

Advertising Standards Authority

Broadcast Advertising
Adjudications

25 May 2005



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ADVERTISER: DSG Retails Ltd t/a PC World
AGENCY: M&C Saatchi Plc
Date: 25 May 2005
Media: Television & Leaflet
No. of complaints: 1

COMPLAINT:

Objection to a TV advertisement and a leaflet that featured a Packard Bell computer package with a black and silver keyboard.

The complainant, who purchased the advertised computer package, said the keyboard she received was different to the one featured in the advertisement.

ADJUDICATION: Complaint upheld

The advertiser said that, of the first batch of computer packages it had received from its supplier, a significant number came with the advertised keyboard, although it acknowledged that the majority of packages eventually sold came with the keyboard supplied to the complainant. It said it had not been aware that the supplier had changed the model of keyboard at the time the images in the advertisements were prepared. It said the keyboard supplied to the complainant was of an equivalent specification to the one advertised but that it was prepared to replace her keyboard for the one that featured in the advertisement. In addition, the advertiser asserted that since the keyboard was only a very minor facet of the computer package the complaint should not be upheld.

The Broadcast Advertising Clearance Centre (BACC) endorsed the advertiser's response.

We noted that the keyboard featured in the advertisements differed significantly from the one that was supplied with the majority of computer packages sold by the advertiser; the latter was black rather than silver and black, featured a less 'sleek' design and did not feature multimedia buttons. We considered that the advertisements featured a keyboard that was not supplied to a majority of consumers and which had been replaced with a keyboard that was different both aesthetically and in terms of its specifications. We concluded that the advertisements were misleading.

The TV advertisement was found in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising) and 5.2.3 (Qualifications).

The leaflet was found in breach of British Code of Advertising, Sales Promotion and Direct Marketing Clauses 7.1 (Truthfulness) and 16.1 (Availability of Products).

ADVERTISER: Elida Faberge Dove
AGENCY: Ogilvy
Date: 25 May 2005
Media: Television
No. of complaints: 3

COMPLAINT:

An advertisement for Dove Bar showed a finger putting distilled water on yellow pH indicator paper. The paper remained yellow. Visuals showed different fingers putting different soaps on fresh indicator paper. The papers turned green every time. A finger put Dove Bar on the indicator paper; it remained yellow. On-screen text claimed "Dove is different. It is mild because it has a pH neutral formula. So Dove won't dry your skin like soap can".

1. One viewer considered the advertisement suggested that Dove Bar was better for skin than other soaps as a result of its pH neutral formula, which he felt was misleading, because he thought a soap with a neutral pH could reduce the natural acidity of the skin's protective mantle.
2. Another viewer complained because he thought the visuals contradicted the claim that Dove Bar had a pH neutral formula. He pointed out that Universal Indicator Paper would turn green when testing products of a neutral pH and remain yellow for acidic products of around pH 5.
3. Both viewers also felt the advertisement unfairly implied soaps were bad for the skin.

We asked for the substantiation for the claims made.

ADJUDICATION:

The advertiser sent evidence to substantiate the claims. We submitted the evidence to an expert, who accepted that based on its ingredients and method of cleaning, Dove Bar was different to the vast majority of other soaps marketed and would not dry skin as much as those soaps. He said it was less alkaline than soap and would remove less oil from the skin, so it was less drying. He added that machine measurement tests and self assessment and observer studies submitted by the advertiser further supported the claim that Dove Bar would not dry skin like some soap can.

1. Complaint not upheld

The advertiser said that Dove Bar was a synthetic detergent bar and its key cleansing ingredients were not based on soap. Rather, they were based on neutral surfactants resulting in a pH neutral formula. It acknowledged that the normal pH range of skin was acidic, but pointed out that it would not be significantly altered by a pH neutral product. It said clinical studies demonstrated that the Dove Bar preserved skin hydration and kept the skin's own barrier intact, unlike regular soaps.

We accepted that Dove Bar's neutral formula would not significantly alter the skin's naturally acidic mantle.

2. Complaint not upheld

The advertiser explained that visuals in the advertisement did not show Universal Indicator Paper. It said it chose a pH indicator paper that remained unchanged when testing substances below pH 8, such as Dove Bar and distilled water, but was turned green by more alkaline substances.

We acknowledged that to viewers who had expert knowledge of Universal Indicator Paper and thought it was used in the advertisement, the demonstration might appear to contradict the claims. However, we considered that the visuals would simply give the majority of viewers the impression that Dove Bar was different to some other soaps that can dry skin, which we were satisfied was true. We also noted that although the indicator paper did not distinguish between substances below pH8, the visuals suggested that Dove Bar and distilled water were both pH 7; we were satisfied that that was true based on the evidence submitted by the advertiser.

3. Complaints not upheld

The advertiser considered that the advertisement demonstrated the difference between Dove Bar and ordinary alkaline soaps in a factually correct way. It did not feel that by demonstrating that difference it was discrediting other soaps or suggesting they were unsatisfactory.

