

**Advertising Standards Authority**

Broadcast Advertising  
Adjudications

4 May 2005



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**ADVERTISER:** Activision (UK) Ltd  
**AGENCY:** Premier Communications  
**Date:** 4 May 2005  
**Media:** Television  
**No. of complaints:** 37

**COMPLAINT:**

A commercial for Mercenaries Playground of Destruction featured clips from the 16+ certificate computer game, including buildings, a tank, and helicopters exploding. The voice-over, and text on screen, said "You are a mercenary. Blow up anything. Blow it up again. Keep blowing stuff up. Blow the living hell out of it. Blow the living hell out of it some more."

Viewers complained that the advertisement was gratuitously violent, was an incitement to violence, and was inappropriate given current worldwide terrorism and suicide bombings. Two viewers objected to the use of the word "hell".

**ADJUDICATION:** Complaint not upheld

The Broadcast Advertising Clearance Centre (BACC) said that the advertising was cleared with a restriction to keep it away from programmes made specifically for children. It considered this restriction was appropriate as the product was clearly established as a fantasy war game. It believed it was different in content to other games, which invited players to act out violence in realistic urban settings.

We agreed with the BACC that the animated graphics were more fantastical than realistic. The tone was unthreatening, made lighter by the mock seriousness of the voice-over. The explosions were similar in style to the type seen in action adventure films frequently broadcast before the watershed. We did not believe the advertisement was an incitement to violence.

We understand the unease some viewers feel about the inclusion of explosions or war references in television advertising. However, it would be overly restrictive and impracticable to prohibit all such images or references since they appear so frequently in films and programmes. None the less, we would expect the commercials to be sensitively scheduled away from news stories of war coverage or bombings. In this case, we had no reports of the advertisement being shown inappropriately.

'Living hell' is in popular usage as a description of a type of bad situation. We did not consider that "Blow the living hell out of it" would ordinarily be considered swearing. Research has shown that the word 'hell' was not generally found to be offensive.

In the circumstances, we did not believe the commercial breached the CAP (Broadcast) TV Advertising Standards Code. We investigated under Rules 6.1 (Offence), 6.2 (Violence and cruelty), and 7.3.7 (Use of scheduling restrictions).

**ADVERTISER:** Associated Newspapers Ltd t/a Mail on Sunday

**AGENCY:** FCB Productions

**Date:** 4 May 2005

**Media:** Television and National Press

**No. of complaints:** 4

### **COMPLAINT:**

A television advertisement for the Mail on Sunday said that there would be a free luxury goody bag inside every copy of the newspaper. It said that everyone was guaranteed a luxury gift. It showed several goody bags being opened and various items including a mobile phone, designer watch, car keys, Caribbean holiday postcards and a diamond bracelet fell out. That weekend, there were to be 10 goody bags each containing £100,000. On-screen text read 'prizes revealed over seven days' and the advertisement ended with the voiceover line 'starting in tomorrow's Mail on Sunday.'

The flash on the front page of the Mail on Sunday read: 'Free Inside: Your luxury goody bag - a guaranteed luxury gift for everyone'.

The complainants believed the television advertising was misleading because:

1. it implied that all readers buying the Mail on Sunday (and no further editions) were guaranteed a prize and
2. the reader needed to send away for the prize.
3. One of the complainants also believed the front-page flash was misleading because it implied that all readers buying the Mail on Sunday (and no further editions) were guaranteed a gift.

### **ADJUDICATION:**

#### 1. Complaints upheld

The Broadcast Advertising Clearance Centre (BACC) said that the advertisement did not claim to offer prizes as a result of buying just the Sunday paper. It pointed to the on-screen text that said 'prizes revealed over seven days' and the voiceover line 'starting in tomorrow's Mail on Sunday.' It said, however, that many readers would receive their prize in fewer than seven days.

