

Advertising Standards Authority

Broadcast Advertising
Adjudications

23 March 2005



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ADVERTISER: Best Direct

BROADCASTER: Best Direct

Date: 23 March 2005

Media: Television

No. of complaints: 1

COMPLAINT:

An advertisement for Golden Secret on Best Direct offered an airbrush self-tanning system for sale.

In October 2004, Ofcom found the previous version of the advertising broadcast on Best Direct misleading and in breach of the Advertising Standards Code. It considered that the advertisement had portrayed an ease of use and convenience that was not supported by the product's accompanying booklet and video. Best Direct made a number of changes to the advertising before it returned to air.

The same viewer who originally complained contacted the ASA. She believed that the changes were insufficient and the revised commercial remained misleading. She felt that the product did not work as shown.

We queried the following:

1. The advertising gave the impression that it was safe to put on clothing almost immediately. It said "No awkward hanging around afterwards", while a woman was seen putting on a white skirt. Another scene showed two women in a bedroom using the spray on themselves, and in the next scene getting dressed. However, the instructions recommended loose fitting clothing for 12 hours after the spray had dried.
2. Text appeared twice in the advertising which said "Instant drying."
3. Superimposed text in the advertising said "Always place propellant in water - refer to instructions" which was shown each time the product was being demonstrated, except in one instance. This text was added to the commercial after Ofcom ruled that this significant condition should have been made clear in the advertising. We queried why the text did not appear during all demonstrations.
4. The commercial featured a number of identifiable Hollywood actors at a media event. The voice-over said "You too can have a celebrity style tan ... How do the stars get that incredible flawless glow? Well, we are about to let you into a secret; a secret that will make you look and feel great all year round." We asked Best Direct whether it had permission from the actors to be included in the promotion.

ADJUDICATION:

1. Complaint upheld

Best Direct said it was safe to get dressed almost immediately. The solution was clear and therefore left no stains. It would be touch dry very quickly when used as advised in the instructional booklet. It recommended loose fitting clothing to give the solution a better chance to work with the body's natural tone to produce a tan.

We believed that the commercial gave an over simplified impression of how soon someone could safely get dressed. The instructions warn "Don't get dressed until comfortably dry" (which would vary depending on how much spray was used), and "tanning solution can stain some fabrics."

2. Complaint upheld

Best Direct accepted that this was wrong. It had been overlooked in the re-edit.

3. Complaint upheld

Best Direct acknowledged this was a mistake. However, it pointed out that the advertising was concerned with the products features and benefits, and not an instructional guide. It did not believe that putting the propellant in water was a serious disadvantage or inconvenience when using Golden Secret. Failing to mention it would not mislead or cause a customer to make a purchase under a misconception.

We believed that this was an important qualification for the ease and proper use of the product. Therefore the text should have appeared each time the demonstration took place.

4. Complaint upheld

Best Direct said that the film clips were standard library footage available to any production studio facility. It supplied a letter from the production company confirming that it owned the copyright and the footage was cleared for usage. Best Direct believed that CAP (Broadcast) TV Advertising Standards Code Rule 6.5 (Protection of privacy and exploitation of the individual), that states living people must not be portrayed, caricatured or referred to in advertisements without their permission, did not apply in this case. The Rule says that exceptions are made for advertisements where the appearance is brief and incidental, for example in a crowd scene. (Note (c))

We did not agree the appearances were brief or incidental. All the actors were easily recognisable. We believed that using the footage could be seen as an endorsement of the product by the Hollywood actors. The production company did not confirm the actors featured had given their permission for the footage to be used in an advertisement. It therefore breached the Code Rule.

We acknowledged the efforts taken by Best Direct to make the commercial presentation compliant, but it none the less still breached CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising), 5.2.2 (Implications), 5.2.3 (Qualifications) and 6.5 (Protection of privacy and exploitation of the individual). It must not be broadcast in its present form again.

ADVERTISER: Bid-up TV
BROADCASTER: Bid-up TV
Date: 23 March 2005
Media: Television
No. of complaints: 1

COMPLAINT:

Teleshopping channel Bid-up TV offered Black Agate Globes for sale. The guide price used was £1700. The channel sold the globes for £187, plus package and postage.