Our expert accepted that ordinary, alkaline pH soaps caused skin dryness, but that Dove Bar, because of its less alkaline ingredients, removed less oil from the skin. Based on our expert's opinion, we accepted that Dove Bar would not dry skin like ordinary soaps could. We considered that by graphically indicating some other soaps were not pH neutral, the advertisement merely demonstrated the advantage of Dove Bar compared to those soaps. We did not think it unfairly denigrated all soaps or implied that the soaps shown were bad for your skin.

The advertisement was investigated under CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising), 5.2.1 (Evidence) 5.2.2 (Implications) and 5.4.6 (Comparative advertising), but was not found in breach.

ADVERTISER: Globespan Airways Ltd
BROADCASTER: Scottish TV
Date: 25 May 2005
Media: Television
No. of complaints: 1

COMPLAINT:

An advertisement for Globespan, a low cost airline flying from Edinburgh and Glasgow, showed a map of its destinations, which included Madrid.

A viewer, who saw the advertisement on 31 March, complained it was misleading because the route was cancelled.

ADJUDICATION: Complaint upheld

The advertiser admitted its flights to Madrid were cancelled from 18 March but argued that its advertisement was generic and featured its entire European flight programme as opposed to being just for Madrid. It said it had not recognised the incidental reference to Madrid and had not intended to mislead. The advertisement was last shown on 9 April and was no longer running.

The broadcaster said it verified the information submitted by Globespan when it cleared the advertisement in December 2004 and was not informed of any subsequent change to the flight destinations shown. It did not believe Globespan had intended to mislead and said the original campaign was no longer running, pending new copy. It received an assurance from Globespan that it would be informed of future changes that might have an impact on the validity of its advertising.

Whilst we accepted there was no intention to mislead, the advertisement showed a destination the airline no longer covered. We considered it misleading and welcomed its withdrawal. We found the advertisement in breach of the CAP (Broadcast) TV Advertising Standards Code Rule 5.1 (Misleading advertising).

ADVERTISER: Hydro Hotel
BROADCASTER: Teletext
Date: 25 May 2005
Media: Television
No. of complaints: 1

COMPLAINT:

An advertisement on Teletext offered two nights for the price of one at the Hydro Hotel in Eastbourne. The advertisement claimed rooms were available from £27.50 per person, with a minimum two-night stay.

A viewer complained because after he booked the holiday he was told a mistake had been made and the hotel room would cost £27.50 per person per night.

ADJUDICATION: Complaint upheld

The advertiser admitted the advertisement should have said "£27.50 per person per night" and apologised for the confusion caused to viewers. It said the usual price of a room was £55 per person per night so the promotion did offer a genuine discount. It added that the customer had cancelled the booking and was not charged for it.

Teletext said they had sent guidance on their rules regarding special offers to Artavia, the agency used by the Hydro Hotel.

Whilst we acknowledged that a mistake had been made, the advertisement did not make clear the quoted price was for one night only. We considered this a significant qualification to the offer. We thought viewers were unlikely to realise that the cost of the hotel was £27.50 per person per night, particularly as the price per person appeared next to text indicating a minimum two-night stay. We therefore found the advertisement in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising), 5.2.3 (Qualifications) and 5.3.1 (Accurate pricing).

Broadcaster: JML
Date: 29 March 2005
Media: Television

COMPLAINT:

BCAP staff noted a teleshopping infomercial broadcast on JML Direct that advertised a car paint coating called "Dura Shine Advanced Auto Polish".

The infomercial showed a family waxing their car in the traditional way. It suggested that this took all afternoon as they had to wash, dry, buff and wax the car and clean the wax from the grill work. They would then watch rainwater beading up and believe this equalled protection. But, the infomercial said, "beading is bad": "it causes water stains, which look bad, and puts holes in today's modern paints, even clear coats"; "after rain, beads dry up and harden into ugly stains, which are dirty and abrasive".

The presenter then, with a hose, simulated rain on a brand new car. On one side of the bonnet, the water was beading. But on the other side, it was "sheeting right off the car". The infomercial claimed this was due to Dura Shine (D.S.), the only product that causes water to sheet off your car and that prevents beading.

Visuals claimed that water spots allowed by beading are made of dirt, which "sticks like glue to today's softer paint". When the sun comes out, "dirt melts in, etching pit marks right through your paint".

The presenter passed the sun's rays through a magnifying glass to burn a hole in a sheet of paper. He said that "rain or morning dew on a car act like a lens when the sun comes out, focusing light into little laser beams, burning tiny holes and pit marks in your car's finish". The infomercial claimed that D.S. is "the cure for all beading dangers, especially from acid rain".

The presenter showed a tray of water and submerged a small section of a car panel treated with D.S. We were told that "even under water, D.S. still repels water away like parting the red sea".

A demonstration followed, using a "high powered argon laser beam, the kind that slices through metal". The presenter claimed that, "even at the lowest power setting, it made quick work of everything we could put in front of it, including 2" thick industrial polystyrene". Two surfaces were then placed in front of the beam, the first impregnated with car wax and the second with car polish. The beam burned through both panels. The presenter asked "Where is the protection we've all heard about? Maybe it's not there. The real test is your car." The beam was directed at a car door and visibly damaged it.

The beam was then directed at a car treated with D.S. In this case, the beam did no harm. Instead it was "ricocheting right off the side of the car".

