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ASA Adjudication on Gallaher Ltd

Gallaher Ltd

Members Hill
Brooklands Road
Weybridge
Surrey
KT13 0QU

Date:

30 July 2014

Media:

National press

Sector:

Tobacco

Number of complaints:

13

Agency:

Big Al's Creative Emporium

Complaint Ref:

A13-228477

Background

Summary of Council decision:

Two issues were investigated, of which one was Upheld and one was Not upheld.

Ad

A national press ad, for Gallaher Ltd, JTI's UK trading company (Gallaher), a tobacco company, which appeared in April 2013, included an e-mail from the UK Department of Health to the Australian Department of Health and Ageing. The email featured text, which stated "I work on the UK Government's Tobacco Policy Team ... you will be aware that the UK Government is considering the introduction of plain packaging of tobacco products. As I'm sure you're aware, one of the difficulties regarding this is that nobody has done this and therefore, there isn't any hard evidence to show that it works." The text "there isn't any hard evidence to show that it works" was highlighted. Text beneath the e-mail stated "WE COULDN'T HAVE PUT IT BETTER OURSELVES". Text in the bottom right corner of the page stated "JTI is a leading international tobacco company".

Issue

Thirteen complainants, including Cancer Research UK, UK Centre for Tobacco Control Studies & ASH, objected to the ad:

1. Ten complainants challenged whether the email, which predated significant research and the introduction of standardised packaging in Australia, misleadingly implied that, at the time the ad appeared, there existed no evidence to support the introduction of plain packaging.
2. Seven complainants challenged whether the ad promoted a tobacco product.

CAP Code (Edition 12)

[21.13.13.3](#)

Response

1. Gallaher said the ad was intended to question the rationale of the Department of Health's (DoH) approach in 2011 and pointed out that, at the time the ad appeared, JTI's UK Managing Director, publicly stated "We are using this media campaign to demonstrate that in 2011 even the DoH accepted that these proposals are not supported by any hard evidence".

Gallaher said the email was reproduced in its entirety and included the date the email was sent. They pointed out that the claim "WE COULDN'T HAVE PUT IT BETTER OURSELVES" was expressed in the past tense. They believed that made clear to consumers that the statement related to the situation in 2011.

Gallaher believed the ad did not state or imply that, at the time the ad appeared, there existed no evidence to support the introduction of plain packaging; rather they believed the claim "there isn't any hard evidence to show that it works", which was highlighted, made clear that there was a lack of hard evidence to show that plain packaging worked in 2011. They said the ad did not address predictive evidence as to whether plain packaging could work, nor did it address the material relied upon as evidence in support of plain packaging by a number of the complainants.

Gallaher believed the fact that standardised packaging was implemented in Australia on 1 December 2012 was not relevant to the complaint, because the ad related to the hard evidential situation in 2011, prior to the introduction of plain packaging in Australia. They also believed the systematic review of evidence commissioned by the DoH and published on 16 April 2012, which was referred to by a

number of complainants, was not relevant to the complaint, because the review was published after the period to which the ad related, May 2011, but before the implementation of plain packaging in Australia. They therefore believed it was not possible for the review to constitute hard evidence as to whether plain packaging worked.

Gallaher said that even if the ad had stated the position at the time the ad appeared, which they said it did not, it was their opinion that it would still have been true to state that there was no hard evidence that plain packaging worked. They said, at the time the ad appeared, it had been four months since Australia's plain packaging legislation came into force and no other country had introduced such a measure. They therefore believed it was too soon for there to be any hard evidence from Australia on whether plain packaging worked. They cited an article in an Australian national newspaper and comments by the UK Secretary of State for Health on a UK national radio show, in support of that conclusion. Both commentaries post dated the ad. The newspaper article, in June 2103, stated "HEALTH Minister Tanya Plibersek is insisting that Labor's plain packaging reforms will help cut the number of smokers as her critics mark World No Tobacco Day by declaring the changes have had no impact on sales ... But the government could not provide any figures to show any fall in tobacco sales since December 1, when new laws forced radical changes to cigarette packs to remove brand logos and show stronger health warnings instead." The UK Secretary of State for Health stated, in May 2013, "On plain paper packaging, if we do it will be the first country in Europe, the second country in the world - Australia only introduced it in January. So it is much harder to assess the evidence as to how effective it would be. I want to make sure we do the job properly so I've said I will take the time needed." They also said that, in July 2013, the DoH announced that the Government had "decided to wait until the emerging impact of the decision in Australia can be measured before making a final decision on this policy." They believed that demonstrated that, as at 12 July 2013, the Government accepted that it was not yet possible to measure whether any hard evidence from Australia demonstrated that the policy worked.

Gallaher said that reviews by two experts of the publicly available consumer survey studies relevant to plain packaging, which included the Systematic Review that was referred to by a number of complainants, found that the studies did not constitute reliable evidence that plain packaging would change actual smoking behaviour, either by preventing minors from smoking or by increasing smoking cessation among minors or adults.

2. Gallaher said that the ad did not make reference to a tobacco product and pointed out that there was no brand of tobacco product called JTI. They said the ad engaged with a political subject and did not promote a tobacco product for sale. They said the statement "JTI is a leading international tobacco company" was intended to provide transparency and to enable the reader to identify the source of the advert.

Assessment

1. Upheld

The ASA noted the ad included the date the email was sent from the UK Department of Health to the Australian Department of Health and Ageing. However, we considered the presentation of that information was not made clear, and that in any event readers would consider the highlighted reference to "there isn't any hard evidence to show that it works" as being a reference to the position at the time the ad appeared, and not only to the position two years earlier. We also considered that consumers would not associate "hard evidence" only with the lack of evidence following the practical introduction of plain packaging. We considered consumers would interpret the claim to mean that no real evidence existed to support the introduction of plain packaging at the time the ad appeared.

We understood that the DH considered the e-mail was not intended as a definitive statement about the state of the evidence about tobacco packaging in May 2011, and did not reflect their view of the evidence at the time the ad appeared. By then plain packaging had been in place in Australia for several months, although its effect was as yet unknown. In addition, a number of peer-reviewed and published studies of the behavioural effects of tobacco packaging were by then available, including the Public Health Research Consortium report on Plain Tobacco Packaging: A Systematic Review, published in April 2012. We sought an expert opinion on the Systematic Review and understood that its conclusions had been reached in a robust manner. We understood the Systematic Review concluded that plain packaging would reduce the attractiveness and appeal of tobacco products; increase the visibility and effectiveness of health warnings and messages; and reduce the use of design techniques that may mislead consumers about the harmfulness of tobacco products. We also understood the Systematic Review reported that plain packaging was perceived by smokers and non-smokers to reduce initiation among non-smokers and encourage cessation-related behaviours among smokers.

Because we considered the ad implied that no real evidence existed to support the introduction of plain packaging at the time the ad appeared and because we understood that such evidence existed to support the introduction of plain packaging, we considered the presentation of the ad was likely to mislead.

On this point, the ad breached CAP Code (Edition 12) rules 3.1 and 3.3 (Misleading advertising).

2. Not upheld

We acknowledged the ad referred to JTI as a leading international tobacco company. However, we considered the ad related to the debate on plain packaging, but did not advertise a tobacco product.

On that basis, we concluded that the ad did not breach the Code on this point.

On this point, we investigated the ad under CAP Code (Edition 12) rules 21.1 (Tobacco, rolling papers and filters) but did not find it to be in breach.

Action

The ad must not appear again in its current form. We told Gallaher to ensure future ads were not likely to mislead.

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