A viewer, who bought one of the globes, believed the guide price was inflated. He had found it for sale in a shop for £199.

ADJUDICATION: Complaint upheld

Bid-up explained that there were many different specifications of globe available on the market, not all of which were made of real gemstones. It did not believe the globe found by the viewer was of the same quality as those it sold. It supplied evidence of three Internet companies selling the globe for £1700 to back its guide price.

We found the evidence supplied was inconclusive. One of the three companies was prepared to sell us a globe at a much reduced price. Another was a wholesale supplier, and therefore not a retail outlet. It was also the company that supplied Bid-up TV, so was not sufficiently independent. Bid-up could only provide proof of one supplier that may have sold the globe for £1700.

We checked a number of companies selling identical globes. The prices offered were between £250 and £500. One of the companies used for substantiation by Bid-up offered our 'mystery shopper' the globe for £265.

As the advertiser was unable to provide adequate substantiation of the guide price from three independent retailers, the advertising was in breach of CAP (Broadcast) TV Advertising Standards Code Rule 5.3.1 (Accurate pricing).

ADVERTISER: Department of the Environment

AGENCY: A V Browne Advertising

Date: 23 March 2005

Media: Television and Poster

No. of complaints: 7

COMPLAINT:

Objections to a poster and a television commercial promoting a new plating scheme for taxi drivers in Northern Ireland.

a) The poster was headlined "IT'S NOW THIS EASY TO SPOT AN ILLEGAL TAXI" and showed a photograph of three taxis on a street at night; each of the taxis had an illuminated sign on its roof displaying the words "MUGGER"; "UNINSURED" and "DRUNK" respectively. Examples of the new licences that private-hire taxis were required to display were featured at the foot of the advertisement next to the text "NOT ON IT? DON'T GET IN IT."

b) The television commercial began with the driver's view through the windscreen of a moving car at night; threatening music played in the background. The shot cut to show a front view of the moving car that had an illuminated sign on its roof with the inscription "I'M NOT INSURED". It then showed the inside of the car where the driver's black gloved hand was shown tightening its grip on the steering wheel. The shot cut to a rear view of the car where the illuminated sign on the car roof said "I'VE HAD A FEW". The shot cut to the inside of the car where the driver's eyes were shown looking in the rear-view mirror and then back to the front view of the car where the illuminated sign showed "GONNA ROB SOMEONE". The shot then cut to show the driver's view of a night club entrance as the car passed it; a young woman was shown standing in a short skirt and the shot closed in onto her legs as she was caught in the passing headlights. The shot then cut back to show the illuminated sign that stated "OR WORSE". The voiceover began "If you could read this illegal taxi driver's mind, you'd never get into the car" while a close-up of the taxi-driver's mouth was shown. The driver's view of a young couple standing outside a nightclub was shown; the couple ran towards the car with the illuminated sign showing "TAXI" as it approached and the voiceover continued as they got into the car "But you can't". The shot cut to the licence plate of a parked taxi and the voiceover continued "That's why legal taxis must now display plates like this. Look for them". The various taxi plates that should be displayed were shown in succession and the voiceover stated "And if they're not on it, don't get in it; the text appeared on the screen around a licence plate "NOT ON IT? DON'T GET IN IT."

The complainants, several of whom were licensed taxi drivers, objected that the poster and television commercial were offensive to taxi drivers.

ADJUDICATION: Complaints not upheld

The advertisers responded to the complaints about the poster and the BACC to the complaints about the television commercial: the agency's creative rationale was sent for both. The advertisers explained that there had been a recent surge in illegal taxiing in Northern Ireland, which put the public at major risk; they explained that, in the interest of public safety, they had introduced a system requiring that all vehicles licensed for public hire display distinctive licence plates to enable easier recognition of illegal taxis. The advertisers explained that the campaign was primarily devised to build awareness of the new 'plated' taxis and convince the public to use only legal taxis with the new licence plates by highlighting the potential risks and dangers of travelling in illegal taxis without plates.