The infomercial claimed that D.S. contains "revolutionary technology protecting your car with a shine so new it's patented".

No beading means that with D.S. there is no need to dry your car every time you wash it saving you time. Users can just wash the treated cars, spray them off, let them dry, and go. “Only D.S. can make this guarantee: You will never have to wax, polish, or take your car to the car wash again or dry it again, and that this applies to any car, old or new”. “Every time it rains it is like taking your car to the car wash”.

“Only D.S. can be applied in sun or shade, indoors or outdoors. Only D.S. protects against acid rain, water stains, pit marks, ultra violet rays and only D.S. stands up to a laser beam.”

“Dura Shine is the only patented finish protectant”.

BCAP challenged the following:

1. only Dura Shine repels water and sheets water off treated car panels before it can bead;
2. all other products, by not preventing water beading, enable “dirt to eat through the paint”, and that “water beads etch pit marks right through your paint” or create “holes, even with modern clear coats”;
3. only Dura Shine protects against ultra violet rays;
4. only Dura Shine protects against acid rain;
5. only Dura Shine stands up to a laser beam;
6. Dura Shine gives “a shine so new it’s patented” and “Dura Shine is the only patented finish protectant”;
7. a guarantee that users will never have to wax, polish or take their car to the car wash again or dry it again, and that this applies to any car, old or new and
8. only Dura Shine can be applied in sun or shade, indoors or outdoors.

ADJUDICATION:

JML Direct provided five laboratory test reports to support the efficacy of Dura Shine. The test reports featured five differently named products. JML Direct informed BCAP that only two, Dura Shine Advanced Auto polish and the generic Dura Shine, related to the advertised product. BCAP considered the results for the advertised product only.

1. Upheld

One of the trials provided on another subject, Damage Assessment with pH 3 Simulated Acid Rain Exposure, comparing surfaces treated with Turtle Wax and Dura Shine, noted “the Turtle Wax product tended to bead the solution more, thus the ring was only approximately 1/16” in diameter” while “the Dura Shine product had a ring of approximately 1/2” in diameter” because it caused the solution to spread more. However, JML Direct did not provide any specific substantiation to demonstrate that Dura Shine actually repels

water and causes it to sheet off a car before it can bead, or comprehensive comparative tests to show that it is the only car product to do so.

The Authority considered that JML Direct had not adequately substantiated the claim and that this was a breach of CAP (Broadcast) TV Advertising Standards Code rules 5.1 (misleading) and rule 5.2.1 (objective evidence).

2. Upheld

The test reports used tap water to represent non-acidic “water beads”. The results showed that “no noticeable damage” was caused to panels treated with Dura Shine or with Turtle Wax, and that an “etched ring” was produced on untreated paint. No other comparative tests were provided. The Authority considered that this one piece of evidence was not enough to substantiate the claims that all other products allowed “dirt to eat through the paint”, that beading caused “holes, even with modern clear coats” and that “water beads etch pit marks right through your paint”.

The Authority considered that the broadcasters had not substantiated the claim and had breached rule 5.2.1 (objective evidence).

3. Upheld

In a weathering study, all car panels were treated with ultra violet light as part of the test. The Authority noted, however, that no individual results were produced isolating its effect and that no comparative evidence was provided to support the claim that “only Dura Shine stands up to ultra violet light”.

The Authority considered that this was a breach of rules 5.1 (misleading) and 5.2.1 (objective evidence).

4. Upheld

A pH 3 acid rain simulation showed an “etched ring” on a panel treated with Turtle Wax and “no noticeable damage” on a panel treated with Dura Shine. Another test with pH 3 and pH 4 acid rain simulation showed “etched through to primer” and “sever etched ring” for uncoated paint and for silicone polish, and “no damage” for Dura Shine. A third test found that a pH 3 acid rain simulation caused an “etched circle” on panels with no coating and a standard transit coating and “no damage” for Dura Shine. When directly added to 100 ml sulphuric acid solution, 10 ml Dura Shine was found to neutralise acid better than the four other auto polishes tested: Vision, Turtle Hard Shell, Nu Finish and Rain Dance.

The Authority accepted that, based on the tests, Dura Shine did protect against acid rain but did not consider there was sufficient substantiation for the claim that “Only Dura Shine protects against acid rain” as only a small number of other polishes were tested.

The Authority considered that this was a breach of rule 5.2.1 (objective evidence).

5. Upheld

JML Direct said they were not able to provide any substantiation to support the laser beam test or the comparative claim that “only Dura Shine stands up to a laser beam”.

The Authority was concerned that no evidence was provided and considered this a breach of rules 5.2.1 (objective evidence) and 5.4.1 (visual techniques and special effects).

6. Upheld

JML Direct provided a US patent number for a “method of chemically assisting high gloss buffing and cleaning pre-existing wax on a waxed surface thus improving the lustre of a waxable surface”. The Authority found that the patented method differed significantly from the Dura Shine method of use. For example: the patented method used ammonia while Dura Shine claimed that it contained no solvents, and the patented method involved hand polishing following application while Dura Shine claimed that none was necessary. The Authority was not convinced that Dura Shine’s method was equivalent to the patented method.

JML Direct did not provide any substantiation to support the claim that Dura Shine is the only patented finish protectant.

