

Advertising Standards Authority

**Broadcast Advertising
Adjudications**

24 May 2006



ADVERTISERS IN THIS WEEKS REPORT

Babestar.tv Live XXX 3

DSG Retail Ltd t/a PC World 5

Electronic Arts Ltd 7

Fresh Breath Ltd t/a Dentyl pH Mouthwash 9

Homepride Ltd t/a Bugs Away 11

Advertiser: Babestar.tv Live XXX

Broadcaster: Look4Love TV

Date: 24 May 2006

Media: Television

COMPLAINT:

BCAP monitored a TV ad for 09090 26 00 00 at 10 pm on Look4Love, an unencrypted channel. Several women wearing underwear were lounging on a mattress using sex toys. A young-looking woman with long blonde hair was shown sucking a lollypop. The voice-over stated "She is just 18. She is barely legal, if you like them young, take advantage of our young girl here at Babestar". The voice-over used crude explicit language, referred to young girls and frequently claimed "We are live here until 5.30 and guys you can get through to any babe right now".

BCAP challenged whether:

1. the ad complied with rule 11.1.2, which prohibits premium-rate services of a sexually explicit nature;
2. the ad would have a harmful influence on children;
3. would cause serious or widespread offence to adults;
4. the ad misleadingly implied the service was live and suggested that callers could speak to the women featured on screen and
5. the size of the superimposed text was legible.

ADJUDICATION:

1. Upheld

The broadcaster maintained that the material was editorial programming and therefore did not need to comply with the CAP (Broadcast) TV Advertising Standards Code.

Ofcom confirmed that the channel held a licence for a teleshopping service and was subject to the CAP (Broadcast) TV Advertising Standards Code. The ASA considered that the ad advertised a premium-rate service of a sexually explicit nature.

2. Upheld

The broadcaster explained that the advertising was shown after 10 pm in the adult area of the electronic programme guide. The channel could be blocked by parents with a PIN code. They added that a certificate "18" sign was on the lower portion of the screen at all times and warnings were given that it was a channel for over 18s.

We considered that the warnings made at the beginning of the broadcast, for example "this channel is for over 18s only. So if you're under 18 please switch over now", were

insufficient and did not absolve the channel from complying with the Code. We were concerned that, because the channel was unencrypted and the ad was shown at 10 pm, some children were likely to see it. We considered that the images and words used in the ad would have a harmful influence on children.

3. Upheld

The broadcaster explained that the channel was an adult channel broadcasting in the adult area of the electronic programme guide. They explained that adults looking for adult content would go to a channel beginning with 9, knowing that there they would find adult content.

We considered that the ad was unacceptable and were especially concerned by the crude language and references to young girls. We considered that the ad would cause both serious and widespread offence to adults.

4. Upheld

The broadcaster maintained that callers could speak to the women featured on screen. They argued that because it was programming and not advertising the material was not misleading.

We noted that a text message from "Ryan" was read out twice and several sections of the ad were repeated throughout the evening. We considered this demonstrated that the material was pre-recorded. We considered that, because the ad stated that the service was live and not pre-recorded and that callers would get through to the women featured on screen, the ad was misleading.

5. Upheld

To establish the exact height of the superimposed text, the ad was sent to the Ofcom Broadcast Technical Policy team, which confirmed that the text height was well below the minimum height required by the On-screen Text and Subtitling in Television Advertisements Guidance. We considered the superimposed text was too small to comply with the rule.

We were concerned that the broadcaster had made such serious breaches of the Code. We ordered them to remove the ad immediately. We noted the broadcaster had not complied with our direction. We referred Look4Love TV to Ofcom, which may instigate formal sanction procedures.

We considered the ad breached the CAP (Broadcast) TV Advertising Standards Code rules 11.1.2 (Premium-rate telephone services), 7.3.1 (Mental harm), 7.3.7 (Use of scheduling restrictions), 4.2.3 (Treatments unsuitable for children), 6.1 (Offence), 5.1 (Misleading advertising) and 5.4.2 (a) (Superimposed text).

ADVERTISER: DSG Retail Ltd t/a PC World
AGENCY: M & C Saatchi plc
Date: 24 May 2006
Media: Television
No. of complaints: 1

COMPLAINT:

A TV ad, for the Compaq Presario PC, showed a salesman in a PC World store saying to a customer “Compaq Presario PC, latest AMD Athlon 64 Processor, incredible deal just £499!” The ad showed the PC with the AMD 64 Athlon logo on its screen.