a) The advertisers pointed out that the taxis featured in the poster were illegal and that was made clear in the headline "IT'S NOW THIS EASY TO SPOT AN ILLEGAL TAXI" and reinforced through the strapline "NOT ON IT? DON'T GET IN IT". They said the poster was deliberately dramatic to emphasise the importance of recognising the new plates on legal taxis because illegal taxis posed a serious threat to the public.

b) The BACC pointed out that the taxi featured was illegal and that was made clear by the voiceover which stated "If you could read this illegal taxi driver's mind ..." and visually because the taxi was highlighted as not displaying the new plates. They said the warnings "I'M NOT INSURED", "I'VE HAD A FEW", "GONNA ROB SOMEONE", "OR WORSE" highlighted the potential risks and dangers of travelling in an illegal taxi. They explained that the commercial used the new licence plates as an integral part of the campaign message "NOT ON IT? DON'T GET IN IT" to make clear to the public that, in the interest of their safety, they should only use taxis with the new plates on them. They said the commercial had been pre-aired to a range of young people under 25 years of age and the responses showed that the key campaign message was understood and almost all respondents believed the commercial would encourage them to check the legitimacy of taxis before they got in them.

The Authority noted the poster and television commercial promoted awareness of the new 'plated' taxis and aimed to convince the public to use legal taxis only. Because the advertisers' new initiative meant that all licensed taxis would bear licence plates and the poster and television commercial made clear that the words "MUGGER"; "UNINSURED" and "DRUNK" and the warnings "I'M NOT INSURED", "I'VE HAD A FEW", "GONNA ROB SOMEONE", "OR WORSE" referred to illegal taxi drivers, the Authority considered that the advertisements were unlikely to cause serious or widespread offence or be seen to denigrate legitimate taxi drivers.

The Authority concluded that the poster was not in breach of CAP Code Edition 11 clauses 5.1 (Decency: avoiding serious or widespread offence) and 20.1 (Denigration and unfair advantage: Denigration).

It concluded that the TV commercial was not in breach of the CAP (Broadcast) TV Advertising Standard Codes clauses 6.1 (Harm and Offence: Offence) and 5.3.4 (Creative treatments: Denigration).

ADVERTISER: Reckitt Benckiser

AGENCY: Cheetham Bell JWT

Date: 23 March 2005

Media: Television

No. of complaints: 1

COMPLAINT:

An advertisement for Lemsip's Cold and Flu sinus 12 hour product showed an air hostess responding to repeated requests from a passenger. She said to a colleague "My sinuses are killing me, I don't think I can bear another 12 hours to Singapore". The colleague replied "Have you heard of this, Lemsip's new sinus 12 hour product? It's the only one to help treat your sinus pressure pain and congestion for up to 12 hours". After taking the product, the air hostess helped the same passenger clean up his spilt coffee; she was no longer experiencing any discomfort. The voiceover said "Lemsip. Let's get on with life".

A viewer complained because he believed the product contained pseudoephedrine hydrochloride, which he understood the Civil Aviation Authority (CAA) prohibited cabin crew from using due to its side effects.

ADJUDICATION: Complaint upheld

The advertiser said it intended to use the aeroplane setting to humorously demonstrate the product's duration of action. It said the advertisement was not aimed at cabin crew or those using aircraft. It felt it did not pose a health and safety danger to cabin crew, who it believed would be aware of the specific risks posed to them by proprietary medicines. It believed cabin crew were unlikely to interpret the advertisement as suggesting that Lemsip's sinus 12 hour product was appropriate for use by them while on duty. It felt that even if cabin crew were to interpret the advertisement as suggesting they should use Lemsip's sinus 12 hour product, it was unlikely to present a significant health and safety risk because side effects were rare. It added that the product was only sold under the supervision of a pharmacist, who would advise of any side effects, and that on-screen text in the advertisement advised viewers to read a label directing consumers to a leaflet listing the product's side effects. The agency presented the same arguments.

The BACC said it supported the advertiser's arguments. It felt the advertisement merely used a fanciful storyline to illustrate the idea of 12 hour relief while active and its purpose was not to advocate use of the product to cabin crew.

