

SOUTH AFRICA



Chris Job, Kelly Thompson, & Lindsey Kilmartin

Adams & Adams

ckj@adamsadams.co.za

www.adamsadams.co.za

1. Self-Regulation Rules	
Topic:	Section I, Clause 4.1 and Section II, Clause 4.2.1 and Appendix E of the Advertising Standards Authority Code of Advertising Practice ("ASA Code") ("Substantiation", "Misleading claims" and "Advertising for slimming")
Who:	ASA Directorate
When:	7 September 2004
Where:	South Africa
What Happened:	<p>A complaint was lodged against a California Pharmaceutical's television commercial for its product, In Shape.</p> <p>Various weight loss claims are contained in the advertisement, for example:</p> <ul style="list-style-type: none">"Liqui Lean combats cellulite""Vidette du Plessis lost 5kg in 2 weeks""Fast fat burning system""Fiona Stigling lost 2 dress sizes!" and "visibly reduced cellulite". <p>The complainant argued that the advertisement did not contain the disclaimer, "only effective when used in conjunction with a calorie restricted diet". In addition, the complainant requested scientific evidence to substantiate the weight loss claims made in the commercial.</p> <p>The respondent argued that on the packaging of the product, reference is made to a kilojoule restricted diet.</p> <p>Nevertheless, despite its argument, the respondent confirmed that the commercial had been discontinued and would not be flighted in the future. Furthermore, the respondent submitted that any further advertisements of the product would be amended to not include any of the claims complained of.</p> <p>In the circumstances, the Directorate accepted the respondent's undertaking to withdraw the commercial and not to use it again in the future.</p>
Comments:	The Directorate emphasised that the respondent should note that all future claims which are capable of substantiation should comply with clause 4.1 of Section II, as well as Appendix E of the ASA code, as the complaint was lodged against the weight loss claims in their totality.

2. Self-Regulation Rules	
Topic:	Section I, Clauses 1.2, Section II, Clauses 1 and 14 of the ASA code ("Responsibility", "Offensive advertising" and "Children")
Who:	ASA Directorate
When:	3 September 2004
Where:	South Africa

<p>What Happened:</p>	<p>A consumer complaint was lodged against an Elastoplast Fast Healing Plasters television commercial.</p> <p>The commercial features a man with his lover. Once she leaves the man notices that he has scratch marks on his shoulder and covers them with a Fast Healing Elastoplast plaster. By the time his partner (a different woman) returns home, his scratches are healed. The couple embrace, and the man is surprised to see that the same plaster he used to heal his scratches is being used by his partner on her shoulder.</p> <p>The complaints were, in essence, that the commercial condones and promotes adultery and conveys to children that it is acceptable to be unfaithful in marriage. Furthermore, that it is irresponsible to show such disregard for fidelity in a country where HIV/AIDS is factually a health problem.</p> <p>The respondent's attorneys confirmed that the commercial would not be flighted again.</p>
<p>Comments:</p>	<p>The undertaking was accepted on condition that the commercial was withdrawn in its current form, with immediate effect, and not used again in the future.</p>

<p>3. Self-Regulation Rules</p>	
<p>Topic:</p>	<p>Section II, Clauses 4.2.1 and Section IV, Clause 4 of the ASA Code ("Misleading claims" and "Non-availability of advertised products")</p>
<p>Who:</p>	<p>ASA Directorate</p>
<p>When:</p>	<p>2 September 2004</p>
<p>Where:</p>	<p>South Africa</p>
<p>What Happened:</p>	<p>A consumer complaint was lodged against a store advertising Levi's new 501 range.</p> <p>The advertisement consists, <i>inter alia</i>, of three male models wearing the new "Levi's 501 Jeans with ANTI-FIT". Each picture is headed "choose your look" and under each of the three models photographs is stated either, "YOUR SIZE", "OVERSIZE" or "WAY OVERSIZE" superimposed on the respective photos.</p> <p>The complainant submitted that the advertisement depicted three different styles of Levi's 501 Jeans. When the complainant enquired about the "YOUR SIZE" variety of these jeans the sales personnel informed him that the specific style was not available and he further advised that he did not know of any store that stocked them. The complainant submitted that the advertisement is misleading as it lures potential customers to stores only to discover that the product is not, in fact, available. Furthermore, the complainant submitted that the advertisement is likely to mislead other consumers into believing that there are three different styles available.</p> <p>In response, the respondent argued that merely wearing a larger or smaller size of this style of jeans creates these different looks. At no point was it communicated that there are many different styles as the jeans depicted in the advertisement are all the same design.</p> <p>The respondent further submitted that they implemented an extensive training programme to inform all retail staff that the 501 Jeans have been updated, but it appears that this was not entirely effective.</p>

