

**Advertising Standards Authority**

Broadcast Advertising  
Adjudications

13 July 2005



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**LICENSEE:** Channel 5 Broadcasting Ltd  
**BROADCASTER:** Channel 5 Broadcasting Ltd  
**Date:** 13 July 2005  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

Advertisements were shown during a break in the film Groundhog Day, shown on Channel 5 on 3 March 2005.

A viewer complained that the advertisements were much louder than the surrounding programme.

**ADJUDICATION:** Complaint upheld

Channel 5 checked the transmission and said, in its view, the content did not breach the requirements of the CAP (Broadcast) TV Advertising Standards Code.

Ofcom's technical department provides the ASA with expert advice and conducts tests for noise related issues in advertisements. It examined the sound levels of the advertisements during the times highlighted by the viewer. It said that almost all the advertisements sounded subjectively louder than the main content of the surrounding film and that this subjective loudness had been due to the use of audio compression. This meant that the minimum sound levels of the advertisements had been raised during the production stage, resulting in almost constant loudness. The film contained several scenes of quiet dialogue, some of which immediately preceded advertising breaks. Advertisement soundtracks featuring highly compressed sound played during these breaks appeared particularly strident. A requirement of the TV Advertising Standards Code is that highly compressed advertisements of this nature have their peak volume reduced before broadcast. They must maintain a particular range of volume to ensure the subjective volume is consistent with adjacent programming and to prevent excessive loudness changes. Ofcom did not consider the range of volume was at the required level, with the result that the advertisements sounded incongruous against the surrounding programme. It concluded that the peak volume of the compressed advertisements was higher than permitted by the Code.

We agreed with Ofcom's findings and considered that the fixed absolute maximum sound level was set too high by the licensee to guarantee that its sound output would comply with the Code in all instances.

Channel 5 therefore breached CAP (Broadcast) TV Advertising Standards Code Rule 6.9 (Sound levels in advertisements) and was reminded to ensure that its output levels for advertisements comply with the Code.

**ADVERTISER:** Chupa Chups Perfetti Van Melle UK Ltd  
**AGENCY:** Commercial Breaks  
**Date:** 13 July 2005  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

An advertisement for Smint showed a young boy tip his head back whilst his mother dispensed a mint directly into his mouth.

A viewer complained because he was concerned that children might copy the action shown and choke.

**ADJUDICATION:** Complaint not upheld

The BACC said it took the issue very seriously but did not consider the action shown in the advertisement to be unsafe or likely to encourage child emulation. It argued that the advertisement showed a responsible adult with a perfect view of her child's mouth dispense the sweet into it from a very close position. It believed the action was inherently safe and pointed out that the child did not try to catch the sweet in his mouth. It felt the action lacked the elements of fun and skill that would make it appealing to children or likely to be copied by them.

The advertising agency said a Smint was very small and could not block the windpipe. It thought most children would prefer to dispense the sweet into their hands, but added that it did not believe the advertisement showed a hazardous action; the sweet was dispensed directly into the mouth from a very short distance and released slowly and gently. It said the shot was used to demonstrate the dispensing pack neatly and succinctly. It believed that because an adult was shown dispensing the sweet, the action would not encourage child emulation. It said the product had been on the market for some years and the advertisement had been shown in Europe as well as the UK without any other complaints or accidents.

We were not aware of any reports of emulation. We noted that the advertisement had been shown elsewhere in Europe without complaints or accidents. We agreed with the BACC's argument that it was unlikely to be emulated by children because it lacked the elements of fun and skill that might make it appeal to them.

The advertisement was investigated under CAP (Broadcast) TV Advertising Standards Code Rules 6.7 (Health and safety), 7.3.2 (Physical harm - children) and 7.3.7 (Use of scheduling restrictions) but was not found in breach.