The advertiser said that the advertisement simply informed viewers that there would be a luxury goody bag inside every copy of the Mail on Sunday. It said that the luxury gift referred to in the advertisement was guaranteed to everyone who collected five goody bags, and that the qualifications 'prizes revealed over seven days' and 'starting in ...' referred to that. It added that the rules also contained a 'no purchase' route, by which viewers could take part in the offer without buying copies of the newspaper.

The advertisement referred to luxury goody bags inside every copy of the Mail on Sunday and went on to show examples of gifts contained in the goody bags. The voiceover said that everyone was guaranteed a luxury gift. We believed the natural assumption for viewers was that a gift of some kind was guaranteed for those who bought the Mail on Sunday and no further editions of the newspaper. However, a gift was only guaranteed for those who collected five goody bags from newspapers over the following three weeks. We did not believe that the advertisement made this clear. We did not think the on-screen text that read 'prizes revealed over seven days' or the voiceover that said 'starting in tomorrow's Mail on Sunday' would ensure viewers understood that it could take up to three weeks to collect the goody bags needed to claim a gift. Even if a 'no purchase' route was available, we considered that the advertising should have made it clear that participants would need to purchase subsequent editions to collect goody bags or go to the trouble of entering via the 'no purchase' route. The strong impression given in the rest of the advertisement was that a gift was guaranteed for purchasers of the Mail on Sunday that day.

## 2. Complaints not upheld

Although newspapers frequently made offers that CDs and suchlike would be contained inside particular editions, we did not believe viewers would reasonably expect the kind of valuable gifts or prizes included in this offer to actually be contained inside their newspaper. We thought it would be reasonable for the newspaper to contain a voucher or similar confirmation that would then need to be claimed.

## 3. Complaint upheld

The advertiser said newspaper promotions following the same basic format had been running for over 20 years. It believed the format was well-accepted and understood by the public. It said that there was a 'no purchase necessary' route for the promotion, so readers buying the Mail on Sunday would not need to buy further editions of the newspaper in order to take part.

Clause 36.1 of CAP Code Edition 11 requires that reader promotions on the front page should ensure that consumers know whether they will be expected to buy subsequent editions of the publication. There was no mention of this on the front page of the Mail on Sunday. Clause 34.1 requires promotions to state the means of participation and any significant conditions. We considered it was a significant condition that should have been made clear in the advertising that participants would need to purchase subsequent editions to collect goody bags or go to the trouble of entering via the 'no purchase' route.

The television advertising was in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising) for implying that a luxury goody bag gift was guaranteed on the Sunday when that was not the case and 5.2.3 (Qualifications) for not making sufficiently clear that a gift was guaranteed only to those who collected five goody bags over the following three weeks. It must not be shown again in that form.

The front-page flash was in breach of CAP Code Edition 11 clauses 7.1 (Truthfulness), 27.4 (Sales Promotion Rules), 34.1 (Significant conditions for promotions) and 36.1 (Front page flashes).

**ADVERTISER:** British Telecommunications plc  
**AGENCY:** Abbot Mead Vickers BBDO Ltd  
**Date:** 4 May 2005  
**Media:** Television  
**No. of complaints:** 3

**COMPLAINT:**

An advertisement for BT's new 2MB Broadband service showed a man at home on his computer. The camera accelerated down the phone socket and the same man was then shown as if inside the computer talking to a BT representative. He told her that he just had a baby and that he wanted to share his photos with everyone and handed her his photo albums. The BT representative assured the man his photos would be safe. The camera then followed the photo albums through the phone socket to the home of an elderly couple who smiled at the photos of a baby that appeared to be downloading on-screen. The voiceover said 'Why wait? BT Broadband just got better. Share digital photos almost instantly with new 2MB Broadband.'

Viewers complained that the advertisement was misleading as the upload speed (the speed at which data is transferred from the PC to the Internet) of BT's new 2MB Broadband service was no faster than BT's other broadband products or other providers. They believed the product offered no advantage over others for uploading photos. One viewer said he believed only the download speed was faster.

