

Advertising Standards Authority

**Broadcast Advertising
Adjudications**

2 November 2005



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ADVERTISER: British Sky Broadcasting Group plc (BSkyB)
AGENCY: SBG & Finex Communications Group Plc
Date: 2 November 2005
Media: Television
No. of complaints: 2

COMPLAINT:

A TV ad for Sky Digital TV claimed “Call local rate 08705 66 33 66 ...”.

Two viewers believed the ad was misleading, because the 0870 telephone number was not a local rate number. They said calls to that number would be charged at national rate or higher.

ADJUDICATION: Complaints upheld

The Broadcast Advertising Clearance Centre (BACC) said they had assumed the number was charged at local rate and did not realise the error.

BSkyB admitted they had mistakenly described the national rate telephone number as local rate, but said they had amended the ad as soon as they realised the mistake.

We welcomed BSkyB’s decision to amend the ad, but nevertheless considered the ad as it had originally been broadcast was misleading for describing a telephone number as local rate, when calls to that number were charged at national rate or higher.

The ad breached CAP (Broadcast) TV Advertising Standards Code rule 5.1 (Misleading advertising).

ADVERTISER: Conduit Ltd t/a 118 888
AGENCY: Max Films
Date: 2 November 2005
Media: Television
No. of complaints: 1

COMPLAINT:

A TV ad for 118 888 Directory Enquiries featured Fran Cosgrave. He said "Get a number, get a new car. Get a number, get a new gaff. Get a number, get a whole new life. Get a phone number from 118 888 on your mobile and they'll also text you numbers for the Saturday Lotto draw. So you get a chance to win. Maybe millions. Just get a phone number? Get real! Get free lotto numbers with 118 888 Directory Enquiries! Change your number. Change your life." On-screen text said "Competition closes 17/12/05. Terms and conditions apply. Participants must be 16 or over. No purchase necessary. See 118888.co.uk for details".

A viewer complained that the ad implied he would have the same chance of winning a prize as if he had purchased a National Lotto ticket separately and that the prize would be the same, which was not the case. He referred to the terms and conditions of the promotion which said that players who matched three numbers would not receive £10; the normal prize in the Lotto draw. Instead they would all be put in a draw with one person winning the combined total of the winning £10 tickets. The conditions also said that 118 888 would buy 10,000 Lotto tickets a week; 1,000 sets of numbers would be given to different people who would therefore not share their numbers with other players, and the other 9,000 sets of numbers would be shared out between all other participants and the prize for each set of numbers would also be shared. The viewer thought this was misleading and that it should have been made clear in the ad.

ADJUDICATION: Complaint upheld

The Broadcast Advertising Clearance Centre (BACC) said the numbers received via the promotion were standard Lotto numbers which carried the same chance of coming up as the numbers viewers would receive if they bought them "over the counter". They said that if viewers matched more than four numbers they would win whatever they would have won if they had bought a ticket. However, if they just matched three balls, instead of winning £10, all the winning numbers would be pooled together and one individual would win the combined amount of all those numbers, so one person would do better than they would have done while the rest would do less well. They said that they did not feel the commercial said anything at all about what viewers' chances of winning were; it simply told viewers they would get Lotto numbers. They said the ad alerted viewers to the fact that terms and conditions applied and directed them to the website for further information.

118 888 said the ad advised that Lotto numbers would be sent by text to participants without charge and that, as a result, they would have a "chance" to win. They said the ad did not guarantee winnings nor make any representation as to the relative chance of a participant winning. They said that 118 888's numbers had the same chance of "coming up" as anyone who bought a ticket over the counter. However, they added that the ad itself

did not say that participants had the same chance of winning as any other participant in the Lotto. They said the ad simply said that viewers had "a chance" to win. They said the ad therefore accurately described what the consumer received if they used 118 888 and what they needed to do in order to obtain the numbers - i.e. be over 16 and use a mobile phone to obtain a number from 118 888. They said it was generally understood by members of the public that more than one person may also have the same numbers as them. They said winners who matched three numbers were offered a draw because they believed participants would prefer a chance to win a larger sum than to be sent a cheque for £10, or a share of the £10 prize. They said the ad did not suggest participants would receive their own Lotto numbers or a ticket as it stated that they would receive lotto "numbers" and a "chance to win" and that details would be provided in the text about how to find out more.

