

Advertising Standards Authority

**Broadcast Advertising
Adjudications**

7 December 2005



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ADVERTISER: Air India & Birmingham International Airport

AGENCY: McCann Erickson Advertising UK Ltd

Date: 7 December 2005

Media: Radio and poster

No. of complaints: 1

COMPLAINT:

A radio ad for Air India and Birmingham International Airport said "Fed up with flying to India from Heathrow ... no problems. Air India now flies direct from Birmingham to Amritsar and Delhi three times a week from just £370 return and to Toronto from £180 return ... Visit airindia.com or see your travel agent. Birmingham International Airport. Above and beyond."

A poster said " Air India now flies direct from Birmingham to Amritsar from £319 rtn* & Delhi from £319 rtn* Toronto from £130 rtn* www.airindia.com or visit your travel agent. Air India. Birmingham International Airport. Above and beyond" Small print at the bottom of the poster said " *Terms and conditions apply. Fares subject to availability & excludes tax".

1. A listener heard the ad on Sabras Sound Radio but was unable to find the £180 fare to Toronto either through travel agents or Air India themselves. The fares he was offered were around £300.

2. He also saw the poster offering an even cheaper fare, which was also unavailable. He believed the advertising was misleading.

3. We challenged whether the prices quoted in the poster had excluded non-optional taxes in breach of the CAP Code.

ADJUDICATION:

1. Complaint upheld

The Radio Advertising Clearance Centre (RACC) said that when they cleared the ad they were given written confirmation that the advertised fare was available until 30 June. The agency confirmed in writing that 10% of seats were available at the stated price.

Sabras Sound Radio said they had received a complaint from a listener that the Toronto fare was not available. They contacted McCann Erickson asking them to confirm with their client that the flights were available and the ad had RACC clearance. This confirmation was not received. However, they were sent a copy of a statement from Birmingham International Airport (BIA) and Air India which said "Following the launch of Air India's services from Birmingham to Delhi, Amritsar and Toronto, we would like to inform customers that due to the high demand for these services tickets are no longer available at the fares quoted in our advertising. Air India would like to reassure customers that there is still plenty of availability on most flights at highly competitive prices."

BIA said they and the advertising agency had used the pricing information provided by Air India in good faith. They said they had no access to airline fares databases and relied on the information provided by an airline for all joint advertising between the airport and an airline partner. BIA said they had explained to Air India that although the ad said prices "from" there had to be reasonable levels of availability at the advertised price. The details given to them by Air India had shown the prices included taxes, and the offer was valid until 30 June.

On receiving complaints BIA said they sought clarification from Air India on the availability of the Toronto fares. The information they received showed the cheapest fare to Toronto was £160 excluding taxes, valid from 1 November to 15 December and 1 January to 31 March 2006. They were unable to find out from Air India the number of seats originally on sale at that price. They said that as this new information contradicted that previously provided by the airline, they revised the radio ads, removing any reference to price. They also issued the joint statement referred to by Sabras Sound.

BIA said there was no intention to mislead and they had acted in good faith, taking immediate action to revise the ad when it became clear there was a problem. They said that as the "from" price quoted in the ad was the lowest price available, it was reasonable to expect that customers would not always be able to get that price for their chosen date of travel. They also said that although the advertised fares were not available the airline was still able to offer highly competitive fares compared to other airlines.

We noted that "from" was used to warn listeners that this was the lowest price available and the possibility the cost might be higher. While we would not object to there being a fair range of prices above the lowest figure, we would expect there to be bookings available in reasonable quantities at the lowest price quoted. However, Air India and BIA were unable to provide any evidence to show this was the case. The information we were given showed that the airlines lowest fares would cost more than the prices in the ad. Also they were for dates much later in the year. There had been no indication in the ad that the advertised offer might have been for dates far in the future.

With no substantiation, other than the written assurance to the RACC, to show flights had been available at the advertised price, we considered the ad had breached CAP (Broadcast) Radio Advertising Standards Code Section 2, rule 3 (Misleadingness).