**ADJUDICATION:** Complaints upheld

The advertising agency said its intention was to convey the message that BT's Broadband package got better due to an increase in speed to 2MB, which allowed customers to carry out certain tasks quicker including downloading photos, music and video clips. As the sharing of photos involved both uploading and downloading (i.e. sending and receiving) it would be enhanced by higher speed Broadband due to the faster download speeds. It said it was not its intention to imply specifically that sharing photos had improved as a result of the speed increase but that this was a general benefit of Broadband.

The BACC said the advertisement claimed that BT's Broadband service was faster than it was before enabling users to carry out tasks faster including sharing photos, which was a two way process. Although it may not be quicker to send photos it was quicker to receive them and therefore the overall speed of sharing photos was faster.

As the advertisement did not make it clear that only the download speed of sharing photos was faster, we felt viewers could be misled about the new 2MB Broadband service. The advertisement showed a man wanting to send a large number of photos to a large number of people. We believed viewers could think that this part of the service also got better and was therefore faster with the new 2MB service, which would not be the case. The advertisement was found in breach of CAP (Broadcast) TV Advertising Standards Code Rule 5.1 (Misleading advertising) and 5.2.3 (Important limitations and qualifications).

**ADVERTISER:** DFS Trading Ltd  
**AGENCY:** PWLC  
**Date:** 4 May 2005  
**Media:** Television  
**No. of complaints:** 70

**COMPLAINT:**

An advertisement for DFS showed a number of abandoned sofas in various settings including by a busy roadside, in a park, a football pitch, under a motorway bridge and dumped in a canal. All the sofas looked old, tattered and dirty. The background music was 'Non, Je Ne Regrette Rien' (No, I regret nothing) by Edith Piaf. On-screen text saying 'Please dispose of your sofa responsibly' appeared at the start of the commercial. Towards the end, the caption 'New Sofa?' appeared on screen. The voiceover asked 'Time for a new sofa?' A young man was then seen relaxing on a new DFS sofa. The advertisement ended with the slogan 'Think Sofas. Think DFS'.

Viewers complained that the advertisement was irresponsible as it both encouraged and condoned fly-tipping; an illegal activity that was harmful to the environment and put a financial burden on local authorities to clean up. One of the complainants said that showing a sofa dumped in a canal was particularly irresponsible as this could lead to blocked waterways and increase the risk of flooding. Several viewers said the on-screen text did not go far enough to encourage viewers to be responsible when disposing of their sofas. They believed the advertisement treated fly-tipping in a flippant way. A few commented on the music and said the underlying message was that such behaviour was acceptable. Some viewers thought the advertisement was in poor taste as it made light of a serious issue in order to sell furniture. Six of the complainants worked for different regional Environment Agency Offices. They highlighted the huge sums of money needed to clear up fly-tipping from the streets and countryside. They also believed the advertisement condoned such behaviour.

**ADJUDICATION:** Complaints not upheld

The advertising agency said the advertisement was first run on television in June 2004 and it was not aware of any complaints at that time or since. The advertisement always carried the advice to dispose of sofas responsibly making the point that DFS did not condone fly-tipping in any form. It added that no action of fly-tipping was shown but only the results of sofas being left in unusual places. The on-screen text was a warning against such actions.

The BACC said the creative treatment, which showed sofas in unexpected places, did not condone fly-tipping as there was a clear message to dispose of sofas responsibly.

We understood why some viewers would not want to see an advertisement for sofas feature abandoned sofas as a prelude to getting a new one. We appreciated that fly-tipping was both a serious and costly problem, however we did not believe this advertisement either encouraged or condoned disposing of sofas illegally. The advertisement was unlikely to be seen by most viewers as putting across a serious

message about the disposal of unwanted furniture, although we recognised this is what some viewers would have liked to have seen.

