

Advertising Standards Authority

**Broadcast Advertising
Adjudications**

19 April 2006



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ADVERTISER: Argos Ltd
AGENCY: Clemmow Hornby Inge Ltd (CHI)
Date: 19 April 2006
Media: Television
No of complaints: 1

COMPLAINT:

A TV ad for Argos showed a number of power tools and said “At Argos, get 20% off all power tools like Black and Decker and Bosch.”

A viewer believed this was misleading because the offer did not include garden power tools. She had visited her local branch to buy an electric hedge trimmer and was told the offer was not available because it was not classed as a power tool.

ADJUDICATION: Complaint not upheld

The Broadcast Advertising Clearance Centre (BACC) said that garden tools such as hedge trimmers were listed separately from power tools in the Argos catalogue. They did not believe that high street or DIY stores would put garden electrical tools in the power tools section and believed there was a clear distinction between the two types of product.

Argos said they believed the products shown in the ad were traditionally regarded as being power tools used for DIY (as opposed to garden tools).

The ASA noted the point that both the Argos catalogue and, typically, shops separated DIY power tools from garden tools. We considered that viewers generally would not consider garden tools as power tools particularly given the context in which they were referred to in the ad. As there was no implication that the offer included garden tools we did not consider the claim misleading.

We investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.2 (Implications) and 5.2.3 (Qualifications) but did not find it in breach.

ADVERTISER: Ford Motor Company Ltd
AGENCY: Ogilvy and Mather Ltd
Date: 19 April 2006
Media: Television
No. of complaints: 3

COMPLAINT

A TV ad for the 2006 Ford Fiesta range showed a bride and groom about to be married in a church. The vicar said "If anyone here knows of any lawful reason why these two should not be married speak now or forever hold your peace." A car horn could be heard and the bride smiled, ran outside to a car and drove off. The voiceover said "The new voice-controlled, brighter coloured, MP3-ready Fiesta. Drop everything, take a test drive today". Onscreen text said "Model featured Fiesta Zetec, £10,265 including Voice Control System, mp3 connector and metallic paint as optional extras." Larger on-screen text appeared at the end of the ad which said "New 2006 Fiesta From £7,595."

1. One viewer complained that the ad implied the MP3 connector, voice-control system and brighter colours (metallic paint) were standard features whereas they were optional extras.
2. A second viewer said it was misleading to show the car with body-coloured wing mirrors when the model used according to the onscreen text (Zetec) had black wing mirrors and did not have the option of body-coloured ones.
3. A third viewer said it was misleading to advertise the car with a "from" price of £7,595 when the car shown cost £10,265.

ADJUDICATION

1. Complaint upheld

The Broadcast Advertising Clearance Centre (BACC) said the voice-control system, MP3 connector and brighter colours were all optional extras and were clearly described as such in the onscreen text which appeared as soon as the voiceover mentioned the features. They said the ad was intended to highlight these added features and made clear they were optional. They said the ad was not misleading because the "from" price was the base price without the optional features and the total price of the model featured and the fact the extra features were optional was clearly indicated in the onscreen text. They said they could not see how the overall impression could be that the features were anything other than optional.

Ford said the on-screen text making clear the features were optional appeared as soon as the voice-over mentioned them. They said it appeared onscreen for 10 seconds of the 30-second ad, which was sufficient for viewers to read it. They said the use of on-screen text in this manner was standard practice.

Ogilvy and Mather Ltd (Ogilvy) said the voice-control system, MP3 connector and brighter colours were mentioned in the voice-over because the availability of these features separated the 2006 Fiesta models from previous models. They said they were available for a relatively small price as an optional extra for the entire range of Fiestas, including the £7,595 model. They said the on-screen text clarified that the features were optional extras.

The ASA noted that the 2006 Fiesta range were the first Fiesta models to have a voice-control system, metallic paint and an MP3 connector available as optional extras. We noted that the on-screen text referred to these features as "optional extras". However, we considered the overall impression of the ad from the voice-over was that these features came as standard to the 2006 Fiesta range. Rule 5.4.2 (a) (Superimposed text) states that text in ads must comply with [BCAP Guidance on On-screen Text and Subtitling in Television Advertisements](#). The guidance states that the principal offer and any important qualifications to it should not normally appear only in the form of on-screen text. We were therefore concerned that the only qualification to the voice-over that the features were optional came in the form of on-screen text. We considered the ad should have made it clearer in stating that these features were optional so as not to give a misleading impression to viewers.

2. Complaint upheld

The BACC said that body-coloured mirrors were available on the model featured but the model was incorrectly described in the ad and it was therefore not identified as clearly as it might have been.

