

Advertising Standards Authority

Broadcast Advertising Adjudications

23 February 2005



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ADVERTISER: American Express

BROADCASTERS: ITV, Channel Four, Channel Five, Sky One

Date: 23 February 2005

Media: Television

No. of complaints: 6

COMPLAINT:

An advertisement for a credit card featured an American surfer, Laird Hamilton. It showed him riding a surf board behind a jet ski and preparing water sports equipment on a beach, which he referred to as his "base camp". He was seen with his surf-board jumping out of a helicopter into the sea, where he was then shown surfing a large wave. Another large wave was shown, which he referred to as "my Everest". He said "and my favourite part ... the descent". Dramatic visuals showed him surfing an extremely high wave. He said "My life takes me to the edge. My card always goes with me".

Six viewers complained because they felt it was insensitive to show an advertisement that contained images of large waves in the aftermath of the Asian tsunami disaster. Three viewers said they saw the advertisement on ITV on 26 December and on Channel Four on 29 December after nightly news bulletins containing upsetting footage from the disaster, which they felt was particularly inappropriate. Two of those viewers also complained that it was broadcast on Channel Four adjacent to another advertisement that contained images of large waves.

ADJUDICATION: Complaints upheld in part

The broadcasters said they made appropriate checks on the creative content of advertising they carried in commercial breaks around news programmes and removed advertisements that viewers might consider insensitive.

ITV acknowledged that the advertisement was broadcast after its extended nightly news bulletin on 26 December. However, it pointed out that that was the day the disaster occurred and said it had acted as quickly as possible and followed established procedures to identify potentially unsuitable advertisements as soon as the scale of the disaster became clear. It said it advised the advertiser to change the copy, which was withdrawn the day after the viewer saw it, adding that it was never its intention to schedule the advertisement insensitively. Channel Four acknowledged that the advertisement was shown adjacent to another advertisement featuring a large wave on 29 December, but said the broadcast occurred during a commercial break in a programme called "The Real King Herod", not immediately after a news bulletin. It said, however, that it subsequently decided the imagery in the advertisement was inappropriate, and from 1 January it ran alternative copy. Channel Five said it did not broadcast the advertisement on 28 December as the viewer thought. It said it was contacted by the agency on 29 December

and the advertisement was withdrawn. Sky said that no news programmes ran on Sky One and it did not believe there were any inappropriate juxtapositions between the advertisement and surrounding programmes it broadcast.

Rule 4.1.2 of the CAP (Broadcast) Rules on the Scheduling of Advertising requires broadcasters to be sensitive in the scheduling of advertising. Because of its tragic nature and dramatic scale, the Asian tsunami disaster dominated news bulletins broadcast in its aftermath. Many news items contained images of the tsunami. We felt viewers that saw the advertisement in or around the news were likely to have perceived a connection between the images of large waves in the advertisement and the disaster itself. We noted ITV had checks in place to identify advertisements that might be inappropriate in light of tragic news events. However, we believed the advertisement should not have been broadcast after its extended nightly news programme. We acknowledged that some viewers also found the advertisement distasteful when it was broadcast away from news footage and for those viewers, the separation of the advertisement and news programmes may have been insufficient. However, in this instance we did not believe that that was generally the case. Although the treatment in the advertisement was dramatic, the waves were not shown in a threatening context and it was clear that the images related to surfing. We felt that unless it was broadcast directly after or during news programmes featuring images of the tsunami, viewers were unlikely to find the advertisement distressing. We therefore upheld the complaint about the scheduling of the advertisement after the ITV news, but concluded that generally, the scheduling of the advertising was not inappropriate.

ADVERTISER: British Gas
AGENCY: Clemmow Hornby Inge
Date: 23 February 2005
Media: Television
No. of complaints: 2

COMPLAINT:

A British Gas advertisement showed an elderly couple describing what happened when their central heating system broke down on Christmas Day. On-screen text said "based on a true story". The elderly woman said "We do have a contract with British Gas but we didn't think anyone would come out on Christmas Day". A British Gas engineer explained that he had visited the couple's home on Christmas Day to correct the fault. He said "We provide a service to our customers 365 days a year, 24 hours a day" and visuals showed him standing by a British Gas van parked at the side of a road. The voiceover said "Over Christmas, our engineers are there to look after the things you take for granted".

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, including Christmas Day. In their experience, that was not the case. One viewer, who had rheumatoid arthritis, had contacted British Gas when she found herself without heating or hot water on Christmas Day, but was told the earliest an engineer could visit her was 27 December.

