

**Advertising Standards Authority**

**Broadcast Advertising  
Adjudications**

21 December 2005



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**ADVERTISER:** Beiersdorf UK Ltd t/a Nivea  
**AGENCY:** TBWA\ London Ltd  
**Date:** 21 December 2005  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

A TV ad for Nivea Body Triple Action Conditioning Lotion showed a woman in a room using the product. The voiceover said "Discover an easy way to care for your body. New Nivea Body Triple Action Conditioning Lotion. It protects. It tones. And it smoothes. That's triple active care in just one bottle." On-screen text said "82% agreed minimum 95 women tested."

A viewer complained that the claim the product could "tone" was unscientific, because it was based on auto-evaluation which was not a valid method of verifying such a claim.

**ADJUDICATION:** Complaint not upheld

The Broadcast Advertising Clearance Centre (BACC) said that, as the ad made clear the basis of the claim, viewers would not be misled about the product's ability. They said self-testing was the most effective and appropriate method to support a toning claim because it was more consumer relevant than other technical testing methods available to Nivea. They said the evidence demonstrated that, in normal use, consumers could reasonably expect to experience similar benefits to the 95 respondents. They said they considered the majority of viewers would accept that most, if not all moisturisers, have a toning effect simply by their application and massage into the skin. They said it was not unscientific to use this test method as it was the most appropriate and adequate for such non-groundbreaking claims. They said they considered the substantiation was robust and followed sound methodology and, in essence, supported the claim about toning.

Nivea said feedback from the use of their products by consumers was very relevant evidence and very valuable to them. They said scientific studies were important to show an effect was measurable and statistically valid but if it could not be perceived by the consumer using it in their own home then it would fail to satisfy a consumer's expectations. They said the ad was not trying to deceive and the source of the data was clearly shown on screen.

The ASA considered that most viewers understood "toning" to be a relatively minor and temporary "tightening" of the skin. We further considered that all moisturisers "toned" skin through a combination of the effect of applying the product (massage) and the effect of the product itself (moisturisation). We therefore did not expect skin "toning" claims to be supported by independent scientific evidence. We noted that Nivea had used feedback provided by a group of 95 women (50% of whom were already users of Nivea body products) to support the claim. However, we considered "it tones" was acceptable in the ad without detailed scientific evidence and that Nivea had chosen to reinforce their view of the likely effect of the product by referring to self-test studies. We therefore did not

consider the ad was likely to mislead viewers as to the potential effect of the product on skin.

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:** British Telecommunications plc UK (BT)

**AGENCY:** Abbott Mead Vickers BBDO Ltd (AMV BBDO)

**Date:** 21 December 2005

**Media:** Radio and press

**No. of complaints:** 2

**COMPLAINT:**

A radio ad for the service BT Privacy invited listeners to register for the “free sign-up service to help you block unwanted sales calls and enjoy your privacy in peace”.

A press ad said “Uninterrupted time with your family is priceless. With BT Privacy it’s now also free ... BT has launched free BT Privacy, a sign up service that helps block unwanted sales calls. It also gives you free Caller Display\* so you can check who’s on the end of the line before you pick up, or more to the point, before you decide not to”. The asterisk led to small print text that said “BT line required. Customers with other call providers eligible if they have made some calls with BT ... Conditions apply”.

1. A listener, who paid line rental to BT but had his calls charged by another operator, believed the radio ad was misleading for not explaining that you also had to take calls from BT to obtain the service.
2. A competitor, Telecom plus plc, believed that it was misleading for the press ad to describe the BT Privacy service as “free” because they believed it was permanently available to all BT customers as part of their package. They believed it should be described as “inclusive”.
3. The ASA challenged whether the use of the word “free” in the radio ad was misleading if the BT Privacy service was included as part of a package.

**ADJUDICATION:**

1. Complaint upheld

The Radio Advertising Clearance Centre (RACC) said they had been given the wrong information at the time the ad was cleared and that, in order to sign up to BT Privacy, customers were required to take some calls as well as line rental from BT. AMV BBDO echoed this, adding that they would ensure all future ads made this condition clear.

We welcomed the assurance for the future, but considered that listeners would infer from the ad that the service was available to all BT customers, not just those who took both calls and line rental from BT.

The ad breached CAP (Broadcast) Radio Advertising Standards Code section 2, rule 3 (Misleadingness) on this point.

The ad must not be transmitted again in that form.

## 2. & 3. Complaint not upheld

BT believed BT Privacy could not be considered an element of the line rental package because customers who paid for line rental only and did not make calls with BT were not eligible to sign up for it. They therefore believed it was acceptable to describe it as “free”.

