

FINAL ADJUDICATION

Marie Stopes International
1 Conway Street
Fitzroy Square
London
W1T 6LP

Case number: A10-128084
Media: Television
Sector: Non-commercial
Agency:

Number of complaints : 1047

Background

The ASA received 1047 complaints, plus a further 3296 postcards which made up a petition organised by the Society for the Protection of Unborn Children (SPUC), and another petition with 63 signatures. In addition there were 327 pre-transmission complaints. Because some viewers objected that the TV ad carried a political message, because they believed the advertisers actively campaigned to change the law on abortion, the ASA referred those complaints to Ofcom according to procedure set out in the CAP (Broadcast) TV Advertising Standards Code rule 4 (Political and controversial issues).

Ad

A TV ad for Marie Stopes International (MSI), a not-for-profit organisation which provided sexual and reproductive healthcare advice, information and services, featured three women. First, a woman waiting at a bus stop, looking down the road, with the onscreen text "Jenny Evans is late." Then, a woman in a park with her two small children, with the text "Katie Simmons is late." Finally, a woman in a café, with the text "Shareen Butler is late." A female voiceover said: "If you're late for your period, you could be pregnant. If you're pregnant and not sure what to do, Marie Stopes International can help." The end caption carried the text "Are you late?" a phone number, and the website address.

Issue

Complainants included members of the public, GPs, people who offered counselling, MPs and other representatives, and MPs who forwarded their constituents' concerns.

The complainants objected that the ad was misleading, offensive and harmful and queried its compliance with specific Code rules.

1. Viewers objected that the ad was offensive:
 - because it promoted abortion;
 - because of their religious beliefs;
 - because it trivialised the difficult decision faced by women experiencing an unwanted pregnancy;
 - because decisions about the life of an unborn child were being equated to decisions about consumer goods;
 - because it would be distressing to those women who had taken the decision to have an abortion;

- because it did not take into account the views of the father;
- because it was sexist towards women by implying that the pregnancy was solely the woman's responsibility; and
- because, by featuring a mother with her small children, it suggested that the life of an unborn child was less important than a woman's existing children.

2. Viewers objected that the ad was harmful:

- because the ad would encourage viewers to have an abortion when they had not previously considered that option; and,
- because it would encourage promiscuity, especially amongst young people.

3. Viewers objected that the ad was misleading:

- because it promoted abortion, but did not make reference to the physical and mental health risks or physical and psychological effects which could be experienced after an abortion;
- because the ad was illegally offering abortion 'on demand';
- because it implied that obtaining an abortion was easier than it was in reality;
- because it failed to mention that pregnant women who wanted advice should contact their GPs or seek the advice of family members; and,
- because it was unclear what services were on offer; some believed Marie Stopes offered a full range of advice about pregnancy, whilst others believed the advertisers were advocates for abortion.

Some viewers challenged whether Marie Stopes International (MSI) should be allowed to advertise on TV, because:

4. they believed MSI were a commercial company that charged for their services;
5. the ad promoted a Prescription Only Medicine (POM) or a medical procedure, which they believed was not permitted by the Code;
6. the ad was for a medicinal product aimed at children; and,
7. the ad offered a remote personal advice service on health matters, which they believed breached rule 8.1.3 of the Code relating to services offering remote personalised advice on medical or health matters offers to prescribe or treat remotely.
8. Some viewers objected to the scheduling of the ad at times when children might see it.

Response

1. Marie Stopes International (MSI) said the ad did not mention abortion and did not 'promote' it. The ad was designed to draw attention to their Advice Line and general advice service for any woman concerned about a missed period or unplanned pregnancy. They said they understood that some people were opposed to abortion on religious or other grounds, they respected their beliefs and the intention was not to offend anyone. They said the ad offered advice for those who needed it; every year, tens of thousands of women of all religions and nationalities found themselves

with an unplanned pregnancy and those women wanted and needed help and advice. They said they felt the ad was very sensitively made and did not trivialise the difficult decision faced by women experiencing an unwanted pregnancy, but felt it did the opposite. They said the Advice Line was needed because some women facing that decision needed support and advice.

MSI pointed out that TV ads were used to publicise a range of services, causes and issues which were different from ordinary consumer products; for example, private healthcare, public service ads on health and safety issues and non-commercial charitable causes. They said that advertising of that kind did not involve any equation of the service, cause or issue advertised with ordinary consumer goods, and they did not feel that their ad did either. They did not believe that the ad would be generally perceived as distressing to women who had taken the decision to have an abortion, and stated they had received significantly more calls to their advice line during the period the ad was shown from women and health professionals who expressed gratitude for the support given. They also said they had received overwhelmingly positive responses to the ad. They said that the ad featured a range of women who might need advice about unplanned pregnancies, and it focused on women because they were the ones who took the decision about what to do after an unplanned pregnancy. MSI did not feel that the ad implied that the views of the father were irrelevant to the decision, and they explained that women who called MSI's Advice Line were encouraged to talk to their partners about the decision, and that the Advice Line was often used by men. They also did not believe that the ad suggested that the life of an unborn child was less important than a woman's existing children.

