

# The CAP Code

**The UK Code of Non-broadcast  
Advertising, Sales Promotion and  
Direct Marketing**

**Edition 12**

Published by TSO (The Stationery Office) and available from:

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Applications for reproduction should be made in writing to:

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London

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First published 2010

ISBN 978 0 11 706410 2

Printed in the United Kingdom by The Stationery Office

## Preface

In the UK, The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the Code) is the rule book for non-broadcast advertisements, sales promotions and direct marketing communications (marketing communications). The Code is primarily concerned with the content of marketing communications and not with terms of business or products themselves. Some rules, however, go beyond content; for example, those that cover the administration of sales promotions, the suitability of promotional items, the delivery of products ordered through an advertisement and the use of personal information in direct marketing. Editorial content is specifically excluded from the Code, though it might be a factor in determining the context in which marketing communications are judged.

The Committee of Advertising Practice (CAP) is the self-regulatory body that creates, revises and enforces the Code. CAP's members include organisations that represent the advertising, sales promotion, direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those businesses agree to comply with the Code so that marketing communications are legal, decent, honest and truthful and consumer confidence is maintained.

Some CAP member organisations, for example, the Direct Marketing Association and the Proprietary Association of Great Britain, also require their members to observe their own codes of practice. Those codes may cover some practices that are not covered in this Code.

The Code supplements the law, fills gaps where the law does not reach and often provides an easier way of resolving disputes than by civil litigation or criminal prosecution. In many cases, self-regulation ensures that legislation is not necessary. Although advertisers, promoters and direct marketers (marketers), agencies and media may still wish to consult lawyers, compliance with the Code should go a long way to ensuring compliance with the law in areas covered by both the Code and the law.

By creating and following self-imposed rules, the marketing community produces marketing communications that are welcomed and trusted. By practising self-regulation, it ensures the integrity of advertising, promotions and direct marketing.

The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including those on misleading and comparative advertising (Directives 2005/29/EC and 2006/114/EC). Self-regulation is accepted by the Department for Business, Innovation and Skills and the Office of Fair Trading as a first line of control in protecting consumers and the industry.

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the Code, ensuring that the self-regulatory system works in the public interest. The ASA's activities include investigating and adjudicating on complaints and conducting research. Full information about the ASA's complaints procedure is available on [www.asa.org.uk](http://www.asa.org.uk).

## PREFACE

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The vast majority of advertisers, promoters and direct marketers comply with the Code. Those that do not may be subject to sanctions. Adverse publicity may result from the rulings published by the ASA weekly on its website. The media, contractors and service providers may withhold their services or deny access to space. Trading privileges (including direct mail discounts) and recognition may be revoked, withdrawn or temporarily withheld. Pre-vetting may be imposed and, in some cases, non-complying parties can be referred to the Office of Fair Trading for action, where appropriate, under the Consumer Protection from Unfair Trading Regulations 2008 or the Business Protection from Misleading Marketing Regulations 2008.

The successful track record of the self-regulatory system meant that the ASA was recognised as the natural co-regulatory partner when Ofcom was required to give effect to European Union legislation governing advertising content on relevant on-demand services. The ASA was designated by Ofcom as the co-regulator of advertising content included in on-demand services with effect from August 2010. The statutory requirements applying to certain on-demand services are reflected in the rules set out in Appendix 2 in this document.

The system is structured so that it does not operate in an unfair or anti-competitive manner or restrict free speech unjustifiably. ASA decisions are subject to independent review, including in exceptional cases by the Administrative Division of the High Court.

The full text of the Code is available on [www.cap.org.uk](http://www.cap.org.uk).

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### Introduction

This twelfth edition of the Code comes into force on 1 September 2010. It replaces all previous editions.

As well as this Code, non-broadcast marketing communications are subject to legislation. See [www.cap.org.uk](http://www.cap.org.uk) for a non-exhaustive list. The advertising rules that apply to video-on-demand services which are subject to statutory regulation are reflected in the rules set out in Appendix 2.

#### **I The Code applies to:**

- a. advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions (including SMS and MMS), fax transmissions, catalogues, follow-up literature and other electronic or printed material
- b. posters and other promotional media in public places, including moving images
- c. cinema, video, DVD and Blu-ray advertisements
- d. advertisements in non-broadcast electronic media, including but not limited to: online advertisements in paid-for space (including banner or pop-up advertisements and online video advertisements); paid-for search listings; preferential listings on price comparison sites; viral advertisements (see III l); in-game advertisements; commercial classified advertisements; advergames that feature in display advertisements; advertisements transmitted by Bluetooth; advertisements distributed through web widgets and online sales promotions and prize promotions
- e. marketing databases containing consumers' personal information
- f. sales promotions in non-broadcast media
- g. advertorials (see III k).
- h. Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities.

#### **II The Code does not apply to:**

- a. broadcast advertisements (The BCAP Code sets out the rules that govern broadcast advertisements on any television channel or radio station licensed by Ofcom)
- b. the contents of premium-rate services, which are the responsibility of PhonepayPlus; marketing communications that promote those services are subject to PhonepayPlus regulation and to the CAP Code
- c. marketing communications in foreign media. Direct marketing communications that originate outside the United Kingdom and sales promotions and marketing communications on non-UK websites, if targeted at UK consumers, are subject to the jurisdiction of the relevant authority

- in the country from which they originate if that authority operates a suitable cross-border complaint system. If it does not, the Advertising Standards Authority (ASA) will take what action it can. Most members of the European Union, and many non-European countries, have a self-regulatory organisation that is a member of the European Advertising Standards Alliance (EASA). EASA co-ordinates the cross-border complaints system for its members (which include the ASA)
- d. claims, in marketing communications in media addressed only to medical, dental, veterinary or allied practitioners, that relate to those practitioners' expertise
  - e. classified private advertisements, including those appearing online
  - f. statutory, public, police and other official notices or information, but not marketing communications, produced by public authorities and the like
  - g. works of art exhibited in public or private
  - h. private correspondence, including correspondence between organisations and their customers about existing relationships or past purchases
  - i. live oral communications, including telephone calls and announcements or direct approaches from street marketers
  - j. press releases and other public relations material not covered by part I above
  - k. editorial content; for example, of the media or of books and regular competitions such as crosswords
  - l. flyposting (most of which is illegal)
  - m. packages, wrappers, labels, tickets, timetables and price lists unless they advertise another product or a sales promotion or are visible in a marketing communication
  - n. point-of-sale displays, except those covered by the sales promotion rules or the rolling paper and filter rules
  - o. political advertisements as defined in Section 7
  - p. website content not covered by I d and I h, including (but not limited to) editorial content, news or public relations material, corporate reports and natural listings on a search engine or a price comparison site
  - q. sponsorship; marketing communications that refer to sponsorship are covered by the Code
  - r. customer charters and codes of practice.
  - s. investor relations (see III m)
  - t. 'heritage advertising' by or from companies, organisations or sole traders on their own websites, or in other non-paid for space online under their control, where that advertising

is not part of their current promotional strategy and is placed in an appropriate context. In cases where advertisements or other marketing communications recently adjudicated against by the ASA are featured, rule 1.2 (the spirit of the Code) may be invoked to bring those advertisements or other marketing communications within remit.

### III These definitions apply to the Code:

- a. a product encompasses goods, services, ideas, causes, opportunities, prizes or gifts
- b. a consumer is anyone who is likely to see a given marketing communication, whether in the course of business or not
- c. the United Kingdom covers the Isle of Man and the Channel Islands
- d. a claim can be implied or direct, written, spoken or visual; the name of a product can constitute a claim
- e. the Code is divided into numbered rules
- f. a marketing communication includes all forms of communication listed in part I
- g. a marketer includes an advertiser, promoter or direct marketer
- h. a supplier is anyone who supplies a product that is sold by a distance-selling marketing communication (and can be the marketer)
- i. a child is anyone under 16
- j. a corporate subscriber includes corporate bodies such as limited companies in the UK, limited liability partnerships in England, Wales and Northern Ireland or any partnerships in Scotland. It also includes schools, hospitals, Government departments or agencies and other public bodies. It does not include sole traders or non-limited liability partnerships in England, Wales and Northern Ireland. See rule 10.14
- k. An advertorial is an advertisement feature, announcement or promotion, the content of which is controlled by the marketer, not the publisher, that is disseminated in exchange for a payment or other reciprocal arrangement
- l. A viral advertisement is an e-mail, text or other non-broadcast marketing communication designed to stimulate significant circulation by recipients to generate commercial or reputational benefit to the marketer. Viral advertisements are usually put into circulation (“seeded”) by the marketer with a request, either explicit or implicit, for the message to be forwarded to others. Sometimes they include a video clip or a link to website material or are part of a sales promotion campaign.
- m. Investor relations material is information about an organisation (including its goods or services) addressed to the financial community, including shareholders and investors, as well as others who might be interested in the company’s stock or financial stability.



**IV These criteria apply to the Code:**

- a. the ASA Council's interpretation of the Code is final
- b. if it is not clear whether a communication falls within the remit of the Code, the ASA will be more likely to apply the Code if the material complained about is in paid-for space
- c. compliance with the Code is assessed according to the marketing communication's probable impact when taken as a whole and in context. That will depend on the medium in which the marketing communication appeared, the audience and its likely response, the nature of the product and any material distributed to consumers
- d. the Non-broadcast ASA Council may have regard to decisions made by the Broadcast ASA Council under the BCAP Code and, similarly, the Broadcast ASA Council may have regard to decisions made by the Non-broadcast ASA Council under the CAP Code. Factors that help to determine whether an ASA adjudication is likely to apply across media include, but are not limited to, the characteristics of the medium, how the advertisement is targeted, the context in which a claim is made and the extent to which the relevant CAP Code provisions correspond to those in the BCAP Code
- e. the Code does not have the force of law and its interpretation will reflect its flexibility. The Code operates alongside the law; the Courts may make rulings on matters covered by the Code
- f. an indication of the statutory rules governing marketing communications is given on [www.cap.org.uk](http://www.cap.org.uk); professional advice should be taken about their application
- g. no spoken or written communication from the ASA or CAP should be understood as containing legal advice
- h. the Code is primarily concerned with the content of advertisements, promotions and direct marketing communications and not with terms of business or products. Some rules, however, go beyond content; for example, those that cover the administration of sales promotions, the suitability of promotional items, the delivery of products ordered through an advertisement and the use of personal information in direct marketing. Editorial content is specifically excluded from the remit of the Code (see II k) although it might be a factor in determining the context in which a marketing communication is judged (see IV c)
- i. the Code makes due allowance for public sensitivities but will not be used by the ASA to diminish freedom of speech unjustifiably
- j. the ASA does not arbitrate between conflicting ideologies
- k. in assessing compliance with the Code, the ASA may take account of honest market practices and the general principle of good faith in the traders' field of activity.
- l. in relevant cases the ASA will have regard to existing statutory enforcement bodies. The ASA reserves the right to refer complainants to the relevant statutory regulator in cases where a complaint about a marketing communication relates to a Code rule that reflects a legal provision for a regulated product.

# 01

## Compliance



### Principle

**The central principle for all marketing communications is that they should be legal, decent, honest and truthful. All marketing communications should be prepared with a sense of responsibility to consumers and society and should reflect the spirit, not merely the letter, of the Code.**

### Background

Marketers should use the ASA website, [www.asa.org.uk](http://www.asa.org.uk), or the CAP website, [www.cap.org.uk](http://www.cap.org.uk), to inform themselves of recent ASA adjudications, the latest text of the Code and CAP guidance on the Code.

The fact that a marketing communication complies with the Code does not guarantee that every publisher will accept it. Media owners can refuse space to marketing communications that break the Code and are not obliged to publish every marketing communication offered to them.

The ASA/CAP self-regulatory system is recognised by the Government, Office of Fair Trading and the Courts as one of the "established means" of consumer protection in non-broadcast marketing communications. Any matter that principally concerns a legal dispute will normally need to be resolved through law enforcement agencies or the Courts.

The ASA and CAP will treat in confidence any genuinely private or secret material supplied unless the Courts or officials acting within their statutory powers compel its disclosure.