ADJUDICATION: Complaints upheld

The advertiser said the advertisement depicted a real emergency situation that took place on Christmas Day in 2003 and featured the engineer that attended the breakdown. It said its telephone helpline was available to all British Gas customers 24 hours a day, 365 days a year. It added that its engineers were available to attend breakdowns 24 hours a day, every day of the year (including Christmas Day), on a priority system. Customers with complete loss of heating or hot water were prioritised if they were elderly, disabled or had a young baby. Customers with serious uncontrollable water leaks were also treated as priority. It said the viewer with rheumatoid arthritis was not treated as a priority customer because she did not bring her medical condition to the attention of its customer service agent when requesting a same day visit; however, she did mention she had a gas fire in her living room. It pointed out that the advertisement did not indicate a timeframe within which customers were guaranteed to receive a visit and argued that its main message was that British Gas was contactable over Christmas. It added that customers did not always find a same day visit convenient and therefore it would never be able to provide a 100% same-day service. It did not feel the advertisement implied that an engineer would be made available to all

customers regardless of the nature of their call at all times 24 hours a day, 365 days a year.

The BACC argued that because the advertisement was based on an actual incident, it did not paint an unreasonable picture of the service. It pointed out that over the Christmas period, 61% of calls received were attended on the same day, which it felt indicated the level of service shown was not untypical. It also pointed out that the advertisement did not state that all calls would be answered the same day. It believed the main message was that the advertiser provided a friendly and extensive service over a period during which viewers might expect it to be closed or operating on skeleton staff.

We believed the description of the service experienced by the couple in the advertisement along with the claims "We provide a service to our customers 365 days a year, 24 hours a day" and "Over Christmas, our engineers are there to look after the things you take for granted" would give viewers the strong impression that an engineer would respond in person to calls for assistance, on Christmas day or on any other day. We acknowledged that some customers might find a same-day service inconvenient, but nevertheless felt that a same-day service was not guaranteed to all those that might want it. We did not believe the advertisement made it sufficiently clear that the claims referred to the telephone helpline only, or that engineers were only available on a priority system. Because British Gas were unable to guarantee the service described all year round, we found the advertisement in breach of Rule 5.1 (Misleading advertising) and Rule 5.2.2 (Implied Claims) of the CAP (Broadcast) TV Advertising Standards Code. The advertisement must not be shown again in that form.

ADVERTISER: Daily Mail

AGENCY: FCB Productions

Date: 23 February 2005

Media: Television

No. of complaints: 1

COMPLAINT:

An advertisement for the Daily Mail invited readers to collect tokens to claim a horoscope drawn up by the astrologer Jonathan Cainer and described it as 'an intimately detailed, entertaining, 120 page, personalised horoscope about you and your relationships based on the hour and place of your birth. The horoscope of the heart is unique to you absolutely free.'

A viewer complained that the advertisement was misleading as the horoscope was generated by computer and was not free as claimants needed to buy further copies of the Daily Mail to collect tokens.

We were concerned about the personalised nature of the horoscope. CAP (Broadcast) TV Advertising Standards Code Rules 3.1(i) & 10.3 prohibit advertisements for products or services connected with psychic practices. An exception is made for services, such as typical newspaper horoscopes, which most viewers are likely to regard simply as entertainment and which offer only generalised comments that would clearly apply to large sections of the population. The horoscope advertised required personal information and was described as 'unique to you'.

ADJUDICATION: Upheld

BACC's response was that the word 'entertaining' established the horoscope as the kind allowed to advertise as an exception in the Advertising Standards Code. It also quoted correspondence from December 1999 between BACC and the Independent Television Commission which it said accepted that horoscopes requiring a certain amount of personal information could be advertised provided it was made clear that the services were for entertainment only. It therefore believed that the Daily Mail's advertisement complied with the Code.

The 1999 correspondence BACC quoted had been superseded by a letter sent by the ITC to all its licensees in November 2002. This letter drew attention to the then new code rule that defined what was and what was not acceptable in television advertising for horoscopes.

We believed the main incentive for the reader was that the horoscope was individual and that there was no material disadvantage in it being generated by computer in Jonathan Cainer's name. We did not agree with the viewer that the advertising was misleading on this point. The horoscope was aimed at readers of the Daily Mail, who would not pay in addition to the cost of the

newspaper for the purchase of the horoscope. The advertisement made it clear that it was necessary to collect tokens and that the offer started in the edition advertised. We therefore felt it was justified for the advertisement to claim that the horoscope was free.

Although the advertisement contained the word 'entertaining', the other details that stressed how the horoscope was personal and unique were more prominent. The horoscope was available through a newspaper but was not part of it; readers needed to commit themselves to collect 35 tokens and supply their hour and place of birth, all of which gave the impression that this was more than the kind of horoscope usually found in a newspaper. We therefore found that the horoscope went beyond the kind considered acceptable for television advertising, and that the advertisement was in breach of CAP (Broadcast) TV Advertising Standards Code Rules 3.1 (Unacceptable category – psychic practices) and 10.3 (Psychic practices).

Part of the advertiser's defence was that the horoscope could only offer generalised comments aimed at large sections of the population (and that it therefore complied with the Code) as it was only based on the hour and place of birth. However, that would mean that the horoscope was not 'personalised' and 'unique to you' as claimed. We therefore also found the advertisement in breach of CAP (Broadcast) TV Advertising Standards Code Rule 5.1 (Misleading advertising). The advertisement must not be shown again in that form.