**ADVERTISER:** Dell Computer Corporation Ltd  
**AGENCY:** DDB London Ltd  
**Date:** 13 July 2005  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

An advertisement for Dell PCs claimed "We'll help you get your ideal PC like this dimension desktop featuring the powerful Intel Pentium 4 processor". It briefly showed the PC on screen. It then showed another PC and claimed "Other Dell Desktops come with a flat panel monitor and start at just £349". On-screen text beside the PC said "Dell Dimension 2400 with Intel Celeron Processor only £349". At the end of the advertisement, the voiceover claimed "Dell PCs use Intel Pentium 4 processors".

A viewer found the advertisement misleading because he thought the voiceover at the end implied all Dell PCs used Intel Pentium 4 processors, yet a PC with an Intel Celeron processor was shown earlier in the advertisement. He pointed out that non-technical customers might be unaware that the low price mentioned for the second PC reflected the lower performance capacity and price of the Celeron processor it used.

We challenged whether the voiceover claim "Dell use Intel Pentium 4 Processors" contradicted the on-screen text that claimed the Dell Dimension 2400 came with an Intel Celeron Processor.

**ADJUDICATION:** Complaint upheld

Dell argued that because the advertisement did not say "All Dell PCs use Intel Pentium 4 processors", but rather "Dell PCs use Intel Pentium 4 Processors", the implication was that some Dell PCs used Intel Pentium 4. It believed that that message was further illustrated by the two systems promoted in the advertisement, one using the high specification Intel Pentium 4 processor and the other using a different processor. It pointed out that on-screen text made clear the second PC featured used an Intel Celeron processor. It added that the voiceover introduced the second PC as one of "other PCs" to distinguish it from the first PC shown, which did use Intel Pentium 4. It said that if a non-technical customer did not understand the difference between the two processors that would not affect their decision to respond to the advertisement. It added that non-technical customers could access information on the performance characteristics of the PCs during the buying process and would merely understand from the advertisement that the products started at a different price. It did not think the on-screen text contradicted or qualified the voiceover claim, but considered it to clarify the system specifications of the model shown.

The BACC fully endorsed Dell's argument and did not believe the advertisement was misleading. It said the on-screen text made clear the Dell Dimension 2400 came with an Intel Celeron processor and was intended to prevent viewers from thinking that the PC came with the same processor as the more powerful machine featured before hand. It considered the voiceover at the end of the advertisement to mean that some Dell PCs use

Intel Pentium 4 and therefore believed the on-screen text did not contradict the claim because it did not make it untrue. It also said the on-screen text referring to the Celeron processor was not directly linked with the end voiceover as both pieces of communication were relatively separate within the advertisement. It believed that the on-screen text made clear to viewers what they would get for their money if they purchased the Dell Dimension 2400 and the end voiceover was a claim for the Dell brand, which used Pentium 4 processors.

We noted that the voiceover at the end of the advertisement did not claim that all Dell PCs used Intel Pentium 4 Processors. However, it claimed that Dell PCs used Intel Pentium 4 processors. We considered the claim to be ambiguous. Because it was not quantitatively qualified, it could be interpreted to mean that all Dell PCs used Intel Pentium 4. We believed that that was the misleading impression it gave. We also considered that the on-screen text referring to the Intel Celeron processor contradicted it. We noted that the text was not as prominent as the voiceover claims and considered that some viewers might not have realised that the price of the Dell Dimension 2400 was relatively low because it had a Celeron processor. We considered that the advertisement created the misleading impression that all Dell PCs used Intel Pentium 4 and that prices started as low as £349.

The advertisement breached CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising), 5.2.2 (Implications) and 5.4.2 (Superimposed text). It must not be shown again in its present form.