	<p>The Directorate considered the relevant documentation and submitted that each model has the words “Levi’s 501 Jeans with ANTI-FIT” prominently printed underneath the photo of the male models depicted in the photographs. These photos also appear to be displayed together.</p> <p>The Directorate was of the opinion that each picture clearly labelled the product name so as to clarify that each different look is created by wearing a different size of the same Levi’s 501 Jeans with ANTI-FIT design. It is further clarified by the headline “CHOOSE YOUR LOOK” which implies that the same item could be worn in a number of ways.</p> <p>The Directorate accordingly held that the advertisement was not misleading and did not contravene Clause 4.2.1 of Section II of the Code.</p>
Comments:	<p>The ASA Directorate pointed out that the complaint about the sales staff and the availability of the advertised jeans is a service related issue and accordingly falls outside of the jurisdiction of the ASA. Furthermore it appears that there was stock available for the advertised product and thus the advertisement did not contravene clause 4 of Section IV of the ASA Code.</p>

4. Self-Regulation Rules	
Topic:	Section II, Clauses 4.2.1 and 19 and Section IV, Clause 4 of the ASA Code (“misleading claims”, “pricing policy” and “non-availability of advertised products”
Who:	ASA Directorate
When:	2 September 2004
Where:	South Africa
What Happened:	<p>A consumer complaint was lodged against SMS Furniture, Appliance & Fabric Centre for a print advertisement which offered a Defy Gas Stove with 4 plates for R899.00. The advertisement featured a photograph of the stove advertised.</p> <p>The complainant submitted that he visited the Respondent’s store in order to purchase the said gas stove from the respondent in Pretoria West for the advertised price but was informed that the price was R1 499.00 and not R899.00 as advertised.</p> <p>In response, the respondent submitted that the advertisement erroneously said “Defy Gas Stove” when it should have stated “Ocean Gas Stove/4 plate, a Defy product”. The Ocean model was available at the advertised price but the complainant refused to purchase that model.</p> <p>Furthermore, the respondent confirmed that the advertisement has been rectified and only the correct version will be flighted in the future.</p> <p>The respondent’s undertaking was accepted on condition that the material was withdrawn in the current format with immediate effect and it was not to be used again in future.</p>
Comments:	<p>The Directorate noted the respondent’s submission that the advertisement with erroneous information would no longer be flighted and mentioned that the function of the ASA is not that of redress but to ensure that the offending material is withdrawn to ensure that the public is not misled.</p>

5. Self-Regulation Rules	
Topic:	Section II, Clauses 4.2.1 and 19 of the ASA Code (“misleading claims” and “pricing policy” - contests)
Who:	Advertising Standards Committee
When:	30 July 2004
Where:	South Africa
What Happened:	<p>A consumer complaint was lodged against a Media 24 print advertisement which was published in You magazine for a competition.</p> <p>The advertisement stated: “to enter, send an sms with the word “house” to 35335 (cost R3 per sms)”.</p> <p>The complainant argued that the advertisement was misleading in that in order to qualify for the draw, a person had to send two sms’s. The costs to enter the competition were therefore actually R6. The complainant further submitted that it was not a genuine competition but rather an attempt to make money by the respondent.</p> <p>The respondent submitted that readers could enter the competition by telephone or sms, and that they did not receive any financial gain from those calls or sms’s.</p> <p>Furthermore, the second sms requirement is vital in order to ensure or verify that the correct person received the prize.</p> <p>The respondent further submitted that they only received two complaints regarding the advertisement. The present one and another. The second complaint was satisfied once the reason for requiring two sms’s was explained. The respondent, however, undertook not to repeat the competition in the same format again.</p> <p>The Directorate accepted that the competition had run its course and that the respondent would not conduct a further competition in the same format.</p>
Comments:	The ASA noted the importance of verifying competitors’ information, however it emphasised that the costs of the entry should reflect the actual costs that the consumer is to incur and should not be misleading.