2. Complaint upheld

Air India explained that the April 2005 inaugural fare to Canada had been used in the poster by error. However, Air India failed to reply to our requests for further clarification.

BIA said that when, on 18 May, they discovered the problem with the radio ad they were able to revise it, but as the poster campaign was due to end on 22 May they were unable to change it.

As Air India and BIA were unable to show flights were available at the advertised price we considered the poster had been misleading.

3. Upheld

BIA said that the poster advertising was booked for a two week period from 9 to 22 May, which required the ad to be sent to print on 28 April. Details of the fares were only given to

BIA by Air India at 5 pm on 28 April, and as the airport was unable to establish whether taxes were included at such a late stage, they decided to include the footnote "Terms and conditions apply. Fares subject to availability and excludes taxes."

The CAP Code states that "Prices quoted in marketing communications addressed to the public should include VAT & other non-optional taxes and duties imposed on all buyers." Although we understood the difficulties experienced by BIA, a footnote can not be used to circumvent this rule. The prices quoted in the ad had failed to include all non-optional taxes as required by the Code. We considered that the poster was in breach of the Code and recommended BIA and Air India seek advice from the CAP Copy Advice team for future advertising.

The poster breached CAP Code Clauses 7.1 (Truthfulness), 15.2 (Prices - VAT), and 15.4 (Prices - availability).

ADVERTISER: Centrica plc t/a British Gas

AGENCY: Clemmow Hornby Inge Ltd (TV)
WWAV Rapp Collins Ltd (Press)

Date: 7 December 2005

Media: Television and regional press

No. of complaints: 23

COMPLAINT:

A TV ad for British Gas featured a flame inside an ice cube telling a smaller flame that it had been frozen. The smaller flame said "Oh yes, British Gas are the first to offer frozen prices until 2010." The voice over said "Freeze your energy prices. Sign up to British Gas Price Protection and we'll guarantee no more price rises until 2010." Text said "Conditions and cancellation charges apply. Restricted availability." The ad finished with the words 'No rises' on screen and a website address.

A regional press ad in the style of a newspaper headline said "British Gas customer freezes energy prices till 2010 and feels cosy." Underneath it said "Funny how good news doesn't always make the headlines. When Mr Currie chose to take out Price Protection 2010 with British Gas, it wasn't a life-changing experience. It just made him feel a little bit more relaxed ... because he knows that his energy prices won't go up for five long winters. Now that's worth celebrating with a nice, hot cuppa. The good news is you can take out Price Protection 2010. Visit house.co.uk/norises" A footnote read "Prices protected until April 2010. Based on our standard current prices for your area. Subject to a small price protection premium of 2.8% above our standard variable gas prices and a 4.8% discount on our standard variable electricity prices. Other conditions and variable cancellation charges apply. Restricted availability, excludes VAT and regulatory changes."

24 viewers, which included competitor RWE Npower Ltd, believed the TV ad was misleading.

1. 16 viewers said the claims "no more price rises" and "no rises" was misleading as British Gas had just announced a 14.2% price rise. Five of these viewers pointed out that the price protection was based on this new rate.
2. RWE Npower and seven viewers said the ad had not explained that customers would have to pay a premium, on top of the new standard rate, to freeze their prices.
3. Two viewers said that as pre-pay customers they were unable to take advantage of the offer and the ad should have made this clear.
4. We challenged whether the ad's claim to "guarantee no more price rises" (for the next five years) held in the event of any changes to regulatory charges being introduced.

RWE Npower Ltd believed the press ad had been misleading.

5. They said the ad claimed prices were protected until April 2010 based on British Gas' "standard current prices". They said this was untrue as it was actually based on the soon to be introduced 14.2% higher standard rate. At the time of the ad 'Mr Currie' would be paying, including the premium, 17% more than his then current standard rate.