The music and the visuals of the abandoned sofas added to the light-hearted humour of the advertisement. The song about having no regrets could be interpreted as not regretting getting a new sofa rather than not regretting dumping the old one irresponsibly. The advertisement did not actually show the sofas being dumped, which could have condoned this practice. Rather the sofas appeared deserted and out of place in their surroundings, which in our view, sent out the clear message that dumping sofas illegally was both anti-social and unsightly. Advertisers are allowed to show anti-social behaviour in advertisements provided they are careful that they do not encourage or condone such behaviour or cause widespread offence. We believed that those viewers who may be predisposed to dumping things illegally would do so anyway and were unlikely to be encouraged further having seen this advertisement. We did not believe responsible viewers would be encouraged nor did we believe the majority of viewers would see the light-hearted advertisement as condoning such behaviour.

The advertisement was considered under CAP (Broadcast) TV Advertising Standards Code Rules 6.1 (Offence) and 6.8 (Protection of the Environment) but was not found in breach.

**ADVERTISER:** Isomers Laboratories  
**BROADCASTER:** Vitality (Ideal Shopping Direct Plc)  
**Date:** 4 May 2005  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

A teleshopping broadcast for Isomers Laboratories' range of beauty products used before and after photographs to illustrate the products' effects. A number of claims were made about the effectiveness of Matrixyl Wrinkle Defense System, Acetyl Hexapeptide 3, Desert Youth Anti-ageing Friendly Bacteria and Maxilip.

1. A viewer complained that the broadcast was misleading as it used the same before and after photographs used to illustrate the effects of a different product range manufactured by another company that advertised on the same channel.
2. On viewing the Isomers Laboratories broadcast, we had a number of concerns about the cosmetic claims it contained.

**Matrixyl Wrinkle Defense Serum:**

We were concerned that claims made for this product implied it brought about physiological changes, stimulated collagen production, repaired loss of elasticity and addressed deep lines. We challenged the following claims:

- "smooth out those visible signs of ageing, sallowness, lacklustre skin, loss of elasticity, lines and wrinkles, deeper lines and wrinkles."
- "you get the collagen boost, you support the collagen, you support the Glycose-amino-glycans, you support your dermal matrix, you smooth out those lines and wrinkles you want your skin to be thicker and juicier and have much more collagen in."
- "what you're actually doing is giving your skin micronised collagen, you're giving it the fragment of pro-collagen type 1, which is a messenger peptide that basically goes into the skin and helps to support and stimulate collagen in the skin."
- "we're helping the skin to make its own food and we're helping it to support and stimulate its own collagen."
- "this is going to really collagen, really re-fatten your skin: it's nourishing."
- "the product has been studied against Retinol and Vitamin C and has performed equally if not better than both of those ingredients."

### Acetyl Hexapeptide 3:

We were concerned that claims made for this product made a direct comparison to Botox injections and implied that the product could achieve similar results. We challenged the following claims:

- "This is similar to the kind of injections you can have, where you paralyse the muscles."
- "If you were going to consider having injections then why not go for the topical alternative."
- "within 15 days you get to see results."
- "[there is a] measurable difference within 15 days."

### Desert Youth Anti-ageing Friendly Bacteria:

We were concerned that claims made for this product implied long-term effects and that it acted deep within the skin rather than on the surface. We challenged the claims:

- "24-hour hydration and balance due to climate control."
- "retains, accumulates and sustains moisture in the skin."
- "there are even studies that show you can use it on one day, and it literally can keep moisturising days later."

### Maxilip:

We were concerned that claims made for this product implied it could achieve similar results to cosmetic procedures and achieve physiological changes. We challenged the claims:

- "this is actually the fat of the collagen, so now we have fat-based collagen to re-fatten your lips, to plump up your lips, to add volume, to add fullness, to add the texture."
- "The bow [of the lip] comes back up and it actually smoothes out, so this is what it does."
- "[works] within 30 days"
- "as you age you are losing the fat, you lose the fat, your lips thin out and the bow turns under, so there's all these things happening; so you want something that's going to start reversing that: you want something to re-fatten the bow."