6. Self-Regulation Rules	
Topic:	Section II, Clauses 4.1 and 4.2 and Appendix E, of the Advertising Standards Authority Code of ASA Code (“misleading claims” and “pricing policy” - children)
Who:	Advertising Standards Committee
When:	29 July 2004
Where:	South Africa
What Happened:	<p>A consumer complaint was lodged against Glomail for a television commercial of one of its products, namely Bio-Slim.</p> <p>The advertisement featured a woman named Mandy Strachan and her son Jason. Mandy Strachan stated in this advertisement that Bio-Slim worked for her and her son.</p> <p>The complainant argued that the weight loss claims made in the advertisement</p>

	<p>were not substantiated. Furthermore he submitted that the use of children in advertisements for slimming products was irresponsible and dangerous.</p> <p>The respondent believed that the advertisement complied with the ASA Code. The respondent further provided evidence in support of the weight loss claims made in the advertisement. The respondent accepted the complaint about using children in the advertisement and undertook not to use children in advertisements for its slimming products in future.</p> <p>The Directorate accepted the undertaking of the respondent not to use children in slimming advertisements again on condition that the advertisement was withdrawn with immediate effect and the advertisement would not be used again.</p> <p>The Directorate accepted documentary evidence from the respondent. However, the Directorate stated that it had a number of concerns with regard to this documentary evidence. The Directorate held that the documentary evidence submitted by the respondent did not comply with the requirements of Clause 4.1 in Section II.</p> <p>The respondent was therefore requested to withdraw the advertisement which made weight loss claims (with immediate effect) until such time that the respondent submitted documentary evidence which complied with Clause 4.1 of Section II and the evidence submitted had been evaluated.</p>
Comments:	The Directorate impressed that independent, verified research based on sound research principles needed to be submitted in terms of Clause 4.1 of Section II of the ASA Code.

7. Self-Regulation Rules	
Topic:	Section I, Clause 1.2 and Section II, Clause 3.3 and Clause 13 of the ASA Code ("Responsibility", "Legality" and "Safety")
Who:	ASA Directorate
When:	31 August 2004
Where:	South Africa
What Happened:	<p>A complaint was lodged against a Simba television commercial for its Doritos chips. The commercial featured a man and a woman giving a group of hitchhikers a lift. The driver and passengers appear to not be wearing seat belts.</p> <p>The complainant submitted that the four occupants were not wearing seat belts and that the action against the commercial should be taken immediately before people die as a result of copying the commercial. Moreover, the complainant submitted that the ASA has already ruled that non-compliance with seat belt wearing regulations contravenes the ASA Code.</p> <p>The respondent argued that the commercial is an international commercial, set in America the historical era of the 1960's. The vehicle used is a 1960's 280SE Mercedes-Benz convertible and is an American model. It is evident the vehicle is a left-hand drive.</p> <p>Furthermore, the respondent argued that the motor vehicle is fitted with a lap belt, which was a legally acceptable form of seat belt at that time, (is not visible from a shoulder height view). The commercial therefore does not support any criminal or legal activities, nor does it condone such activities as suggested.</p>

	<p>The respondent did not believe they acted irresponsibly in fighting the advertisement.</p> <p>The Directorate requested an opinion from the Department of Transport who advised that the vehicle in question falls within the definition of “vintage vehicles”. A vintage vehicle is exempted from certain provisions in respect of such motor vehicles and is considered roadworthy where it does not contain all of the equipment found in modern vehicles.</p> <p>The Directorate noted the respondent’s submission that there was no scene in the commercial which indicated that the passengers in the car do not have the lap belts on. In view of the nature of the vehicle, contents of the commercial and the opinion of the Department of Transport, the Directorate held that there is in fact no illegal activity depicted in the commercial.</p> <p>The complaint was accordingly dismissed.</p>
Comments:	The Directorate stated that they do not believe that any reasonable consumer would act illegally, unsafely or irresponsibly as a result of the commercial.