**ADVERTISER:** Direct Auto Finance Ltd t/a Yes Car Credit

**AGENCY:** The Walker Agency

**Date:** 13 July 2005

**Media:** Television

**No. of complaints:** 1

**COMPLAINT:**

An advertisement for Yes Car Credit was shown on Living TV. It showed a woman who said "If you're stuck with an old, unreliable car because you can't get credit, don't worry because at Yes Car Credit you could get a better car, and a service that's second to none. Just give us a call and no matter what your credit history, we could approve you over the phone right away." She then proceeded to outline a range of further benefits for customers. On-screen text said "Credit subject to income".

1. A viewer complained that the advertisement suggested credit was guaranteed and that despite applying three times he had been turned down and had not been told why.
2. We challenged whether the only relevant obstacle to obtaining credit was an applicant's income as suggested by the on-screen text.

**ADJUDICATION:**

1. Complaint not upheld

The Broadcast Advertising Clearance Centre (BACC) said the practice of using "could" to indicate that something was not a certainty, such as you "could get credit" was well established. It did not believe the advertisement suggested all applications would be accepted.

The advertiser said it was not the case that the advertisement claimed to guarantee car credit. It said it could not comment on why the complainant had been turned down but if he wished to understand more about his credit position he could do so through Experian or Equifax for a small charge.

We accepted that the advertisement had not implied credit would be guaranteed for all applicants because it claimed only that viewers "could" get credit and included on-screen text showing that a further condition applied.

2. Upheld

The advertiser said its previous advertisements had included the on-screen text "subject to status and income" but it had removed "status" following discussions with Trading Standards. It said it had since returned to mentioning "status" because it recognised that around 3% of people could be refused credit by Yes Car Credit on the basis of their status (such as being a non-discharged bankrupt) regardless of their income.

We considered that the on-screen text suggested the only relevant obstacle to obtaining credit was an applicant's income and therefore implied viewers would be likely to receive credit from Yes Car Credit even if they had a poor credit rating. Although we accepted this did not mean credit was guaranteed, it was clear from the advertiser's response that an applicant's status was also relevant and we therefore considered the advertisement was likely to mislead viewers by omitting this important qualification.

The advertisement was in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising) and 5.2.3 (Qualifications) and should not be shown again in that form.

**ADVERTISER:** Direct Line Financial Services Ltd

**AGENCY:** Chi Advertising

**Date:** 13 July 2005

**Media:** Television

**No. of complaints:** 19

**COMPLAINT:**

An advertisement for Direct Line showed twin brothers. One of the brothers said "This is me, Tom, and my twin brother Jack. We drive identical cars which were both hit by uninsured drivers." They were shown in identical cars having similar minor accidents in which a car ran into the back of theirs. Tom said "We thought we'd be fine because we're both covered by major insurers, but that's where it all went wrong - for Jack. He lost his no claims bonus and had to pay an excess costing him more than £300 overall. Whereas I'm with Direct Line. Unlike most insurers, I kept my no claims bonus and didn't have to pay a penny. Direct Line also saved me on my insurance in the first place."

1. Three viewers said the terms and conditions on Direct Line's website made clear that an excess did have to be paid which contradicted the claim in the advertisement.
2. Six viewers said they were insured through Direct Line and had been in a similar situation but either had to pay an excess or lost their no claims bonus or both.
3. Nine viewers said the advertisement implied that Direct Line were the only insurer to offer such a service which was misleading because all insured drivers could reclaim losses in such circumstances through the Motor Insurer's Bureau and in addition it was possible to protect a No Claims Bonus with many other insurers.
4. One viewer said he was advised that he would need to have four years no claims bonus to protect his no claims bonus in the event of an accident as portrayed.
5. We challenged whether it was clear that the benefit offered was only available to comprehensive policy holders.

**ADJUDICATION:**

1. Complaints not upheld

The Broadcast Advertising Clearance Centre (BACC) said it had received confirmation that no excess would be payable in the event of an accident with a known uninsured driver which was how the accident appeared in the advertisement.

The advertiser said its website was out of date and had been amended since the complaint was received to reflect the service which was as depicted in the advertisement.