In addition to the cosmetic claims above, we challenged:

3. Whether the testimonials used in the broadcast related to the advertised products.

4. The claim, apparently relating to the advertised products and contained in a testimonial, that "I looked ten years younger, it were really amazing".

5. "[Isomers Laboratories] won entrepreneur of the year in Canada, we've won awards for our business, for our formulations."

6. "if we [Isomers Laboratories] were to go head to head, I know this and I challenge anyone out there in the industry, if you go head to head with these ingredients and these formulations, we are way below price wise anything in the industry."

**ADJUDICATION:**

1. Complaint upheld

The broadcaster, Ideal Shopping Direct plc, accepted that the same before and after photographs had been used to demonstrate the effects of two different product ranges and that that was likely to have confused viewers. However, the broadcaster said that both product ranges contained the same active ingredient (Matrixyl) and that the before and after photographs had been sourced from a study looking at that active ingredient. It asserted that because the before and after photographs showed the effect of the active ingredient in the advertised product, viewers would not have been substantively misled by the photographs.

We noted that the before and after photographs did not relate to the advertised product, but had been sourced from a study that only looked at the effectiveness of the active ingredient. Because the subject of the photographs had not used the actual product, merely one of its ingredients, we concluded that the photographs were misleading.

2. Complaint upheld

The broadcaster submitted a large amount of evidence in support of the claims.

Because of the scientific nature of some of the evidence, we consulted an expert. The expert had serious reservations about the quality of the evidence. He reported that the evidence was mostly from in vitro studies which were not adequately supported by in vivo trials. He said such evidence was insufficient to substantiate the claims, particularly given that some of them would represent a "breakthrough" and would require trials in peer reviewed journals and independent verification if they were to be substantiated. The expert found no acceptable evidence to support the claims in the material that had been submitted. In addition, he stated that, if substantiated, some of the claims for long-term physiological change would place the advertised products in the medicine category.

In light of the expert's report, we concluded that the claims were misleading.

3. Complaint upheld

The broadcaster said it could not confirm that the testimonials used in the broadcast related to the products advertised. It said that when callers rang in to give testimonials they often referred to the whole range of products produced by Isomers Laboratories, which included products other than those advertised in the broadcast. It accepted that the broadcast did not state that the testimonials related to the advertiser's products in general and that this fact may not have been immediately obvious to all viewers. It said that the presenter should have pointed out the generality of the testimonials when introducing them.

We considered that the broadcast did not make clear what products the testimonials referred to and was therefore misleading.

#### 4. Complaint upheld

The broadcaster said that the testimonial represented the personal opinion of the testifier. It said that the phrase "I looked ten years younger" was a commonplace figure of speech that would be understood as an expression of the testifier's satisfaction with the product, rather than an objective claim capable of substantiation.

We considered that the claim, which indicated that the advertised product could make those who used it look ten years younger, was objective and capable of substantiation. We did not receive any evidence in support of the claim and therefore concluded that it was misleading.

#### 5. Complaint upheld

The broadcaster submitted a number of letters which stated that Ms Manuela Marcheggiani, the owner of Isomers Laboratories, had been nominated for the 2003 "Rotman Canadian Woman Entrepreneur of the Year Awards". The broadcaster also said that, in 2003 and 2004, Isomers Laboratories had been awarded a place in Chatelaine's "Canada's Top 100 Women Business Owners" list. A letter, from the teleshopping channel ShopNBC, stated that Ms Marcheggiani had been awarded the "Partner of the Year Award" in 2003. Another letter, from Croda Canada Ltd (a pharmaceutical company), stated that Ms Manuela Marcheggiani was awarded Croda's "Award of Excellence" for a product called "Matryxil Wrinkle Defense Serum".