AMV BBDO made a similar argument for the radio ad – because BT Privacy was not available to all customers using a BT Together package (for example, customers who made all their calls with another provider and those who did not opt in to receive the service), they did not believe it could be seen as being part of a package.

We understood that BT Privacy was permanently available without charge to customers who took line rental and who made some calls with BT. Until relatively recently, however, those same customers would have paid an additional cost for a substantial part of the service, Caller Display. The cost that customers paid for their BT package, both before and after the introduction of BT Privacy and whether or not they signed up for it, had not increased. Neither would the cost of the package decrease if customers did not sign up for BT Privacy.

Because BT Privacy was optional and those customers who did not sign up paid the same for their package and because a substantial element of BT Privacy, Caller Display, was still a chargeable additional feature for those who were not eligible for it, we considered it was acceptable to describe BT Privacy as “free”. The CAP (Broadcast) Help Note on “Free” Claims, however, which also reflects the policy on non-broadcast ads, states “if an extra element is added ... to form a more attractive product, the element could be described as ‘free’ for a reasonable period as long as the original package (without the extra element) had been available beforehand at the same price, again for a reasonable period. The periods that would be regarded as ‘reasonable’ would have to be judged according to the circumstances”.

If the “free” claim was to be used again in future, we advised BT and, in the case of broadcast ads, the clearance body (in this case, the RACC) to seek advice from the appropriate CAP copy advice team (for non broadcast ads) or the BCAP Code Policy team (for broadcast ads) on the interpretation of a “reasonable” period of time.

The radio ad was investigated under CAP (Broadcast) Radio Advertising Standards Code section 2, rule 3 (Misleadingness) and the press ad under CAP Code clauses 7.1 (Truthfulness), 15.3 (Prices – one product dependent on purchase of another) and 32.3 (Free – when included in the package price) but the ads were not found in breach on these points.

**ADVERTISER:** Burger King Ltd

**AGENCY:** Delaney Lund Knox Warren & Partners Ltd  
(DLKW & Partners Ltd)

**Date:** 21 December 2005

**Media:** Television

**No. of complaints:** 82

**COMPLAINT:**

A TV ad for Burger King showed a man in a field singing "1.99er. They're only 1.99". Towards the end of the ad a cow walked past in the background wearing a blanket with the Burger King logo.

Viewers complained it was offensive to show a live cow in an ad for Burger King, who sold beef products. Others said it was especially offensive to show the cow with the logo on its back. Some complainants, who were vegetarian, said they found it distressing.

**ADJUDICATION:** Complaints not upheld

The Broadcast Advertising Clearance Centre (BACC) said they accepted that viewers, including meat-eaters, would not necessarily want to be reminded where meat products came from. However, they did not feel there was such a close link between the passing cow and Burger King products to cause widespread or serious offence.

DLKW & Partners Ltd said the ad was based on a country singer musing about the wonders of the countryside whilst singing the 1.99 tune. The cow was used as one element amongst others to recreate the country environment. They said the intention of the cow was to create humour by drawing attention to the Burger King logo in an engaging way. They said they had not intended to draw a direct parallel between the product and the animal.

The ASA appreciated that some viewers would consider it to be in poor taste to feature a live animal in an ad for a product containing its meat, advertising the product on its back. However, we have to judge between poor taste (i.e. disagreeable or uncomfortable viewing but which would be permitted under the Code) and serious or widespread offence (i.e. deeply upsetting or distressing to either a majority or a particular section of the audience and which would be considered a breach). Whilst we recognised that some viewers would find the link between the cow and the product distasteful and too direct an approach, we did not consider it was likely to cause serious or widespread offence against general public feeling.

We considered the ad under CAP (Broadcast) TV Advertising Standards Code rules 6.1 (Offence) and 6.3 (Personal distress) but did not find it in breach.

**ADVERTISER:** Digital Radio Development Bureau (DRDB)  
**AGENCY:** Radioville Ltd  
**Date:** 21 December 2005  
**Media:** Radio  
**No. of complaints:** 10

**COMPLAINT:**

Four radio ads for DAB digital radios featured various comic scenarios. One ad was set in a shop trying to sell analogue radios; another was set in a dirty kitchen which went unnoticed because of a DAB radio; one focused on an unwanted gift of an analogue radio; while the fourth featured the rejection of an analogue radio from a bring-and-buy sale. All the ads said "DAB digital radios - around twice as many stations all in digital quality sound." The ad set in the dirty kitchen said "... with a digital radio there is no irritating hiss and crackle ..."