### Rules

- 1.1 Marketing communications should be legal, decent, honest and truthful.
- 1.2 Marketing communications must reflect the spirit, not merely the letter, of the Code.
- 1.3 Marketing communications must be prepared with a sense of responsibility to consumers and to society.
- 1.4 Marketers must comply with all general rules and with relevant sector-specific rules.
- 1.5 No marketing communication should bring advertising into disrepute.
- 1.6 Marketing communications must respect the principles of fair competition generally accepted in business.
- 1.7 Any unreasonable delay in responding to the ASA's enquiries will normally be considered a breach of the Code.
  - 1.7.1 The full name and geographical business address of the marketer must be given to the ASA or CAP without delay if requested.
- 1.8 Marketing communications must comply with the Code. Primary responsibility for observing the Code falls on marketers. Others involved in preparing or publishing

marketing communications, such as agencies, publishers and other service suppliers, also accept an obligation to abide by the Code.

**1.8.1** Rules in [Appendix 3](#) apply only to third parties as defined. If the ASA is unable to identify the relevant third party, the advertiser - on behalf of whom the OBA advertisement is delivered to web users - must, in good faith, co-operate with the ASA to help determine the identity of the third party.

**1.9** Marketers should deal fairly with consumers.

### Legality

**1.10** Marketers have primary responsibility for ensuring that their marketing communications are legal. Marketing communications should comply with the law and should not incite anyone to break it.

**1.10.1** Marketers must not state or imply that a product can legally be sold if it cannot.

**02**

**Recognition  
of marketing  
communications**

### Background

Other sections of the Code contain product-specific or audience-specific rules that are intended to protect consumers from misleading marketing communications. For example, the Charity-linked Promotions and Children sections of the Code contain rules that apply, as well as the general rules, to marketing communications that fall under those sections.

### Rules

- 2.1** Marketing communications must be obviously identifiable as such.
- 2.2** Unsolicited e-mail marketing communications must be obviously identifiable as marketing communications without the need to open them (see rule 10.6).
- 2.3** Marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession; marketing communications must make clear their commercial intent, if that is not obvious from the context.
- 2.4** Marketers and publishers must make clear that advertorials are marketing communications; for example, by heading them “advertisement feature”.

# 03

## Misleading advertising

### Background

The ASA may take the Consumer Protection from Unfair Trading Regulations 2008 into account when it adjudicates on complaints about marketing communications that are alleged to be misleading. See Appendix 1 for more information about those Regulations.

The ASA will take into account the impression created by marketing communications as well as specific claims. It will adjudicate on the basis of the likely effect on consumers, not the marketer's intentions.

Other sections of the Code contain product-specific or audience-specific rules that are intended to protect consumers from misleading marketing communications. For example, the Children and Medicines sections of the Code contain rules that apply, as well as the general rules, to marketing communications that fall under those sections.

### Rules

#### General

- 3.1** Marketing communications must not materially mislead or be likely to do so.
- 3.2** Obvious exaggerations ("puffery") and claims that the average consumer who sees the marketing communication is unlikely to take literally are allowed provided they do not materially mislead.
- 3.3** Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the marketer takes to make that information available to the consumer by other means.

- 3.4** For marketing communications that quote prices for advertised products, material information [for the purposes of rule 3.3] includes:
  - 3.4.1** the main characteristics of the product
  - 3.4.2** the identity (for example, a trading name) and geographical address of the marketer and any other trader on whose behalf the marketer is acting
  - 3.4.3** the price of the advertised product, including taxes, or, if the nature of the product is such that the price cannot be calculated in advance, the manner in which the price is calculated
  - 3.4.4** delivery charges



## MISLEADING ADVERTISING

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**3.4.5** the arrangements for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely to reasonably expect

**3.4.6** that consumers have the right to withdraw or cancel, if they have that right (see rule 3.55).

Cross-reference: If the marketing communication encourages a consumer to buy a product through a distance-selling mechanism, please refer to Section 9: Distance Selling.

**3.5** Marketing communications must not materially mislead by omitting the identity of the marketer.

Some marketing communications must include the marketer's identity and contact details. Marketing communications that fall under the Distance Selling, Database Practice or Employment sections of the Code must comply with the more detailed rules in those sections.

Marketers should note the law requires marketers to identify themselves in some marketing communications. Marketers should take legal advice.

**3.6** Subjective claims must not mislead the consumer; marketing communications must not imply that expressions of opinion are objective claims.

### Substantiation

**3.7** Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.

**3.8** Claims for the content of non-fiction publications should not exaggerate the value, accuracy, scientific validity or practical usefulness of the product. Marketers must ensure that claims that have not been independently substantiated but are based merely on the content of a publication do not mislead consumers.

CAP has published a Help Note on the Marketing of Publications.

### Qualification

**3.9** Marketing communications must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.

**3.10** Qualifications must be presented clearly.

CAP has published a Help Note on Claims that Require Qualification.

### Exaggeration

**3.11** Marketing communications must not mislead consumers by exaggerating the capability or performance of a product.

**3.12** Marketing communications must not present rights given to consumers in law as a distinctive feature of the marketer's offer.

- 3.13** Marketing communications must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.

### Prohibited Claims

These rules apply regardless of any substantiation presented in support of the claims:

- 3.14** Marketing communications must not claim that products can facilitate winning in games of chance.
- 3.15** Marketing communications must not explicitly claim that the advertiser's job or livelihood is in jeopardy if the consumer does not buy the advertised product.
- 3.16** No marketing communication may promote a pyramid promotional scheme. Pyramid promotional schemes are those in which consumers pay for the opportunity to receive payments derived primarily from the introduction of other consumers into the scheme, not from the sale or consumption of products.

### Prices

#### Background

Price statements in marketing communications should take account of the Department for Business Innovation & Skills (BIS) Pricing Practices Guide.

#### Definition

Price statements include statements about the manner in which the price will be calculated as well as definite prices.

- 3.17** Price statements must not mislead by omission, undue emphasis or distortion. They must relate to the product featured in the marketing communication.
- 3.18** Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers. However, VAT-exclusive prices may be given if all those to whom the price claim is addressed pay no VAT or can recover VAT. Such VAT-exclusive prices must be accompanied by a prominent statement of the amount or rate of VAT payable.
- 3.19** If a tax, duty, fee or charge cannot be calculated in advance, for example, because it depends on the consumer's circumstances, the marketing communication must make clear that it is excluded from the advertised price and state how it is calculated.
- 3.20** Marketing communications that state prices must also state applicable delivery, freight or postal charges or, if those cannot reasonably be calculated in advance, state that such charges are payable.
- 3.21** If the price of one product depends on another, marketing communications must make clear the extent of the commitment the consumer must make to obtain the advertised price.
- 3.22** Price claims such as "up to" and "from" must not exaggerate the availability or amount of benefits likely to be obtained by the consumer.

### Free

### Principle

Marketing communications must not describe a product as "free", "gratis", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding and collecting or paying for delivery of the item.

- 3.23** Marketing communications must make clear the extent of the commitment the consumer must make to take advantage of a "free" offer.
- 3.24** Marketing communications must not describe items as "free" if:
- 3.24.1** the consumer has to pay packing, packaging, handling or administration charges for the "free" product
  - 3.24.2** the cost of response, including the price of a product that the consumer must buy to take advantage of the offer, has been increased, except where the increase results from factors that are unrelated to the cost of the promotion, or
  - 3.24.3** the quality of the product that the consumer must buy has been reduced. CAP and BCAP have published joint guidance on the use of "free".
- 3.25** Marketers must not describe an element of a package as "free" if that element is included in the package price unless consumers are likely to regard it as an additional benefit because it has recently been added to the package without increasing its price.
- 3.26** Marketers must not use the term "free trial" to describe "satisfaction or your money back" offers or offers for which a non-refundable purchase is required.

### Availability

- 3.27** Marketers must make a reasonable estimate of demand for advertised products.
- 3.28** Marketing communications that quote a price for a featured product must state any reasonable grounds the marketer has for believing that it might not be able to supply the advertised (or an equivalent) product at the advertised price within a reasonable period and in reasonable quantities. In particular:
- 3.28.1** if estimated demand exceeds supply, marketing communications must make clear that stock is limited
  - 3.28.2** if the marketer does not intend to fulfil orders, for example, because the purpose of the marketing communication is to assess potential demand, the marketing communication must make that clear
  - 3.28.3** marketing communications must not mislead consumers by omitting restrictions on the availability of products; for example, geographical restrictions or age limits.

- 3.29** Marketers must monitor stocks. If a product becomes unavailable, marketers must, whenever possible, withdraw or amend marketing communications that feature that product.
- 3.30** Marketers must not use the technique of switch selling, in which their sales staff decline to show the advertised product, refuse to take orders for it or to deliver it within a reasonable time or demonstrate a defective sample of it to promote a different product.
- 3.31** Marketing communications must not falsely claim that the marketer is about to cease trading or move premises. They must not falsely state that a product, or the terms on which it is offered, will be available only for a very limited time to deprive consumers of the time or opportunity to make an informed choice.
- 3.32** Marketing communications must not mislead the consumer about market conditions or the possibility of finding the product elsewhere to induce consumers to buy the product at conditions less favourable than normal market conditions.

### Comparisons

#### Principle

The ASA will consider unqualified superlative claims as comparative claims against all competing products. Superiority claims must be supported by evidence unless they are obvious puffery (that is, claims that consumers are unlikely to take literally). Objective superiority claims must make clear the aspect of the product or the marketer's performance that is claimed to be superior.

#### Comparisons with Identifiable Competitors

- 3.33** Marketing communications that include a comparison with an identifiable competitor must not mislead, or be likely to mislead, the consumer about either the advertised product or the competing product.
- 3.34** They must compare products meeting the same need or intended for the same purpose.
- 3.35** They must objectively compare one or more material, relevant, verifiable and representative feature of those products, which may include price.
- 3.36** They must not create confusion between the marketer and its competitors or between the marketer's product, trade mark, trade name or other distinguishing mark and that of a competitor.
- 3.37** Certain EU agricultural products and foods are, because of their unique geographical area and method of production, given special protection by being registered as having a "designation of origin". Products with a designation of origin must be compared only with other products with the same designation.

#### Other Comparisons

- 3.38** Marketing communications that include a comparison with an unidentifiable competitor must not mislead, or be likely to mislead, the consumer. The elements of the comparison must not be selected to give the marketer an unrepresentative advantage.

### Price Comparisons

- 3.39** Marketing communications that include a price comparison must make the basis of the comparison clear.
- CAP has published a Help Note on Retailers' Price Comparisons and a Help Note on Lowest Price Claims and Price Promises.
- 3.40** Price comparisons must not mislead by falsely claiming a price advantage. Comparisons with a recommended retail prices (RRPs) are likely to mislead if the RRP differs significantly from the price at which the product or service is generally sold.

### Imitation and Denigration

- 3.41** Marketing communications must not mislead the consumer about who manufactures the product.
- 3.42** Marketing communications must not discredit or denigrate another product, marketer, trade mark, trade name or other distinguishing mark.
- 3.43** Marketing communications must not take unfair advantage of the reputation of a competitor's trade mark, trade name or other distinguishing mark or of the designation of origin of a competing product.
- 3.44** Marketing communications must not present a product as an imitation or replica of a product with a protected trade mark or trade name.

### Endorsements and Testimonials

- 3.45** Marketers must hold documentary evidence that a testimonial or endorsement used in a marketing communication is genuine, unless it is obviously fictitious, and hold contact details for the person who, or organisation that, gives it.
- 3.46** Testimonials must relate to the advertised product.
- 3.47** Claims that are likely to be interpreted as factual and appear in a testimonial must not mislead or be likely to mislead the consumer.
- 3.48** Marketing communications must not feature a testimonial without permission; exceptions are normally made for accurate statements taken from a published source, quotations from a publication or references to a test, trial, professional endorsement, research facility or professional journal, which may be acceptable without express permission.
- 3.49** Marketers must not refer in a marketing communication to advice received from CAP or imply endorsement by the ASA or CAP.
- 3.50** Marketing communications must not display a trust mark, quality mark or equivalent without the necessary authorisation. Marketing communications must not claim that the marketer (or any other entity referred to), the marketing communication or the advertised product has been approved, endorsed or authorised by any public or other body if it has not or without complying with the terms of the approval, endorsement or authorisation.

- 3.51** Marketing communications must not falsely claim that the marketer, or other entity referred to in the marketing communication, is a signatory to a code of conduct. They must not falsely claim that a code of conduct has an endorsement from a public or other body.
- 3.52** Marketing communications must not use the Royal Arms or Emblems without prior permission from the Lord Chamberlain's office. References to a Royal Warrant should be checked with the Royal Warrant Holders' Association.

