

**Advertising Standards Authority**

**Broadcast Advertising  
Adjudications**

1 February 2006



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**ADVERTISER:** Blockbuster Entertainment Ltd t/a Gamestation  
**AGENCY:** Cheetham Bell JWT Ltd  
**Date:** 1 February 2006  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

A TV ad for Gamestation promoted a game called "Ultimate Spider Man" as their "Steal of the Week". It showed a woman unable to recall the name of the game she had intended to buy. She said "Hiya, I'm looking for the man with the pointy ears." The assistant said "Oh right, do you mean Kevin?" and pointed towards the cashier. She said "No, no, he's a superhero. He's err climbing, I'm always climbing buildings me. Pshoo! Pshoo!" and stuck out her arms in a theatrical way. The assistant said "Oh, Ultimate Spider Man!" and took it down from the shelf. She said "Yeah! Thanks." The voiceover said "Get the right game this Christmas, send your mum to Gamestation."

A viewer complained that the ad was trying to persuade children to pressurise their parents into visiting Gamestation to buy their games, which he felt breached the CAP (Broadcast) TV Advertising Standards Code rule 7.2.1 (Pressure to purchase: Direct exhortation).

**ADJUDICATION:** Complaint not upheld

The Broadcast Advertising Clearance Centre (BACC) said the ad was part of an extensive and established campaign to highlight how helpful Gamestation staff were to the uninitiated as they had a policy to employ avid "gamers". They said there was nothing in the ad that was directed at children; the game was of general appeal, no children or toys appeared and the tone was pitched at young to older adults. They said the idea of sending someone to a certain retailer because they would be able to get much needed expert help would be too sophisticated for young children.

Cheetham Bell JWT Ltd said the line "send your mum to Gamestation" was part of a sentence that read "Get the right game this Christmas, send your mum to Gamestation". They said the ad was based on the thought that Gamestation and their staff have a great understanding of gaming which meant they could help people find the right gift for Christmas. They said when viewers saw the live action accompanied by the voiceover it would leave them with the feeling that the staff were there to help, rather than it being an order for children to hassle their parents. They said they knew from research, and from the number that visited the stores, that mums valued the expertise and help that Gamestation staff gave them, particularly when there were hundreds of products to choose from. They said mums would not feel pressurised in the slightest.

The ASA did not consider that the idea of sending someone to a certain retailer was too complex for children. However, on balance, we did not consider this ad was asking or directly advising children to buy or to ask their parents or others to make enquiries or purchases. We considered the ad was advising viewers, who were concerned that they

may be given the wrong game for Christmas, to send their mum to Gamestation where they would be helped to buy the right one. The decision to purchase had already been made; the purpose of the ad was simply to influence where that purchase was to be from.

We considered the ad under CAP (Broadcast) TV Advertising Standards Code rules 7.2.1 (Pressure to purchase: Direct exhortation) but did not find it in breach.

**ADVERTISER:** Church and Dwight UK Ltd t/a First Response

**AGENCY:** Media Therapy (TV)

**Date:** 25 January 2006

**Media:** TV and Brochure

**No. of complaints:** 2

**COMPLAINT:**

A TV ad for First Response Early Result Pregnancy Tests began with a woman saying: "You know, there is such a thing as being a little bit pregnant. And First Response is sensitive enough to detect the pregnancy hormone at the first stage of pregnancy, four days before your missed period. First Response - detects the pregnancy hormone first." The ad included an image showing the level of pregnancy hormone rising against time. A line running from left to right rose as it passed bars representing days up to and including the first days of a missed period. The line was highlighted at the point four days before the beginning of the period and continued to rise after this.

An ad in the July/August edition of 'Advantage at Shelf', a brochure distributed to Vantage chemists, for First Response Early Result Pregnancy Tests showed the packaging along with text that said: "It's never too early to get excited about a new baby and, with First Response Early Result Pregnancy Test, there's no need to wait. First Response - unlike any other home pregnancy tests - can detect pregnancy four days before the missed period, identifying the hCG pregnancy hormone at very low levels. Independent consumer tests confirm First Response's best performance with 9 out of 10 women stating it as their preferred pregnancy test." The claim "Test earlier than any other home test" that appeared on the packet was legible.

Two complainants, including a competitor Unipath Ltd, raised four issues.

1. Unipath Ltd complained that the claim in the TV ad that the product 'detects the pregnancy hormone first' was misleading because their product, Clearblue Pregnancy Test, could also be used up to four days before the due period. Clearblue's packaging had been changed to reflect this fact in the week commencing 11 July. Unipath Ltd said that the TV ad had been broadcast up until at least 7 August.
2. Unipath Ltd objected to the claim in 'Advantage at Shelf' that "First Response - unlike any other home pregnancy tests - can detect pregnancy four days before the missed period" and the claim on the product's package that was pictured in the brochure because their product, Clearblue Pregnancy Test, could also detect pregnancy four days before a missed period.
3. Unipath Ltd said that the claim in 'Advantage at Shelf' that nine out of ten women identified First Response as their preferred choice was misleading and was not supported by market research.