We accepted that Ms Marcheggianni, as the owner of Isomers Laboratories, had received awards for her business. As regards the other claims, we noted that Ms Marcheggiani had only been nominated for the "Rotman Canadian Woman Entrepreneur of the Year Awards"; no evidence was submitted to show that she had won. We understood that Croda Canada Ltd was a private company, not a recognised award giving body; we considered that without specifying the source and nature of the award viewers were likely to be misled. While we noted that Isomers Laboratories had been given credit for its business, we considered that the claims relating to the entrepreneur of the year award and awards for formulations had not been substantiated and were therefore misleading.

#### 6. Complaint upheld

The broadcaster quoted five price comparisons between an Isomers Laboratories product called Trace Elements Wrinkle Release which retailed at 35 USD and products produced by competitors that retailed at between 49 USD and 125 USD. It sent a printout from a website that featured those prices.

The printout from a website submitted by the broadcaster did not state what ingredients were used in the products manufactured by Isomers Laboratories' competitors nor the concentration in which they were used. We received no evidence to show that the price comparisons quoted by the broadcaster compared similar products with the same ingredients and same formulations as the products manufactured by Isomers Laboratories. We concluded that the claim had not been substantiated and was misleading.

The broadcast was in breach of CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading Advertising), 5.2.1 (Claims - Evidence), 5.2.2 (Claims - Implications), 5.4.4 (Creative treatments - Testimonials), 5.4.6 (Comparative Advertising) and 8.1.1 (Assessment of Claims). We reminded the broadcaster of its responsibilities under section (b) of the Introduction to the Code, which states "It is the responsibility of the broadcasters themselves to ensure the advertising they transmit complies with both the spirit and the letter of the Code."

**ADVERTISER:** YES  
**BROADCASTER:** YES  
**Date:** 4 May 2005  
**Media:** Television  
**No. of complaints:** 1

**COMPLAINT:**

Teleshopping channel YES offered a Zurich Swiss mens sports watch for sale. The presenter mentioned the manufacturer's recommended retail price tag of £129.99, which was inside the presentation box. She pointed out to viewers that YES also sold the watch on its website for £129.99. This was given on screen as the YES Price. The 'Crash Price' for the watch that day was £10.

A viewer did not believe that the watch was worth the amount the presenter had said, as the channel was able to sell it for £10.

**ADJUDICATION:** Complaint upheld

Teleshopping channels are entitled to lower their price for products but must ensure that comparative or illustrative prices, whether Recommended Retail Prices (RRP), guide prices or similar, are genuine and not likely to mislead. This applies to both direct and implied comparisons.

YES said that it did not use guide prices in its advertising. It said that the on-screen YES Price was its web price, and the price at which the watch was always offered. The price would crash when offered live on television. It explained that its usual policy was for a committee to decide on the YES Price based on what it would expect the same or similar items to be sold for in good retail stores, mail order catalogues or other outlets. If the manufacturer put its RRP tag on the goods, this would also be taken into account when setting the YES web price.

The advertiser said that in this case, the manufacturer's RRP was already in the presentation box, which was why it was referred to by the presenter. It believed that it would be difficult to avoid showing the RRP tag on camera without removing it. It felt that it would be inappropriate to interfere with the presentation box. During the investigation YES told us that it had reduced the website price for the watch to £59.

Broadcasters must hold documentary evidence to support price claims before transmission. YES was unable to provide substantiation to show that the watch normally retailed for £129.99. In regard to its own website price, YES understood that goods had to have been offered, not sold, for 28 consecutive days in the previous six months in order for that price to be used as a reference. However, the ASA Committee of Advertising Practice (Broadcast) Help Note on Price Indications and Comparisons in Teleshopping Advertising

makes clear that RRP or similar indications may only be quoted if:

- a. the product has been sold, on normal commercial terms, to significant and independent competitors of the advertiser; and
- b. the price does not differ significantly from the price at which the product has been generally sold.

We considered that using the YES website price and mentioning the manufacturer's RRP was an illustrative price comparison. As YES was unable to provide evidence, the advertising breached CAP (Broadcast) TV Advertising Standards Code Rules 5.1 (Misleading advertising), 5.2.1 (Evidence), and 5.3.1 (Accurate pricing).