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Legal and Regulatory Update

First ASA video-on-demand ad case

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Journal of Direct, Data and Digital Marketing Practice (2010) **12**, 92–93.
doi:10.1057/dddmp.2010.23

Topic: Video on demand

Who: Advertising Standard Authority

When: 19 May 2010

Where: UK

Law stated as at: 2 June 2010

What happened

The ASA has adjudicated on an advert shown on a video-on-demand service for the first time.

The advert was for the 15-rated Paramount Pictures film *Carriers*, and was shown before and during the *X Factor* final on the ITV Player. A voice-over described life following an outbreak of a deadly virus and stated: 'The sick are already dead, avoid populated areas at all cost. You come into contact with other people — assume they have it'. The ad featured survivors wearing masks and carrying weapons along with images of body bags piled high and dead people with decayed skin appearing to come back to life. The advert had been banned from being shown before the 9-pm watershed on linear TV.

A parent complained that the ad was frightening and inappropriate for display during a family programme after his young children had become distressed after seeing it on the ITV Player.

The ASA noted that ITV had safeguards in place in relation to video-on-demand programmes that contained adult themes, so that they could only be accessed if the viewer was over 18 years. Furthermore, an on-screen warning of the adult content also appeared prior to the start of the programme. However, the *X Factor* Final was not protected by a restricted content warning and there was no warning about the scenes in the trailer.

The ASA concluded that the advert was in breach of CAP Code clauses 2.2 (Responsible advertising) and 9.1 (Fear and distress) on the basis that certain scenes in the advert would be frightening to younger children, particularly the one in which the decayed body appeared to come back to life, and because adequate measures had not been taken to ensure that the advert was appropriately targeted around suitable programming on the ITV Player.

Why this matters

This ruling marks a milestone as it is the first time that the ASA has made a ruling on video-on-demand content. It signals that advertisers and broadcasters should start giving the same consideration to advertisements shown on video-on-demand services as they do to adverts shown on linear TV. It also indicates, perhaps rather surprisingly, that video-on-demand adverts will be assessed according to the CAP Code rather than the BCAP Code.

It is presumed that the ASA relied on paragraph 1.1 of the CAP Code, which states that the Code applies to ‘other electronic ... material’ and ‘advertisements in non-broadcast electronic media’ when deciding whether it could adjudicate on the advert, rather than its proposed designation by Ofcom as a co-regulator in relation to advertisements appearing on video-on-demand services following implementation of the AVMS Directive, the precise terms of which have not yet been agreed.

The full adjudication is available here:

http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2010/5/Paramount-Pictures-UK/TF_ADJ_48485.aspx

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