We noted that over 90% of Lotto numbers provided by 118 888 were likely to be shared between participants. We considered that the ad implied viewers who obtained a telephone number from 118 888 using their mobile phone would receive their own set of Lotto numbers. We considered that some viewers would expect to receive the same prize for matching three or more numbers as consumers who purchased tickets "over the counter". Except for the first 1,000 participants, players were likely to receive only a fraction of any large prize and only one person would win anything for matching three numbers. We considered that the promotion was very different from actually playing the Lotto and this should have been made clear to avoid giving a misleading impression.

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

ADVERTISER: Dell Computer Corporation Ltd
AGENCY: DDB London Ltd
Date: 2 November 2005
Media: Television
No. of complaints: 3

COMPLAINT:

An ad for Dell Computers showed a man looking at a magazine ad for their products. He dropped the magazine and another man picked it up, looked at it and said "Dell, you can't buy them in the shops. Just give them a call or go online".

Three viewers objected that the ad misleadingly implied you could only buy Dell products from their website or over the phone when they believed they could be bought in high street stores.

ADJUDICATION: Complaints not upheld

The Broadcast Advertising Clearance Centre (BACC) said Dell tailored their products to their customers' specifications and they did not build products before customers had placed orders. They said Dell sold directly from the factory to the customer and did not have any shops or contracts with shops to sell their products.

Dell said the statement "... you can't buy them in the shops" was not misleading, because the products and prices advertised were available only to customers who ordered from their website or their telephone sales line. They said they were different from other PC manufacturers because they provided a made-to-order service and, because they built their products only once they received orders, they did not have an official channel where their goods were available in high street stores. Dell said they had a repaired product business called Dell Outlet which sold repaired or returned products to customers who did not require a brand new computer or one specifically customised to meet their needs. They said they did not advertise Dell Outlet products on TV. They said Dell Outlet had trading relationships with a limited number of companies who bought repaired or returned products and then sold them on the high street. They said they could not prevent companies doing this but they did not encourage customers to buy their products from outlets not authorised by Dell.

We noted customers could purchase repaired and second-hand Dell products, which were distributed via third parties, from high street stores, however, the ad clearly referred only to new Dell products and we considered the majority of viewers would understand that to be the case. Because new Dell products were available only from their website and telephone sales line, we concluded the ad was not misleading.

We investigated under CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.1 (Evidence) and 5.2.3 (Qualification) but did not find the ad in breach.

ADVERTISER: Direct Line Financial Services Ltd
AGENCY: Clemmow Hornby Inge Ltd
Date: 2 November 2005
Media: Television
No. of complaints: 9

COMPLAINT:

A TV ad for Direct Line showed twin brothers. One of the brothers said "This is me, Tom, and my twin brother Jack. We're identically forgetful which caused identical damage" They were shown entering their homes to find water flooding out of the door and a hole in the ceiling of the room inside. Tom said "We thought we'd be fine because we're both covered by major insurers, but that's where the similarity ends. Jack had to find and arrange all his own workmen and pay them himself before claiming his money back later. Whereas I'm with Direct Line. They took care of everything, from finding all the right workmen to paying them direct. And Direct Line saved me on my insurance in the first place." On-screen text said "Applies to claims above £250 and under £10,000."

Viewers complained about the ad.

1. One viewer said all insurance companies offered this service so it was misleading to suggest that Jack would not have been able to take advantage of a similar service to Tom.
2. Eight viewers complained that the ad was misleading because in their personal experience they had been advised when making a claim to find their own workmen and to claim the money back later.

ADJUDICATION:

1. Complaint not upheld

Direct Line said the ad did not imply that they were the only insurer to offer this service but it was not yet commonplace and they were legitimately advertising a benefit of their home insurance.

We understood that not all major insurers offered this service and we accepted that the ad did not imply that Direct Line were the only insurer to offer it.

2. Complaints not upheld

Direct Line said the service had been advertised since May which was when its support staff were trained in how to handle such claims. They said they offered the service as advertised which covered situations such as that portrayed in the ad. They said they could not comment on the precise details for all complainants but conceded that two of them had experienced a rare instance of poor customer service. They said that an error had meant one was not offered the service at all and a delay in Direct Line being able to handle the other claim meant that viewer had been passed to a third-party who did not follow the correct procedures when assisting them. They assured us these were isolated incidents.

The Broadcast Advertising Clearance Centre (BACC) said they were satisfied the service was offered as depicted in the ad and that any significant conditions had been clearly stated.