### Guarantees and After-sales Service

#### Definition

In the rules below, "guarantee" includes warranties, after-sales service agreements, care packages and similar products.

- 3.53** Marketing communications must not use the word "guarantee" in a way that could cause confusion about a consumer's rights.
- 3.54** Marketing communications must make clear each significant limitation to an advertised guarantee (of the type that has implications for a consumer's rights). Marketers must supply the full terms before the consumer is committed to taking up the guarantee.
- 3.55** Marketers must promptly refund consumers who make valid claims under an advertised money-back guarantee.
- 3.56** Marketing communications must not falsely claim or imply that after-sales service is available in an EEA member state in which the advertised product is not sold.
- 3.57** If a marketing communication in a language other than an official language of the EEA State where the trader is located offers after-sales service but the after-sales service is not available in the language of the marketing communication, the marketer must explain that to the consumer before the contract is concluded.

# 04

## Harm and offence



### Principle

**Marketers should take account of the prevailing standards in society and the context in which a marketing communication is likely to appear to minimise the risk of causing harm or serious or widespread offence.**

### Rules

**4.1** Marketing communications must not contain anything that is likely to cause serious or widespread offence. Particular care must be taken to avoid causing offence on the grounds of race, religion, gender, sexual orientation, disability or age. Compliance will be judged on the context, medium, audience, product and prevailing standards.

Marketing communications may be distasteful without necessarily breaching this rule. Marketers are urged to consider public sensitivities before using potentially offensive material.

The fact that a product is offensive to some people is not grounds for finding a marketing communication in breach of the Code.

**4.2** Marketing communications must not cause fear or distress without justifiable reason; if it can be justified, the fear or distress should not be excessive. Marketers must not use a shocking claim or image merely to attract attention.

**4.3** References to anyone who is dead must be handled with particular care to avoid causing offence or distress.

**4.4** Marketing communications must contain nothing that is likely to condone or encourage violence or anti-social behaviour.

**4.5** Marketing communications, especially those addressed to or depicting a child, must not condone or encourage an unsafe practice (see Section 5: Children).

**4.6** Marketing communications must not encourage consumers to drink and drive. Marketing communications must, where relevant, include a prominent warning on the dangers of drinking and driving and must not suggest that the effects of drinking alcohol can be masked.

**4.7** Marketers must take particular care not to include in their marketing communications visual effects or techniques that are likely to adversely affect members of the public with photosensitive epilepsy.



**05**

**Children**

### Principle

**Care should be taken when featuring or addressing children in marketing communications.**

**The way in which children perceive and react to marketing communications is influenced by their age, experience and the context in which the message is delivered. Marketing communications that are acceptable for young teenagers will not necessarily be acceptable for younger children. The ASA will take those factors into account when assessing whether a marketing communication complies with the Code.**

### Definition

For the purposes of the Code, a child is someone under 16.

### Rules

#### Harm

- 5.1** Marketing communications addressed to, targeted directly at or featuring children must contain nothing that is likely to result in their physical, mental or moral harm:
- 5.1.1** children must not be encouraged to enter strange places or talk to strangers
  - 5.1.2** children must not be shown in hazardous situations or behaving dangerously except to promote safety. Children must not be shown unattended in street scenes unless they are old enough to take responsibility for their own safety. Pedestrians and cyclists must be seen to observe the Highway Code
  - 5.1.3** children must not be shown using or in close proximity to dangerous substances or equipment without direct adult supervision
  - 5.1.4** children must not be encouraged to copy practices that might be unsafe for a child
  - 5.1.5** distance selling marketers must take care when using youth media not to promote products that are unsuitable for children.

#### Credulity and Unfair Pressure

- 5.2** Marketing communications addressed to, targeted directly at or featuring children must not exploit their credulity, loyalty, vulnerability or lack of experience:
- 5.2.1** children must not be made to feel inferior or unpopular for not buying the advertised product
  - 5.2.2** children must not be made to feel that they are lacking in courage, duty or loyalty if they do not buy or do not encourage others to buy a product

- 5.2.3** it must be made easy for children to judge the size, characteristics and performance of advertised products and to distinguish between real-life situations and fantasy
- 5.2.4** adult permission must be obtained before children are committed to buying complex or costly products
- 5.3** Marketing communications addressed to or targeted directly at children:
  - 5.3.1** must not exaggerate what is attainable by an ordinary child using the product being marketed
  - 5.3.2** must not exploit children's susceptibility to charitable appeals and must explain the extent to which their participation will help in any charity-linked promotions.

### Direct Exhortation and Parental Authority

- 5.4** Marketing communications addressed to or targeted directly at children:
  - 5.4.1** must not actively encourage children to make a nuisance of themselves to parents or others and must not undermine parental authority
  - 5.4.2** must not include a direct exhortation to children to buy an advertised product or persuade their parents or other adults to buy an advertised product for them.
- 5.5** Marketing communications that contain a direct exhortation to buy a product via a direct-response mechanism must not be directly targeted at children. For a definition of "direct-response mechanism", see Section 9: Distance Selling.

### Promotions

- 5.6** Promotions addressed to or targeted directly at children:
  - 5.6.1** must make clear that adult permission is required if a prize or an incentive might cause conflict between a child's desire and a parent's, or other adult's, authority
  - 5.6.2** must contain a prominent closing date if applicable (see rule 8.17.4)
  - 5.6.3** must not exaggerate the value of a prize or the chances of winning it.
- 5.7** Promotions that require a purchase to participate and include a direct exhortation to make a purchase must not be addressed to or targeted at children. See Section 8: Sales Promotions.

**06**

**Privacy**

## Principle

**Individuals should be protected from unwarranted infringements of privacy.**

## Rules

**6.1** Marketers must not unfairly portray or refer to anyone in an adverse or offensive way unless that person has given the marketer written permission to allow it. Marketers are urged to obtain written permission before:

- referring to or portraying a member of the public or his or her identifiable possessions; the use of a crowd scene or a general public location may be acceptable without permission
- referring to a person with a public profile; references that accurately reflect the contents of a book, an article or a film might be acceptable without permission
- implying any personal approval of the advertised product; marketers should recognise that those who do not want to be associated with the product could have a legal claim.

Prior permission might not be needed if the marketing communication contains nothing that is inconsistent with the position or views of the featured person.

**6.2** Members of the Royal Family should not normally be shown or mentioned in a marketing communication without their prior permission but an incidental reference unconnected with the advertised product, or a reference to material such as a book, article or film about a member of the Royal Family, may be acceptable.

**07**

# **Political advertisements**

### Rules

- 7.1** Claims in marketing communications, whenever published or distributed, whose principal function is to influence voters in a local, regional, national or international election or referendum are exempt from the Code.
- 7.2** Marketing communications by central or local Government, as distinct from those concerning party policy, are subject to the Code.

# 08

## Sales promotions





### Background

The sales promotion rules apply to consumer and trade promotions, incentive schemes and the promotional elements of sponsorships; they regulate the nature and administration of promotions.

Promoters should take legal advice before embarking on promotions with prizes, including competitions, prize draws, instant-win offers and premium promotions, to ensure that the mechanisms involved do not make them unlawful lotteries (see the Gambling Act 2005 for Great Britain and the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (as amended) for Northern Ireland).

Promoters should comply with all other relevant legislation, including data protection legislation for which guidance is available from the Information Commissioner's Office.

The sales promotion rules must be read in conjunction with all other parts of the Code, including the relevant rules in Section 5: Children and Section 18: Alcohol.

### Definition

A sales promotion can provide an incentive for the consumer to buy by using a range of added direct or indirect benefits, usually on a temporary basis, to make the product more attractive. A non-exhaustive list of sales promotions includes: "two for the price of one" offers, money-off offers, text-to-wins, instant-wins, competitions and prize draws. The rules do not apply to routine, non-promotional, distribution of products or product extensions, for example one-off editorial supplements (in printed or electronic form) to newspapers or magazines.

### Rules

- 8.1** Promoters are responsible for all aspects and all stages of their promotions.
- 8.2** Promoters must conduct their promotions equitably, promptly and efficiently and be seen to deal fairly and honourably with participants and potential participants. Promoters must avoid causing unnecessary disappointment.

### Protection of Consumers, Safety and Suitability

- 8.3** Promoters must do everything reasonable to ensure that their promotions, including product samples, are safe and cause no harm to consumers or their property. Literature accompanying promotional items must give any necessary warnings and safety advice.
- 8.4** Alcoholic drinks must not feature in promotions directed at people under 18. Alcohol must not be available on promotion to anyone under 18.
- 8.5** Promotions must not be socially undesirable to the audience addressed by encouraging excessive consumption or irresponsible use.
- 8.6** Promoters must do everything reasonable to ensure that unsuitable or irresponsible material does not reach consumers or other recipients.

- 8.7** No promotion or promotional item should cause serious or widespread offence to consumers.

### Children

- 8.8** Special care must be taken with promotions addressed to children or if products or items intended for adults might fall into the hands of children. (See Section 5: Children)

### Availability

- 8.9** Promoters must be able to demonstrate that they have made a reasonable estimate of the likely response and that they were capable of meeting that response.
- 8.10** Phrases such as “subject to availability” do not relieve promoters of their obligation to do everything reasonable to avoid disappointing participants.
- 8.11** Promoters must not encourage the consumer to make a purchase or series of purchases as a precondition to applying for promotional items if the number of those items is limited.
- 8.12** If, having made a reasonable estimate as in rule 8.9, it is unable to supply demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside its control, the promoter must ensure relevant communication with applicants and consumers and offer a refund or a substitute product in accordance with rule 9.5.
- 8.13** If a prize promotion is widely advertised, the promoter must ensure the widespread availability of the requisite forms and any goods needed to establish proof of purchase.

### Administration

- 8.14** Promoters must ensure that their promotions are conducted under proper supervision and make adequate resources available to administer them. Promoters, agencies and intermediaries should not give consumers justifiable grounds for complaint.
- 8.15** Promoters must allow adequate time for each phase of the promotion: notifying the trade, distributing the goods, issuing rules if relevant, collecting wrappers and the like and judging and announcing results.
- 8.15.1** Promoters must award the prizes as described in their marketing communications or reasonable equivalents.
- 8.16** Promoters must normally fulfil applications within 30 days in accordance with rule 9.4 and refund money in accordance with rule 9.5.

### Significant Conditions for Promotions

#### Background

Please see the Children section, the Prize Promotions sub-section and the CAP Help Note on Promotions with Prizes.

**8.17** Before purchase or, if no purchase is required, before or at the time of entry or application, promoters must communicate all applicable significant conditions. Significant conditions include:

**8.17.1 How to participate**

How to participate, including significant conditions and costs, and other major factors reasonably likely to influence consumers' decision or understanding about the promotion

**8.17.2 Free-entry route explanation**

Any free-entry route should be explained clearly and prominently

**8.17.3 Start date**

The start date, if applicable

**8.17.4 Closing date**

**8.17.4.a** A prominent closing date, if applicable, for purchases and submissions of entries or claims. Closing dates are not always necessary, for example: comparisons that refer to a special offer (whether the promoter's previous offer or a competitor's offer) if the offer is and is stated to be "subject to availability"; promotions limited only by the availability of promotional packs (gifts with a purchase, extra-volume packs and reduced-price packs) and loyalty schemes run on an open-ended basis

**8.17.4.b** Unless the promotional pack includes the promotional item or prize and the only limit is the availability of that pack, prize promotions and promotions addressed to or targeted at children always need a closing date

**8.17.4.c** Promoters must be able to demonstrate that the absence of a closing date will not disadvantage consumers

**8.17.4.d** Promoters must state if the deadline for responding to undated promotional material will be calculated from the date the material was received by consumers

**8.17.4.e** Unless circumstances outside the reasonable control of the promoter make it unavoidable, closing dates must not be changed. If they are changed, promoters must do everything reasonable to ensure that consumers who participated within the original terms are not disadvantaged

**8.17.5 Proof of purchase**

Any proof of purchase requirements

**8.17.6 Prizes and gifts**

Promoters must specify the number and nature of prizes or gifts, if applicable. If the exact number cannot be predetermined, a reasonable estimate of the number and a statement of their nature must be made. Promoters must:

**8.17.6.a** distinguish those prizes that could be won, including estimated prize funds, from those prizes that will be won by someone by the end of the promotional period and

**8.17.6.b** state whether prizes are to be awarded in instalments or are to be shared among recipients

**8.17.7 Restrictions**

Geographical, personal or technological restrictions such as location, age or the need to access the Internet. Promoters must state any need to obtain permission to enter from an adult or employer

**8.17.8 Availability**

The availability of promotional packs if it is not obvious; for example, if promotional packs could become unavailable before the stated closing date of the offer

**8.17.9 Promoter's name and address**

Unless it is obvious from the context or if entry into an advertised promotion is only through a dedicated website containing that information in an easily found format, the promoter's full name and correspondence address must be stated.

