

## ANNEX

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**Bulldog Communications  
Ltd**  
26 Red Lion Square  
London  
WC1R 4HQ

**Date:** 20 September 2006  
**Media:** Television, National press  
**Sector:** Computers and  
telecommunications

**Number of complaints: 3**

### Ad

A national press ad, for Bulldog, was headlined "The gate is open" and featured a gate opened to a meadow. The ad claimed "Up to 8 meg broadband for only £15.50\* per month".

A TV ad, for Bulldog, had a voiceover that said "With up to 8 meg broadband, more people can play, e-mail, download and talk, together, all at the same time. With Bulldog, unlimited phone calls to your network friends are included. To find out more about Bulldog Broadband packages call now on 0800 or visit bulldogbroadband.com. Bulldog. Broadband and Phone." Onscreen text said "Broadband speed is up to 8meg downstream. Subject to local availability and Bulldog phone line".

### Issue

1. ntl complained that the press ad was misleading because, due to the technical limitations of high speed broadband services, the maximum speed quoted would not be available to a significant number of people within the geographic areas in which the service was available. They provided figures that showed that, as the length of line between a local exchange and a customer's home increased, the broadband speed that could be achieved by the customer decreased. They said broadband speeds of 8 megabits per second (Mbps) or close to 8 Mbps could be achieved only by people who lived within 3 km of an exchange. Beyond that distance the achievable speed dropped rapidly because of unavoidable signal attenuation caused by line length and quality. The 35% of people who lived more than 3.8 km from an exchange, for example, would get at best a 5 Mbps connection. They believed the prefix "up to" was not an adequate indication that a large proportion of customers could not get a service close to the headline speed.

2. Two members of the public said the TV ad was misleading because the broadband speed quoted was not achievable for all users. One said their connection had never exceeded 5 Mbps and the others said they believed technical limitations would prevent users from achieving the headline speed.

## **Response**

Bulldog Communications (Bulldog) said their ads were in line with previous ASA adjudications and CAP guidance, which required claims about broadband speeds to be preceded with the words "up to" to indicate that the top speed might not be achieved by users.

They said a substantial proportion of customers using the "up to 8 meg" service achieved speeds of 8 Mbps, or close to 8 Mbps, and more than half of customers using the service achieved speeds of 6 Mbps or higher. They sent the results of customer speed tests for July 2005 and December 2005.

The Broadcast Advertising Clearance Centre (BACC) said they agreed with Bulldog's comments.

## **Assessment**

### **Complaints upheld**

The ASA noted Bulldog considered that the inclusion of the words "up to" was an adequate indication to consumers that they might not achieve the top speed quoted in the ads and that their ads were in line with previous ASA adjudications and CAP guidance. We considered that "up to" was an adequate qualification in ads for 1 Mbps and 2 Mbps services, where the user would not achieve the maximum speed because of factors such as the number of people on line but where the attainable speeds were close enough to those advertised so as not to affect the customers' experience in any meaningful way.

We considered that the higher speed service was likely to be attractive to consumers because of the advertised headline speed and the potential capabilities that a connection of that speed could give users. We understood, however, that the speeds 8Mbps services could deliver were significantly affected by signal attenuation, which was caused by distance from the exchange, and that as a result a significant proportion of consumers could not achieve speeds close to the headline speed. We understood that users of an up to 8Mbps service could take advantage of capabilities such as video streaming, file sharing and online gaming but that there would be a noticeable degradation of quality of the service when speeds fell below 6Mbps. We therefore considered that "up to" was not an adequate qualifier in ads for higher speed services, given the impact that signal attenuation could have on speed and performance. We concluded that the ads were misleading and asked Bulldog to amend them.

The press ad breached CAP Code clauses 3.1 (Substantiation) and 7.1 (Truthfulness).

The TV ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.1 (Evidence) and 5.2.3 (Qualifications).

**Action**

We asked Bulldog to indicate prominently in future ads (for example in the body copy of non-broadcast ads) that top speeds varied significantly, in particular because of a user's distance from their local exchange.