We noted that, of the eight viewers who complained about this issue, two had experienced problems three months before the advertisement aired which was before Direct Line offered the service. One viewer referred to a claim for £78 which was below the minimum level identified by the on-screen text. One viewer later withdrew his complaint. We noted that four viewers had not received the service as depicted in the ad. However, we accepted the explanation offered by Direct Line for two of these and considered that the other two were also likely to be isolated incidents. We recognised that even in the best run companies things can go wrong from time to time. We did not consider that four complaints was evidence of a widespread problem. Because Direct Line assured us the service was available to the vast majority of viewers, we did not consider the ad misleading.

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

ADVERTISER: Holland and Barrett Retail Ltd
AGENCY: Guerilla Communications
Date: 2 November 2005
Media: Television
No. of complaints: 1

COMPLAINT:

A TV ad for Holland and Barrett featured a shot of six different packets of fruit, seeds and nuts with a voiceover that said: "Right now Holland and Barrett has up to 50% off selected fruit, nuts, seeds and snacks. So hurry down to Holland and Barrett. Up to 50% off now on." On-screen text said 'On selected lines only'.

The complainant said it was misleading to show a packet of linseeds in the ad because they were not part of the offer.

ADJUDICATION: Complaint upheld

The Broadcast Advertising Clearance Centre (BACC) and Guerilla Communications said that the representation of a range of products was intended to illustrate that a selection of snacks were available during the promotion. They said that linseeds were not included in the offer and that the word 'selected' had been included in the voiceover and in on-screen text to avoid misleading viewers that the offer applied to the whole range of products. They said that at no point were prices quoted or individual products mentioned.

We noted that the ad made clear that the offer only applied to selected products and that no individual product was mentioned. However, we considered that the linseeds were identifiable in the ad and that their inclusion implied that they were part of the offer. As they were not, we considered that the ad was likely to mislead viewers.

The ad was in breach of CAP (Broadcast) TV Advertising Standards Code rule 5.1 (Misleading advertising). It should not be shown again in this form.

ADVERTISER: Mazda Motors (UK) Ltd.
AGENCY: J. Walter Thompson (London) Ltd.
Date: 2 November 2005
Media: Television and Cinema
No. of complaints: 425

COMPLAINT:

A TV and cinema ad for Mazda showed a man loading a number of female mannequins wearing lingerie into the back of a car. The camera focused on the smooth breasts of one of the mannequins. Viewers saw the man driving around a city, inter-cut with shots of the same mannequin's face and its hand hitching up its negligee to expose the top of its stockings. Its eyes glazed over. The man parked outside a lingerie store and lifted the mannequin out of the car. Its chest was at his eye level. Its nipples were now erect. The driver gave the mannequin a bemused look. There was a shot of the mannequin's face and the sound of a woman's giggle. A voiceover said: "The all new Mazda 5. Surprisingly stimulating".

The ad had a post 7.30 pm scheduling restriction for TV.

404 viewers complained about the TV ad and 30 people complained about the cinema version. The complainants raised four issues:

1. 175 of the TV viewers and 5 of the cinema-goers felt that the reference to sexual arousal in the ad was offensive.
2. 205 of the TV viewers and 7 of the cinema-goers felt that the ad demeaned women and portrayed them as sexual objects.
3. 136 of the TV viewers felt that the ad was unsuitable for broadcast at times when it was likely to be seen by children.
4. 24 of the cinema-goers said that they saw the ad before 'PG' (Parental Guidance) rated films. They felt that it was unsuitable for children and that it should not have been shown before these films.

ADJUDICATION:

1. Complaints not upheld

The Broadcast Advertising Clearance Centre (BACC) said they considered the ad's creative treatment carefully. They felt it was about the excitement of the driving experience and its tone was more comic than overtly sexual. They said the reaction of the driver in the final scene was one of surprise and confusion rather than sexual interest.

The Cinema Advertising Association (CAA) said that the sexual reference in the ad was mild in comparison to much of the innuendo contained in films deemed suitable for a PG rating.

J. Walter Thompson (JWT) said that the ad was intended to highlight the exciting aspects of a type of car that may be regarded by some sections of the audience as uninspiring. Research into how the ad would be received by both men and women was carried out in France, Germany, Italy and the UK. The UK consumer group reacted positively to the ad and its adult theme.