The Authority therefore considered that there was a breach of rule 5.1 (misleading) and rule 5.2.1 (objective evidence).

7. Upheld

JML Direct claimed that users would never have to wash, dry, polish or wax their car again because Dura Shine caused water to sheet away from a car, eliminating the need for drying. They also argued that it was a method of “dry-cleaning” a car without using detergent or “cleaning and levelling the wax coat and hence the car”. JML Direct provided user testimonials in support of the claim. However, only one was for the advertised Dura Shine product, and this also talked about washing a Dura Shine treated car. Furthermore, the infomercial itself offered the product “Dura Wash” with every purchase of Dura Shine. The Authority also understood from the directions for use and from one of the test reports that users of Dura Shine Polish should use Dura Wash/Renewer Concentrate. The Authority therefore concluded that the broadcaster did, in fact, expect users to subsequently wash their cars. JML Direct also failed to provide evidence that users would never have to wax or polish their car again.

The Authority considered that this breached rules 5.1 (misleading) and 5.2.1 (objective evidence).

8. Upheld

JML Direct did not provide any substantiation to support the claim that only Dura Shine can be applied in sun or shade, indoors or outdoors.

The Authority considered that this breached rule 5.2.1 (objective evidence).

JML Direct said that they were unable to acquire any further substantiation from the makers of the infomercial and took it off air during BCAP’s investigation. JML Direct later informed BCAP that they had changed format to broadcast live teleshopping spots from 8 am to 2 am, and would not show the infomercial again, although they would consider selling the product in a live spot. None the less, the Authority considered that the infomercial breached TV Advertising Standards Code rules 5.1 (misleading), 5.2.1 (objective evidence) and 5.4.1 (visual technique).

ADVERTISER: Party poker.net
BROADCASTER: CNBC
Date: 25 May 2005
Media: Television
No. of complaints: 1

COMPLAINT:

Three advertisements for a website, www.partypoker.net, broadcast on CNBC, said that viewers could “play poker for free with thousands of real players”. Onscreen text stated “World's Largest Poker School”.

1. A viewer questioned Party poker.net's claims to be a poker school as she believed that the organisation's main source of income was from online gaming.
2. We were concerned that the advertisement indirectly promoted the advertiser's online gaming website, www.partypoker.com, by using the same name on both websites. The online gaming website was prohibited from advertising on television under Rule 3.1. Advertising which would indirectly publicise this prohibited service would also be unacceptable, under Rule 3.2.

Although the online gaming website was not allowed to advertise on television it was permitted to sponsor programmes under Ofcom's sponsorship rules and did so on CNBC. Viewers of the channel could therefore be familiar with both the advertiser (www.partypoker.net) and the sponsor (www.partypoker.com) and likely to connect the two. In addition, we found that using an online search engine for party poker was more likely to direct the user to the online gaming website than the tuition site.

ADJUDICATION:

1. Complaint not upheld

Although the advertiser also ran an online gaming website, the advertised service, www.partypoker.net, was a poker school which allowed customers to play poker for free. The fact that the advertiser's main source of income was through its online gaming website was not a breach of the Code.

2. Complaint upheld

CNBC argued that www.partypoker.net was a completely separate website address from its online gaming website www.partypoker.com. It believed viewers would log on to the website address advertised and that if they used a search engine to find it they would still choose www.partypoker.net even if offered other websites. CNBC said “it seems to us that the ASA is stretching the meaning of indirect promotion to an unacceptable degree given the clarification note to rule 3.2. This note talks of referring viewers to a website or publication where an unacceptable product or service is promoted to a significant extent. The advertisement in question does not refer viewers to a website where an unacceptable product is promoted. It refers viewers to the educational website which is not a gambling site and has no links to any gambling sites”.

The advertiser believed it was unfair to base the acceptability of an advertiser on the results of search engines, as those results were out of an advertiser's control. It also believed it was unfair for the presence of existing and legitimate sponsorship credits to make advertising for a product that was acceptable under the code unacceptable.

We believed the advertising for www.partypoker.net indirectly publicised www.partypoker.com primarily because of the similarity in the website names. It is easy to overlook the suffix when looking at a website address and viewers may decide to search online to find it. If so, viewers searching for the poker school website using the word partypoker on a search engine could easily be directed to the online gaming site; indeed, when we entered "partypoker" into the popular search engines Yahoo and Google we found that the gaming website www.partypoker.com was listed prominently and repeatedly but the poker school website www.partypoker.net was not listed in the first 30 results on Yahoo and was number 20 on the list for Google.

Sponsorship rules permit gaming companies to sponsor programmes provided they are not game shows that closely resemble gaming that takes place in bingo halls or casinos (e.g. poker). Because of Partypoker.com's sponsorship of the Winners and Losers Hotboards (Stock Market Listings) on CNBC, we believed there was likely to be a general level of awareness among viewers of the channel that www.partypoker.com was an online gaming website. Both websites had almost identical website names and the logos were very similar so it was likely that viewers would connect the two.