Ten listeners believed the ads to be misleading for a number of reasons.

1. Five listeners said it was untrue that there were around twice as many radio stations with DAB.
2. One listener said the number of radio stations was dependent on the type of DAB radio purchased.
3. Four of the listeners also pointed out that digital radio was not available in all areas.
4. Four listeners also said the reception and quality was poor in some areas and not "hiss-and crackle-free" as claimed.

**ADJUDICATION:**

1. Complaint not upheld

The Radio Advertising Clearance Centre (RACC) said that before they cleared the ads they received substantiation from the Digital Radio Development Bureau (DRDB) relating to the number of DAB stations available compared to analogue radio. In light of this information the claim was changed from "at least twice as many stations" to "around twice as many stations." They received confirmation from DRDB that the sample was representative of the country as a whole.

DRDB said the claim referred to licensed commercial or BBC radio services available on FM or AM on a standard home radio device. It did not include foreign language stations, shortwave radio broadcasts, Restricted Services License (RSL) services, or any other non-traditional radio services. They explained that they had undertaken extensive research into the number of stations available to listeners via analogue and DAB radio, but it was impossible for them to check every postcode in the UK. In the 38 major areas they had looked at, consumers could receive double or more than double the number of stations with DAB than analogue radio. In other less populous areas the figure was slightly less

than double. The wording of the scripts had been changed to reflect this so as not to imply that listeners were sure to receive exactly double the stations.

The ASA agreed that the majority of listeners were likely to consider the claim referred to licensed commercial and BBC radio stations, and would not consider the claim referred to all stations in particular those listed above by DRDB. We also agreed that the survey had shown the number of DAB stations in the areas surveyed to be about double that of analogue, and considered the size of the sample areas to have been sufficient to give a general overview. We believed that listeners would understand that "around twice as many" meant that in some areas there were slightly more and in others slightly fewer stations.

## 2. Complaint not upheld

DRDB said that there were only two types of DAB radio available. One received just DAB broadcasts and the other received both DAB and analogue broadcasts. However, they said that both types received more stations than an analogue-only radio.

We noted the ads were about the number of digital stations available. Both types of DAB radio sets were able to provide these. Although a consumer might be disappointed in being unable to access analogue stations on a DAB-only radio, we did not consider that it made the claim misleading.

## 3. Complaint upheld

DRDB agreed that digital radio was not available in all areas. They said DAB digital radio broadcasts were available to just over 89% of the UK population. They quoted a recently published Ofcom report, *The Communications Market 2005*, which said "DAB digital radio coverage of households has been improving rapidly over recent years with the majority of the population now being covered by at least one multiplex, and most by three or more." DRDB said that no radio service, analogue or DAB, was accessible via a radio set to the entire population, and that neither Classic FM nor the BBC claimed 100% coverage for any of their national services. They said the ads had not claimed DAB was available everywhere or wherever analogue existed. The ads simply implied that where DAB was available the number of services would increase. DRDB added that retailers were able to perform coverage checks for consumers at the point of purchase.

We acknowledged that DAB coverage was relatively high, but there were still a number of areas across the country unable to receive the service. Although the ads had not claimed total coverage, neither had they warned that digital radio was not available to everyone. Digital radio is still a relatively new service which many listeners would have been unfamiliar with and therefore unaware of the geographical restrictions. We considered that a warning of availability should have been included in the ads.

## 4. Complaint not upheld

The RACC supplied us with evidence from an experienced electronics engineer. He explained that in analogue radio transmissions, towards the edge of a coverage area the signal gradually faded until it got lost in the background noise. As DAB was a digital technology it was either on or off, with the signal being the same right up to the coverage limit. With an analogue radio signal, as the signal faded the signal-to-noise (hiss) ratio was reduced and the level of hiss behind the signal became more audible. Crackle on an analogue radio was caused by analogue electrical interference from items such as fridges,

thermostats, or motors. However, as the DAB signal was digital the set decoded all of the relevant programme information and ignored any hiss or electrical interference that would have been audible on an analogue broadcast.

DRDB said that reception would be clear and interference-free when listening to a DAB station within its prescribed and licensed transmission area. It explained that local and regional DAB services were licensed to be received within a designated area. Because DAB was a land-based transmission network, there came a point where a particular station was no longer within its licensed coverage area. DRDB told us that beyond the borderline of coverage, listeners might still be able to receive the station but with a slight degradation of signal. However, they said "hiss and crackle" did not exist on DAB.