**8.18** Marketing communications that include a promotion and are significantly limited by time or space must include as much information about significant conditions as practicable and must direct consumers clearly to an easily accessible alternative source where all the significant conditions of the promotion are prominently stated. Participants should be able to retain those conditions or easily access them throughout the promotion.

**Prize Promotions****Background**

See CAP Help Note on Promotions with Prizes.

- 8.19** Promoters must not claim that consumers have won a prize if they have not. The distinction between prizes and gifts must always be clear: items offered to a significant proportion of consumers in a promotion should be described as gifts, not prizes, or any other term for either word likely to have the same meaning for consumers. If a promotion offers a gift to a significant proportion and a prize to those who win, special care is needed to avoid confusing the two: the promotion must, for example, state clearly that consumers “qualify” for the gift but have merely an opportunity to win the prize. If a promotion includes, in a list of prizes, a gift for which consumers have qualified, the promoter must distinguish clearly between the two.
- 8.20** Promoters must not exaggerate consumers’ chances of winning prizes. They must not include a consumer who has been awarded a gift in a list of prize winners.
- 8.21** Promoters must not claim or imply that consumers are luckier than they are. They must not use terms such as “finalist” or “final stage” in a way that implies that consumers have progressed, by chance or skill, to an advanced stage of a promotion if they have not.
- 8.21.1** Promoters must not falsely claim or imply that the consumer has already won, will win or will on doing a particular act win a prize (or other equivalent benefit) if the consumer must incur a cost to claim the prize (or other equivalent benefit) or if the prize (or other equivalent benefit) does not exist.
- 8.22** Promoters must not claim that consumers must respond by a specified date or within a specified time if they need not.
- 8.23** Promoters must avoid complex rules and only exceptionally supplement conditions of entry with extra rules. If extra rules cannot be avoided, promoters must tell participants how to obtain them; the rules must contain nothing that could reasonably have influenced consumers against buying or participating.
- 8.24** Promoters of prize draws must ensure that prizes are awarded in accordance with the laws of chance and, unless winners are selected by a computer process that produces verifiably random results, by an independent person, or under the supervision of an independent person.
- 8.25** Participants in instant-win promotions must get their winnings at once or must know immediately what they have won and how to claim without delay, unreasonable cost or administrative barriers. Instant-win tickets, tokens or numbers must be awarded on a fair and random basis and verification must take the form of an independently audited statement that all prizes have been distributed, or made available for distribution, in that manner.
- 8.26** In competitions, if the selection of a winning entry is open to subjective interpretation, an independent judge, or a panel that includes one independent member must be appointed. In either case, the judge or panel member must be demonstrably independent, especially from the competition’s promoters and intermediaries and from the pool of entrants from which the eventual winner is picked. Those appointed to act as judges should be competent to judge the competition and their full names must be made available on request.

- 8.27** Withholding prizes (see rules 8.15.1 and 8.28.2) is justified only if participants have not met the qualifying criteria set out clearly in the rules of the promotion.
- 8.28** Participants must be able to retain conditions or easily access them throughout the promotion. In addition to rule 8.17, prize promotions must specify before or at the time of entry:
- 8.28.1** any restriction on the number of entries
  - 8.28.2** whether the promoter may substitute a cash alternative for any prize
  - 8.28.3** if more than 30 days after the closing date, the date by which prizewinners will receive their prizes
  - 8.28.4** how and when winners will be notified of results
  - 8.28.5** how and when information about winners and results will be made available. Promoters must either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries. Prizewinners must not be compromised by the publication of excessive personal information
  - 8.28.6** in a competition, the criteria and mechanism for judging entries (for example, the most apt and original tiebreaker)
  - 8.28.7** if relevant, who owns the copyright of the entries
  - 8.28.8** if applicable, how the promoter will return entries
  - 8.28.9** any intention to use winners in post-event publicity.

### Front-page Flashes

- 8.29** Publishers announcing reader promotions on the front page or cover must ensure that consumers know whether they are expected to buy subsequent editions of the publication. Major conditions that might reasonably influence consumers significantly in their decision to buy must appear on the front page or cover. (see CAP Help Note on Front-page Flashes)

### Trade Incentives

- 8.30** Incentive schemes must be designed and implemented to take account of the interests of everyone involved and must not compromise the obligation of employees to give honest advice to consumers.
- 8.31** If they intend to ask for help from, or offer incentives to, another company's employees, promoters must require those employees to obtain their employer's permission before participating. Promoters must observe any procedures established by companies for their employees, including any rules for participating in promotions.

**8.32** Incentive schemes and relevant promotions must make clear if a tax liability might arise.

### Charity-linked Promotions

**8.33** Promotions run by third parties (for example commercial companies) claiming that participation will benefit a registered charity or cause must:

**8.33.1** name each charity or cause that will benefit and be able to show the ASA or CAP the formal agreement with those benefiting from the promotion

**8.33.2** if it is not a registered charity, define its nature and objectives

**8.33.3** specify exactly what will be gained by the named charity or cause and state the basis on which the contribution will be calculated (see rule 8.34)

**8.33.4** state if the promoter has imposed a limit on its contributions

**8.33.5** not impose a cut-off point for contributions by consumers if an amount is stated for each purchase. If a target total is stated, extra money collected should be given to the named charity or cause on the same basis as contributions below that level

**8.33.6** be able to show that targets set are realistic

**8.33.7** not exaggerate the benefit to the charity or cause derived from individual purchases of the promoted product

**8.33.8** if asked, make available to consumers a current or final total of contributions made

**8.33.9** not directly encourage children to buy, or exhort children to persuade an adult to buy for them, a product that promotes charitable purposes.

**8.34** Where a promotion states or implies that part of the price paid for goods or services will be given to a charity or cause, state the actual amount or percentage of the price that will be paid to the charity or cause.

**8.34.1** For any other promotion linked to a charity or where a third party states or implies that donations will be given to a charity or cause, the promotion must state the total (or a reasonable estimate) of the amount the charity or cause will receive.

**09**

**Distance  
selling**



### Background

Most business-to-consumer distance selling contracts are subject to the Consumer Protection (Distance Selling) Regulations 2000 (as amended). These rules complement those Regulations and do not replace them.

These rules must be read in conjunction with other rules in this Code, especially the rules on availability in Section 3: Misleading Advertising.

The Direct Marketing Association (DMA) requires its members to observe the DM Code of Practice, which covers some practices that are not covered in the CAP Code.

### Definition

Distance selling marketing communications are marketing communications that promote specific goods or services and include direct response mechanisms that allow readers to place orders without face-to-face contact with the marketer.

In this section of the Code (and only in this section), “consumer” does not include those acting in the course of their business.

### Rules

- 9.1** Distance selling marketing communications must make clear the marketer's identity and geographic address; that information must be given in a form that can be retained by consumers.
- 9.2** Distance selling marketing communications must include:
  - 9.2.1** the main characteristics of the product
  - 9.2.2** the price, including any VAT or other taxes payable (see “Prices” in Section 3: Misleading Advertising, and payment arrangements
  - 9.2.3** the amount of any delivery charge
  - 9.2.4** the estimated delivery or performance time (see rule 4.9.3) and arrangements
  - 9.2.5** a statement that, unless inapplicable (see rule 9.6), consumers have the right to cancel orders for products. Marketers of services must explain how the right to cancel may be affected if the consumer agrees to services beginning less than 7 working days after the contract was concluded. They must, however, make it clear when the services will begin
  - 9.2.6** any telephone, postal or other communication charge calculated at higher than the standard rate (for example, if a premium-rate call is required)
  - 9.2.7** any other limitation on the offer (for example, period of availability) and any other condition that affects its validity

- 9.2.8** a statement on whether the marketer intends to provide substitute products (of equivalent quality and price) if those ordered are unavailable and one that it will meet the cost of returning substitute products on cancellation
- 9.2.9** if goods are supplied or services performed permanently or recurrently, the minimum duration of open-ended contracts.
- 9.3** At the latest by the time that goods are delivered or services begin, marketers must give consumers written information on:
- 9.3.1** how to exercise their right to cancel, unless inapplicable (see rule 9.6). Marketers must allow at least seven clear working days after delivery (or after the conclusion of service contracts unless the consumer agrees to an earlier start date) for consumers to cancel
- 9.3.2** for goods, whether the consumer has to return the goods to the suppliers on cancellation and, if so, who is to bear the cost of return or recovery of the goods (though see rule 2.8.9 for substitute goods)
- 9.3.3** any other guarantees and after-sales services
- 9.3.4** the full geographical address of the suppliers for any consumer complaints
- 9.3.5** the conditions that apply to the cancellation of any open-ended contract.
- 9.4** Marketers must fulfil orders within 30 days from the day consumers send their order unless:
- 9.4.1** the nature of the product or service makes it reasonable to specify a longer period in the marketing communications: for example, marketing communications for made-to-measure products, plants that are out of season, or products or services that are supplied on an instalment basis may reasonably specify a longer period, or
- 9.4.2** a longer performance period has been agreed with the consumer.
- 9.5** Marketers must refund money promptly (and at the latest within 30 days of notice of cancellation being given) if:
- 9.5.1** consumers have not received products within the specified period. If they prefer to wait, consumers must be given a firm dispatch date or fortnightly progress reports. Alternatively marketers may, if asked or if stated before purchase, provide a substitute of equivalent quality and price
- 9.5.2** products are returned because they are damaged when received, are faulty or are not as described; if so, the marketer must bear the cost of transit in both directions
- 9.5.3** consumers cancel within seven clear working days after delivery, unless the product is listed in rule 9.6. Consumers should assume they may try out products, except for audio or video recordings or computer software, but should take reasonable care of them before they are returned. Consumers must return the product and, unless the product is a substitute product sent instead of the ordered

product, the marketer may require the consumer to pay the costs of doing so providing the marketer made that clear at the latest at the time the product was delivered.

**9.5.4** an unconditional money-back guarantee is given and the products are returned within a reasonable period

**9.5.5** products that have been returned are not received back, provided consumers can produce proof of posting.

**9.6** If all contractual obligations to consumers are met, marketers do not have to provide a refund on:

**9.6.1** services that have already begun with the consumer's agreement, if rule 9.2.5 has been complied with

**9.6.2** products the price of which depends on financial market fluctuations that are outside the control of the supplier

**9.6.3** perishable, personalised or made-to-measure products

**9.6.4** audio or video recordings or computer software if unsealed by the consumer

**9.6.5** newspapers, periodicals or magazines

**9.6.6** betting, gaming or lottery services.

**9.7** Marketers should take particular care when packaging products that might fall into the hands of children.

**9.8** Marketers must not falsely imply that consumers have already ordered the marketed product by including in marketing material an invoice or similar document that seeks payment.

**9.9** Marketers should not ask consumers to pay for or return unsolicited products, except for substitute products supplied in conformity with rules 8.12 and 9.5.1.

**9.10** This rule must be read in conjunction with Directive (EC) No 2010/30/EU and the Energy Information Regulations 2011 on labelling and standard product information of the consumption of energy and other resources by energy-related products and its subsequent delegated regulations. The Directive introduces an information and labelling framework whereby delegated regulations will detail which products need to contain an energy efficiency rating or fiche. The rule only applies to products which are subject to a delegated regulation.

For more information on delegated regulations, go to <http://ec.europa.eu/energy>.

Marketers must make product fiche information about products that fall under delegated regulations available to consumers before commitment.

# 10

## Database practice



### Background

Marketers must comply with all relevant data protection legislation. Guidance on that legislation is available from the Information Commissioner's Office. Although data protection legislation has a wide application, these rules relate only to databases used for direct marketing purposes. The rules should be observed in conjunction with the legislation; they do not replace it.