We therefore believed that a significant effect of the television advertisements for the poker school website was to publicise the unacceptable gaming website. The advertisements were in breach of CAP (Broadcast) TV Advertising Standards Code Rule 3.2 (Indirect promotion) and should not be shown again. It is unlikely that any advertisement for the poker school website would be acceptable if the name is the same as a gaming company.

ADVERTISER: Slendertone Flex
 BROADCASTER: Simply Shopping
 DATE: 25 May 2005
 MEDIA: Television

COMPLAINT:

During routine monitoring, BCAP noted an infomercial on Simply Shopping which advertised an electrical muscle stimulation belt called the “Slendertone Flex”. Images of slim, exceptionally well-muscled torsos were shown as examples of what might be achieved by using the product. In addition the voice-over and testimonials made nine categories of claims about the belt:

1. Muscles/Ab claims

- “A rock hard sexy waist is only a few weeks away – automatically”.
- “Your flat, firm and well-muscled stomach is waiting for you”.
- “I never knew that such a small device could build such big muscles”.
- “You can have rock-hard sexy abs ... Just wear Slendertone Flex a few minutes a day, and it’s automatic. Look at these results – incredible”.

2. Gym and fitness claims

- “It allows you to get on with your life while you’re getting fit and toned”
- “Slendertone Flex. Be fit with no sweat”
- “In this way you’re getting the same workout as doing sit-ups or crunches, without the risk of strain or injury”
- Testimonial: “I still had a tummy. And so I began to work out and doing sit-ups, but I wasn’t seeing as much of an improvement as I was hoping. With the Slendertone belt I feel a much more complete workout across the waist and the abdomen”
- Testimonial: “I was doing ab crunches at the gym but not getting the results I wanted. With the Slendertone the results are much better”
- “No sit-ups. No exercise. Slendertone Flex automatically works your muscles for you. In a thirty-minute session with Slendertone Flex you do three hundred repetitions of an abdominal exercise. That’s three hundred contractions, with no sweat”.

3. Figure claims

- “Want to take inches off your waist without dieting or exercise? ... With no sit-ups and no dieting, we’ll show you how to firm and trim up three and a half centimetres off your waist in just eight weeks”.
- “Slendertone Flex has the unique power to change your figure – and fast”
- “With this belt I am sure to have a perfectly flat tummy”
- “3.5 centimetre loss in eight weeks”
- “an average reduction of 3.5 cm from the waist in just 8 weeks – without exercise”
- “As you get ... thinner”

4. Speed of results

The advertisement claimed that “wear Slendertone Flex a few minutes a day and you’ll get results like this” and “just a few minutes a day gives you the figure of your dreams”.

5. Special price

“Slendertone Flex is sold for as much as £99 but on this special TV offer you can buy Slendertone Flex for £69.90” with a caption – “At a Special low price”.

6. Pain-free

“wow it doesn’t hurt at all”, “it doesn’t hurt. Actually, it feels good” and “no pain”.

7. That it was the best on the market

“Slendertone Flex was tested in the laboratory against a competitor. Through a series of thermal images we can measure the level of electro-stimulation. The higher the temperature; the better the workout. The competitor shows no change in colour. Now look at the Slendertone Flex. You can see the results. The red-hot colour means a superior workout by vigorous muscle contractions. Seeing is believing. Slendertone Flex beats the competition and delivers the results you dream of”.

The Authority challenged whether:

1. the belt would produce the well muscled “6 pack” abs as identified in the infomercial;
2. the belt made users fit, whether it was the equivalent of, or better exercise than going to the gym and whether the stimulation was the equivalent of doing sit-ups (which are known in the USA as “crunches”);
3. a user’s figure would change to the extent shown in the advertisement and whether the claims to improve figure shape also implied a weight-loss claim;
4. the belt would produce the effects claimed if used only a few minutes a day;
5. the belt was sufficiently widely available at £99 to justify the price comparison;
6. using the belt was painless;
7. it was the most effective belt on the market and
8. the transmission complied with the Guidance Note for licensees on flashing images and regular patterns in television.

ADJUDICATION:

1. Upheld

The broadcaster sent evidence from a study in which subjects reported that, after using the belt for two months, their abdomens felt more firm. The study also stated that “subjects did not feel more confident, compare their shape more favourably to others, or feel healthier after completing the study. This was probably due to the fact that even though the subjects felt that their abdomens were stronger and firmer, they didn’t perceive themselves to look any different because they did not lose any subcutaneous fat”.

The Authority judged that the claim “Slendertone Flex was the first ab belt to pass the rigorous testing standards of the United States FDA” was misleading because it did not disclose important Food and Drug Administration (FDA) qualification. The FDA had only approved Slendertone Flex for “toning, strengthening and firming abdominal muscles” and its advice on such products was that “using these advices alone will not give you ‘six-pack’ abs”.

The Authority concluded that the claims were misleading as, although the product was capable of toning existing muscle, there was no evidence that it could increase muscle as claimed and implied in the infomercial.

2. Upheld

The broadcaster was unable to provide evidence of the muscle stimulation achieved with sit-ups compared to using Slendertone. In addition the product’s instruction leaflet said “Is Flex a substitute for normal exercise? No. A balanced diet and regular aerobic exercise are also important in achieving your desired body shape”.