Ogilvy said the car in the ad was actually a Fiesta "Zetec Climate" which had been incorrectly described as a "Zetec" in the onscreen text. They said that, unlike the "Zetec", the "Zetec Climate" did have the option of body-coloured wing mirrors and, as the car shown was available to buy as depicted, the ad was not misleading.

We noted that the car shown had been incorrectly described in the onscreen text. However, we understood that neither the "Zetec" nor the "Zetec Climate" had body-coloured wing mirrors available when the ad was first shown. We considered the ad gave the impression that the "Zetec" was available with body-coloured wing mirrors and, as this was not the case, it was likely to mislead viewers.

3. Complaint not upheld

The BACC said it was common practice in car advertising to quote the base price for the cheapest model in the range provided the total price for the model featured was also given. They did not feel the ad was misleading.

Ogilvy said the car shown was mid-range and cost £10,265 because of a number of added features such as engine size, CD player, trip computer and seat fabric, none of which were mentioned in the ad. They also said it was common practice to use a vehicle in an ad which was representative of the range available and this would not mislead viewers as the "from" price was clearly stated.

We considered that most viewers would understand the text at the end of the ad "New 2006 Fiesta From £7,595" related to the 2006 Fiesta range and not just the model shown. We agreed with the BACC that it was common practice to feature a mid-range model in a

car ad and to include a “from” price for the car range and another for the specific model shown. As the ad made it clear which price related to the range and which to the model shown we did not consider the ad misleading.

On points 1 and 2, the ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.1 (Evidence), 5.2.2 (Implications), 5.2.3 (Qualifications) and 5.4.2 (Superimposed text).

On point 3, we investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.4.2 (Superimposed text) but did not find it in breach.

ADVERTISER: Live Lines Ltd
AGENCY: Acumen Partners
Date: 19 April 2006
Media Television
No. of complaints: 1

COMPLAINT

A TV ad for Live Lines 1-2-1 Chat showed a woman on a phone. She lightly touched her body as the voice-over said "Chat live one to one with sexy girls right now. Call 0906... and get it on with one of our selection of eager babes ... it's the live one-to-one experience you won't forget". The camera panned out to show that the woman was wearing only a pink top and black frilly knickers. It then panned round to show her cleavage as her fingers played with the ribbon that fastened her top.

The ad was cleared with a post-11 pm restriction.

1. A viewer said the ad was offensive because of the content of the ad and the implied sexual nature of the service it promoted.
2. The ASA challenged whether the service being promoted was, in fact, a premium rate voice service of a sexual nature.

ADJUDICATION

1. Complaint upheld

The Broadcast Advertising Clearance Centre (BACC) said they understood that voice services with a prefix of 0909 or 0908 or text services with a prefix of 69 or 89 were permitted only on encrypted elements of adult entertainment channels. As the service advertised had a prefix of 0906 they believed it was permitted to broadcast them on non-encrypted channels. They said it was not for the BACC to determine the content of any such services as the prefixes applied were approved by the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS). They said the ad was cleared with a post-11pm restriction because of its content. They said it would be very difficult to apply any other type of clearance to this ad because it would require a judgement to be made on just how sexual the service was. They said this was clearly a grey area and subject to interpretation, which could best be achieved by the competent body, in this case ICSTIS, and which was managed through the correct approval of prefixes.

The ASA considered that the relatively inexplicit sexual imagery was unlikely to cause widespread or serious offence given the post-11pm restriction placed on it by the BACC. However, we considered that the combination of the imagery, the voiceover and the premium rate telephone number strongly suggested that the service being promoted was sexual in nature. The CAP (Broadcast) TV Advertising Standards Code restricts premium rate voice services of a sexual nature to encrypted elements of adult channels because of concerns about protection of minors and the likelihood of offence being caused to a

general adult audience. We considered that most viewers would interpret the ad as promoting a voice service of a sexual nature and that some were likely to be seriously offended by it.

2. Upheld

The ASA sought the advice of ICSTIS to determine the nature of the service. ICSTIS advised us that the service was chat based, not of a sexual nature and not on an adult prefix.

We noted that the BACC had applied a post-11pm restriction to the ad in view of its content. We also noted that ICSTIS considered the service to be chat based and non-sexual. Currently, 0908 and 0909 prefixes are designated by ICSTIS for premium rate voice services of a sexual nature (69 and 89 for text services) and can therefore be shown only on encrypted elements of adult entertainment channels. We noted the service in this case was not of a sexual nature or on an adult prefix. However, we considered that the combination of sexual imagery, voice-over and premium rate number would lead most viewers to interpret the service as being of a sexual nature. We concluded that, as the ad appeared to promote a premium rate voice service of a sexual nature but the service itself was non-sexual, the ad was misleading.

