consumer is very wooly”. They felt that there was a conversational element to it which provided general information as opposed to a specific claim. The Authority noted that rule 8.4.3 is very clear and states that, when a specific amount of weight is lost by an individual, the period over which that weight is lost must also be stated. In addition the rate and amount of weight loss must be compatible with accepted good medical and dietary practice. The rate achieved in the testimonial was almost double the 2 lb per week maximum rate recommended by Department of Health guidelines. Best Direct agreed to remove the testimonial from the infomercial.

3. Upheld

Rule 8.4.5 states that testimonials from people who are, or appear to be obese should not be used. Best Direct did not dispute the apparent obesity of the person in question and agreed to remove the testimonial.

The Authority reminded Best Direct of their pre-transmission compliance responsibilities and that BCAP’s discussions on the subject of on-screen text should have been regarded as both specific to that case and as more widely applicable. In addition, the Authority was concerned that Best Direct’s compliance system had failed to address the obesity issue. The Authority noted Best Direct’s offer to amend the advertising and concluded that the commercial was in breach of rules 8.4.3 (Predictions of Weight Loss) and 8.4.5. (Obesity).