Responsibility for complying with the database practice rules may rest directly not with marketers but with data controllers. Those responsible are expected to comply.

### Definitions

A "data controller" is an entity that determines the purposes for which, and the manner in which, personal information is to be processed. It may be an individual or an organisation and the processing may be carried out jointly or in common with other persons or organisations.

A "preference service" is a service that, to reduce unsolicited contact, enables consumers and businesses to have their names and contact details in the UK removed from or added to lists that are used by the direct marketing industry.

Electronic mail in this section encompasses e-mail, Short Message Service (SMS), Multimedia Messaging Service (MMS) and other data transfer methods.

(See also CAP Help Notes on Mobile Marketing and Viral Marketing.)

### Rules

- 10.1** Personal information must always be held securely and must be safeguarded against unauthorised use, disclosure, alteration or destruction.
- 10.2** Any proposed transfer of a database to a country outside the European Economic Area must be made only if that country ensures an adequate level of protection for the rights and freedoms of consumers in relation to the processing of personal information or if contractual arrangements provide that protection.
- 10.3** Marketers must do everything reasonable to ensure that, if asked in writing, consumers or the ASA (with consent of the consumer concerned) are given available information on the nature of a consumer's personal information and from where it has been obtained.
- 10.4** Marketers must not make persistent and unwanted marketing communications by telephone, fax, mail, e-mail or other remote media. To avoid making persistent and unwanted marketing communications, marketers must do everything reasonable to ensure that:
  - 10.4.1** marketing communications are suitable for those they target
  - 10.4.2** marketing communications are not sent unsolicited to consumers if explicit consent is required (see rule 10.13)

- 10.4.3** anyone who has been notified to them as dead is not contacted again and the notifier is referred to the relevant preference service
- 10.4.4** marketing communications are not sent to consumers who have asked not to receive them (see rule 10.5) or, if relevant, who have not had the opportunity to object to receiving them (see rule 10.9.3). Those consumers should be identifiable
- 10.4.5** databases are accurate and up-to-date and that reasonable requests for corrections to personal information are effected within 60 days.
- 10.5** Consumers are entitled to have their personal information suppressed. Marketers must ensure that, before use, databases have been run against relevant suppression files within a suitable period. Marketers must hold limited information, for suppression purposes only, to ensure that no other marketing communications are sent as a result of information about those consumers being re-obtained through a third party.
- 10.6** Marketing communications sent by electronic mail (but not those sent by Bluetooth technology) must contain the marketer's full name (or, in the case of SMS messages, a recognisable abbreviation) and a valid address; for example, an e-mail address or a SMS short code to which recipients can send opt-out requests.
- 10.7** Fax and non-live-sound automated-call marketing communications must contain the marketer's full name and a valid address or freephone number to which recipients can send opt-out requests.
- 10.8** Marketers are permitted, subject to these rules and to database rights, to use published information that is generally available if the consumer concerned is not listed on a relevant suppression file.
- 10.9** Unless it is obvious from the context, or if they already know, consumers must be informed in a clear and understandable manner and at the time personal information is collected:
- 10.9.1** who is collecting it (and the representative for data protection queries, if different)
- 10.9.2** why it is being collected
- 10.9.3** if the marketer intends to disclose the information to third parties, including associated but legally separate companies, or put the information to a use significantly different from that for which it is being provided; if so, an opportunity to prevent that from happening must be given.
- 10.10** The extent and detail of personal information held for any purpose must be adequate and relevant and should not be excessive for that purpose.
- 10.11** Personal information must not be kept for longer than is necessary for the purpose for which it was originally obtained.

- 10.12** If after collection they decide to use personal information for a purpose significantly different from that originally communicated, marketers must first get the explicit consent of consumers. Significantly different purposes include:
- 10.12.1** the disclosure of personal information to third parties for direct marketing purposes
  - 10.12.2** the use or disclosure of personal information for any purpose substantially different from that which consumers could reasonably have foreseen and to which they might have objected.
- 10.13** The explicit consent of consumers (see rule 10.4) is required before:
- 10.13.1** processing sensitive personal data, including information on racial or ethnic origin, political opinion or religious or other similar beliefs, trade union membership, physical or mental health, sex life, criminal record or allegation of criminal activity
  - 10.13.2** sending marketing communications by fax
  - 10.13.3** sending marketing communications by electronic mail (excluding by Bluetooth technology) but marketers may send unsolicited marketing about their similar products to those whose data they have obtained during, or in negotiations for, a sale. Data marketers must, however, tell those consumers they may opt out of receiving future marketing communications both when they collect the data and at every subsequent occasion they send out marketing communications. Marketers must give consumers a simple means to do so
  - 10.13.4** sending non-live-sound marketing communications by automated calling systems.
- 10.14** Explicit consent is not required when marketing business products by fax or by electronic mail to corporate subscribers (see III j), including to their named employees. Marketers must nevertheless comply with rules 10.4.5 and 10.5 and offer opt-outs in line with rule 10.13.3.

### Children

#### Background

Please see Section 5: Children

- 10.15** Marketers must not knowingly collect from children under 12 personal information about those children for marketing purposes without first obtaining the consent of the child's parent or guardian.

**10.16** Marketers must not knowingly collect personal information about other people from children under 16 unless that information is the minimum required to make a recommendation for a product, is not used for a significantly different purpose from that originally consented to, and the marketer can demonstrate that the collection of that information was suitable for the age group targeted.

Data about third parties collected from children must not be kept for longer than necessary.



# 11

## Environmental claims

### Background

Marketers should take account of Government guidance including the Green Claims Code published by DEFRA and BIS.

### Rules

- 11.1** The basis of environmental claims must be clear. Unqualified claims could mislead if they omit significant information.
- 11.2** The meaning of all terms used in marketing communications must be clear to consumers.
- 11.3** Absolute claims must be supported by a high level of substantiation. Comparative claims such as “greener” or “friendlier” can be justified, for example, if the advertised product provides a total environmental benefit over that of the marketer’s previous product or competitor products and the basis of the comparison is clear.
- 11.4** Marketers must base environmental claims on the full life cycle of the advertised product, unless the marketing communication states otherwise, and must make clear the limits of the life cycle. If a general claim cannot be justified, a more limited claim about specific aspects of a product might be justifiable. Marketers must ensure claims that are based on only part of the advertised product’s life cycle do not mislead consumers about the product’s total environmental impact.
- 11.5** Marketers must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.
- 11.6** If a product has never had a demonstrably adverse effect on the environment, marketing communications must not imply that the formulation has changed to improve the product in the way claimed. Marketers may, however, claim that a product has always been designed in a way that omits an ingredient or process known to harm the environment.
- 11.7** Marketing communications must not mislead consumers about the environmental benefit that a product offers; for example, by highlighting the absence of an environmentally damaging ingredient if that ingredient is not usually found in competing products or by highlighting an environmental benefit that results from a legal obligation if competing products are subject to that legal obligation.
- 11.8** This rule must be read in conjunction with Directive (EC) No 2010/30/EU and the Energy Information Regulations 2011 on labelling and standard product information of the consumption of energy and other resources by energy-related products and its subsequent delegated regulations. The Directive introduces an information and labelling framework whereby delegated regulations will detail which products need to contain an energy efficiency rating or fiche. The rule only applies to products which are subject to a delegated regulation.

For more information on delegated regulations, go to <http://ec.europa.eu/energy>.

Marketing communications for specific energy-related products, subject to a delegated regulation, that include energy-related information or disclose price information, must include an indication of the product’s energy efficiency class i.e. in the range A+++ to G.

# 12

**Medicines,  
medical devices,  
health-related products  
and beauty products**



### Background

The rules in this section are designed to ensure that marketing communications for medicines, medical devices, treatments, health-related products and beauty products receive the necessary high level of scrutiny. The rules apply to marketing communications and not the products, which are regulated by health regulators such as the Medicines and Healthcare products Regulatory Agency (MHRA), [www.mhra.gov.uk](http://www.mhra.gov.uk), the European Medicines Agency (EMA), [www.ema.europa.eu](http://www.ema.europa.eu) and the Department of Health, [www.dh.gov.uk](http://www.dh.gov.uk). Marketing communications for those products must comply with the rules and professional codes of conduct of relevant professional bodies.

### Definition

For the purposes of this Code, “licence” includes certificate, authorisation or registration.

For more information, see CAP Help Notes, especially those on: Substantiation for Health, Beauty and Slimming Claims; Health, Beauty and Slimming Advertisements that Refer to Medical Conditions; Cosmetic Surgery Marketing and Use of Experts by the ASA and CAP.

### Rules

- 12.1** Objective claims must be backed by evidence, if relevant consisting of trials conducted on people. If relevant, the rules in this section apply to claims for products for animals. Substantiation will be assessed on the basis of the available scientific knowledge.

Medicinal or medical claims and indications may be made for a medicinal product that is licensed by the MHRA or EMA, or for a CE-marked medical device. A medicinal claim is a claim that a product or its constituent(s) can be used with a view to making a medical diagnosis or can treat or prevent disease, including an injury, ailment or adverse condition, whether of body or mind, in human beings.

Secondary medicinal claims made for cosmetic products as defined in the appropriate European legislation must be backed by evidence. These are limited to any preventative action of the product and may not include claims to treat disease.

- 12.2** Marketers must not discourage essential treatment for conditions for which medical supervision should be sought. For example, they must not offer specific advice on, diagnosis of or treatment for such conditions unless that advice, diagnosis or treatment is conducted under the supervision of a suitably qualified health professional. Accurate and responsible general information about such conditions may, however, be offered. (See rule 12.11.)

Health professionals will be deemed suitably qualified only if they can provide suitable credentials; for example, evidence of: relevant professional expertise or qualifications; systems for regular review of members’ skills and competencies and suitable professional indemnity insurance covering all services provided; accreditation by a professional or regulatory body that has systems for dealing with complaints and taking disciplinary action and has registration based on minimum standards for training and qualifications.

- 12.3** Marketers offering individual treatments, especially those that are physically invasive, may be asked by the media and the ASA to provide full details together with information about those who supervise and administer them. Practitioners must have relevant and recognised qualifications. Marketers should encourage consumers to take independent medical advice before committing themselves to significant treatments, including those that are physically invasive.
- 12.4** Marketers must not confuse consumers by using unfamiliar scientific words for common conditions.
- 12.5** Marketers inviting consumers to diagnose their minor ailments must not make claims that might lead to a mistaken diagnosis.
- 12.6** Marketers should not falsely claim that a product is able to cure illness, dysfunction or malformations.
- 12.7** References to the relief of symptoms or the superficial signs of ageing are acceptable if they can be substantiated. Unqualified claims such as “cure” and “rejuvenation” are not generally acceptable, especially for cosmetic products.
- 12.8** Marketers must hold proof before claiming or implying that a minor addiction or a bad habit can be treated without effort from those suffering.
- 12.9** Marketers must not encourage consumers to use a product to excess and must hold proof before suggesting their product or therapy is guaranteed to work, absolutely safe or without side-effects.
- 12.10** Marketing communications must not suggest that any product is safe or effective merely because it is “natural” or that it is generally safer because it omits an ingredient in common use.

### Medicines

The Medicines Act 1968 and secondary legislation issued under it, as well as Regulations implementing European Community Directive 2001/83/EC on the Community Code relating to medicinal products for human use, govern the advertising and promotion of medicines and the conditions of ill-health that medicines may be offered to treat. Guidance on the relevant legislation is available from the MHRA.

For more information on medicinal products and medical devices, go to: [www.mhra.gov.uk](http://www.mhra.gov.uk). For more information on medical treatments, go to: [www.healthcarecommission.org.uk](http://www.healthcarecommission.org.uk).