8. Self-Regulation Rules	
Topic:	Section II, Clauses 1 and Clause 3.5 of the Advertising of the ASA Code (“Offensive advertising” and “Gender”)
Who:	ASA Directorate
When:	28 September 2004
Where:	South Africa
What Happened:	<p>A complaint regarding a television commercial for the Vitalinea range of fat free yoghurt from Clover Danone was lodged with the ASA as the complainant thought that the advertisement objectified women in that focusing on a woman’s body creates an impression that a woman’s body, like yoghurt, is available for consumption.</p> <p>The complainant further submitted that there is no conclusive evidence that consuming this product would lead to a firm body and a firm body could only be acquired through physical exercise.</p> <p>The Directorate dismissed the complaint and the complainants challenged the ruling.</p> <p>The advertisement featured a woman buying a new bikini. She is then seen next to a swimming pool. A man, presumably her partner, arrives and the woman gives him a spoonful of a yoghurt, asking him how he likes it. Whilst tasting the yoghurt, he replies “tasty ...”, he then focuses on the yoghurt which the woman is holding at the region of her stomach, lifts up his eyes and says “... very tasty”.</p> <p>The appellant repeated her earlier submissions that the advertisement is not about yoghurt but about the female form. As opposed to the woman, the man is fully clothed and the advertisement is used to generally objectify and ridicule women.</p> <p>The Directorate requested an opinion from the Commissioner of Gender Equality (“CGE”) on the advertisement. The CGE reported that the advertisement falls in the same trap as other commercials in that it portrays women in a limited role, i.e. housewife and caregiver whose ultimate reward</p>

	<p>for looking good is to be pleasing to the male gaze. The part of the commercial where the man responds “tasty very tasty” while gazing at the woman’s body implies that a female’s body is a commodity or object and is therefore demeaning to women.</p> <p>The Directorate, after considering all the material, submitted that it is difficult to discern anything offensive in the content of the commercial. The Directorate held that whilst there is a gender stereotyping, the portrayal neither exploits, objectifies nor demeans women.</p> <p>The ASA stated that they would uphold complaints regarding gender stereotyping when a message portrays women as stupid, objectifies women as only good for sex objects, or portrays women in any other demeaning or undermining manner and held that this was not the case in this instance.</p> <p>The complaint was accordingly dismissed.</p>
Comments:	<p>The Directorate submitted that an advertisement which responsibly discourages people from bad eating habits which lead to obesity, or encourages healthy eating, would be justifiable in a society that has identified obesity as a health crisis.</p>

9. Self-Regulation Rules	
Topic:	Section II, Clauses 1, 3.3, 13 and 145 of the Advertising Standards Authority Code of the ASA Code (“Offensive advertising”, “Legality”, “Safety” and “Children”)
Who:	ASA Directorate
When:	28 September 2004
Where:	South Africa
What Happened:	<p>Consumer complaints were lodged against a Simba television commercial for its Lays chips product.</p> <p>The commercial shows Francois Pienaar setting a postcard alight in an attempt to distract guests at a party from the Lays chips and as a result the house catches fire.</p> <p>The complainants were of the view that the commercial conveyed a message that, in order to get what you want, you can do so by any means, and therefore sends the wrong message to young people. It is also offensive in that it disregards the feelings of victims of fire accidents. Furthermore, the commercial condones illegality in that an act of arson is committed.</p> <p>The respondents argued that Mr. Pienaar has no intentions of burning down the house in the commercial and therefore no act of arson as condoned. The commercial is humorous, and thus a reasonable viewer, even a child, would not emulate the actions of Mr. Pienaar. Furthermore it is not the intention to play down the feelings and trauma suffered by victims of fire accidents.</p> <p>The committee was of the opinion that the burning down of the house is not intentional, and the advertisement therefore does not condone illegal activities.</p> <p>With regard to safety, the Directorate was of the opinion that the advertisement does not communicate to children that it is acceptable and safe to create a fire in order to obtain something, nor would children emulate what occurred in the advertisement. Furthermore, the Directorate held the</p>

	<p>advertisement not to be offensive.</p> <p>The complaint was accordingly dismissed.</p>
Comments:	<p>The Directorate held that the current Lays commercial shows an adult using matches and starting a fire. Although this is not necessarily dangerous for an adult, the ASA Code prohibits the portrayal of children engaging in similar acts. The commercial is viewed by children with impressionable minds. Despite this, the commercial is unrealistic and would be seen as such by the average reasonable viewer, be it an adult or a child.</p>