The ad breached CAP (Broadcast) TV Advertising Standards Code rule 5.1 (Misleading advertising) and 6.1 (Offence). It should not be shown again in its current form.

ADVERTISER: L L Ltd
BROADCASTER: Channel U
Date: 19 April 2006
Media: Television
No of complaints: 1

COMPLAINT:

During the morning of Saturday 15 October 2005, music channel Channel U showed a number of ads for L L Ltd which appeared to be for premium rate voice services of a sexual nature. The services being advertised were 2 Girl Action, Live XXX Action, Listen to me Play, Hot and Spicy and After Dark. The ads typically showed women either alone or in pairs preparing to remove clothing and touching themselves or each other suggestively. All the services had a 0906 prefix.

1. A viewer complained that the sexually suggestive ads, shown between 9.00 and 9.30am on a Saturday morning, were offensive and inappropriate at a time when young children were likely to be viewing.
2. The ASA challenged whether the services being advertised were, in fact, premium rate voice services of a sexual nature.

ADJUDICATION:

1. Complaint upheld

Channel U said that the ads had been scheduled in error following a software upgrade in their transmission system that had taken place during the previous night. Following the upgrade, ads that had originally been scheduled for transmission late that night had instead been shown the following morning. They apologised for the offence caused. They said that the ads were no longer being shown on Channel U and that they were addressing the technological and human errors that had led to the inappropriate scheduling.

The ASA considered that the relatively inexplicit sexual imagery was unlikely to cause widespread or serious offence when scheduled late at night, but that viewers were likely to consider it inappropriate for broadcast at times when young children were likely to be watching, such as Saturday mornings. We also considered that the combination of the imagery, the voice-overs and the premium rate telephone numbers strongly suggested that the services being promoted were sexual in nature. The CAP (Broadcast) TV Advertising Standards Code restricts ads for premium rate voice services of a sexual nature to encrypted elements of adult channels because of concerns about protection of minors and the likelihood of offence being caused to a general adult audience. We considered that most viewers would interpret the ads as promoting services of a sexual nature and that some were likely to be seriously offended by them.

2. Upheld

We sought the advice of the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS) to determine the nature of the services. ICSTIS advised us that they were not of a sexual nature and not on an adult prefix.

We noted the services themselves were not of a sexual nature but considered that the combination of the imagery, the voiceover and the premium rate telephone number misleadingly suggested that they were.

The ads breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 6.1 (Offence), 7.3.7 (Use of scheduling restrictions), and CAP (Broadcast) Rules on the Scheduling of Advertising rule 4.2.3 (Treatments unsuitable for children). They must not be shown again in that form.

ADVERTISER: L'Oreal Golden Ltd

AGENCY: McCann-Erickson Advertising UK Ltd

Date: 19 April 2006

Media: Television

No. of complaints: 1

COMPLAINT

A TV ad for L'Oreal Revitalift featured Andie MacDowell, who said "I want an immediate lift. For me nothing beats Revitalift." Onscreen text said "Temporary lift effect". A male voiceover said "Step into the future of skincare. New L'Oreal Revitalift Double Lifting. On one side a concentrated tautening gel with Pro-Tensium. On the other a comforting anti-wrinkle cream with Pro-Retinol A. It immediately tautens skin and reduces the appearance of wrinkles. Double action technology for a spectacular result." Onscreen text said "*Effectiveness confirmed, test on 52 women". Other larger text said "Immediate tautening effect: 75% agree *." At the end of the ad Andie MacDowell said "For me the best anti-ageing treatment in the world. Because you're worth it."

1. A viewer said the ad was misleading because the 'remarkable' claims were based on a test on only 52 women, which he felt was an unrepresentative sample.

The ASA challenged whether:

2. the ad implied the product could have more than a temporary effect and
3. the mention of Pro Tensium and Pro-Retinol A in the ad implied they were responsible for the effects of the product.

ADJUDICATION

1. Complaint not upheld

The Broadcast Advertising Clearance Centre (BACC) said the claims made in the ad were not remarkable and they clearly referred only to temporary effects such as tautening. They said these effects had been demonstrated in the evidence provided by L'Oreal, which had been examined by the BACC's dermatology consultant. They said they had asked L'Oreal to add onscreen text explaining the size of the test group and the percentage who reported the effect so that the basis of the claims was clear to viewers.

L'Oreal said they had provided the BACC with a dossier of evidence supporting the claims made about Revitalift which, whilst spectacular in the context of a cosmetic, were not 'remarkable' and were in fact ways of highlighting the immediate moisturising effect all consumers would experience when using the product. They said they had used past guidance provided by the ASA when creating the advertising for Revitalift and believed that the claims in the ad such as "tautens" and "temporary lift effect" were established and therefore did not require substantiation. However they said that as a responsible manufacturer they had produced data, including consumer perception tests, to support their claims and the BACC had seen that before clearing the ad.