We accepted that the website had not been updated and that an excess would not be charged in the event of an accident caused by a known uninsured driver. We understood

an excess would be payable if the uninsured driver was not known (e.g. if they drove away). However we believed viewers would appreciate that the advertisement only referred to accidents with known insured drivers who were at fault. We considered that most viewers would be aware an excess would still apply in some accident situations.

## 2. Complaints not upheld

The BACC said it had received assurances that the No Claims Bonus would not be affected and no excess was payable in the event of an accident involving a known uninsured driver as shown in the advertisement.

The advertiser said the benefit was a new element of its insurance policy and had come into effect on 9 May 2005 which was just before the advertisement was first broadcast and was not retrospective. It offered assurances that since it had introduced the policy it had not charged relevant customers an excess or reduced their No Claims Discount if it had been able to reasonably ascertain that they were hit by an uninsured driver. It said that in order to be reasonably sure the driver was uninsured it required a registration plate number or other details and it was only relevant if the accident was the fault of the uninsured driver.

We understood the complainants were not new customers and we accepted that new customers would not have to pay an excess or lose their No Claims Bonus in the event of an accident as portrayed in the advertisement.

## 3. Complaints not upheld

The BACC said the advertisement did not claim that Direct Line were unique in offering this particular type of protection but rather that there were other insurers who did not offer it and therefore, when looking for cover, people may have found its protection policy preferable.

The advertiser said it was not aware of any other insurers offering similar protection to Direct Line in the event of such an incident and that it was not normal to retain a no-claims bonus when hit by an uninsured driver in a similar way to that portrayed in the advertisement. It said it did offer an additional No Claims Bonus protection service which incurred an additional charge but customers did not need this in order to benefit from No Claims Bonus protection in the event of an accident with an uninsured driver which applied to all customers with comprehensive cover.

We were satisfied that the benefit offered by Direct Line was substantially different to the service afforded to other insured drivers through the Motor Insurance Bureau because Direct Line customers involved in an accident as portrayed in the advertisement would not have to pay anything whereas the Motor Insurance Bureau is a service which can offer a method of reclaiming monies already paid. We considered the benefit of not paying upfront was clear.

## 4. Complaint not upheld

The advertiser said it did offer the benefit of a protected No Claims Bonus which did require drivers to have four years No Claims Bonus in order to qualify. However, as explained before, this was separate from the No Claims Bonus protection benefit offered in the event of an accident involving an uninsured driver as portrayed in the advertisement,

which applied to all drivers with comprehensive insurance policies taken out after 9 May. This benefit would not incur any additional charges.

We accepted that drivers could pay extra to protect their No Claims Bonus but that this was separate from the benefit offered for all eligible drivers who were involved in an accident like the one shown in the advertisement.

#### 5. Upheld

The BACC said that the uninsured driver offer applied to comprehensive policy holders hit by an identifiable vehicle when the policy holder was not at fault. It said at the time of script approval both it and the advertiser were happy that the advertisement showed one such scenario and clearly stated that “conditions apply”. It said it had been content with the super “conditions apply” drawing attention to the fact that the situation described was not relevant to all cases.

The advertiser said that, on reflection, it accepted that the advertisement was not as clear as it should have been. It said the fact that the benefit was only included in comprehensive cover policies was a significant condition and not mentioning it had been an oversight on its part. It confirmed the advertisement had since been amended.

We welcomed the advertiser’s comments and their decision to amend the advertisement. We considered that the condition should have been stated in the advertisement. Nothing in the advertisement suggested the drivers had comprehensive cover and, as the accidents were clearly not the drivers fault, we believed viewers could have interpreted the benefit as relating to Third Party insurance. In normal circumstances, where the offending driver is insured, third party policy holders would be able to claim off that driver’s insurance and there was no reason to presume the additional benefit being advertised would not protect all policy holders where the accident was not their fault. We further considered that the argument put forward in defence of the other elements of the advertisement were on the grounds that the advertisement showed a specific situation. We did not consider it was clear that the situation involved comprehensive policy holders.