4. A complainant objected to the claim in the TV ad that the product could detect pregnancy four days before a missed period because, according to its packaging and online information, the product was accurate only 69% of the time at this point. She said that the ad implied that the product would be as accurate four days before a missed period as it would be on the due day of a period and that was why she had bought the product.

#### **ADJUDICATION:**

##### **1. Complaint not upheld**

The Broadcast Advertising Clearance Centre (BACC) said that it cleared the claim in good faith on the basis of the information provided by First Response. They said that the claim had subsequently been made untenable by Unipath Ltd's claims for their product, of which they and First Response were unaware at the beginning of the campaign.

First Response said that Unipath Ltd informed them that they had introduced new packaging for the Clearblue Pregnancy Test to communicate that it could be used four days before a missed period. They said that Unipath Ltd had asked them to remove from their advertising the claim about First Response being able to detect pregnancy before other tests. They said that they had done so. They said that they regularly checked the availability of products sold by their competitors and did not find examples of the new Clearblue packaging in retailers until after 8 August.

We noted that, when the TV ad had been cleared and first broadcast, First Response was the only manufacturer claiming that their product could detect pregnancy four days before a missed period. We also noted they had undertaken not to repeat the claims once they were made aware by Unipath Ltd in early August that this was no longer the case. Though Clearblue's packaging was changed in early July, we were not presented with evidence that it was available to consumers while the ad was being broadcast. We did not consider that First Response could have been aware of the development in the market until early August or that the continued broadcasting of the ad had misled viewers to the detriment of Unipath Ltd.

##### **2. Complaint not upheld**

First Response said the claims made in 'Advantage at Shelf' were made before they were aware of Unipath Ltd's 'early response' product.

We noted that the claim had been made before the Clearblue Pregnancy Test was repackaged in July to reflect that it could be used four days before a missed period. At the time of publication the claim to be the only test that could be used so early was accurate but became inaccurate soon after. We did not consider that First Response had the opportunity to amend the advertising once the Clearblue packaging had changed and welcomed their subsequent decision to remove the claim in all future advertising material.

##### **3. Complaint upheld**

First Response said that the claim that First Response was the preferred pregnancy test for 9 out of 10 women in the USA had appeared in an approved press release. They said that, due to the restrictions of available space, their sales department had amended the release when submitting it to Advantage at Shelf and inadvertently omitted the reference to the USA. They said that they had since put measures in place to ensure that such a mistake did not happen again.

We noted that the "9 out of 10" claim was applicable only to consumers in the USA and that it had been mistakenly misrepresented on publication. We considered that the information in the ad was inaccurate and misleading to the detriment of First Response's competitors.

#### 4. Complaint upheld

The BACC said that the TV ad made no reference to accuracy and that they took great care when dealing with anything in a script that appeared to relate to accuracy. They said the content of the ad related solely to efficacy and that it included text stating that the product should only be used as directed.

First Response said that the ad made no reference to accuracy and simply stated the product's ability to detect pregnancy early. Substantiation for this ability had been presented to the BACC before broadcast.

According to the First Response website, the product was accurate 69% of the time four days before the first day of a period, 83% three days before and 93% one or two days before. We noted that the ad included a graph showing the rising level of pregnancy hormone measured against time, that the level was highlighted at a point four days before the due day of a period and that it continued to rise after this point. However, the overall impression of the ad was of the ability of the product to detect pregnancy four days before the first day of a period. We considered that the ad gave the misleading impression that the product would be as accurate four days before a period as it would be the day before or on the due day of the period, the time at which home pregnancy tests are at their most accurate.

The TV ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.2.1 (Evidence). It must not be shown again in this form. It was also investigated under 5.4.6 (Comparative advertising) but was not found in breach.

On point 3 the brochure ad breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness) and 19.1 (Other comparisons).

**ADVERTISER:** D&G  
**AGENCY:** FilmLoverS.r.l  
**Date:** 1 February 2006  
**Media:** Television  
**No. of complaints:** 89

**COMPLAINT:**

An ad for D&G watches showed various brief shots of people in cafes, restaurants and on a dance floor. In each shot, they were wearing two D&G watches. In the final shot, a man loading groceries into his car gave one of his watches to a second man, after which they kissed briefly on the lips.

1. 70 viewers objected to seeing a kiss between two men at times when children were likely to be watching. 17 mentioned seeing the ad in breaks during the programme The X Factor on ITV1 on Saturday evenings. Others mentioned other times during the early evening on channels including ITV2, UK History, UKTV Documentary and Hallmark.
2. 19 viewers objected that an ad showing two men kissing was unacceptable at any time.