Adjudication of the ASA Council (Broadcast)

Adjudication of the ASA Council (Non-broadcast)

**Be Un Limited**

**Date:** 24th January 2007

**Media:** Regional press

**Sector:** Computers and telecommunications

**Complaint(s)  
from:** Hampshire, London

**Complaint type:** Industry

### **Complaint**

A press ad, for Be Un Limited, was headlined "up to 24 Meg broadband". NTL and a member of the public objected to the ad because they believed that the headline speed would be unattainable to most users. They believed that, with distance from the exchange, the service suffered from severe signal attenuation, which rendered the claim misleading.

**Codes section:** 3.1, 6.1, 7.1

### **Adjudication**

Complaints upheld

Be Un Limited (Be Un Ltd) said their service operated only in major urban areas and, at the time of the ad, was almost entirely based in London. They said they advertised only in areas where they had rolled out their network and the ad in question had appeared only in London newspapers. Be Un Ltd said their services were provided via ADSL2+ technology, which operated on a different frequency to that used for 8 Megabytes per second (Mbps) ADSL services allowing a much stronger signal over a shorter distance. Be Un Ltd said although distance from the exchange affected the speeds attainable with their service, the results of their speed tests showed a significant proportion of users achieved over 16 Mbps, especially within 1km of their local exchange. They also said other factors existed which affected user speeds, such as the quality of the copper wire, interference from other lines and internal problems at the user's premises. Be Un Ltd said they had little control over those factors but pointed out that the terms and conditions in the ad stated "download speeds and broadband comparison speeds are for speeds up to the quoted amount and are dependent on various factors." Be Un Ltd said the description of their service as "up to 24 meg" was intended to allow consumers to understand the difference between their service and the different levels of service offered by other ISPs. They maintained that the speed descriptions were the standard way in which broadband services were marketed and pointed out that they used the qualification "up to" to ensure that consumers were aware that the headline speed was an upper limit.

Be Un Ltd referred to the recent ASA adjudication on Bulldog Communications Ltd (Bulldog), which referred to the meaningful impact of signal attenuation on user experience, and sent the results of a series of user

tests, which compared their 24 Mbps product with other products. They said, in the same location and at the same time of day, the 24 Mbps connection downloaded a 99 minute film in 11 mins 14 secs compared with 19 mins 47 secs and 27 mins 05 secs for two other providers' 8 Mbps connections. They also said they tested the meaningful difference between various speeds in downloading a normal Mp3 file. The test results showed a 24 Mbps and a 16 Mbps connection both downloaded the file in 2 secs compared with 4 secs for an 8 Mbps connection. Be Un Ltd maintained that those tests demonstrated that any limitations to their service did not meaningfully affect user experience.

The ASA accepted Be Un Ltd's assertion that factors other than distance from the local exchange affected user speeds. We considered, however, that the data provided by Be Un Ltd and NTL demonstrated a clear downward trend in user speeds with distance from the exchange, which increased markedly the closer it got to 3km. We noted the recent Bulldog adjudication about an 8 Mbps broadband service had referred to the negative impact of signal attenuation on user experience, but noted that Be Un Ltd's speed test demonstrated that the vast majority of users experienced speeds in excess of 8 Mbps. We understood that speeds of 8 Mbps would allow users to take advantage of the vast majority of speed intensive services and functions, such as video streaming and online gaming.

Although we accepted that speeds of less than 24 Mbps were unlikely to meaningfully affect the users' overall experience of the service so long as they were over 8 Mbps, we considered that some consumers would reasonably expect to achieve speeds in the range of the headline speed and might feel misled if they could only achieve speeds of around 8 Mbps. We noted the small print disclaimer in the ad and considered that many consumers would have some knowledge of the limitations and factors that affected ADSL broadband service speeds. We considered, however, that the significant drop off in the speed of Be Un Ltd's service for some customers was a significant enough condition to warrant a more detailed disclaimer in the body copy. We concluded that the ad was likely to mislead.

We noted Be Un Ltd's co-operation throughout the investigation and their willingness to amend their ads in line with the Bulldog adjudication. We asked them to state in the body copy of future ads that top speeds varied significantly, in particular because of a user's distance from their local exchange.

The ad breached CAP Code clauses 3.1 (Substantiation) and 7.1 (Truthfulness).