The viewer complained that the claim “latest AMD Athlon 64 Processor” was misleading, because the latest 64-bit AMD processor was from the “Athlon FX” range but the advertised PC was not sold with an “Athlon FX” AMD chip.

ADJUDICATION: Complaint upheld

PC World said the ad had been prepared with the involvement and approval of HP-Compaq and AMD. They explained that AMD produced three ranges of desktop 64 bit processors: the “Athlon”, the “Athlon X2” and the “Athlon FX”; each range was represented by an AMD colour-coded logo: orange, blue and silver respectively. They said the orange logo was featured in the ad on the screen of the PC. They said the latest 64 bit “Athlon FX” processor was a highly specialised gaming processor that would be familiar only to knowledgeable computer users. PC World said processor ranges were subject to frequent new additions as well as revisions to existing processors; they argued that the existence of a faster processor did not automatically mean that a slower processor was less recent or performed worse.

PC World acknowledged that the ASA recently investigated and upheld a complaint about a Currys TV ad that claimed “latest 64 bit AMD processor”. However, they said the claim in the PC World ad was different because it included the word “Athlon”; they believed that meant viewers were even more likely to realise that the processor was from the “Athlon” range and less likely to infer that it was from the “Athlon FX” range. They pointed out that they had not repeated the claim “latest 64 bit AMD processor”.

PC World also said the Broadcast Advertising Clearance Centre (BACC) cleared the PC World ad four days before they and DSG learned of the ASA adjudication on the Currys ad. They argued that, even if they had considered it appropriate to amend the ad in light of that adjudication, there would not have been time to do so before the ad went on air. They said the ad was on air for only a few days.

The BACC said they cleared this ad because they believed the claim about the processor was different to the claim in the Currys ad.

The ASA noted the PC world ad referred to “Athlon”, not “Athlon FX”, and considered that viewers were unlikely to infer that the advertised processor was from the “Athlon FX”

range. We considered, however, that the claim “latest AMD Athlon 64 Processor” was very similar to the claim “latest 64 bit AMD processor”, because both included the word “latest”. We considered that, like the claim in the Currys ad, “latest AMD Athlon 64 Processor” gave the impression that the processor was the most recently released in the “Athlon” range. We understood, however, that AMD had released a better performing “Athlon” processor at a later date than the processor contained in the advertised Compaq Presario. We concluded that the claim was misleading.

The ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.1 (Evidence) and 5.2.2 (Implications).

ADVERTISER: Electronic Arts Ltd
AGENCY: Wieden + Kennedy
Date: 24 May 2006
Media: Television
No. of complaints: 16

COMPLAINT:

A TV ad for the video game Black began with a shot of an ornately decorated room. Operatic music began as the room was sprayed with gunfire. The camera panned around the room as the walls and furnishings were riddled with bullets; vases, busts, a piano and bookcases were destroyed. A flat-screen TV came into view on which the shots from the game were displayed before it exploded. Throughout the ad only the music was audible except for a final shot, after a pack shot of the game, in which a chandelier crashed to the floor.

The Broadcast Advertising Clearance Centre (BACC) applied an "ex-kids" timing restriction to the ad to ensure it was not scheduled in or around programmes made for or targeted specifically at children.

1. 14 viewers said that the ad was offensive and harmful because it glamourised the use of guns and could encourage the destruction of property.
2. Two viewers felt the ad was unsuitable for broadcast before 9 pm.

ADJUDICATION:

1. Complaints not upheld

The BACC said that the images in the ad were fantastical and stylised and did not involve any people. No one was shot at or threatened and there was no blood or gore. The music featured in the ad was classical without the aggression of rock or dance music. The slow motion shots were balletic and portrayed the destruction of inanimate objects in an abstract way. There was no link to realistic crime or violence.

Wieden + Kennedy said that the intention of the ad was to communicate that, unusually for this kind of game, most of the virtual environment could be destroyed by gunfire though the ad intentionally did not feature any guns being fired other than those in the game footage. They said the transition to the game footage reinforced the impression that the slow motion shots were not taking place in the real world.