It is the Authority’s understanding that, unless a product or regime involves an aerobic element, it is unlikely to produce a fitness benefit. In the absence of evidence to the contrary, the Authority concluded that it was misleading to claim that using the belt would achieve better results than sit-ups.

3. Upheld

The broadcaster argued that “abdominal girth is dependent upon many factors, including but not solely, abdominal fat deposits. It also depends on the condition of the abdominal muscles themselves, which in effect define the mechanical compliance of the anterior abdominal wall. Poorly toned abdominal muscles can result in a distension of the abdominal wall in response to ultra abdominal pressure”. Therefore “an increase in abdominal muscle performance, which correlates with the reduction in abdominal girth” would improve a subject’s figure.

The study referred to above suggested that the subjects’ waist circumferences had decreased by an average of 3.5 centimetres.

The Authority was advised by an independent consultant that the study was not “blind” (in other words, not conducted using a sham stimulation device in a way which would prevent possible bias caused by test subjects knowing whether or not they were using the real product). Furthermore, the group using the stimulation product received an additional incentive of \$100. This was not given to the control group and could have been an incentive for the “stimulation” group to demonstrate, consciously or not, a greater improvement than the control group. In addition, the consultant advised the Authority that simple measurement of the abdomen is imprecise as (a) there is a tendency for people to brace their abdomen or pull it in and (b) it depends on how tightly the tester pulls the tape. The Authority noted that there were no changes in those measures that cannot be influenced by the subjects themselves, for example, body weight and body mass index, and umbilical or suprailiac skin fold. The consultant advised that a 3.5 centimetre change in abdominal circumference would have been accompanied by at least some changes in those other parameters.

The Authority therefore concluded that there was insufficient evidence to support the claim that using the belt would result in a “dream figure” or measurement reduction.

The broadcaster argued that the advertisement did not make or imply weight-loss claims and that evidence in that area was therefore not relevant. The Authority concluded that the infomercial did imply that the product would help weight loss and, in the absence of evidence to support those implications, was also misleading in that respect.

4. Upheld

The study showed that the subjects had used the belt for 40 minutes a day for the last three weeks of an eight-week trial. The Authority therefore concluded that it was misleading to state that the belt would produce the effects claimed when used for only a few minutes a day.

5. Upheld

The broadcaster explained that the reason for the “special offer” was because it included a pedometer. However, the Authority noted there was no reference to a pedometer in the infomercial. The broadcaster supplied evidence to show that the belt had been available more expensively from two outlets in October 2001 and Spring/Summer 2002. The Authority judged that, because this was not a price that consumers would have paid recently, this was misleading.

In addition, the broadcaster was not able to tell the Authority how long they had been broadcasting this price comparison. The Department of Trade and Industry (DTI) publishes a Code of Practice to help traders comply with the Consumer Protection Act 1987. This states that an offer should not continue “so long that it becomes misleading to describe it as a special offer ... and that it is likely to be a matter of weeks, not months”. In the absence of evidence to the contrary, the Authority concluded that the “special offer” claim was misleading.

6. Upheld

The study stated that “all subjects were encouraged to increase the amplitude on the stimulator to the highest tolerable level in order to achieve the strongest possible contractions”. On the basis of the consultant’s advice, the Authority judged that, to achieve the claimed muscle-toning, at least some pain was likely and so the references to use of the product being painless were misleading.

7. Upheld

The broadcaster was only able to send a trial that compared five different electrical muscle stimulation products tested on six people’s legs. Because this trial was not independent or peer-reviewed, was very small-scale and was conducted on leg muscles not abs, the Authority concluded that the trial was insufficient evidence to support the claim that the Slendertone Flex was the most effective.

8. Upheld

The Authority expressed concern that an infomercial, with a number of obvious flashing sequences, appeared to have been transmitted without any routine compliance checks. The Authority pointed out to the broadcaster that photo-sensitive epilepsy is an established health and safety issue. There are long-established Guidelines to help broadcasters assess whether advertisements pose a risk to sufferers or to those who may experience

their first seizure while watching television. A technical assessment of the infomercial revealed that in a six-minute sample section of the 30-minute feature there were 24 separate sequences that could cause reactions. A similar pattern of problems was evident in the rest of the tape. The number of flashes in each sequence varied between three and 13 (three or more flashes in any one second is potentially harmful). The rate of flashing was consistent at 12.5 Hz, the maximum limit being 3 Hz. Some of the sequences involved saturated reds and static patterns which are other potentially harmful stimuli. The Authority was concerned this had not been noticed by Simply Shopping's compliance procedures and required that the advertisement should not be shown unless it had been edited to comply with rule 6.7 (5).

The broadcaster stated that the belt had been advertised for several years without, to their knowledge, any customer complaints. The Authority noted the broadcaster's swift reaction in stopping the broadcasts when concerns were first raised but nevertheless believed the broadcaster should have been more conscientious in clearing the infomercial, especially as Electrical Muscle Stimulation products had already been the subject of nine ITC and Ofcom adjudications.

The Authority concluded that the advertising was in breach of The Television Advertising Standards Code rule 5.1 (Misleading Advertising), 5.2.1 (Evidence), 5.2.2. (Implications), 5.3.1 (Accurate Pricing), 5.4.1. (Visual Techniques and Special Effects) and 6.7 (5) (Health and Safety) and required that it not be shown until the necessary changes had been made.

