

Appendix

Case – Television advertisement for “JcoNAT Naturally-Existing Disinfectant” (「JcoNAT原生除菌液」電視廣告) broadcast on the Jade Channel of Television Broadcasts Limited (TVB) in June 2020 at various time slots

Six members of the public complained about the captioned advertisement. The main allegations were that –

- (a) the claim in the advertisement that the advertised product “僅用 15 秒就幫你 K.O. 新型冠狀病毒” (“help you K.O. novel coronavirus in only 15 seconds”) (the “Claim”) was exaggerated and misled viewers into believing that the product could kill or eliminate novel coronavirus (the virus) with 100% success rate;
- (b) the advertisement did not indicate the source and date of any assessment or research and did not provide substantiation for the Claim; and
- (c) the advertisement might contravene the Undesirable Medical Advertisements Ordinance (Cap. 231) (UMAO).

The Communications Authority (CA)’s Findings

In line with the established practice, the CA considered the complaint case and the representations of TVB 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 10-second advertisement under complaint promoted a brand of disinfectant. The Claim and a QR code underneath the Chinese text “了解更多” (“to find out more”) were shown on the screen for about five seconds. There was no reference to any research survey or test regarding the Claim in the advertisement;
- (b) TVB submitted, among others, that the advertisement had never explicitly or implicitly expressed the message that the advertised product is able to remove the virus at 100% success rate and the line “幫你 K.O. 新型冠狀病毒” (“help you K.O. novel coronavirus”) was a general remark; and
- (c) the advertiser submitted, among others, that a QR code with the Chinese text “了解更多” (“to find out more”) was displayed on screen which would direct viewers to the details of test reports to substantiate the Claim.

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;
- (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; and
- (d) paragraph 7 of Chapter 6 - licensee should ensure that all medical advertisements conform with the laws of Hong Kong, including without limitation the UMAO.

The CA's Consideration

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

- (a) regarding the Claim of “僅用 15 秒就幫你 K.O. 新型冠狀病毒” (“help you K.O. novel coronavirus in only 15 seconds”), the term “K.O.” generally refers to the colloquial abbreviation of the phrase “knock out” which has the dictionary meaning of defeating an opponent in a competition. An average viewer would likely consider that the Claim suggested the efficacy of the advertised product in defeating the novel coronavirus within a specified time. In this regard, the advertiser had provided TVB with information for substantiation of the Claim. Hence, the CA considered the Claim a factual claim;

- (b) taking into account the representations and information provided by TVB and the advertiser, including a test report on the advertised product, there were reasonable grounds to consider the Claim as being capable of substantiation and that TVB had exercised reasonable diligence in ascertaining the truthfulness of the Claim;
- (c) the advertisement did not indicate the source and date of the assessment(s)/test(s) for substantiating the Claim as required under paragraph 2 of Chapter 4 of the TV Advertising Code. The mere showing of the QR code could not be considered as fulfilling the said requirement; and
- (d) taking into account the advice of the Director of Health, there was no evidence to suggest that the advertisement under complaint did not conform with the UMAO.

Decision

In view of the above, the CA considered that the complaints in respect of the failure to indicate the source and date of the relevant assessment or research in the advertisement were justified and that TVB was in breach of paragraph 2 of Chapter 4 of the TV Advertising Code. Having taken into account the specific facts, circumstances of the present complaints and other relevant factors (including that TVB having no record of non-compliance in relation to the relevant provision), the CA decided that TVB should be **advised** to observe more closely the relevant provision.