We acknowledged that any reference to sexual arousal in ads could cause offence to some viewers. However, we considered that the humour in the ad was based on mildly sexual material and was not excessively explicit. We understood that the depiction of a mannequin becoming aroused by the excitement of a journey in a car may not have been to everyone's taste but we did not consider it likely to cause serious or widespread offence.

2. Complaints not upheld

The BACC said the ad was about the excitement of the driving experience for the mannequin.

The CAA said they felt that the content and humour of the ad was comparable to that in PG rated films. They gave the example of the 'Carry On' series of films.

JWT pointed out that the use of mannequins instead of real people contributed to the humour of the ad.

We appreciated that to some the depiction of the female mannequin becoming sexually aroused could be seen as objectifying and demeaning women. However, we considered that the intention was not to insult or offend but to humorously present the absurd notion that an inanimate object could be turned on in the first place. We considered that to the majority of viewers the sexualisation of the mannequin would not have been taken to be demeaning to women or portraying them as sex objects.

3. Complaints not upheld

The BACC acknowledged the potential for parents to be embarrassed by the sexual reference if they saw the ad with their young children. The BACC felt the post 7.30 pm restriction they imposed would resolve that by keeping the ad away from times when those youngsters might be watching.

We noted the post 7.30 pm restriction and the reasons for its imposition. We appreciated the concerns of the complainants but we did not consider that the content of the ad was out of step with the type of programmes that air after that time and which are watched as part of a general family audience. We considered that the post 7.30 pm restriction was sufficient to keep the ad away from those younger children who might be watching TV alone and for whom it would have been unsuitable.

4. Complaint not upheld

The CAA said that the ad had been approved on the basis that the sexual reference in it was mild. They said that the visuals were ambiguous and that the sexual reference was not likely to be comprehensible to children. They pointed out that the British Board of Film Classification (BBFC) classification of PG allows sexual content providing that it is 'discreet and infrequent: mild sexual references and innuendo only.' The CAA felt that the content of

the ad fell within these bounds and that it was not inappropriate for the ad to be shown before such films.

We noted that the CAA had approved the ad for exhibition before PG films on the basis that the content was within the limits prescribed by the BBFC classification system. We considered that the classifications awarded to films were well known and that parents exercised their own judgement on whether or not certified films were suitable for their children. We did not consider that the ad was targeted at children or that the screening of the ad before PG films was likely to result in harm to them.

The TV ad was investigated under CAP (Broadcast) TV Advertising Standards Code rules 6.1 (Offence) and 7.3.7 (Use of scheduling restrictions) and Rules on Scheduling of Advertising rule 4.2.3 (Treatments unsuitable for children) but was not found in breach.

The cinema ad was investigated under CAP Code clauses 2.2 (Principles), 5.1 (Decency) and 47.2 (Children) but was not found in breach.

ADVERTISER: Sony Ericsson Mobile Communications International AB

AGENCY: Bartle Bogle Hegarty Ltd (BBH)

Date: 2 November 2005

Media: Television

No. of complaints: 4

COMPLAINT:

A TV ad for a Sony Ericsson K750i camera-phone showed a man and woman walking by a lake with him talking on the phone. She looked across at a flower in the shallow waters of the lake and grabbed the phone to photograph it. As she took the picture a dragonfly flew up to the flower and was captured in the photo. A sharp close-up still image of the dragonfly and flower was visible on-screen. Bubbles then appeared on the surface of the water and, as the man took the camera-phone and took another photo, a large fish jumped out of the water and ate the dragonfly. A still image showed the fish in sharp focus with the dragonfly disappearing into its mouth. At that moment a large bear appeared and attacked the fish and the couple took another picture, which again appeared on-screen as a still image. A large bird flew down, grabbed the bear and flew off with it in its talons. The voiceover said "Take your best shot with a phone".

Four viewers complained that the ad was misleading.

1. One viewer said the still images, which appeared to represent action-shot photographs taken with the camera, were clearly faked as they would not be as bright or sharp in real life. As this was not made clear, the ad misled about the quality of images possible.
2. All four viewers said both the time taken for the camera to "auto-focus" and the shutter speed were too slow to take action shots in the way shown and the ad therefore also misled about the capabilities of the camera.

We asked for a sample of the phone to assess for ourselves the claims made.