ADVERTISER: Telewest Broadband
 BROADCASTER: Various radio stations
 Date: 25 May 2005
 Media: Radio
 No. of complaints: 1

COMPLAINT:

Advertisements for Telewest's Essential TV package claimed: "With Telewest Broadband, you can get Essential TV, with all the Sky Movie/Sports channels, for 25% less than the equivalent package from Sky. All you need to do is get a Telewest Unlimited Phone Package. So, if you ... want to save 25% on great TV for a year, call ..." Later versions claimed: "With a Telewest Unlimited Phone Package you can get Essential TV with all the Sky Movie/Sports channels and it's 25% less than the equivalent package from Sky for a year."

A competitor, Sky, complained that the advertisements were misleading as:

1. they did not clarify that the 25% price difference was based on Telewest's offer prices compared with Sky's standard prices and excluding Sky's concurrent offers (e.g. free Sky Sports for 6 months);
2. it believed that the advertiser's Essential TV package was not "equivalent" to its own Popular Mix package and
3. the line, "All you need to do is get a Telewest Unlimited phone package", was incorrect, as you also needed to subscribe to, and pay for, Essential TV.

ADJUDICATION:

1. Complaint upheld

The Radio Advertising Clearance Centre (RACC) and the advertiser said that they believed the words, "for a year", clarified that the advertisement was based on Telewest's offer prices. However, Telewest conceded that it could have clarified that the price comparison was with its competitor's standard prices, excluding promotional offers. The RACC said that it had been unaware that Sky was running such offers concurrently.

We believed that the one-year time limitation stated in the advertisements, associated with a 25% saving, indicated an offer. However, we agreed it was unclear that the price comparison was made with Sky's standard package price and ignored its concurrent promotional offers.

2. Complaint upheld

Telewest believed that Sky's Popular Mix was an equivalent package to Essential TV, as each was the mid-price package of three available and, although the Popular Mix contained 126 channels compared with Essential's 72, if one discounted channels that were zero-rated by the Broadcasters' Audience Research Board Ltd (BARB), 29 channels

(out of 47 Popular Mix channels and 65 Essential TV channels) were common to both packages. It said that the primary message and comparison in the advertisements centred on the premium Sky Movie and Sports channels and not on the overall packages. It added that Telewest's Essential TV package did carry every single Sky Movie and Sports channel. The RACC said that, based on the information submitted, it believed the two packages were equivalent.

Although Telewest's Essential TV package did carry all Sky Movie and Sports channels as claimed, we did not believe that the television packages compared in the advertisement could be described as 'equivalent' as they provided very different mixes of basic and additional free to air channels. The popularity of individual channels appeared to us irrelevant, as potential subscribers would have their own channel combination preferences.

3. Complaint not upheld

Telewest said that the line "all you need to do is get a Telewest Unlimited Phone Package" came after the 25% less comparison claim and clearly acted as a qualifying statement. The RACC said: "We believe that it is clear that people have to pay for the TV package in addition to the phone package."

We believed listeners would be aware that they would have to pay for the TV package as well as the Telewest Unlimited Phone Package and that they would realise the requirement of the Phone Package was an additional cost rather than the only cost. We did not find the advertisements misleading on this point.

The Authority concluded that on points 1 and 2, the advertisements were in breach of CAP (Broadcast) Radio Advertising Standards Code, Section 2 Rule 3 (Misleading advertising) and Rule 6 (Fair Comparisons). The advertisements must not be broadcast again in their current form.

ADVERTISER: Twentieth Century Fox
BROADCASTER: Channel Four
Date: 25 May 2005
Media: Television
No. of complaints: 1

COMPLAINT:

An advertisement for a film, Hide and Seek, showed a man talking to his young daughter. She said "I have a new friend, he told me to call him Charlie". A wall covered with strange drawings of a figure that seemed to have been painted by a child was then shown. Her father asked "Is he here now?". The scene cut to the father pulling back a shower curtain to reveal the words "You let her die" written in red around the bath. The girl said "It was Charlie". On-screen text stated "Contains moderate horror and violence". A frightened woman sitting in a torrent of water was then shown. A policeman shone a torch on the girl and a ghostly shadow passed across the screen. It then showed the girl drawing in her room. The policeman said "What you drawing there?" and she replied "You ... dying." The light in the room went out and the voiceover said "Hide and Seek".

A viewer complained that it was inappropriate to schedule an advertisement for a horror film during Channel Four's 6 pm showing of "The Simpsons" because children could be watching.

ADJUDICATION: Complaint upheld

The BACC said it automatically approved the advertisement with the restriction that it should not be shown in or around programmes made specifically for children because it was for a film-rated certificate 15. It said it viewed the advertisement with a number of other trailers for the film, many of which were approved with the restriction that they should not be shown before 9 pm. It acknowledged that because the advertisement was viewed between other more frightening versions, it may have come across as tamer than it was. It said, however, that the advertisements shown after 9 pm contained loud, dramatic music, were punctuated with screams and were made up of short shots cut together in a fast, dramatic manner. This advertisement was less dramatic with slower shots, so the overall effect was considered far less frightening and the lesser timing restriction was felt to be appropriate.