The ASA noted that the only guns shown being fired were those in the game footage and that the combination of slow motion shots and a soundtrack made up entirely of operatic music meant that the ad was unlikely to be seen by viewers as a realistic depiction of violence. Whilst we appreciated that any reference to guns or gunfire would be distasteful to some viewers, we considered that the action in this ad was clearly placed within the context of a video game. We did not consider that the theme of gunfire or the depiction of

the destruction of inanimate objects glorified real violence, was likely to cause serious or widespread offence or was likely to lead to harmful emulation.

2. Complaints not upheld

The BACC said that they felt that an "ex-kids" restriction was appropriate because the creative treatment of the ad was so stylised and removed from reality.

We considered that the ad did not contain any images, either in the "real world" footage or the game footage, that were inappropriate for or likely to cause distress to children or to result in emulation. We considered, therefore, that the "ex-kids" restriction was adequate.

We investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 6.1 (Offence), 6.2 (Violence and cruelty), 7.3.1 (Mental harm) and 7.3.7 (Use of scheduling restrictions) and CAP (Broadcast) Rules on the Scheduling of Advertisements rule 4.2.3 (Treatments unsuitable for children) but did not find it in breach.

ADVERTISER: Fresh Breath Ltd t/a Dentyl pH Mouthwash

AGENCY: Full House Productions

Date: 24 May 2006

Media: Magazine and television

No. of complaints: 2

COMPLAINT:

A magazine ad and a TV ad described what users could expect from using Dentyl pH Mouthwash.

The magazine ad headed “Look in the sink – you’ll see it works” said “There’s no other mouthwash quite like Dentyl pH. It was specially developed by dentists and is recommended by hygienists and fresh breath centres to help fight bad breath, plaque and gum disease. Dentyl pH is alcohol-free and has a clever anti-bacterial action that not only kills bacteria but then lifts and reveals them ...”

The TV ad showed a woman using the product in her bathroom. It said “Dentyl pH was specially developed to help fight bad breath, plaque and gum disease. Its anti-bacterial formula kills bacteria then lifts and reveals it, along with food and other particles ... There’s no other mouthwash quite like Dentyl pH.” On-screen text read “Patented alcohol-free bacteriostatic formula.”

1. A competitor, Pfizer Consumer Healthcare, believed that the claim that Dentyl pH helped fight gum disease in both the magazine ad and the TV ad was an unauthorised medicinal claim in breach of the Medicines and Healthcare products Regulatory Agency (MHRA)’s Medicines (Advertising) Regulations 1994 and therefore also in breach of the CAP and CAP (Broadcast) Codes.
2. A viewer believed the TV ad was misleading for claiming to “kill” bacteria when in fact the bacteriostatic formula worked by stopping bacteria reproducing rather than killing it.
3. The ASA challenged whether the same claim to kill bacteria in the magazine ad was therefore also misleading.

ADJUDICATION:

1. Complaint upheld

Dentyl pH said it had never been their intention to make a medicinal claim. They said that in the past they had liaised with the MHRA to ensure the wording of their ads complied but that their recent ads were not approved by the MHRA. They said that the MHRA had themselves received a complaint and were currently investigating whether it breached their regulations.

The Broadcast Advertising Clearance Centre (BACC) said the claim to “fight gum disease” in the TV ad was qualified by the word “help.” They believed it would be understood as referring to preventative action rather than as a medicinal claim. They believed the

question of whether it amounted to a non-compliant medicinal claim was a legal issue for the advertiser to consider.

The ASA consulted the MHRA who told us that Dentyl pH's claim "to help fight gum disease" (in both the magazine and TV ads) was a non-compliant medicinal claim. However, Dentyl pH had assured them they would undertake to ensure future ads complied. We welcomed Dentyl pH's undertaking for the future, but nevertheless considered that both ads had made an unauthorised medicinal claim.

The magazine ad breached CAP Code clause 50.11 (Medicines – Marketing authorisation).

The TV ad breached CAP (Broadcast) TV Advertising Standards Code rule 8.2.3 (Products without a marketing authorisation)

2. & 3. Complaint not upheld

Dentyl pH said that the anti-bacterial ingredients used in mouthwashes typically worked by both killing bacteria and by inhibiting their growth and reproduction. They provided studies that they believed showed that the ingredient cetyl-pyridinium chloride (CPC) used in Dentyl pH worked in both these ways.

The BACC endorsed this for the TV ad.

We sought expert advice. The expert's view was that the evidence Dentyl pH had provided, combined with his own knowledge of CPC, was sufficient to show that the product worked in both the ways claimed. We therefore did not consider it misleading for the ads to refer to both these methods of controlling bacteria.