- 12.11** Medicines must have a licence from the MHRA before they are marketed. Marketing communications for medicines must conform with the licence and the product's summary of product characteristics. For the avoidance of doubt, by conforming with the product's indicated use, a marketing communication would not breach rule 12.2.
- Marketing communications must not suggest that a product is "special" or "different" because it has been granted a licence by the MHRA.
- 12.12** Prescription-only medicines or prescription-only medical treatments may not be advertised to the public.
- 12.13** Marketing communications which include a product claim for a medicinal product (including legible on-pack product claims within a pack shot) must include the name of the product, an indication of what it is for, text such as "Always read the label" and the common name of the sole active ingredient, if it contains only one.
- Marketing communications for a traditional herbal medicinal product or a homeopathic medicinal product must include mandatory information, which can be found in the MHRA's *The Blue Guide: Advertising and Promotion of Medicines in the UK* at [www.mhra.gov.uk](http://www.mhra.gov.uk).
- 12.14** Marketers must not use fear or anxiety to promote a medicine or a recovery from illness and must not suggest that using or avoiding a product can affect normal health.
- 12.15** Illustrations of the effect or action of a product should be accurate.
- 12.16** Marketing communications for a medicine must not be addressed to children.
- 12.17** Marketers must not suggest that a medicinal product is either a food or a cosmetic.
- 12.18** Marketers must not use health professionals or celebrities to endorse medicines.
- 12.19** Marketing communications for a medicine may not claim that its effects are as good as or better than those of another identifiable product.
- 12.20** Homeopathic medicinal products must be registered in the UK. Any product information given in the marketing communication should be confined to what appears on the label. Marketing communications must include a warning to consult a doctor if symptoms persist. Marketing communications for an unlicensed product must not make a medicinal or therapeutic claim or refer to an ailment unless authorised by the MHRA to do so.
- 12.21** Marketers of traditional herbal medicines may advertise for the indications listed in the product's summary of product characteristics. Marketing communications for products that hold a Traditional Herbal Medicines Registration must not imply that registration is based upon clinical trials.

## Cosmetics

**12.22** Claims made about the action that a cosmetic has on or in the skin should distinguish between the composition of the product and any effects brought about by the way in which it is applied, such as massage. Scientific evidence must also make that distinction.

**12.22.1** Some cosmetics have an effect on the type of skin changes that are caused by environmental factors. Marketing communications for them may therefore refer to temporarily preventing, delaying or masking premature ageing.

## Hair and Scalp

**12.23** Marketers must be able to provide scientific evidence, if relevant consisting of trials conducted on people, for any claim that their product or therapy can prevent baldness or slow it down, arrest or reverse hair loss, stimulate or improve hair growth, nourish hair roots, strengthen the hair or improve its health as distinct from its appearance.

## Services offering advice on unplanned pregnancy

**12.24** Marketing communications for services offering advice on unplanned pregnancy must make clear if the service does not refer women directly for a termination. Given that terminations are lawful only in some circumstances, and are subject to particularly stringent requirements in Northern Ireland, marketers may wish to seek legal advice.

# 13

## Weight control and slimming



### Background

The rules in this section are designed to ensure that marketing communications for slimming and weight control products receive the necessary high level of scrutiny.

See CAP Slimming Guidelines for Press Advertisements.

### Definition

This section applies to marketing communications for weight control and slimming foodstuffs, aids (including exercise products that make weight-loss or slimming claims), clinics and other establishments, diets, medicines, treatments and the like. If applicable, they must comply with Section 12: Medicines, Medical Devices, Health-related Products and Beauty Products and Section 15: Food, Food Supplements and Associated Health or Nutrition Claims).

### Rules

- 13.1** A weight-reduction regime in which the intake of energy is lower than its output is the most common self-treatment for achieving weight reduction. Any claim made for the effectiveness or action of a weight-reduction method or product must be backed, if applicable, by rigorous trials on people; testimonials that are not supported by trials do not constitute substantiation.
- 13.2** Obesity in adults is defined by a Body Mass Index (BMI) of more than 30 kg/m<sup>2</sup>. Obesity is frequently associated with a medical condition and a treatment for it must not be advertised to the public unless it is to be used under suitably qualified supervision. Marketing communications for non-prescription medicines that are indicated for the treatment of obesity and that require the involvement of a pharmacist in the sale or supply of the medicine may nevertheless be advertised to the public.
- 13.3** Marketing communications for any weight-reduction regime or establishment must neither be directed at nor contain anything that is likely to appeal particularly to people who are under 18 or those for whom weight reduction would produce a potentially harmful body weight (BMI of less than 18.5 kg/m<sup>2</sup>). Those marketing communications must not suggest that being underweight is desirable or acceptable.
- 13.4** Before they make claims for a weight-reduction aid or regimen, marketers must show that weight-reduction is achieved by loss of body fat. Combining a diet with an unproven weight-reduction method does not justify making weight-reduction claims for that method.
- 13.5** Marketers must be able to show that their diet plans are nutritionally well-balanced (except for producing a deficit of energy) and that must be assessed in relation to the category of person who would use them.
- 13.6** Vitamins and minerals do not contribute to weight reduction but may be offered to slimmers as a safeguard against any shortfall in recommended intake when dieting.

- 13.7** Marketers promoting Very Low Calorie Diets or other diets that fall below 800 kilo-calories a day must do so only for short-term use and must encourage users to take medical advice before embarking on them. Marketers should have regard to the guidance on “Obesity: the prevention, identification, assessment and management of overweight and obesity in adults and children” (2006) published by the National Institute for Health and Clinical Excellence.
- 13.8** Marketing communications for diet aids must make clear how they work. Prominence must be given to the role of the diet and marketing communications must not give the impression that dieters cannot fail or can eat as much as they like and still lose weight.
- 13.9** Marketing communications must not contain claims that people can lose precise amounts of weight within a stated period or, except for marketing communications for surgical clinics, establishments and the like that comply with rule 12.3, that weight or fat can be lost from specific parts of the body.
- 13.9.1** Marketing communications for surgical clinics, establishments and the like that comply with rule 12.3 must not refer to the amount of weight that can be lost.
- 13.10** Claims that an individual has lost an exact amount of weight must be compatible with good medical and nutritional practice. Those claims must state the period involved and must not be based on unrepresentative experiences. For those who are normally overweight, a rate of weight loss greater than 2 lbs (just under 1 kg) a week is unlikely to be compatible with good medical and nutritional practice. For those who are obese, a rate of weight loss greater than 2 lbs a week in the early stages of dieting could be compatible with good medical and nutritional practice.
- 13.10.1** Health claims in marketing communications for food products that refer to a rate or amount of weight loss are not permitted.
- 13.11** Resistance and aerobic exercise can improve muscular condition and tone and that can improve body shape and posture. Marketers must be able to substantiate any claim that such methods used alone or in conjunction with a diet plan can lead to weight or inch reduction. Marketing communications for intensive exercise programmes should encourage users to check with a doctor before starting.
- 13.12** Short-term loss of girth may be achieved by wearing a tight-fitting garment. That loss must not be portrayed as permanent or confused with weight or fat reduction.

# 14

## Financial products



### Background

Marketers must have regard to the financial promotion restriction in Section 21 of the Financial Services and Markets Act 2000 and in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended), as reflected in the rules and guidance issued and enforced by the Financial Services Authority (FSA). The scope of that legislation, rules and guidance extends to marketing communications for: investments and investment advice; deposit taking (for example, banking); home finance transactions (regulated mortgages, home purchase plans and home finance plans); general insurance and pure protection policies (for example, term assurance). The FSA is responsible for the regulation of first-charge mortgage lending and selling, as well as certain secured loans and the activities of insurance intermediaries. The FSA does not provide pre-publication advice on proposed financial marketing communications; technical guidance is available on specific matters or rule interpretation only. For more information, contact the FSA (see [www.fsa.gov.uk](http://www.fsa.gov.uk)). The Office of Fair Trading (OFT) regulates other consumer loans under the Consumer Credit Act 1974 (as amended) and the Consumer Credit (Advertisements) Regulations 2004 (as amended). Debt management companies must ensure they comply with the Guidance for Debt Management Companies published by the OFT.

The rules that follow apply to financial marketing communications that are not regulated by the FSA or the OFT and to marketing communications for debt advice. All financial marketing communications are, however, subject to Code rules that cover non-technical elements of communications; for example, serious or widespread offence, social responsibility and the truthfulness of claims that do not relate to specific characteristics of financial products.

### Rules

- 14.1** Offers of financial products must be set out in a way that allows them to be understood easily by the audience being addressed. Marketers must ensure that they do not take advantage of consumers' inexperience or credulity.
- 14.2** Marketing communications should state the nature of the contract being offered, any limitation, expense, penalty or charge and the terms of withdrawal. Alternatively, if a marketing communication is short or general in its content, free material explaining the offer must be made readily available to consumers before a binding contract is entered into.
- 14.3** The basis used to calculate any rate of interest, forecast or projection must be apparent immediately.
- 14.4** Marketing communications must make clear that the value of investments is variable and, unless guaranteed, can go down as well as up. If the value of the investment is guaranteed, the marketing communication must explain the guarantee.
- 14.5** Marketing communications should make clear that past performance or experience does not necessarily give a guide for the future; if they are used in marketing communications, examples of past performance or experience should not be unrepresentative.

# 15

## Food, food supplements and associated health or nutrition claims

## Principle

**Public health policy increasingly emphasises good dietary behaviour and an active lifestyle as a means of promoting health. Commercial product advertising cannot reasonably be expected to perform the same role as education and public information in promoting a varied and balanced diet but should not undermine progress towards national dietary improvement by misleading or confusing consumers.**

## Background

These rules must be read in conjunction with the relevant legislation including the Food Safety Act 1990, the Food Labelling Regulations 1996 (as amended), especially Schedule 6, and Regulation (EC) No 1924/2006 on nutrition and health claims made on foods (the EU Regulation). They apply to all marketing communications for food products.

The EU Regulation is mandatory and seeks to protect consumers from misleading or false claims. It came into force in July 2007 but was subject to a series of complex transitional periods. Specific conditions of use associated with authorised health and nutrition claims are determined at a European level. The EU Register of nutrition and health claims (the EU Register) lists all authorised nutrition and health claims as well as non-authorised health claims that have been rejected. It is available at:

<http://ec.europa.eu/nuhclaims/>

Some transitional periods still apply, for instance, those affecting trade marks or brand names in use prior to 1 January 2005. In addition, there are claims that the European Commission has placed “on hold” whilst discussions take place on the best way forward for these types of claims. Claims that are “on hold” are subject to an extended transition period and are still permitted for use.

CAP advises advertising industry stakeholders to take advice on the effect of the EU Regulation.

Advertising industry stakeholders might find the Guidance to Compliance with European Regulation (EC) No 1924/2006 on nutrition and health claims made on foods, published by the Department of Health, useful:

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_130972](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_130972).

## Definitions

For the purposes of the rules in this section:

‘Nutrition claim’ means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to:

- (a) the energy (calorific value) it provides; provides at a reduced or increased rate; or does not provide; and/or

(b) the nutrients or other substances it contains; contains in reduced or increased proportions; or does not contain;

‘Health claim’ means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.

‘Reduction of disease risk claim’ means any health claim that states, suggests or implies that the consumption of a food category, a food or one of its constituents significantly reduces a risk factor in the development of a human disease.

References to food apply also to drink products.

## **Rules**

These rules should be read in conjunction with other rules in this Code, especially Section 5: Children and Section 13: Weight Control and Slimming.

## **General**

**15.1** Marketing communications that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim, as specified in the EU Register. Claims must be presented clearly and without exaggeration.

**15.1.1** Only nutrition claims listed in the updated Annex of the EU Regulation (as reproduced in the EU Register) may be used in marketing communications.

[http://www.ec.europa.eu/food/food/labellingnutrition/claims/community\\_register/nutrition\\_claims\\_en.htm](http://www.ec.europa.eu/food/food/labellingnutrition/claims/community_register/nutrition_claims_en.htm)

Only health claims listed as authorised in the EU Register, or claims that would have the same meaning to the consumer may be used in marketing communications.

[http://www.ec.europa.eu/food/food/labellingnutrition/claims/community\\_register/authorised\\_health\\_claims\\_en.htm](http://www.ec.europa.eu/food/food/labellingnutrition/claims/community_register/authorised_health_claims_en.htm).

**15.2** References to general benefits of a nutrient or food for overall good health or health-related well-being are acceptable only if accompanied by a specific authorised health claim.

**15.3** Comparative nutrition claims must compare the difference in the claimed nutrient to a range of foods of the same category which do not have a composition which allows them to bear a nutrition claim.

**15.3.1** A marketing communication may use one product as the sole reference for comparison only if that product is representative of the products in its category.