We considered the advertisement under CAP (Broadcast) TV Advertising Standards Code Rule 5.1 (Misleading advertising), 5.4.3 (Denigration) and 5.4.6 Comparative advertising and found it in breach of Rule 5.1. It should not be shown again in its current form without making it clear that only comprehensive policy holders are eligible.

**ADVERTISER:** Ideal Shopping Direct plc  
**BROADCASTER:** Ideal Shopping Direct plc  
**Date:** 13 July 2005  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

A Spectrum Media Centre Personal Computer (PC) was advertised on Ideal World by two presenters. During the advertisement one presenter said a function of the PC was that it could burn (copy) pre-recorded television programmes onto a DVD which could then be played in "any DVD player". They then demonstrated how to burn a DVD and when the process had finished one presenter said to the other "that's now finished and you can take that home with you if you like".

A viewer said the type of video file recorded onto the DVD using the Media Centre PC as shown in the demonstration would not be recognised by most standalone DVD players. He said that Media Centre PCs used a particular type of data file (dvr-ms) which, when copied to a DVD, could only be played in a DVD drive connected to a PC. He said standalone DVD players generally required MPEG files in order to playback the recorded footage and these could only be created by converting the existing files through the use of further software. He therefore believed the advertising was misleading.

**ADJUDICATION:** Complaint upheld

Ideal World said the advertising was essentially accurate as the DVDs could be played in every PC DVD player and the manufacturer had indicated they would also play in 9 out of 10 standalone DVD players. However, it accepted that a small number of viewers with incompatible standalone DVD players may require file conversion software. It said that since the viewer had highlighted the potential problem it had sent such software to all customers who purchased the PC along with detailed instructions on how to use it and a helpline number. It said that there had been no contact from customers regarding the issue since it had issued the additional software.

We noted that in the online specification for Media Centre software, Microsoft stated "most" standalone DVD players would play DVDs recorded using its Media Centre operating system. It was therefore clear that exceptions did exist. We welcomed the steps taken by the licensee to ensure that all customers who had purchased the PC would be able to copy DVDs using the additional software and play them in a standalone DVD player. We accepted that, contrary to what the complainant said, some standalone DVD players would play back the files with no further conversion required. However, we considered that viewers would have reasonably expected the PC to burn DVDs that could be played back in all standalone DVD Players as claimed in the advertisement.

The advertising was therefore in breach of CAP (Broadcast) TV Advertising Standards Code Rule 5.1 (Misleading advertising) and should not be shown again in its current form.

**ADVERTISER:** McNeil Consumer Nutritionals Ltd

**AGENCY:** Miles Calcraft Briginshaw Duffy Ltd

**Date:** 13 July 2005

**Media:** Radio

**No. of complaints:** 1

**COMPLAINT:**

A radio advertisement for Benecol in association with BUPA said it was seeking volunteers to take part in the Benecol Cholesterol Reduction Programme. It said 'If you would like to take part, please call the Benecol hotline on 0870 ...'

A listener complained that the advertisement was misleading as:

1. there was no guarantee that callers would be accepted for the programme;
2. Benecol was making money on the calls and
3. no warning was given on how much the phone calls would cost.

**ADJUDICATION:**

1. Complaint not upheld

The advertiser said the advertisement did not claim that every caller would be guaranteed a place in the programme. It felt that it was not possible to provide all the details of the selection process in such a short radio advertisement. It confirmed that those who rang the number were informed early that 150 people were being selected and that a selection process applied. It explained that a number of people would not be eligible (i.e. people taking cholesterol-lowering medication, those under 18 years of age, those currently using Benecol and related products and those who had a low level of blood cholesterol) and that access to a BUPA centre was essential. It added that every caller received a cholesterol reduction information pack.

