

Complaints dealt with by the Communications Authority (“CA”) (released on 5 October 2018)

The CA considered the following case which had been deliberated by the Broadcast Complaints Committee (“BCC”) –

Complaint Case

[Television Advertisement for “Estée Lauder Advanced Night Repair Eye Concentrate Matrix” \(Estée Lauder 升級再生基因修護亮眼精萃\) broadcast by Fantastic Television Limited \(“Fantastic TV”\)](#)

The CA also considered cases of dissatisfaction with the decisions of the Director-General of Communications (“DG Com”) on complaint cases.

Having considered the recommendations of the BCC, the CA decided –

1. that the complaint against the television advertisement for “Estée Lauder Advanced Night Repair Eye Concentrate Matrix” (Estée Lauder 升級再生基因修護亮眼精萃) was unsubstantiated and **no further action** should be taken against Fantastic TV; and
2. to uphold the decisions of the DG Com on three cases of dissatisfaction with the decisions of the DG Com. The list of the cases is available in the [Appendix](#).

5 October 2018

Case – Television Advertisement for “Estée Lauder Advanced Night Repair Eye Concentrate Matrix” (Estée Lauder 升級再生基因修護亮眼精萃) broadcast at 7:45pm on 23 August 2017 on Fantastic TV Chinese Channel of Fantastic Television Limited (“Fantastic TV”)

A member of the public complained that the claim about the efficacies of the advertised product was exaggerating and not credible, and the voice-over’s remark that the product was developed specifically for Asian females was not capable of substantiation.

The Communications Authority (“CA”)’s Findings

In line with the established practice, the CA considered the complaint case and the representations of Fantastic TV and the advertiser in detail. The CA took into account the relevant aspects of the case, including the following –

Details of the Case

- (a) the 30-second advertisement under complaint promoted a brand of eye cream. The voice-over’s remarks mentioned, among other things, the efficacies of the advertised product, including “修護” and “抗壓”, during which the relevant captions were shown. In addition, at the beginning and towards the end of the advertisement, there were captions superimposed on the screen which contained the reference “專為亞洲女性肌膚研製”.

Relevant Provisions in the Generic Code of Practice on Television Advertising Standards (“TV Advertising Code”)

- (a) paragraph 9 of Chapter 3 - no advertisements may contain, among others, any claims which expressly or by implication depart from truth or mislead about the product or service advertised. The licensee should have his responsibility under this paragraph discharged if he did not know and had no reason to suspect that the claims made were false or misleading and could not, with reasonable diligence, have ascertained that the claims were false or misleading;
- (b) paragraph 1 of Chapter 4 - all factual claims should be capable of substantiation; and
- (c) paragraph 2 of Chapter 4 - where a factual claim is substantiated by research or testing based on the advertiser’s own assessment or work done at his request, the source and date of the assessment or research should be indicated in the advertisement.

The CA's Considerations

The CA, having regard to the relevant facts of the case, considered that –

Advertising Claim about the Efficacies

- (a) the information provided by Fantastic TV and the advertiser, including the reports of the relevant assessment(s)/research(es) conducted, was capable of substantiating the claim about the efficacies of the product. Also, the relevant caption indicated, albeit in general terms, the source and date of the assessment(s)/research(es) that substantiated the claim; and

Advertising Claim “專為亞洲女性肌膚研製”

- (b) on the basis of the information submitted by Fantastic TV and the advertiser, the CA considered that there was insufficient evidence that the claim “專為亞洲女性肌膚研製” was not capable of substantiation. Nor was there sufficient evidence that Fantastic TV had not exercised reasonable diligence in ascertaining the claim.

Decision

In view of the above, the CA considered the complaint **unsubstantiated** and decided that **no further action** should be taken against Fantastic TV.

Appendix

List of Cases of Dissatisfaction with the DG Com's Decisions

Title	Channel	Broadcast Date	Substance of Complaint	Decision being upheld
TV Programme “Best Flying Furries BFF” (飛不甩家毛)	HKTVE ViuTV	30.12.2017	Illegal Act	Unsubstantiated & Outside the remit of the CA
TV Programme “Noon News” (午間新聞)	TVB News	15.2.2018	Inaccuracy	Unsubstantiated
TV Programmes “News Report” (新聞報道) & “Late News” (晚間新聞)	TVB News	31.3.2018	Inaccuracy	Unsubstantiated