ADJUDICATION:

1. Complaints upheld

British Gas said they were aware of the need to make clear to viewers that the Price Protection 2010 would apply to the new prices, announced on 9 September and implemented on 19 September. They said to convey this to viewers they decided to use the wording "Sign up to British Gas Price Protection and we'll guarantee no more price rises till 2010." They considered that the publicity surrounding the 9 September price rise announcement was such that all viewers would have been aware of the rise, and the use of "no more price rises" made it clear the Price Protection applied to the new prices.

The Broadcast Advertising Clearance Centre (BACC) and Clemmow Hornby Inge Ltd endorsed the decisions taken by British Gas.

We understood that the ad was first broadcast on 9 September, the day the 14.2% price rise was announced. However, we did not consider the subsequent publicity they mentioned was sufficient to explain that "no more price rises" and "no rises" had excluded the rise just announced and not yet operating. In any case, many viewers would have been unaware of the announcement and would have expected to sign up to the Price Protection on their current rate. Even for those viewers who knew of the proposed increase, there was no adequate warning in the ad that they were unable to freeze their current rate before the introduction of the higher rate. We did not agree that using "no more price rises" had clarified that Price Protection was based on a yet to be implemented standard rate.

The ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.3 (Qualifications), and 5.3.1 (Accurate pricing).

2. Complaints upheld

The BACC said they were aware of the limitations to the offer and were content that the on-screen text adequately alerted viewers to their existence. British Gas said that following discussions with the BACC the caveat "Conditions and cancellation charges apply. Restricted availability" was agreed. They considered that "conditions" included financial conditions. British Gas pointed out that although a premium of 2.8% was applied to gas charges, a 4.8% discount was applied to electricity charges. They said that the discount meant that the majority of customers with both gas and electricity would be able to sign up for the scheme at no additional cost, or for a saving, based on average consumption rates. Clemmow Hornby Inge Ltd said that the premium charge was explained in the British Gas terms and conditions.

We noted that the ad itself did not mention a "premium rate" or any kind of charge for Price Protection 2010. While we understood that some customers who took just electricity or both gas and electricity would not have to pay, many viewers signing up to the scheme would have to pay for the service. For example, customers who just took gas would have to pay the 2.8% premium, and those using above average consumption for both gas and

electricity might also have to pay. There was no indication in the ad of the possibility of a charge for Price Protection 2010. We did not consider that such a significant financial condition was adequately covered by the on-screen text "Conditions and cancellation charges apply."

The ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.3 (Qualifications), and 5.3.1 (Accurate pricing).

3. Complaints not upheld

Clemmow Hornby Inge Ltd said they were confident that the on-screen text which said "Restricted availability" had explained that not all customers were eligible for Price Protection. The BACC agreed that the text had covered this restriction.

As gas supply pre-payment affected only a small percentage of customers, we agreed that the on-screen text "Restricted availability" had given warning to viewers that there were some limitations to availability. We understood that the limitations also included the finite number of contracts available to sign up for Price Protection. We therefore accepted the general warning "Restricted availability" was acceptable in this instance. We did not consider the ad breached the CAP (Broadcast) TV Advertising Standards Code on this point.

4. Upheld

The BACC said they initially believed "Conditions apply" covered the possibility of regulatory fuel increases. However, with hindsight they said the ad should have included on-screen text to clarify the situation.

Ads must make clear any significant limitations to an advertised guarantee. We noted that the ad said "... we'll guarantee no more price rises until 2010", but rises would be imposed by British Gas if any governmental, statutory or licensing body increased fuel prices. We considered that a warning to this effect should have been included in the TV ad as it had been in the press ad.

The ad breached CAP (Broadcast) TV Advertising Standards Code rule 5.2.5 (Guarantees) on this point.

5. Complaint upheld

British Gas said that they had taken copy advice from CAP on this ad to ensure that customers fully understood the nature of the Price Protection 2010 product. The wording "Prices protected until April 2010. Based on our current prices for your area" was designed for ads produced after 19 September, when the new standard rate was implemented. Unfortunately, it was used in error in the ad between 12 and 16 September. They were aware that prior to 19 September it should have read "Based on our new standard prices for your area." They said there had been no intention to mislead customers.