ADJUDICATION:

1. Complaint not upheld

Bartle Bogle Hegarty (BBH) said the phone represented a significant change in the picture quality that was achievable on a camera-phone due to its high specification and it having 2-mega pixels. They said it rivalled a number of digital cameras that were on the market. They said the ad depicted a chain of fantastical events and care was taken to ensure that the picture quality of the image on the phone was representative of what could be achieved and that, in reality, the 2-mega pixels of the camera meant that pictures of the quality shown were achievable. They said that fast moving objects could therefore be captured as sharply as shown in the commercial under ideal light conditions and without using auto-focus. They said these photos could be of equal quality to that shown in the commercial.

The Broadcast Advertising Clearance Centre (BACC) said they had impressed upon Sony Ericsson and BBH that an accurate demonstration was essential and felt assured by their letters. They said they did not test the camera-phone themselves.

We noted BBH's comments on the technical capabilities of the camera-phone to take clear images of fast moving objects. We considered that the ad showed a fantasy scenario and that the images were, in part, accidental. We therefore did not consider that viewers would expect the images in the ad to be entirely representative of the quality of the images they would be able to take. The quality of the images we were able to take using the camera-phone was at a level we expected from the impression given by the ad and we therefore did not consider it misleading on this point.

2. Complaints not upheld

BBH said it was true that it took more than two seconds to take a picture using auto-focus on the camera-phone but said that all cameras (digital and non-digital) had a short time-delay for auto-focus. They said, however, it was not necessary to use the auto-focus function to take a picture and the shutter speed would reach 1/20000 seconds in the best light conditions. They said that pressing the shutter-release button halfway down bypassed the auto-focus function for subsequent shots and that spontaneous moments could therefore be captured without waiting two seconds or more. They said that, when not using auto focus, the time taken to capture an image (from the point of pressing the button to the image being captured) was 0.6 seconds. They said that the ad depicted this as there was a clear delay between the actors pressing the button and the static image appearing on-screen.

The BACC provided a copy of a letter received from Sony Ericsson in support of the phone's technical capabilities which confirmed that the maximum shutter speed was 1/20000 seconds.

We accepted that the highest achievable shutter speeds allowed for clear pictures to be taken of fast-moving images under ideal light conditions. We also noted it was possible to bypass the delay of around two seconds between pressing the shutter release button and the photograph being taken. Whilst it was not possible to determine exactly the moment being captured we accepted that this delay was evident on the photos taken in the ad. We considered that the level of control viewers would have over photographs would be roughly the same as that apparently achieved by the couple in the ad and it was therefore unlikely to mislead on this point.

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

ADVERTISER: ST1 Lap Dancing Club
LICENSEE: Signal 1
Date: 2 November
Media: Radio
No. of complaints: 1

COMPLAINT:

An ad for ST1 Lap Dancing Club said: "Have you been to the all new ST1 Lap Dancing Club? It could be just what you're looking for. Perfect for any birthday, stag or leaving party. You can chill out, chat or dance up close and personal with gorgeous glamour models. ST1 on Trinity Street Hanley is open every night, with discounted entry available. Parties welcome. Call Stoke ... Over 18's, conditions apply. "

The ad was approved by the Radio Advertising Clearance Centre (RACC) with the advice that it should be broadcast at times when under-16 year olds were not likely to be listening.

One complainant said that they heard the ad on Signal 1 at 7.30 am and 9:00 am. They felt that the ad was not suitable for children. They felt that it was particularly inappropriate at 7.30 am as they said this was the School of the Day timeslot on the morning show, a feature that would appeal to children.

ADJUDICATION: Complaint not upheld

Signal 1 said that they had observed the RACC advice and ensured that the ad was only broadcast between 7.00 am and 7.30 am, 9.00 am and 3.00 pm and 6.00 pm and 7.00 pm. They said that the School of the Day feature aired at 8.15 am, though it may have been mentioned earlier. They provided Radio Joint Audience Research (RAJAR) figures that showed that between 7.00 am and 7.30 am the station had 40,000 adults listening and 6,000 children listening and that at 9.00 am that ratio widened to 45,000:1,000. They said that they realised the subject matter of the ad would not have been to everyone's taste but they had taken steps to ensure that it was scheduled sensitively and correctly.

We acknowledged that Signal 1 had taken into account the make up of their audience profile when scheduling the ad and kept it away from times when a significant proportion of the audience was children. We did not consider that the ad had been scheduled inappropriately.

The scheduling of the ad was investigated under CAP (Broadcast) Radio Advertising Standards Code section 2, rule 8 (Scheduling) but was not found in breach.