- 15.3.2** The difference in the quantity of a nutrient or energy value must be stated in the marketing communication and must relate to the same quantity of food.
- 15.4** Marketing communications must not condone or encourage excessive consumption of a food.
- 15.5** Marketing communications must not condone or encourage damaging oral health care practices, especially in children.
- 15.6** These are not acceptable in marketing communications for products within the remit of this section:

  - 15.6.1** Claims that state or imply health could be affected by not consuming a food.
  - 15.6.2** Claims that state or imply a food prevents, treats or cures human disease. Reduction-of disease-risk claims are acceptable if authorised by the European Commission.
  - 15.6.3** Health claims that refer to the recommendation of an individual health professional. Health claims that refer to the recommendation of an association are acceptable only if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics.
  - 15.6.4** References to changes in bodily functions that could give rise to or exploit fear in the audience.
  - 15.6.5** Claims of a nutrition or health benefit that gives rise to doubt the safety or nutritional adequacy of another product.
  - 15.6.6** Health claims that refer to a rate or amount of weight loss.

### **Food Supplements and other Vitamins and Minerals**

CAP advises marketers to ensure that claims made for dietary supplements and other vitamins and minerals are in line with the requirements of the EU Regulation.

- 15.7** Nutrition and health claims for food supplements must be permitted or authorised as provided for at rule 15.1.1 above. Marketing communications that contain nutrition or health claims must be supported by documentary evidence to show they meet the conditions of use associated with the relevant claim as specified in the EU Register.
- 15.8** Marketers must not state or imply that a balanced or varied diet cannot provide appropriate quantities of nutrients in general. Individuals should not be encouraged to swap a healthy diet for supplementation, and without well-established proof, no marketing communication may suggest that a widespread vitamin or mineral deficiency exists.
- 15.9** Marketing communications for foods must not claim to treat clinical vitamin or mineral deficiency.



### **Infant and Follow-on Formula**

These rules must be read in conjunction with the relevant legislation including the Infant Formula and Follow-on Formula Regulations 2007 and the EU Regulation.

**15.10** Except for those in a scientific publication or, for the purposes of trade before the retail stage, a publication of which the intended readers are not the general public, marketing communications for infant formula are prohibited.

**15.10.1** Marketing communications must not confuse between infant formula and follow-on formula.

### **Food and Soft Drink product marketing communications and children**

#### **Background**

See also the Help Note for food or soft drink product advertisements and children.

#### **Diet and Lifestyle**

**15.11** Marketing communications must not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.

**15.12** Marketing communications must not disparage good dietary practice or the selection of options, such as fresh fruit and fresh vegetables, that accepted dietary opinion recommends should form part of the average diet.

#### **Promotional Offers**

**15.13** Marketing communications featuring a promotional offer must be prepared with a due sense of responsibility.

**15.14** Except those for fresh fruit and fresh vegetables, food product advertisements that are targeted through their content directly at pre-school or primary school children must not include a promotional offer.

Additionally, for children under 16:

**15.14.1** Except those for fresh fruit or fresh vegetables, marketing communications must not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Marketing communications featuring a promotional offer must ensure a significant presence for the product.

**15.14.2** Marketing communications featuring a promotional offer linked to a food product of interest to children must avoid creating a sense of urgency or encouraging the purchase of an excessive quantity for irresponsible consumption.

- 15.14.3 Marketing communications must not encourage children to eat more than they otherwise would.
- 15.14.4 Marketing communications for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food.

### Licensed characters and celebrities

- 15.15 Licensed characters and celebrities popular with children must be used with a due sense of responsibility. Except those for fresh fruit or fresh vegetables, food advertisements that are targeted directly at pre-school or primary school children through their content must not include licensed characters or celebrities popular with children.

For the avoidance of doubt, that prohibition applies to food or drink advertisements only. The prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.

Licensed characters and celebrities popular with children may present factual and relevant generic statements about nutrition, safety, education or similar.

### Pressure to purchase

- 15.16 Although children might be expected to exercise some preference over the food they eat or drink, marketing communications must be prepared with a due sense of responsibility and must not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases for them. (see rule 5.4.2).
  - 15.16.1 Marketing communications must neither try to sell to children by directly appealing to emotions such as pity, fear or self-confidence nor suggest that having the advertised product somehow confers superiority; for example, making a child more confident, clever, popular or successful.
  - 15.16.2 Marketing communications addressed to children must not urge children to buy or persuade others to buy and must avoid high-pressure or hard-sell techniques. Nothing must suggest that children could be bullied, cajoled or otherwise put under pressure to acquire the advertised item.
  - 15.16.3 Products or prices must not be presented in marketing communications in a way that suggests children or their families can easily afford them.

### Nutrition claims and Health claims

- 15.17 Claims referring to children's development and health are acceptable if authorised by the European Commission.

# 16

## Gambling



### Principle

**The rules in this section are designed to ensure that marketing communications for gambling products are socially responsible, with particular regard to the need to protect children, young persons under 18 and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling.**

### Background

The term “gambling” means gaming and betting, as defined in the Gambling Act 2005, and spread betting. For rules on lottery marketing communications, see Section 17.

The Gambling Act 2005 does not apply outside Great Britain. Specialist legal advice should be sought when considering advertising any gambling product in Northern Ireland or the Channel Islands.

Spread betting may be advertised as an investment under the Financial Services and Markets Act 2000, the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended) and other FSA rules and guidance (see Background, Section 14, Financial Products). A “spread bet” is a contract for difference that is a gaming contract, as defined in the glossary to the *FSA Handbook*.

The rules in this section apply to marketing communications for “play for money” gambling products and marketing communications for “play for free” gambling products that offer the chance to win a prize or explicitly or implicitly direct the consumer to a “play for money” gambling product, whether on-shore or off-shore.

These rules are not intended to inhibit marketing communications to counter problem gambling that are responsible and unlikely to promote a brand or type of gambling.

Unless they portray or refer to gambling, this section does not apply to marketing communications for non-gambling leisure events or facilities, for example, hotels, cinemas, bowling alleys or ice rinks, that are in the same complex as, but separate from, gambling events or facilities.

For the purposes of this section, “children” are people of 15 and under and “young persons” are people of 16 or 17.

### Rules

- 16.1** Marketing communications for gambling must be socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited.
- 16.2** In line with rule 1.2, the spirit as well as the letter of the rules in this section apply whether or not a gambling product is shown or referred to.
- 16.3** Marketing communications must not:

- 16.3.1** portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm
- 16.3.2** exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons
- 16.3.3** suggest that gambling can provide an escape from personal, professional or educational problems such as loneliness or depression
- 16.3.4** suggest that gambling can be a solution to financial concerns, an alternative to employment or a way to achieve financial security
- 16.3.5** portray gambling as indispensable or as taking priority in life; for example, over family, friends or professional or educational commitments
- 16.3.6** suggest that gambling can enhance personal qualities, for example, that it can improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration
- 16.3.7** suggest peer pressure to gamble nor disparage abstention
- 16.3.8** link gambling to seduction, sexual success or enhanced attractiveness
- 16.3.9** portray gambling in a context of toughness or link it to resilience or recklessness
- 16.3.10** suggest gambling is a rite of passage
- 16.3.11** suggest that solitary gambling is preferable to social gambling
- 16.3.12** be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture
- 16.3.13** be directed at those aged below 18 years (or 16 years for football pools, equal-chance gaming [under a prize gaming permit or at a licensed family entertainment centre], prize gaming (at a non-licensed family entertainment centre or at a travelling fair) or Category D gaming machines) through the selection of media or context in which they appear
- 16.3.14** include a child or a young person. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role. No-one may behave in an adolescent, juvenile or loutish way
- 16.3.15** exploit cultural beliefs or traditions about gambling or luck
- 16.3.16** condone or encourage criminal or anti-social behaviour
- 16.3.17** condone or feature gambling in a working environment. An exception exists for licensed gambling premises.

- 16.4** Marketing communications for family entertainment centres, travelling fairs, horse racecourses and dog race tracks, and for non-gambling leisure facilities that incidentally refer to separate gambling facilities, for example, as part of a list of facilities on a cruise ship, may include children or young persons provided they are accompanied by an adult and are socialising responsibly in areas that the Gambling Act 2005 does not restrict by age.
- 16.5** Marketing communications for events or facilities that can be accessed only by entering gambling premises must make that condition clear.

**17**

# Lotteries

### Principle

**The rules in this section are designed to ensure that marketing communications for lotteries are socially responsible, with particular regard to the need to protect children, young persons under 18 and other vulnerable persons from being harmed or exploited by advertising that features or promotes lotteries.**

**This section applies to marketing communications for lottery products that are licensed and regulated by the Gambling Commission, the National Lottery Commission, or in the case of small society lotteries, registered with local authorities in England and Wales or licensing boards in Scotland.**

**The UK National Lottery may be advertised under The National Lottery etc Act 1993 and The National Lottery Regulations 1994 (as amended). Marketing communications for the UK National Lottery are also subject to the National Lottery Advertising and Sales Promotion Code of Practice, approved by the National Lottery Commission.**

### Rules

- 17.1** Marketing communications must not portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm.
- 17.2** Marketing communications must not suggest that participating in a lottery can provide an escape from personal, professional or educational problems such as loneliness or depression.
- 17.3** Marketing communications must not suggest that participating in a lottery can be a solution to financial concerns, an alternative to employment or a way to achieve financial security. Advertisers may, however, refer to other benefits of winning a prize.
- 17.4** Marketing communications must not portray participating in a lottery as indispensable or as taking priority in life; for example, over family, friends or professional or educational commitments.
- 17.5** Marketing communications must neither suggest peer pressure to participate nor disparage abstention.
- 17.6** Marketing communications must not suggest that participating in a lottery can enhance personal qualities, for example, that it can improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration.
- 17.7** Marketing communications must not link participating in a lottery to seduction, sexual success or enhanced attractiveness.
- 17.8** Marketing communications must not portray participation in a context of toughness or link it to resilience or recklessness.
- 17.9** Marketing communications must not suggest participation is a rite of passage.



- 17.10** Marketing communications must not suggest that solitary gambling is preferable to social gambling.
- 17.11** Marketing communications for lotteries that can be participated in only by entering gambling premises must make that condition clear.
- 17.12** Marketing communications for lotteries must not exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons.
- 17.13** Marketing communications for lotteries must not be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture.
- 17.14** Marketing communications for lotteries should not be directed at those aged under 16 years through the selection of media or context in which they appear.
- 17.15** Marketing communications for a lottery product may include children or young persons. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role.
- 17.16** Marketing communications that exclusively feature the good causes that benefit from a lottery and include no explicit encouragement to buy a lottery product may include children or young persons in a significant role.
- 17.17** Marketing communications for lotteries must not exploit cultural beliefs or traditions about gambling or luck.
- 17.18** Marketing communications for lotteries must not condone or encourage criminal or anti-social behaviour.
- 17.19** Marketing communications for lotteries must not condone or feature gambling in a working environment (an exception exists for workplace lottery syndicates and gambling premises).

# 18

## Alcohol



### Principle

**Marketing communications for alcoholic drinks should not be targeted at people under 18 and should not imply, condone or encourage immoderate, irresponsible or anti-social drinking.**

**The spirit as well as the letter of the rules applies.**

### Definition

The rules in this section apply to marketing communications for alcoholic drinks and marketing communications that feature or refer to alcoholic drinks. Alcoholic drinks are defined as drinks containing at least 0.5% alcohol; for the purposes of this Code low-alcohol drinks are defined as drinks containing between 0.5% and 1.2% alcohol.

Where stated, exceptions are made for low-alcohol drinks. But, if a marketing communication for a low-alcohol drink could be considered to promote a stronger alcoholic drink or if the drink's low-alcohol content is not stated clearly in the marketing communications, all the rules in this section apply.

If a soft drink is promoted as a mixer, the rules in this section apply in full.

These rules are not intended to inhibit responsible marketing communications that are intended to counter problem drinking or tell consumers about alcohol-related health or safety themes. Those marketing communications should not be likely to promote an alcohol product or brand.