MSI pointed out that the ad did not explore the circumstances of any of the women featured or how they came to be 'late'. They said they hoped they had been able to reflect, in the short space of time that was provided, that an unplanned pregnancy could happen to any woman of reproductive age; showing a range of women in different circumstances was intended to dispel the often repeated myth that unplanned pregnancy was experienced mainly by young, feckless, single women. As an organisation which spoke to and saw tens of thousands of women every year, MSI said they understood that an unplanned pregnancy could be a very distressing, isolating experience and some women were not supported by their partner or family.

Clearcast said that the ad did not mention abortion, nor refer to it. They said the ad promoted the totality of pregnancy services that MSI offered and did not specifically draw attention to the availability of abortion as one of those services. Whilst they recognised that the issue of abortion could offend some people on religious grounds, because the ad was not focussing on abortion, but on the totality of services offered by MSI, they were satisfied that it was acceptable. They did not feel that the ad was likely to cause serious or widespread offence against generally accepted moral, social or cultural standards, or offend against public feeling. They did not think the ad either trivialised or over-dramatised the difficult decision faced by women experiencing an unwanted pregnancy, and pointed out that the ad simply stated "if you're pregnant and not sure what to do, MSI can help".

Clearcast said advertising was not restricted solely to selling consumer goods, but could also be used to raise awareness of charities and public service issues. They did not feel the ad either advocated or opposed the validity of the views of the father, or the principle that pregnancy was solely the woman's responsibility; it simply stated that MSI could help women who were pregnant and not sure what to do. They said the ad showed a mother with her small children as one of a number of different women who might be pregnant, but drew no conclusions about the dynamics of the mother's relationship with her existing children or her unborn child.

2. MSI reiterated that the ad did not encourage, promote or advocate abortion, but raised awareness about MSI's 24 hour Advice Line, which provided information about sexual health and all pregnancy choices, including but not limited to abortion. They did not believe that the ad could reasonably be understood as encouraging promiscuity amongst young people or at all. They said there was a growing body of evidence that young people who had access to information about sexual health and abortion were more likely to delay their first sexual experience and less likely to have an unintended pregnancy or sexually transmitted infections.

Clearcast said the ad did not encourage viewers to do anything other than contact MSI, who offered a range of services for pregnant women. They said the ad did not make any reference to abortion or encourage women to have one and made no reference to promiscuity or encouraged promiscuity.

3. MSI said that typical calls to their Advice line included varying requests, from information about the contraceptive pill or emergency contraception to vasectomies. They explained that if a caller wanted further advice in relation to abortion, she would be referred to an appropriately qualified and regulated healthcare professional, who would advise her about any health implications of any intervention or procedure which might be appropriate for her. They said callers were offered non-judgemental, non-directive and accurate information about a range of lawful healthcare options available to them. MSI said any advice would relate to options which were both clinically appropriate and lawful, and all healthcare professionals who worked for MSI were aware of, and always operated within the confines of, the Abortion Act 1967. MSI said they were aware that some women would choose to go to their GP for support, but, in their experience as a leading sexual healthcare provider that spoke to over 350,000 women and men every year, some people might not feel comfortable speaking to their GP, friends or family members, or might not be registered with a GP.

They pointed out that the ad spoke of 'being late' which would resonate with the vast majority of women; a 'late' period was associated with pregnancy, which might be planned or unplanned. They argued that the statement "if you unsure what to do, Marie Stopes can help" was a succinct, but accurate, summary of what the Advice Line offered. They said the Advice Line gave women information about all the choices available to her, and that if, for example, a woman wished to carry on with the pregnancy and have the baby adopted, MSI would direct her to an appropriate organisation. They said that they received a range of calls and did their best to assist callers to access appropriate help, including those who may not need their services. They said that during the time the ad was shown, between 20-50 people a

day called the dedicated telephone number for advice and help. They said most people called for advice about an unplanned pregnancy, but some called for other types of advice, which indicated that there was a need for general sexual health advice lines like MSI's.

Clearcast reiterated that the ad did not promote abortion, but was intended to raise awareness of the fact that MSI offered a range of services to women who were pregnant, one of which was abortion. They said the concomitant physical and/or mental issues of abortion would be dealt with after (and if) a viewer had approached MSI and had expressed an interest in having an abortion. They said the ad neither advocated nor opposed the principle of a woman additionally contacting her GP or seeking the advice of family members. They pointed out that information on the MSI website stated the counselling service wasn't a substitute for talking things over with a trusted partner, close friend, family member or doctor.