We noted that the ads had referred to "digital quality sound", not sound quality generally. The claim in the ad had said there was no "... irritating hiss and crackle" with digital radio, and the evidence confirmed this was eliminated with digital broadcasting. The ads had not claimed that all sound degradation was eliminated. Although we understood that the signal might be weaker in borderline areas of transmission and there might be interference in certain circumstances, it would nonetheless not generate hiss and crackle. We considered therefore that the claim was justified.

The ads were in breach of CAP (Broadcast) Radio Advertising Standards Code section 2, rule 3 (Misleadingness) for not making it clear to listeners that digital radio was not available in all areas.

**ADVERTISER:** House Buyers Ltd (Housebuyers UK)  
**BROADCASTER:** Lincs FM  
**Date:** 21 December 2005  
**Media:** Radio  
**No. of complaints:** 1

**COMPLAINT:**

A radio ad for Housebuyers UK said "... replace the timewasters with someone whose business is buying – Housebuyers UK. We'll arrange an independent evaluation and make a decision within ten days. Usually we'll pay the market price and complete within 28 days. We'll then refund the valuation and survey costs and 50% of your legal fees. You could even arrange to rent it from us after the sale. Forget the timewasters, call Housebuyers UK ... or visit Housebuyersuk.com. Conditions apply".

One listener complained that the claim "usually we'll pay the market price" was misleading, because Housebuyers UK made her a significantly lower offer on her property than several other private buyers.

**ADJUDICATION:** Complaint not upheld

The Radio Advertising Clearance Centre (RACC) said receiving higher offers from private buyers was not necessarily significant because private buyers may not have the detailed knowledge of the housing market or the expertise to assess the value of a particular property that professional surveyors had. They sent information from the terms and conditions section of Housebuyers UK's website that explained why they could not always offer the market price for all properties.

Housebuyers UK said they had hundreds of satisfied customers. They said they had been advised by their advertising agency to state "usually" to make clear they could not guarantee to offer market price for all properties and to avoid misleading consumers. They explained there were many situations that could affect the amount they offered, for example, if there was any structural damage to the property, or the property had no central heating or double glazing, but in most cases they were able to offer market price. They said, if they discovered one of their surveyors had made a mistake in the evaluation or, if they discovered customers had received incorrect information about the valuation of their property, they would return those customers' valuation fees in full. They sent a letter of assurance that over the last six months, 100% of the offers they made to consumers were the full market price as recommended by an independent valuer. They also sent the independent valuers' assessment forms for a selection of properties over the last four months and copies of letters sent to the owners confirming that they would purchase their houses for the prices quoted in the independent valuers' assessment: i.e. the market price.

The ASA understood Housebuyers UK had made the claim in order to avoid misleading consumers that they would always offer the market price. Although we acknowledged the listener had been offered more for her property from private buyers, this did not in our view render the claim misleading. We were satisfied from the information provided by

Housebuyers UK that they did, in most cases, offer the market price. We considered that listeners would understand “market price” in the context of this ad to mean the price quoted by an independent valuer and not the inflated price a purchaser might be willing to offer, for example, for a property near a school.

The ad was investigated under CAP (Broadcast) Radio Advertising Standards Code section 2, rule 3 (Misleadingness) but was not found in breach.

**ADVERTISER:** IBM United Kingdom Ltd  
**AGENCY:** Ogilvy & Mather Ltd  
**Date:** 21 December 2005  
**Media:** Television  
**No. of complaints:** 2

**COMPLAINT:**

An ad for IBM's Radio Frequency Identification (RFID) technology for labelling and tracking goods in transit showed a delivery vehicle being halted by a help desk on a remote road. To the driver's surprise, the help desk operator said that the boxes aboard the vehicle had informed her that the vehicle was headed in the wrong direction. She said "RFID. Radio tags on the cargo. Helps track shipments." The ad ended with the following text: "Inventory off track? IBM can help. On demand business."

Two viewers believed the ad was misleading. They said RFID technology only had a short range, and so while it could be used to locate and track goods within a building it could not be used at greater distances as implied in the ad.

**ADJUDICATION:** Complaint not upheld

The Broadcast Advertising Clearance Centre (BACC) said that the sudden appearance of the help desk operator implied that the scene was meant to be taken as fantasy rather than literally, and as a metaphor for what IBM's systems could provide in the way of solutions to problems. They did not believe the ad was claiming that RFID could always solve problems of misdirection, but that it could help track shipments.