**ADJUDICATION:**

1. & 2. Complaints not upheld

The Broadcast Advertising Clearance Centre (BACC) had approved the ad on the condition that it was not shown around programmes aimed specifically at children. They believed the scene was relatively mild and did not justify any further restriction.

The ASA agreed with the BACC that the scene was not inappropriate at times of general, family viewing. We did not consider that a kiss between two men automatically made an ad unacceptable for broadcast or that the kiss was in itself grounds for imposing a stricter timing restriction.

We considered the ad under CAP (Broadcast) TV Advertising Standards Code rules 6.1 (Offence) and 7.3.7 (Use of scheduling restrictions) and CAP (Broadcast) Rules on the Scheduling of Advertising rule 4.2.3 (Treatments unsuitable for children) but did not find it in breach.

**ADVERTISER:** DFS Trading Ltd  
**AGENCY:** Phillipson Ward Longworth Camponi  
**Date:** 1 February 2006  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

A TV ad for a DFS sale claimed it would end on August bank holiday Monday. A second ad promoted an extension to the sale and was shown after the bank holiday Monday.

A viewer complained it was misleading for the ad to claim the sale would end on a specific day if it was not going to end on that day.

We asked DFS to confirm how many of their summer and winter sales had been extended since July 2002.

**ADJUDICATION:** Complaint not upheld

The Broadcast Advertising Clearance Centre (BACC) explained that advertisers' plans can and do change in response to commercial realities. They said retailers and manufacturers should be able to respond to changing circumstances and the decision by DFS to extend the sale was an example of this. They said the extension of the sale did not render the ad misleading in the absence of bad faith. They said it would not be reasonable for the ASA to find such advertising misleading because commercial decisions would effectively be constrained by fear of regulatory action against advertising. They said that for an advertiser to plan and execute an ad for an "extension" during the "end date" campaign was simply a commercial contingency.

DFS said they had no policy of planned extensions nor had they received any customer complaints as a result of the limited extensions they had made to any of their sales. They said the advertising for this sale was extensive and reached many tens of millions of viewers and a single complaint was therefore negligible. They said they had always intended for the sale to end on August bank holiday Monday. They said the decision to extend it was based on a number of factors, which included them being informed by individual stores that customers had left the store without being served, plus pre-existing supply contracts with the sofa manufacturers with whom they had agreed a particular number of sofa sales. They said that, in order to avoid disappointing customers, they made the decision to extend the sale for six days which they said was short compared to the length of the summer sale period which had run for 57 days prior to the extension. They said that, in any case, the decision to purchase furniture was an informed decision and not one which viewers would rush into. They said there was no detriment to viewers because they were entitled to cancel an order if they were dissatisfied or felt they had rushed into making the decision.

DFS confirmed that every summer and winter sale since 2002 had been extended. They said this represented a small proportion of their overall campaign advertising, which

included other sale-time periods as well as non-sale periods plus introductory offers and special range promotions. They said the vast majority of these had not been extended.

The ASA accepted that DFS had not planned the extension to this sale. Although they had produced an ad for the extension prior to the original sale ending we accepted that this was a commercial contingency only. We noted that a number of other DFS promotions had not been extended and the extension in this case lasted for a short period compared to the total length of the sale. We considered that sales could legitimately be extended and advertised accordingly. We also accepted that there was no detriment to viewers in extending the sale in this instance. We concluded that DFS were entitled to claim the sale would end on August bank holiday Monday because they had proved that that was their intention.

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

**ADVERTISER:** Ford Motor Company Limited  
**AGENCY:** Ogilvy & Mather Ltd  
**Date:** 1 February 2006  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

Objection to a TV ad for the new Ford Focus. A voiceover described various specifications of the car, which included "... the very latest in Bluetooth voice control ...".

The complainant objected that the ad was misleading, because the Bluetooth facility was not compatible with his model of mobile phone.

**ADJUDICATION:** Complaint not upheld

Ogilvy & Mather said the focus of the ad was to promote the range of optional features that won the Ford Focus the Auto Express "Car of the Year 2005" award. They said the system available in the new Ford Focus was the latest generation of hands-free Bluetooth and it supported all Bluetooth phones with hands-free version protocol BT 1.0, which was the industry standard.

The Broadcast Advertising Clearance Centre (BACC) added that the complainant's phone was not compatible with the latest Bluetooth voice control technology, which was why the feature did not work for him.

The ASA noted the complainant's phone, although recent, was not compatible with the Bluetooth system in the new Ford Focus, which was the most recent Bluetooth voice control technology available. We did not object.

The ad was considered 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.