4. MSI said they were a company limited by guarantee, incorporated in 1973. They were also a registered charity, which operated exclusively on a not-for-profit basis. They said that although they charged fees for some of their services, they did not make a profit from them and all funds received in respect of those services were reinvested in the charity to help MSI achieve its charitable aims and objectives. MSI said that, as well as charitable work directly related to post-conception advice and services, they did work relating to family planning, contraception and other sexual and reproductive health related issues. They said MSI did not have shareholders and 'profits' could not be divided between members at any point during the existence of the charity. They explained that, should MSI ever be dissolved, any assets or funds would be given to a similar charitable organisation and those matters were evidenced in MSI's Memorandum and Articles of Association. They added that the Charity Commission recognised that certain charities might charge fees and that they were also recognised with HMRC as a non-profit entity.

Clearcast set out the same points as MSI.

5. MSI said the ad did not promote any medicine or medical procedure.

Clearcast said the ad did not promote a POM. The ad promoted all of the services supplied by MSI, which included abortion, but the Code did not prevent the advertising of clinics that carried out medical procedures.

6. MSI said the ad did not advertise a medicinal product aimed at children.

Clearcast said the ad was clearly addressed to women of child-bearing age and capacity and was not aimed at children. They said it was promoting pregnancy advisory services and was not promoting any medicinal product, far less one aimed at children.

7. MSI explained how the Advice Line was operated. The caller first spoke to a Customer Service Assistant (CSA) who, though appropriately trained, was not a qualified or regulated healthcare professional. They said the CSA offered only general information, e.g. on the range of options available to any woman who was or

might be pregnant. If the woman wanted specific advice on which healthcare option or options might be most appropriate for her, given her individual circumstances, the call would be passed to a registered nurse or a qualified counsellor (accredited and regulated by the British Association of Counselling and Psychotherapy), or alternatively the caller might be signposted to other appropriate agencies who could help. MSI said that neither their nurses nor their counsellors treated or prescribed remotely and if a caller wished to have a full consultation or counselling appointment with MSI, because she needed more in-depth advice about her pregnancy, an appointment would be arranged at a later date, either face to face at a MSI Clinic or by phone with members of the nursing team and counsellors. They said that the primary service being advertised consisted of the provision of 'general information on health matters' within the meaning of note 2 to Code clause 8.1.3. They said, to the extent that callers were subsequently offered remote personalised advice on medical or health matters, all staff who provided such advice were subject to regulation by a statutory or recognised medical or health professional body.

Clearcast understood that MSI did not prescribe or treat remotely, but offered advice, including inter alia post conception advice. They also set out MSI's advisory procedures, as detailed above. They considered that it was clear that any remote personalized advice on medical and health matters was provided only by staff who were subject to regulation by statutory or recognised medical or health professional bodies.

8. MSI confirmed that the ad was subject to an 'ex-kids' scheduling restriction, and that they and Channel 4 had followed the guidelines explicitly.

Clearcast considered that the general subject matter of the ad, pregnancy, required an 'ex-kids' scheduling restriction, but that there was nothing in the ad to require any greater restriction than that.

Assessment

1. Not upheld

The ASA acknowledged that the issue of abortion was controversial and distasteful to some, and that the complainants had strong personal and religious objections to the advertising of abortion services, or services that gave advice about abortion. We also noted that many complainants regarded the advertisers as advocates of abortion and therefore interpreted the ad as a promotion of abortion. However, the ad was for an advice service for women dealing with an unplanned pregnancy, and stated that MSI could help women who were "pregnant and not sure what to do". We understood that MSI provided a wide range of advisory and health services and advised on all options during consultations with clients. We noted that the ad did not focus on any one particular service offered by MSI and did not mention abortion. We therefore considered it was an ad for a general pregnancy advice service for women who wished to learn about and discuss their options, which might include, but were not limited to, abortion.

We understood that post-conception decisions could be very difficult, but considered the ad dealt with the issue of possible pregnancy in an understated way and was not sensationalist. The women featured in the ad looked deep in thought, and we did

not therefore consider that the ad trivialised the dilemma of an unplanned pregnancy. Whilst the ad featured three women, we did not consider that it suggested that only the woman would be affected, or that she should take any decisions alone. We did not consider that the ad focused on or advocated any particular choice or course of action over another, or put forward any assumptions about what the women would or should do. Whilst we recognised that any reminder of a difficult time, such as an unplanned pregnancy, could evoke a response in someone directly affected, we considered that the ad was unlikely to cause serious or widespread offence on that basis.

