

Advertising Standards Authority

**Broadcast Advertising
Adjudications**

31 May 2006



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ADVERTISER: Dell Computers

Date: 18 May 2006

Media: Television

No. of complaints: 2

COMPLAINT:

A TV ad for Dell computers showed a son listing the features of a Dell PC to his father that he'd like for his birthday. The son said "Well, it's got a P4 3.46 Gigahertz Processor ... 256Meg PCI Express Graphics ... 5.1 surround sound speakers ...". The scene changed to show the father sitting at his computer followed by a shot of a Dell sales assistant. The ad then showed a PC system with the superimposed text "Dell™ Dimension™ 1100 with Intel® Pentium® 4 Processor ~~Was £489~~ Now £399". A voice-over stated "This Dimension desktop with an Intel Pentium 4 processor is now only £399."

DSG Retail Ltd and a member of the public believed the ad implied that the Dell™ Dimension™ 1100 PC had a P4 3.46 Gigahertz processor and 256 Meg PCI Express Graphics for £399. They objected that the ad was misleading because the PC did not include those features.

ADJUDICATION: Complaints upheld

The Broadcast Advertising Clearance Centre (BACC) said the ad was not misleading. They said the father and son sequence was separate to the second part of the ad which showed the PC for £399. The BACC maintained that the PC offer at the end of the ad was clearly expressed and listed what was included in the package.

Dell Computers (Dell) said the ad did not imply that the features listed in the father and son sequence were included in the PC systems at the end of the ad. They pointed out that the father did not agree to buy the PC for his son nor did the ad state that the PC systems shown at the end of the ad had those features. Dell said that the processor which came with each PC was clearly identified in the superimposed text accompanying the shots of the desktops. They argued that the word "This" in the voice-over "This Dimension desktop with an Intel Pentium 4 processor is now only £399" clearly reinforced the separate elements of the ad and made it clear that the PC shown at the end of the ad had no connection with the opening father and son sequence.

The ASA noted that both PCs had a Pentium 4 processor and the PC at the end of the ad did not list any further specifications to differentiate them. We acknowledged that the father and son sequence was separated from the PC at the end of the ad by a screen shot of the father at a computer and a screen shot of a Dell sales assistant. However, we considered that the screen shots of the father and a Dell sales assistant were likely to be understood as a continuation of the father and son sequence and implied that the PC advertised for £399 included the specifications listed at the beginning of the ad. We considered the ad was ambiguous because it did not make clear that the PC advertised for £399 at the end of the ad was different to the PC described at the beginning of the ad. We concluded the ad was likely to mislead viewers.

The ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.2.3 (Qualifications). It should not be shown again in its current form.

Advertiser: Ideal Vitality
Broadcaster: Ideal Vitality
Date: 31 May 2006
Media: Television

COMPLAINT:

BCAP monitored a TV ad for Derma Wand on Ideal Vitality. The Derma Wand looked like a large, thick pen with a clear bulb that flashed red when in contact with the skin. The presenter explained "It's a strange little sensation, what this is doing, this is emitting an impulse that will give 100,000 pulses to the skin which is basically as you said like a micro-mini massage on to the skin ... you can feel it, it's like a little tingling sensation as those pulses go down into your skin, what that's like is like those little fingers massaging your face at a million miles an hour giving you a little massage and you know how fantastic massaging is for the skin and at the same time it's giving enriched oxygen to the skin".

"It's like a temporary quick fix isn't it? It's a temporary quick fix. But you can have that every single day and every single night if you want to. We recommend if you use it as part of your skin care routine, if you start to use it twice a day, morning and night, cleanse, moisturise and then Derma Wand. If you use it like that, twice a day, you will have results, the optimum results, within about 19 days."

The presenter said "Now obviously everyone gets different results; what I want you to think about is the problem area on your skin. Whether it is high coloration, whether it is a problem skin, whether it is puffy baggy eyes, whether it's frown lines, maybe it's the appearance of fine lines, baggy jowls, the birth lines around your neck, bingo wings, baggy bum, baggy saggy belly, maybe it's the thigh area, you know that lumpy bumpy bit on your thighs, give it a try, it's that brilliant!"

An on-screen graphic claimed the product:

"Improves the skin tone
Improves the texture of the skin
Improves the skin's appearance
Improves the appearance of fine lines
Reduces pore size
Improves the appearance of puffy eyes
Improves skin firmness around the eyes"

The presenter showed "before" and "after" photographs and said "notice how the eyebrow seems to have been lifted, the hoodedness is far less severe and also the lines and wrinkles just seem to have slowly disappeared".

The presenter showed two sets of "before" and "after" photographs of young people with problem skin. The presenter claimed that the reduction in spots had been achieved in just five days. With another set of "before" and "after" photographs the presenter said "Maybe your problem area is high coloration, now if you take a look at this lady here [shows before

photograph] you'll notice that she's got this redness and blotchiness ... Now take a look at the results after, wow ... look how it's calmed down, it's calmed the skin, the high coloration is not as extreme".