ADVERTISER: Deal of the Day
BROADCASTER: Deal of the Day
Date: 23 February 2005

Media: Television

No. of complaints: 1

COMPLAINT:

An advertisement for a watch on the teleshopping channel Deal of the Day claimed that it had a guide price of £495. However, the product was sold for £54.70.

A viewer felt that the broadcaster had exaggerated the guide price to increase the price which it could sell the product and felt this was misleading.

ADJUDICATION: Complaint upheld

We asked Deal of the Day to justify the guide price of the watch.

It said the manufacturer had suggested the guide price. It defended the price stated in the advertisement and provided evidence in the form of receipts for watches, from the same manufacturer, which had been purchased at the full retail price from various outlets. It included a receipt for the same model featured in the advertisement.

We considered this evidence to be insufficient as it was not possible to independently verify that the watches had been sold at the full suggested price. The invoices either lacked any contact details for the purchaser or were from retailers directly linked to the manufacturer. We therefore found that the guide price was misleading as it had not been proven to be an accurate reflection of the price people would generally expect to pay for the product.

The channel had since stopped using the term 'guide price' and the advertising was therefore unlikely to be repeated. However, it was none the less in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading) and 5.2.1 (Evidence) when broadcast.

ADVERTISER: DFS
AGENCY: PWLC
Date: 23 February 2005

Media: Television

No. of complaints: 4

COMPLAINT:

An advertisement for DFS showed an unaccompanied child somersaulting on a sofa.

Viewers, including one who was involved in developing children's gymnastic skills, complained that it was potentially dangerous to somersault on furniture and felt that young children may attempt to emulate the action shown.

ADJUDICATION: Complaints upheld

The advertiser said that the somersault was not planned and the child had somersaulted of his own accord during filming. It decided to include the footage because it was 'good fun' and it did not believe the action would be 'of any influence to viewers' children'. The advertiser added that it had re-edited the advertisement following receipt of the complaints in order to remove the relevant section and said that it always attempted to make DFS advertising 'suitable for all to view'.

The Broadcast Advertising Clearance Centre (BACC) felt the act represented 'childish high spirits'. It said 'the child was clearly athletic and knew what he was doing and as a result he looked perfectly safe. There is a long history of children performing acrobatic feats in commercials such as cartwheels and forward rolls. They all carry an element of risk but I doubt they would be considered unsuitable for family viewing and it would be unfortunate if this could not continue to be the case.'

We believed the somersaulting scene would appeal to children and that there was a risk of emulation and therefore a potential for harm, particularly for children watching television alone. It was not our intention to stop advertisements showing children performing acrobatic feats. However, we judge each advertisement on its own merits and showing an unaccompanied child performing a backwards somersault on a sofa was, in our view, inappropriate. We welcomed the decision to amend the advertisement so quickly. However, it was none the less in breach of CAP (Broadcast) TV Advertising Standards Code Rule 7.3.2 (Physical harm) and 7.3.7 (Use of scheduling restrictions) when broadcast.

ADVERTISER: Seat Toledo

BROADCASTERS: ITV, Channel Four, Channel Five

Date 23 February 2005

Media: Television

No. of complaints: 7

COMPLAINT:

An advertisement for a car featured a scene showing a Sumo wrestler surfing a large wave.

Viewers complained because they felt it was insensitive to show an advertisement that contained an image of a large wave in the aftermath of the Asian tsunami disaster. Two viewers said the advertisement was broadcast on Channel Four on 29 December after a news bulletin that contained distressing footage of the disaster, alongside another advertisement that featured images of large waves.

ADJUDICATION: Complaints not upheld

The advertiser felt the image of a Sumo surfing was absurd enough to remove the advertisement from the realities of the news event. It said the Sumo was not from one of the affected countries, the advertisement did not show anyone in distress in the water and the wave was relatively small. It said, however, that as the severity of the situation in Asia became clear, it decided to withdraw the advertisement on 7 January.

ITV and Channel Five said they scheduled the advertisement away from news programmes when they became aware of the disaster. ITV withdrew it on 31 December; Channel Five withdrew it on 6 January.

Channel Four also said that it had it removed advertising that viewers might consider insensitive from around news programmes as soon as it became aware of the disaster. It acknowledged that the advertisement was shown adjacent to another advertisement featuring large waves on 29 December, but said the broadcast occurred during a commercial break in a programme called "The Real King Herod", not immediately after a news bulletin.

Rule 4.1.2 of the CAP (Broadcast) Rules on the Scheduling of Advertising requires broadcasters to be sensitive in the scheduling of advertising. We noted that the broadcasters took care to avoid scheduling advertisements that might be considered insensitive around news programmes. Although we realised some viewers might find the advertisement distasteful at any time during the aftermath of the disaster, we felt that that was an adequate response. We thought the advertisement made clear it referred to surfing and did not feel the wave was presented as dramatic or threatening. We believed that unless it was scheduled adjacent to a news programme, viewers were

unlikely to be distressed by any perceived connections between the advertisement and the disaster. We therefore concluded that the advertising was not scheduled inappropriately.