The magazine ad was investigated under CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness) and 50.1 (Health & Beauty – Medical and scientific claims) but was not found in breach.

The TV ad was investigated under CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.1 (Evidence) and 5.2.2 (Implications) but was not found in breach.

ADVERTISER: Homepride Ltd t/a Bugs Away

AGENCY: Tomlin Bean Associates Ltd

Date: 24 May 2006

Media: Television

No. of complaints: 15

COMPLAINT:

A TV ad for surface cleaner Bugs Away showed how bacteria and germs accumulated on a kitchen counter. The voice-over stated "The surfaces on your home are a breeding ground for bugs and bacteria including E. coli, Listeria and Salmonella". A number of daily household scenarios were shown which led to dirt and germs accumulating on a kitchen counter. A fly was shown feeding off the crumbs and residue. The voice-over stated "New Bugs Away has Micelle action which lifts the dirt, grease and grime you can see while the active ingredient destroys bugs and bacteria you can't" while an animation of bacteria being "killed" by the spray was shown. "It's so effective, it even kills MRSA". The mother is then shown wiping the work-top clean. "New anti-bacterial, anti-viral Bugs Away leaves your home cleaner and safer for your family. One Spray and it's Bugs Away".

1. 15 members of the public, several of whom had been affected by MRSA and one of whom was a nurse believed the claim the product killed MRSA was misleading on the basis that it could not kill MRSA related infection within the body. Several viewers questioned why, if the product killed MRSA as claimed, it was not used in hospitals.
2. Three viewers complained that the ad appealed to the fears of vulnerable consumers.

The ASA challenged whether:

3. the product was effective against E. coli, Listeria and Salmonella and
4. the claim that the product had anti-bacterial and anti-viral action could be substantiated.

ADJUDICATION:

1. Complaints not upheld

The Broadcast Advertising Clearance Centre (BACC) said they took great care before approving the claim and had sought advice from an analytical chemist and a medical consultant. They said they were aware of the difference between killing MRSA bacteria on surfaces and killing MRSA-related infection in the body. They said the ad did not claim any medical use for the product.

Bugs Away offered to include onscreen text in future ads that made clear the product killed MRSA bacteria on hard surfaces and clarified the difference between MRSA infections within the body and MRSA bacteria found on surfaces. They sent independent test results that showed the product killed MRSA bacteria both in clean and dirty conditions.

The ASA was aware from information available from the Health Protection Agency (HPA) that the spread of MRSA bacteria could be prevented by good hygiene and by washing hands and surfaces with hot soapy water and that while hospitals did have products for killing MRSA bacteria on surfaces, the bacteria could be spread through physical contact with people. We acknowledged that several viewers had been affected by MRSA-related infection and several believed the ad implied Bugs Away could kill MRSA infection in the body. However, we considered the ad made clear the product was effective against MRSA bacteria on surfaces and we judged the evidence adequate to substantiate that claim.

2. Complaints not upheld

The BACC said issues surrounding MRSA were very sensitive due to much media publicity over MRSA outbreaks in hospitals. They said their medical consultant had confirmed that MRSA bacteria could be found in the home and that as such they did not consider the ad's reference to MRSA likely to appeal to consumers' fears.

Bugs Away said the ad would have been seen by 27 million people. They believed many of the complaints received resulted from a lack of knowledge about MRSA. They offered to appease any consumer concerns by making the difference clear in future advertising.

The ASA acknowledged that some consumers could find references to MRSA alarming. However, we were satisfied that the product could kill MRSA bacteria on surfaces as claimed. We considered the tone of the ad was informative and emphasised the importance of good hygiene, and did not exploit the fears of vulnerable consumers by, for example suggesting that they were likely to develop MRSA related infections.

3. Not upheld

The BACC sent scientific evidence to substantiate the claims that the product could kill *E. coli*, *Listeria* and *Salmonella*.

Bugs Away sent independent test results which showed the product killed those bacteria in clean and dirty conditions.

The ASA was satisfied that the evidence substantiated the claims.

4. Not upheld

The BACC and Bugs Away sent scientific test results which they believed substantiated the claim.

The ASA was satisfied the evidence substantiated the claim that the product had anti-bacterial and anti-viral properties.

We investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.1 (Evidence), 5.2.2 (Implications), 6.4 Personal Distress) and 8.1.1 (Assessment of claims) but did not find it in breach.