The presenter said "Usually you only get the high frequency machines editions in beauticians in actual salons. I don't know if you've seen them, those really big machines that you plug something into and you go and have your little treatments. It's also really expensive ... for ten applications you would pay around £400 for the whole ten and it's not something you can spread over time either. They do say that they want you to do the applications sort of two or three times a week. So its really expensive ... This tool is basically made from the same technology that those large machines are made from. Somebody has taken that technology and bought it into this tool which is portable" and "she was fed up, she wanted to use the high frequency machine but she didn't want to use it all the time in the salon ... it's the exact same technology that you can use in the comfort of your own home to achieve fantastic results ...".

The presenter said "Your cream should work better for you as well using this".

A viewer rang in and said "I've seen it a lot more money somewhere else on the major High Street stores ... It was £99.99". The Ideal Vitality price was £49.99.

ISSUE

BCAP challenged whether the Derma Wand:

1. would improve skin tone, the appearance of fine lines, baggy skin, lift and tone skin, the appearance of puffy eyes, skin firmness around the eyes and reduce pore size;
2. would improve cellulite;
3. would improve high coloration;
4. would improve problem skin;
5. was based on the same technology as professional machines;
6. would make skin care products more effective and
7. had been sold for £99.99 on the High Street.

ADJUDICATION

1. Upheld

The broadcaster submitted a clinical study to demonstrate the effect the Derma Wand had on skin. The ASA noted the study was conducted on only 26 people. Furthermore, we considered that the data from eight of the participants was flawed because they had either used the Derma Wand on both sides of their face or had used a different moisturiser on one side and the study contained no information on the subjects' ages and was not double-blind or placebo-controlled. Also, the testing was partly self-administered and the study contained no discussion on whether the results were statistically significant.

The broadcaster argued that it had merely claimed that using the Derma Wand would result in a temporary improvement in the skin; it believed that was in accordance with the advice in the CAP Help Note on Beauty Treatment Devices Using Electrical Currents.

The ASA explained that the Help Note was for products that applied an electrical current to muscles, causing them to temporarily tighten, resulting in the consequent benefit of a temporary reduction in the appearance of wrinkles. Because the advertiser submitted no evidence to show that the product stimulated muscles, the ASA considered that the Derma Wand may not benefit from the provisions in the Help Note.

The broadcaster submitted a letter from a beauty therapist that stated that the physiological effects of high-frequency treatment were stimulation and massage to the skin by way of a dampened, alternating, oscillating, high voltage, low amperage electric current. She claimed the benefit of the treatment was due to the speed at which the massage was delivered, which was much faster than with conventional massage. The therapist submitted various beauty therapist textbooks that described the benefits of massage: increased circulation, improvement of skin texture and tone and increase in muscle tone.

The ASA considered that a testimonial from a beauty therapist was inadequate expert evidence to support the claims. The ASA considered that the advertisers had not demonstrated that massage alone would produce the claimed results. And we considered that the advertisers had not demonstrated that the Derma Wand claimed results were due to the effects of high frequency treatment, not massage alone.

The broadcaster argued that, because it had merely claimed a temporary improvement, which needed to be maintained by regular treatments with the Derma Wand, the claim was uncontroversial and did not need to be substantiated.

The ASA considered the claimed results were not supported by general scientific opinion. We reminded the broadcaster that it was responsible for obtaining adequate objective evidence to support all claims.

The ASA concluded that the evidence was inadequate to substantiate the claims that the Derma Wand would even temporarily improve skin tone, the appearance of fine lines and the appearance of puffy eyes and skin firmness around the eyes and would even temporarily reduce pore size and considered that the claims were misleading.

2., 3., & 4. Upheld

The broadcaster admitted it had no substantiation for the claims and withdrew them. We acknowledged the broadcaster's action but nonetheless considered that the claims were misleading.

5. Upheld

The broadcaster said the Derma Wand was a high-frequency cosmetic device that delivered high voltage, low amperage electric current between 103,000 Hertz and 168,000 Hertz directly to the skin to stimulate and massage. The advertiser submitted a letter from a beauty therapist that stated that professional beauty salon high-frequency machines used frequencies ranging from 100,000 Hertz to 250,000 Hertz. The broadcaster maintained that it had claimed merely that the Derma Wand was based on the same

technology as a salon machine and that the ad had made no claims about the relative performance or power of the machine. The broadcaster maintained that the specific references that it had made in the Ideal Vitality presentation were not the same as those made in the Shop on TV 2003 Derma Wand infomercial.

