[GB] New OFCOM Content Board Adjudicates in Television Advert Complaint

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OFCOM is the UK communications industries regulator. It was established by the Communications Act 2003 and deals with television, radio, telecommunications and wireless communications services.

One of its Boards is the Content Board, a committee of the main Board. It deals mainly with broadcasting (radio and television) on issues of quality and standards. As regards content issues, these are divided into three categories or "tiers": "Tier 1 concerns negative content regulation. It covers matters principally concerning harm and offence, accuracy and impartiality, fairness and privacy. Tier 2 relates to quantitative matters, such as quotas for independent television production, regional production and original EU/UK production. Tier 3 covers the public service broadcasters, and in this context OFCOM has particular responsibility for ITV, Channel 4 and Five."

Recently, the Content Board considered the appeal by The Number (UK) Ltd in respect of a complaint laid by the athlete David Bedford. The Number (UK) Ltd advertises its new telephone number inquiry service on television.

At issue was the claim that the adverts used a caricature of the athlete without his permission, in contravention of Rule 6.5 of the current Advertising Standards Code.

Rule 6.5 states that "With limited exceptions, living people must not be portrayed, caricatured or referred to in advertisements without their permission."

The Board found that the use of such caricature was not "fortuitous", even if The Number (UK) Ltd had neither originally, or finally, intended to caricature Bedford. One of the complicating issues was that David Bedford did not lay a complaint till the adverts had been running for some six months.

The Board decided against making an order that would have had the effect of imposing a ban on such adverts. It said that this would be "disproportionately damaging to The Number compared with any harm to the feelings or reputation of David Bedford suffered as a result of the advertisements."

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The Content Board's decision reflected the fact that the athlete had delayed in making a complaint and that the Board "made no finding as to whether The Number set out specifically to caricature David Bedford...[and also] found no evidence that David Bedford had necessarily suffered actual financial harm as a result of the caricature."

The Board decided that the consequences of the adverts "any harm suffered by David Bedford as a result of the advertisements, or of the public believing that he had endorsed the 118 118 service, or indeed in the public being misled on this issue" could be sufficiently addressed by the publication of its findings that there had been a contravention of Rule 6.5 and that David Bedford had not endorsed The Number (UK) Ltd's service.

The decision is also without prejudice to David Bedford seeking redress against The Number (UK) Ltd through the courts.

Ofcom Content Board Decision of 27 January 2004

http://www.ofcom.org.uk/bulletins/adv_comp/content_board/?a=87101

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