IBM said that RFID technology could be used to track goods as they were moved between, for instance, a warehouse and a delivery vehicle. They said that the claim assumed that a vehicle had an on-board computer, in which case that computer would have a record of the packages on-board and their destinations. In that situation, the short-range capabilities of RFID would enable RFID to communicate with the computer to keep track of which packages left the vehicle at which destination. They said the on-board computer would consequently inform the depot if the direction of the vehicle did not match the destination of any of the packages on-board.

The ASA considered the overall impression of the ad was that RFID technology could assist in tracking the delivery of individual packages from a vehicle and, by extension, the vehicle's location, but not that it would necessarily do this on its own. We understood that the advantage RFID technology gave in this situation was that, in conjunction with it, the vehicle's on-board computer could tell the depot which goods were still on-board, rather than just the direction of the vehicle. We therefore agreed that the ad was not misleading.

The ad was investigated under CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising), 5.2.1 (Evidence), 5.2.2 (Implications) and 5.2.3 (Qualifications) but was not found in breach.

**ADVERTISER:** United International Pictures

**BROADCASTER** British Sky Broadcasting Group Plc (BSkyB)

**Date:** 21 December 2005

**Media:** Television

**No. of complaints:** 7

**COMPLAINT:**

A TV ad for Green Street an 18 certificate film about football hooliganism, contained several fight sequences, scenes of mob behaviour and showed a building being firebombed.

1. Five viewers objected to the ad being shown before 9 pm and in the early afternoon, during football matches, when it had been seen by children;
2. Three viewers complained that the scheduling of the ad during football matches glamorised hooliganism and
3. One viewer, a pub landlord, said it was irresponsible to show an ad that depicted football hooliganism and mob behaviour on a channel broadcast directly into pubs when consumers were watching football matches.

**ADJUDICATION:**

1. Complaint not upheld

BSkyB said the ad had been given a post 9 pm restriction by the Broadcast Advertising Clearance Centre (BACC) but explained that it had not been transmitted on any direct-to-home Sky Sports channel before then. They explained the ad had only been broadcast before 9 pm on their Sky Sports pub feed which was received only in licensed premises. They said they scheduled the ad during afternoon matches because the Sky Sports pub feed was aimed at viewers aged 18 years and older and they believed that was the typical audience they would reach in licensed premises. BSkyB believed there would have been a smaller percentage of viewers under-18 years of age watching the ad in the pub than at home after 9 pm watching on direct-to-home channels. They said it was a legal requirement of pubs that children were accompanied by an adult and therefore any children who saw the ad in that environment would have been supervised. They said it was the responsibility of adults who took children into pubs to exercise a greater degree of responsibility over what they allowed children access to.

The ASA acknowledged the ad was shown only before 9 pm through Sky Sports' pub feed, which was broadcast only into licensed premises. Although we noted some viewers' children had seen it, we considered the vast majority of viewers watching the ad in licensed premises would have been 18 years old and over. We acknowledged some consumers may not realise there was a difference in ads broadcast throughout the day on pub-dedicated channels and on domestic channels but, because the ad was not shown on Sky's domestic channels before 9 pm, and, because it was unlikely to be seen by

significant numbers of children when broadcast in licensed premises, the scheduling was not inappropriate.

## 2. Complaint not upheld

BSkyB believed the ad was clearly a trailer for a film and therefore did not condone football hooliganism. They said they had followed the scheduling restrictions agreed by the BACC and believed, because there was no restriction on showing the ad during football matches after 9 pm on commercial channels, it was not irresponsible to position the ad around football matches.

Although we acknowledged some viewers had found the scheduling distasteful, we considered adults would realise the ad was for a film and as such they would be unlikely to interpret it as condoning or encouraging violence.

## 3. Complaint not upheld

BSkyB said they had not been advised by the BACC that the ad could not be shown on channels broadcast exclusively to pubs or were aware that any such restriction existed.

We noted viewers' concerns that it was irresponsible to schedule the ad around football matches and to show it in pubs where consumers were likely to be drinking. We considered, however, that viewers watching the ad in licensed premises would be able to distinguish between real and movie violence and did not believe the scheduling was irresponsible or that showing the ad on a pub feed would have an impact on the way viewers would interpret it.

The ad was investigated under CAP (Broadcast) Rules on the Scheduling of Advertising rules 4.1.1 (General principles), 4.2.3 (Treatments unsuitable for children) and CAP (Broadcast) TV Advertising Standards Code rule 6.1 (Offence), 6.2 (Violence and Cruelty) and 7.3.7 (Use of scheduling restrictions) but was not found in breach.