The ASA was concerned because, in an earlier adjudication arising from a monitoring challenge for the same product in September 2003, the ITC had considered that the references to larger, more expensive machines were misleading, because they implied that the Derma Wand was as powerful as those machines. The ASA considered that the ad gave the same misleading impression as the one prohibited by the ITC: that the Derma Wand was as effective as much larger salon machines. We were concerned by the broadcaster's failure to comply with a previous adjudication and considered it to be a serious breach of the channel's broadcast licence conditions.

6. Upheld

The broadcaster said the study showed that using the Derma Wand with skin care products produced better results than with just cream. We considered that the claim was misleading, because the evidence, as outlined in 1, was inadequate to support the claim.

7. Upheld

The broadcaster admitted it had no substantiation for the claim that the Derma Wand had been sold for £99.99 on the High Street. It explained that the claim had been made by a member of the public who called in. The broadcaster added that it had procedures to vet telephone callers before they were broadcast but was caught unaware by the claim the caller made. The broadcaster acknowledged that it should have qualified the statement with a disclaimer.

The ASA was concerned that the telephone caller's claim was repeatedly used throughout the presentation. The clip was an edited insert and so we did not understand how the broadcaster could have been caught unaware by the claim. We reminded the broadcaster that all ads, including live broadcasts, must comply with the CAP (Broadcast) TV Advertising Standards Code. We advised moreover, that, to contradict the claim with a disclaimer was not acceptable. We considered that the claim was misleading.

The infomercial breached CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising), 5.2.1 (Evidence), 5.2.2 (Implications), 5.3.1. (Accurate pricing), 5.4.4 (Testimonials), 5.4.6 (Comparative advertising) and 8.1.1 (Assessment of claims). It must not be shown again in its present form and the product should not be advertised without adequate substantiation for the claims made for it.

ADVERTISER: National Express Ltd
AGENCY: Hobo Radio Productions
Date: 31 May 2006
Media: Radio
No. of complaints: 1

COMPLAINT:

A radio ad for National Express said “Get onboard National Express to Newquay for a weekend’s surfing action or whatever else turns you on. There’s loads of room for you and your board. And online fares start at just £1 one-way. Hurry, availability is limited so book and print your e-ticket now at nationalexpress.com.”

A listener said the ad was misleading because, having booked a ticket and arrived to board the coach with his surfboard, the driver refused him, saying it was not company policy to take surfboards. The listener subsequently telephoned National Express, who told him that surfboards were taken at drivers’ discretion.

ADJUDICATION: Complaint upheld

National Express said that they had relaxed their restrictions on carrying surfboards but that information had not been officially communicated to their drivers. They said they were in the process of reviewing their internal communications procedures to prevent a similar situation arising in future. In the meantime, they apologised unreservedly for the error and for the inconvenience caused to the listener. They said they would refund the cost of his alternative travel arrangements and offered him four free National Express tickets to the destination of his choice.

The Radio Advertising Clearance Centre (RACC) endorsed the version of events given by National Express.

The ASA welcomed the action taken by National Express but considered, nevertheless, that at the time it was broadcast the ad incorrectly claimed that passengers could travel with their surfboards.

The ad breached CAP (Broadcast) Radio Advertising Standards Code section 2, rule 3 (Misleadingness). It must not be broadcast again in that form unless passengers are permitted to travel with their surfboards.

ADVERTISER: Procter & Gamble UK
AGENCY: Leo Burnett
Date: 31 May 2006
Media: Television
No. of Complaints: 3

COMPLAINT:

A TV ad for Max Factor Flawless Perfection offered a free sample to viewers who logged onto the Max Factor website. Onscreen text claimed, "While stocks last."

Three viewers, who logged onto the website after seeing the ad but found that there were no samples left, complained that the ad was misleading.

ADJUDICATION: Complaints not upheld

The Broadcast Advertising Clearance Centre (BACC) said Procter & Gamble UK (P&G) had demonstrated that they tried to anticipate demand and made clear through the disclaimer that stocks were limited. They considered that viewer expectation was managed by the addition of the disclaimer. The BACC sent a letter from P&G.

P&G said that they had received an unexpectedly high number of requests for their free trial sample, which resulted in an apparent shortfall in the last week of the TV campaign. They said that estimated demand was based on the response to a previous promotion for Olay products. P&G said the ad ran for a four week period from 16 January to 15 February. They maintained that the sample limit was reached on 9 February and an availability message was posted on their website advising consumers that the offer was no longer available. P&G said consumers who called their free-phone number would have been offered a Max Factor Voucher in compensation. They maintained that they re-introduced the offer on 13 February when they discovered that a number of the requests for free samples were invalid, and stock became available.

The ASA noted P&G's efforts to estimate demand for the promotion and the on-screen text, which made clear to viewers that the offer was limited. We also noted P&G had made efforts to provide a substitute for the free samples with the vouchers obtainable via a free phone number and that stock had become available a few days after they had run out. We considered that P&G had taken reasonable steps to estimate demand and avoid undue disappointment among consumers. We concluded that the ad was unlikely to mislead.

We investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) but did not find it in breach.