The broadcaster said it did not consider "The Simpsons" to be a children's programme because it was not commissioned for children. However, it was conscious that the programme was likely to appeal to a young audience, which could be watching at 6 pm. It said it had not intended scheduling the advertisement in this break for that reason but that a mistake had been made. It added that it was checking its procedures and apologised for any distress that may have been caused.

We noted the broadcaster had not intended to show the advertisement during "The Simpsons" and that the BACC had viewed it with a number of other more frightening trailers for the film. We agreed it may have come across to the BACC as tamer than it was.

Although we did not consider it aggressive or violent, it was for a horror film and conveyed a sense of creepiness and suspense. The music was dramatic and, though brief, the scene showing the frightened woman in the torrent of water contained screaming. We considered the advertisement contained horror cliches that might frighten young children old enough to understand them and concluded it would have been more appropriate for it to be shown after 7.30 pm.

The advertisement was found in breach of CAP (Broadcast) Rules on the Scheduling of Advertising Rule 4.2.3 (Treatments unsuitable for Children) and CAP (Broadcast) TV Advertising Standards Code Rules 7.3.6 (Distress - children) and 7.3.7 (Use of scheduling restrictions). It should not be shown again before 7.30 pm.

ADVERTISER: UK Land Investments Group
BROADCASTER: Sunrise Radio
Date: 25 May 2005
Media: Radio
No. of complaints: 1

COMPLAINT:

A number of radio commercials for UK Land Investments Group offered land for sale as an investment. One of the commercials explained that UK Land Investments identified and bought building-size plots of land which it offered for sale. A telephone number was given to find out more information. Another two commercials said buying land was a good investment. They mentioned that the advertiser would give professional advice, and that applying for planning permission was included in its fee. A contact telephone number was given.

A listener was concerned that the company was still advertising on radio, as he had heard that it did not have planning permission for building on the land. UK Land Investments Group had recently been featured on BBC Watchdog.

ADJUDICATION: Complaint upheld

The Radio Advertising Clearance Centre (RACC) said it was aware of the issue of planning permission. All the scripts it approved had made clear that planning permission had yet to be applied to the land, with lines such as "they even apply for planning permission in the same price." It said it did not approve the advertisement that referred to "building-size plots of land." The RACC believed that listeners would understand that planning applications were not always successful. It also pointed out that the publicity information, sent after contacting the telephone number in the commercials, and the Sales Agreement made it clear that planning permission had not been granted.

The advertiser said that a number of houses in the UK were built on land that was once farm land. It explained that land categorisations are not permanent but reassessed. Since 1997, 162 greenbelt sites in England had been granted planning consent. It sought to amend the categorisation of the land it sold making any subsequent planning application more acceptable to local authorities.

Sunrise Radio considered that the commercials made it clear that this was an investment opportunity and that the advertiser would assist in applying for planning permission. It believed listeners responding to the advertising would understand that planning permission was required before building could take place. As the commercials explained that UK Land Investments would assist in the application it was clear that planning consent did not already exist.

We considered the main impression given by the commercials was that there was a profit to be made from buying land and developing it. Although planning permission was referred to in most of the advertisements, the implication was that this was a matter of course and

that it would be granted. The commercial that had not been cleared by the RACC, which talked about "building-size plots", made no reference to the need for planning permission giving the impression that this had already been given. The advertising did not make it clear enough that it was land without planning permission which was offered for sale.

The advertising therefore breached CAP (Broadcast) Radio Advertising Standards Code Section 2, Rule 3 (Misleading advertising).

ADVERTISER: Universal Music Television
AGENCY: The Production Factory Ltd
Date: 25 May 2005
Media: Television
No. of complaints: 4

COMPLAINT:

An advertisement for a music CD called Clubmix 2005 featured 'scantily clad' women dancing rhythmically to the soundtrack. One of the women ran both her hands through her hair and then down over her breasts. Another, dressed in an open shirt that revealed her underwear worn over fish-net tights, ran one of her hands down over her breast and then back up again.

It was shown on television during children's programmes, including Scooby Doo.

Viewers complained that the style of dancing and the type of clothing worn by the women was inappropriate for broadcast during children's programmes.

ADJUDICATION: Complaints upheld

The Broadcast Advertising Clearance Centre (BACC) said the women in the advertisement were wearing clothes that you would expect to see at a club and dancing to club music in a way many people dance today. The women were lost to the music and expressing themselves rhythmically using their bodies. It said the treatment could not be described as distressing, harmful or inappropriate for children's viewing. Consequently they did not apply a timing restriction.

The Advertising Code maintains the principle that parents should feel confident in allowing even the youngest children to watch children's programmes unsupervised because what they will see will not be inappropriate for their age. Although clearly not distressing or harmful, we believed the mild sexual suggestiveness of the dancing would go against this principle and therefore the advertisement warranted a restriction to keep it away from younger viewers. We felt that an ex-kids restriction would have been more appropriate. The advertising was therefore in breach of CAP (Broadcast) TV Advertising Standards Code Rule 7.3.7 (Use of scheduling restrictions).