Although we acknowledged the wrong wording had been included in the ad because of an error, it had nonetheless given a misleading impression by claiming the Price Protection was based on the existing rate not on a future much higher one.

The ad therefore breached CAP Code Clause 7.1 (Truthfulness).

ADVERTISER: Tulip Plus.com t/a Mobile Club 7
BROADCASTER: Sony TV
Date: 7 December 2005
Media: Television
No. of complaints: 1

COMPLAINT:

Two ads shown until July 2005 on Sony TV for the Mobile Club 7 telephone package advertised a special offer of line rental for £3.99 per month for 12 months with a free Motorola C975 or V975 phone.

A viewer complained that customers in fact needed to pay £15 per month and that Mobile Club 7 then refunded part of the cost of the contract to bring the cost down to £3.99 per month. He believed the ads were misleading for not stating that that was how the offer worked.

ADJUDICATION: Complaint upheld

Mobile Club 7 said that they refunded part of the cost of the contract to bring it down to £3.99 per month. They said a customer needed to send them paid invoices, a copy of their contract and the redemption voucher provided with their handset. Depending on the terms of their contract, this could be six, nine or 12 months after its start date. The refund was then credited direct to their bank account. Mobile Club 7 said that the phone package came with a 14-day peace of mind guarantee so that viewers could return the phone during that time if they were dissatisfied with any aspect of the package.

Sony TV said that Mobile Club 7 believed the offer was too detailed to be explained in full in a single TV ad, but that these details were supplied to viewers with their phone package and were made clear by the telephone operators when they took viewers' order details. Sony TV did not believe the ad was misleading because, after receiving their refund, customers were left having paid the price advertised.

We considered that, even though part of the cost was refunded to them later, viewers nevertheless needed to pay the full monthly rental cost up front. At £15 per month, this was significantly more than the £3.99 quoted in the ad. They also needed to wait for between six and 12 months, and then go to a certain amount of trouble in sending off documents, to claim their refund. We considered the terms of the offer were markedly different – and likely to be less attractive to viewers – than as described in the ads.

The ads breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.3 (Qualifications), 5.3.1 (Accurate pricing) and 5.3.2 (Pricing requirements). They must not be shown again in those forms.

ADVERTISER: Vivid Imaginations Ltd t/a Black Belt Karate Studio
AGENCY: Traffic Bureau
Date: 7 December 2005
Media : Television
No. of complaints: 1

COMPLAINT

A TV ad for Black Belts Karate Studio claimed "Tommy Nitro can show you how to become a karate master with the Black Belts Karate Studio. With the inflatable heavy bag, training mat and 30 minute video you can master the moves of karate, learn the basic stances, strikes 'n' kicks in your very own home. Black Belts Karate Studio". The ad featured three young boys practising karate at home in front of the TV; a male adult was seen perching on a chest of drawers in the background.

A viewer, who believed that advertising of a product of this type should be illegal and that face-to-face tuition should only be allowed by responsible adults, objected that the ad was aimed at very young children and was irresponsible.

ADJUDICATION: Complaint not upheld
Black Belt Karate Studio did not comment on the complaint.

The BACC believed the product was safe to be used by children; they pointed out that the ad did not show any interpersonal contact and showed children practising on safe inflatable targets, in proper attire, and on safety mats.

We noted the product was legal and considered that advertising the product was not, in itself, irresponsible. We noted the ad featured an adult, who appeared to be supervising the boys whilst they practised in front of the TV. We also noted the ad featured children practising on a safety mat and showed no interpersonal contact. We considered that the ad did not condone or encourage irresponsible use of the product and did not object.

The ad was investigated under the CAP (Broadcast) TV Advertising Standards Code rules 7.3.1 (Mental harm - children), 7.3.2 (Physical Harm - children) and 7.3.7 (Use of scheduling restrictions) but was not in breach.