On this point, we investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 6.1 (Offence), 6.6 (Harmful or negative stereotypes) and 11.3.4 (Charities - Ethical responsibility) but did not find it in breach.

2. Not upheld

We noted that the ad promoted a general advice line for women who were pregnant and not sure what to do, but did not explicitly mention or advocate abortion. We therefore did not consider that the ad promoted abortion or would encourage women to contemplate one particular option above any other. We noted that the ad featured three different women of child-bearing age, but did not focus on their lifestyles or the circumstances of any particular pregnancy in any detail. We also noted that the women were shown in everyday settings and were not presented in a glamorous way, and we did not consider that the ad would have a particular appeal to young people or encourage promiscuity. We therefore concluded that the ad that was not harmful.

On this point, we investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 6.7 (Health and safety) and 7.4.1 (Mental harm) but did not find it in breach.

3. Not upheld

We noted that the ad was directed at women who thought they might be pregnant; we considered that it was clear that the ad was promoting the Advice Line as a source of information for those women, and noted that it did not advocate one option over others. We did not consider that it suggested that pregnant women should not consult their GP or family members for support or advice. We understood that MSI were a Pregnancy Advice Bureau (PAB) regulated by the Department of Health and, as a provider of services on behalf of the NHS, were obliged to offer a range of advice on all the options available to pregnant women. We were satisfied that any callers to the Advice Line would be advised about the health implications of any intervention or procedure which might be appropriate for her, in consultation with a qualified and regulated healthcare professional. We noted the ad did not refer to abortion and considered there was no evidence that MSI offered abortion on demand, in conflict with the law.

Because we understood that MSI were a regulated PAB, and because we considered that it was clear that the ad was promoting a general pregnancy advice service for women who were "pregnant and not sure what to do", we concluded that the ad was not misleading.

On this point, we investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 5.1.1, 5.1.2, 5.1.3 (Misleading advertising), but did not find it in breach.

4. Not upheld

We understood that Marie Stopes charged private clients for its services, but that NHS-referred clients did not pay fees. We understood that MSI was a charity registered with the Charity Commission and revenue derived from its fees was 'not for profit', but was used to support charitable works directly related to post-conception advice and services, as well as family planning, contraception and other sexual and reproductive health related issues. We considered that the ad promoted a non-commercial advice service, and therefore concluded that MSI was permitted to advertise that service on TV under the Code.

On this point, we investigated the ad under CAP (Broadcast) TV Advertising Standards Code rule 3.1(j) (Unacceptable categories - commercial advice services) but did not find it in breach.

5 & 6. Not upheld

We noted the ad was for MSI's general pregnancy advisory service, and that it did not refer to any medicinal product or medical treatment. We therefore considered that the ad did not promote a POM or medical procedure.

In addition, we did not consider that the content of the ad was directly targeted at children, or would have a particular appeal to children. We therefore concluded that the ad was not in breach of the Code on these points.

On these points, we investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 8.2.1 (Unacceptable products and services - prescription only medicines) and 8.2.15 (Medicines and children) but did not find it in breach.

7. Not upheld

We noted that rule 8.1.3 of the BCAP Television Advertising Code stated that ads for services offering remote personalised advice on medical or health matters were only acceptable where that advice was provided by staff who were regulated by a statutory or recognised medical or health professional body. We understood MSI operated within a clear regulatory structure supervised by government. We also understood that any caller who contacted the MSI Advice Line, and who wanted specific advice on which healthcare option might be most appropriate for her, would only receive advice on medical and health matters from a registered nurse or qualified counsellor. Because we understood that the advice was only provided by staff who were subject to regulation by statutory or recognised medical or health professional bodies, we did not consider that the ad was in breach of rule 8.1.3 of the Code.

On this point, we investigated the ad under CAP (Broadcast) TV Advertising Standards Code rule 8.1.3 (Medical or health advice given remotely - regulation required), but did not find it in breach.

8. Not upheld

We noted that the ad had been given an ex-kids timing restriction, which meant it should not be shown on dedicated children's channels, or in or around those programmes on other channels made for, or specifically targeted at, children. We considered that that restriction was sufficient to keep the ad away from times when younger children were likely to be watching TV alone. We did not consider that the ad needed to be kept away from times when older children would be watching TV, and therefore concluded that the ex-kids timing restriction that had been imposed was sufficient.

On this point, we investigated the ad under CAP (Broadcast) TV Advertising Standards Code rules 7.4.7 (Use of scheduling restrictions) and CAP (Broadcast) Rules on the Scheduling of TV Advertisements 4.2.3 (Treatments unsuitable for children), but did not find it in breach.

Action

No further action necessary.