The Radio Advertising Clearance Centre (RACC) pointed out that the advertisement did not include the word "guarantee". It claimed "Benecol, in association with BUPA, are seeking a number of volunteers to take part in the Benecol Cholesterol Programme". RACC felt that listeners would understand from this that not everyone who called would be accepted and pointed out that, as the advertisement was for a medical trial, listeners would understand that there would be a selection process.

We agreed with the RACC that listeners would understand that as it was a medical trial there was no guarantee that they would be selected for the programme. We did not consider that the criteria which made callers ineligible to take part was significant enough to have to be stated in the advertisement itself.

2. Complaint not upheld

The advertiser said neither it nor BUPA gained any revenue from the calls, which were made to a 0870 number and not a premium rate number.

We did not regard the advertisement misleading on this point.

### 3. Complaint not upheld

The advertiser said that the RACC did not require call cost information to be included in the advertisement. It said it was only a requirement to include costs for premium rate calls and said it had not acted unreasonably given the circumstances. It understood that Ofcom's consultation process on this issue was still ongoing and in view of the uncertainty surrounding 087 numbers it believed the advertising was not misleading.

The RACC said it ensured calls to 084 and 087 numbers were not described as "national" or "local" as it felt that these meanings were now out-of-date and might confuse and mislead listeners. It said it did not feel the inclusion of pricing information would necessarily benefit listeners, given the complexity of the telecommunication industry's pricing structure for 084 and 087 numbers (Number Translation Services). The RACC pointed out that there had been only one listener complaint on this issue, to date.

We were aware from Ofcom's Consultation document on Number Translation Services (dated 22 October 2004) that there was growing concern from consumers about NTS calls, consumers being unsure how much they paid for these calls. We noted, however, that the results of Ofcom's consultation were due in August 2005. Given that the advertiser was careful not to describe the call as either "national" or "local" and given the very limited opportunity in short radio advertisements to qualify claims, we considered it would be impractical and disproportionate to insist that future radio advertisements included pricing information on NTS numbers until such time as Ofcom's consultation results were known. This issue will be reviewed by BCAP when those results are published.

The advertising was investigated under CAP (Broadcast) Radio Advertising Standards Code Section 2, Rule 3 (Misleadingness) but was not found in breach.

**ADVERTISER:** Tesco Stores Ltd  
**AGENCY:** Lowe & Partners Ltd  
**Date:** 13 July 2005  
**Media:** Television  
**No. of complaints:** 8

**COMPLAINT:**

An advertisement for a diet plan from Tesco claimed "Log on and you'll get your meal plans and even your shopping list designed by a professional nutritionist".

Eight viewers complained because the advertisement did not make clear that customers were required to pay a weekly subscription of £2.99 for the service.

**ADJUDICATION:** Complaint upheld

The BACC was not aware that the advertisement was for a subscription service and agreed it should have made that clear.

The advertiser and agency said that the advertisement did not claim or imply it was for a free service. They argued that slimming services were well enough established for the majority of consumers to understand they would be expected to pay for the level of service Tesco was offering. Consumers would expect to pay for personalised slimming plans in the same way they would expect to pay for music downloads. They felt that including the price in the advertisement would require more explanation and qualification than was practical for a 20-second television commercial. They added that the point of the advertisement was to direct viewers to the website, which clearly explained the weekly subscription fee.

We acknowledged that the website made the cost of the service clear. However, an advertisement may be misleading if, for example, it causes viewers to waste their time making enquiries, only to find that offers are unavailable or that there are important limitations or qualifications, which, had they known about them, would have discouraged viewers from responding. We did not agree that viewers were likely to understand from the advertisement that they would have to pay for the meal plans and shopping list. We considered the subscription an important qualification to the offer that was not made clear and therefore considered the advertisement misleading.

The advertisement was found in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising) and 5.2.3 (Qualifications). It must not be shown again in its present form.