We contacted the CAA for advice. It said the side effects of the product included anxiety and hallucination. Although it only prohibited use of pseudoephedrine hydrochloride for pilots, its advice to cabin crew was not to take the product as the side effects could interfere with a cabin crew member conducting his/her safety critical duties. We accepted that the advertisement was not specifically aimed at cabin crew or those using aircraft and that cabin crew would have been made aware of the risks of taking proprietary medicines whilst flying. However, we felt that by showing an air hostess using the product, the advertisement implied Lemsip's sinus 12 hour product was acceptable for use by cabin crew or those flying with sinus problems. Advertisements should not encourage or condone behaviour prejudicial to health and safety. We therefore felt the advertisement should not have condoned use of the product by cabin crew.

The advertisement was found in breach of Rule 6.7 (Health and Safety) of the CAP (Broadcast) TV Advertising Standards Code and should not be shown again.

ADVERTISER: TMG Company

BROADCASTER: The Hits

Date: 23 March 2005

Media: Television

No. of complaints: 1

COMPLAINT:

An advertisement for a text message joke service showed cartoon jokers jumping out of a box. The characters were laughing very hard. Large on screen text said "TXT JOKE TO 85050 FOR YOUR DAILY JOKE". Smaller text at the bottom of the screen said "info 0879 750 2929 - to end service txt joke stop to 85050 - 50p per message received". The on-screen text was held for a duration of five seconds. A voiceover said "Get the most hilarious jokes and one liners on your mobile. Just text JOKE to 85050 and get a joke for free".

A viewer was concerned that the advertisement did not make clear it was for a subscription service or the costs involved. He believed it targeted children and was concerned it would exploit their credulity.

The Authority challenged whether the on-screen text in the advertisement complied with the ASA's Guidance on Text and Subtitling in Television Advertisements.

ADJUDICATION: Complaint upheld

The advertiser said the BACC had approved the advertisement with the restriction that it should not be shown in or around programmes made specifically for children. It said the voiceover in the advertisement it submitted for approval and for broadcast stated "Just text joke to 85050 and get *your first* joke for free". This was different to the version broadcast. It felt the voiceover made clear that only the first joke would be free and confirmed it was sent at no cost to the consumer. It said that in accordance with the ICSTIS Code of Practice, it sent subscribers a free message, which made clear they had subscribed to a daily service that would cost 50p per day. It felt the information contained in the on-screen text, combined with the reference in the voiceover to "hilarious *jokes* and one *liners*" made clear that the advertisement was for a daily joke service.

The licensee said it broadcast the advertisement on the understanding that it had been BACC approved. The BACC said the voiceover in the advertisement it approved said "Just text joke to 85050 and get *your first* joke for free" and it could only comment on the advertisement it had approved. The licensee acknowledged that it had broadcast the wrong copy in error. It pointed out that the amendment to the copy it had broadcast was very slight, but said it

nevertheless felt it was important that the correct copy was played out and that it had stressed the importance of being vigilant to all those involved in delivering approved copy.

We acknowledged that the BACC had approved a version of the advertisement in which the voiceover made clear that only the first joke was for free. However, we felt the version that was broadcast did not make clear that only the first joke was free. We were concerned that the text was not held on-screen for long enough, as required by the ASA's Guidance on Text and Subtitling in Television Advertisements. We checked this and our calculations confirmed that the smaller text referring to the subscription was only held for five seconds, which was shorter than the required time. We believed it would be unrealistic to expect viewers, particularly children, to absorb from the on-screen text that the advertisement was for a subscription service costing 50p a day. We also believed the likelihood of viewers misunderstanding the nature of the service was increased by the reference in the voiceover to "a free joke". We noted the scheduling restriction imposed on the advertising. However, we believed it was likely to appeal to older children, especially those owning a mobile phone, who were likely to watch programmes of more general interest than just those around which the advertising was restricted. As we did not think the advertisement made clear it was for a text joke service, we felt it was capable of taking advantage of children's inexperience.

We therefore found the advertisement in breach of the CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleadingness), 5.4.2 (Superimposed text - duration of hold) and 7.1.1 (Children's inexperience). The advertisement should not be shown again in that form.