The ASA noted L'Oreal had referred to ASA guidance before producing the ad. In line with that guidance, we understood that it was generally accepted that moisturisers temporarily "tautened" and "lifted" skin through a combination of the massaging effect of applying the product and the moisturising effect of the product itself. Given that, we did not consider that the claims were 'remarkable'. Nor did we consider that it was unacceptable for L'Oreal to refer to the self-testing results of only 52 women to reinforce the established claims made about the product.

2. Not upheld

The BACC said there was no suggestion in the ad that the product produced a long-term effect and the onscreen text "Temporary lifting effect" ensured that no such impression would be inferred. They said Andie MacDowell's language was typical of an enthusiastic celebrity testimony making subjective claims for her experience of the product. They felt this was unlikely to mislead consumers into thinking the product had any more of an effect than had been demonstrated by the evidence received from L'Oreal to support the claims. They said this evidence had been passed to a BACC approved expert, whose comments had resulted in slight changes to the ad so that the final version was fully in line with the evidence for the claims being made.

L'Oreal said that neither they nor their consumers considered that cosmetics had anything other than a temporary effect which lasted while they continued to use the product. They said onscreen text in the ad included the word "temporary" and the voice-over twice referred to an "immediate" effect which further indicated that the effect was cosmetic rather than permanent. They said Andie MacDowell was clearly offering her personal opinion and used the word "treatment" as a colloquial term, which was commonly used in the United States to describe such products. They said she talked in the same way many women would when recommending a product to their friend.

The ASA considered that the claims made in the ad clearly related to the temporary effects of the product; in particular, by using the word "temporary" in prominent on-screen text, the ad made clear that the lift effect would not be long-term. We considered that, in the context of this ad, it was clear that Andie Macdowell offered an opinion and that "anti-ageing treatment" would be interpreted by viewers as a descriptive term that referred to the category of the product, as opposed to any 'remarkable' effect to stop or reverse ageing. We therefore concluded that the ad was unlikely to mislead viewers about how long the product's effects would last.

3. Not upheld

The BACC said L'Oreal were entitled to refer to the ingredients Pro-Tensium and Pro-Retinol A in the ad as they were present in the product.

L'Oreal said they had mentioned Pro-Tensium and Pro-Retinol A in the ad but had not attributed any action to them. They said they understood evidence for the ingredients would only be required if specific claims were made about them, which was not the case.

We accepted that it was permissible to mention Pro-Tensium and Pro-Retinol A because they were present in the product. We noted that the ingredients were described as being "with" the product and considered viewers were therefore unlikely to infer that any effects

would occur “because” of them. We did not consider the ad attributed any effect of the product specifically to the ingredients and therefore did not find it in breach.

We investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.1 (Evidence), 5.2.2 (Implications) and 8.1.1 (Assessment of claims) but did not find it in breach.

ADVERTISER: Moben Kitchens
AGENCY: BCMB Pilkington Speyer
Date: 19 April 2006
Media : Television
No. of complaints: 1

COMPLAINT

A TV ad for Moben Kitchens (Moben) included large onscreen text at the beginning and end of the ad which said “Möben” with two dots above the ‘o’ which looked like an umlaut.

A viewer complained that the umlaut implied Moben was a German company which was misleading.

ADJUDICATION: Complaint not upheld

The Broadcast Advertising Clearance Centre (BACC) said using a German sounding name did not imply that Moben or their products were German. They said, for example, Prêt a Manger’s sandwiches were unlikely to be considered French. They said it would be a great pity for Moben to have to stress the origin of their products on this or future occasions as Moben made no claim, implied or otherwise, to suggest that they or their products were German.

Moben said “Möben” was a registered trademark which they had owned since 1977. They said they had amended their press advertising to make clear that Moben was a British company following a previous ASA ruling in 2001. They said they would be happy to add a similar disclaimer to their TV ads.

The ASA welcomed Moben’s offer to amend their TV ads to bring them in line with the 2001 ASA ruling. However, we noted that umlauts are used in a number of languages, not just German. We also considered that most viewers would recognise that a company’s trademark or registered name would not necessarily relate directly to the origin of that company or their products. The web site featured in the ad was also “www.moben.co.uk” which, being a British suffix, further reduced the likelihood of viewers being misled into thinking they or their products were German. We did not therefore consider the overall impression of the ad was that either Moben or their products were German.

We investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.2.2 (Implications) but did not find it in breach.