### Rules

- 18.1** Marketing communications must be socially responsible and must contain nothing that is likely to lead people to adopt styles of drinking that are unwise. For example, they should not encourage excessive drinking. Care should be taken not to exploit the young, the immature or those who are mentally or socially vulnerable.
- 18.2** Marketing communications must not claim or imply that alcohol can enhance confidence or popularity.
- 18.3** Marketing communications must not imply that drinking alcohol is a key component of the success of a personal relationship or social event. The consumption of alcohol may be portrayed as sociable or thirst-quenching.
- 18.4** Drinking alcohol must not be portrayed as a challenge. Marketing communications must neither show, imply, encourage or refer to aggression or unruly, irresponsible or anti-social behaviour nor link alcohol with brave, tough or daring people or behaviour.
- 18.5** Marketing communications must neither link alcohol with seduction, sexual activity or sexual success nor imply that alcohol can enhance attractiveness.

- 18.6** Marketing communications must not imply that alcohol might be indispensable or take priority in life or that drinking alcohol can overcome boredom, loneliness or other problems.
- 18.7** Marketing communications must not imply that alcohol has therapeutic qualities. Alcohol must not be portrayed as capable of changing mood, physical condition or behaviour or as a source of nourishment. Marketing communications must not imply that alcohol can enhance mental or physical capabilities; for example, by contributing to professional or sporting achievements.
- 18.8** Marketing communications must not link alcohol to illicit drugs.
- 18.9** Marketing communications may give factual information about the alcoholic strength of a drink. They may also make a factual alcohol strength comparison with another product, but only when the comparison is with a higher strength product of a similar beverage.
- Marketing communications must not imply that a drink may be preferred because of its alcohol content or intoxicating effect. There is an exception for low-alcohol drinks, which may be presented as preferable because of their low alcoholic strength.
- In the case of a drink with relatively high alcoholic strength in relation to its category, the factual information should not be given undue emphasis.
- 18.10** Marketing communications that include a sales promotion must not imply, condone or encourage excessive consumption of alcohol.
- 18.11** Marketing communications must not feature alcohol being handled or served irresponsibly.
- 18.12** Marketing communications must not link alcohol with activities or locations in which drinking would be unsafe or unwise.
- Marketing communications must not link alcohol with the use of potentially dangerous machinery or driving. Marketing communications may feature sporting and other physical activities (subject to other rules in this section; for example, appeal to under-18s or link with daring or aggression) but must not imply that those activities have been undertaken after the consumption of alcohol.
- 18.13** Only in exceptional circumstances may marketing communications feature alcohol being drunk by anyone in their working environment.
- 18.14** Marketing communications must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18 in a way that might encourage the young to drink. People shown drinking or playing a significant role (see rule 18.16) should not be shown behaving in an adolescent or juvenile manner.

- 18.15** Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age.
- 18.16** People shown drinking or playing a significant role must neither be nor seem to be under 25. People under 25 may be shown in marketing communications, for example, in the context of family celebrations, but must be obviously not drinking.
- 18.17** Marketing communications may give factual information about product contents, including comparisons, but must not make any health, fitness or weight-control claims.

The only permitted nutrition claims are “low-alcohol”, “reduced alcohol” and “reduced energy” and any claim likely to have the same meaning for the consumer.

# 19

## Motoring

### Principle

**Marketing communications should not condone or encourage unsafe or inconsiderate driving practices. If they make environmental claims, marketing communications for motor vehicles, fuel or accessories should comply with the rules in Section 11.**

### Rules

**19.1** Marketing communications for motor vehicles, fuel or accessories must not depict or refer to practices that condone or encourage anti-social behaviour.

**19.2** Marketing communications must not condone or encourage unsafe or irresponsible driving. If it could be emulated, marketing communications must not depict a driving practice that is likely to condone or encourage a breach of those rules of the Highway Code that are legal requirements if that driving practice seems to take place on a public road or in a public space. Vehicles' capabilities may be demonstrated on a track or circuit if it is obviously not in use as a public highway.

**19.3** Marketing communications must not depict speed in a way that might encourage motorists to drive irresponsibly or to break the law.

To avoid the implication of irresponsible driving through excessive speed, care must be taken in the style of presentation of marketing communications. Particular care must be taken in, for example, cinema commercials and in marketing communications that appear in electronic media to avoid moving images that imply excessive speed. If they are shown in normal driving circumstances on public roads, vehicles must be seen not to exceed UK speed limits.

**19.4** Marketers must not make speed or acceleration the main message of their marketing communications. Marketing communications may give general information about a vehicle's performance, such as acceleration and mid-range statistics, braking power, road-holding and top speed.

**19.5** Safety claims must not exaggerate the benefit to consumers. Marketers must not make absolute claims about safety unless they hold evidence to substantiate them.

# 20

## Employment, homework schemes and business opportunities



### Rules

#### Employment

**20.1** Marketing communications must distinguish clearly between offers of employment and business opportunities. Before publication, media owners normally require marketers' full details and any terms and conditions imposed on respondents.

**20.2** Employment marketing communications must relate to genuine vacancies and potential employees must not be asked to pay for information.

Living and working conditions must not be misrepresented. Quoted earnings must be precise; if one has to be made, a forecast must not be unrepresentative. If income is earned from a basic salary and commission, commission only or in some other way, that must be made clear.

#### Employment Agencies and Employment Businesses

**20.3** Employment agencies and employment businesses must make clear in their marketing communications their full names and contact details and, in relation to each position they advertise, whether it is for temporary or permanent work.

#### Homework Schemes

**20.4** Marketing communications for homework schemes must contain no forecast of earnings if the scheme is new. Marketers may state the likely level of earnings only if it can be supported with evidence of the experience of existing homeworkers. Marketers must not exaggerate the support available to homeworkers.

**20.5** Marketing communications for homework schemes must state:

**20.5.1** limitations or conditions that might influence consumers before their decision to participate

**20.5.2** whether the marketers will buy any products made

**20.5.3** if a financial outlay is, or might be, required.

**20.6** Marketers of homework schemes must include this information in the initial marketing communication or in follow-up literature made available to all consumers before commitment:

**20.6.1** the full name and geographical address of the marketer

**20.6.2** a clear description of the work

**20.6.3** whether participants are self-employed or employed by a business

**20.6.4** charges for raw materials, machines, components, administration and the like.

### Business Opportunities

**20.7** Marketing communications for business opportunities must neither contain unrepresentative or overstated earnings figures nor exaggerate the support available to investors.

**20.8** Marketers of business opportunities must include in their initial marketing communications or in follow-up literature made available to all consumers before commitment:

**20.8.1** the full name and geographical address of the marketer

**20.8.2** a clear description of the work involved

**20.8.3** a statement of the extent of investors' commitments, including any financial investment or outlay.

### Vocational Training and Instruction Courses

**20.9** Marketing communications for vocational training or other instruction courses must not give a misleading impression about the potential for employment that might follow.

Marketing communications must make clear significant conditions for acceptance onto vocational training or instruction courses, such as the level of attainment, and significant conditions likely to affect a consumer's decision to embark on a course, such as the cost or the duration of a course.

### Employment, Homeworking Schemes and Business Opportunities Directories

**20.10** Marketing communications for the sale of directories giving information about employment, homeworking schemes or business opportunities must state plainly the nature of what is being offered.

**21**

**Tobacco,  
rolling papers  
and filters**

### Scope

The scope of the Tobacco Products rule, in particular, as it relates to advertisements appearing on marketer's own websites where tobacco products are offered for sale, is determined by the relevant UK legislation on tobacco advertising.

The Rolling Papers and Filters rules govern the content of marketing communications, including point-of-sale material, for:

- a. rolling papers and filters
- b. any product if the marketing communication concerned features rolling papers, filters or a pack design of a recognisable brand available in the UK
- c. a product displaying the colours, livery, logo or name of a rolling paper or a brand of filter in a way that promotes smoking and not that branded product.

The Rolling Papers and Filters rules do not apply to marketing communications:

- d. addressed to the trade in its professional capacity in media not targeted at the public
- e. for schemes, events or activities sponsored or financially supported by manufacturers or importers, including sports sponsorship, so long as undue emphasis is not placed on the rolling papers or filters as opposed to the scheme, event or activity
- f. on manufacturers' or importers' websites (see Scope of the Code II q).

Other rules in the CAP Code, such as the sales promotion rules, apply to (d) and (e).

### Rules

#### Tobacco Products

**21.1** Tobacco products may not be advertised to the public.

#### Rolling Papers and Filters

**21.2** Marketing communications for rolling papers or filters must neither encourage people to start smoking nor encourage people who smoke to increase their consumption.

**21.3** Marketing communications for rolling papers or filters must not:

**21.3.1** play on the susceptibilities of those who are physically or emotionally vulnerable, especially the young or immature

**21.3.2** suggest that smoking is natural, safe, popular, glamorous or aspirational or that it can lead to social, sexual, romantic or business success

- 21.3.3** suggest that smoking can enhance people's femininity, masculinity or appearance
- 21.3.4** appeal to the adventurous or rebellious or suggest that it is daring to smoke or that smoking can enhance people's independence
- 21.3.5** link smoking with people who are well known, wealthy, fashionable, sophisticated or successful or who possess other attributes or qualities that may reasonably be expected to command admiration or encourage emulation
- 21.3.6** must not suggest that smoking is healthy, can be enjoyed as part of a healthy lifestyle or that it can aid relaxation or concentration.
- 21.4** Marketing communications for rolling papers or filters must not depict anyone smoking.
- 21.5** Marketing communications for rolling papers or filters must not be targeted at, or be likely to appeal to, people under 18. Anyone depicted in a marketing communication for rolling papers or filters must be, and be seen to be, over 25. No medium may be used to advertise rolling papers or filters if more than 25% of its audience is or is likely to be males under 18 years of age or females under 24 years of age. No direct marketing communication for rolling papers or filters may be distributed to males under 18 years of age or females under 24 years of age.
- 21.6** Marketing communications for rolling papers or filters must not condone or encourage the use of illegal drugs. Except in exceptional circumstances, for example, in the context of an anti-drug message, any reference to illegal drugs will be regarded as condoning their use.
- 21.7** Marketing communications for rolling papers or filters must not be sexually titillating.

# How the system works



### How the System Works

#### The self-regulatory system

The self-regulatory system comprises three bodies: the Advertising Standards Authority (ASA), the Advertising Standards Board of Finance (ASBOF) and the Committee of Advertising Practice (CAP). Their work is described below.

The strength of the system depends on the long-term commitment of all those involved in advertising, sales promotions and direct marketing. Practitioners in every sphere share an interest in seeing that marketing communications are welcomed and trusted by their audience: unless they are accepted and believed, marketing communications cannot succeed. If they are offensive or misleading, they discredit everyone associated with them and the industry as a whole.

The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code), and the details of the guidance and training offered by CAP Services to help advertisers comply with the rules, can be found at [www.cap.org.uk](http://www.cap.org.uk). The ASA publishes adjudications weekly on [www.asa.org.uk](http://www.asa.org.uk).

#### The Advertising Standards Authority

The ASA was established in 1962 to provide independent scrutiny of the newly created self-regulatory system set up by the industry. Its chief tasks are to promote and enforce high standards in marketing communications, to investigate complaints, to identify and resolve problems through research, to ensure that the system operates in the public interest and to act as the channel for communications with those who have an interest in marketing communication standards.

The ASA is a limited company and is independent of both the Government and the marketing business. The Chairman of the ASA is appointed by ASBOF and is unconnected with the marketing business. Most of the 12-member Council appointed by the Chairman to govern the ASA is also unconnected with the marketing business. All Council members sit as individuals and are selected, as far as possible, to reflect a diversity of background and experience. Vacancies for independent members of Council are publicly advertised. Members serve for a maximum of two three-year terms.

The ASA investigates complaints from any source against marketing communications in non-broadcast media. Marketers are told the outcome of the ASA Council's rulings and, if necessary, are asked to withdraw or amend their marketing communications. The adjudications reached by the Council are published weekly on [www.asa.org.uk](http://www.asa.org.uk). The ASA website contains information about the ASA's procedures for handling complaints about a marketing communication.

The ASA gives equal emphasis to conducting a substantial research and monitoring programme by reviewing marketing communications that fall within its scope. Specific media and product categories may be identified for scrutiny. In that way the ASA can identify trends and prevent future problems.

Publicising the ASA's policies and actions is essential to sustaining wide acceptance of the system's integrity. A comprehensive programme of seminars and speeches, advertising, e-mail and website updates, briefing notes on a wide range of topics, articles written for professional journals and newspaper, magazine, TV and radio coverage all augment the ASA's extensive media presence.

## The Advertising Standards Board of Finance

The Advertising Standards Board of Finance sets the framework for industry policy making and is responsible for the Committee of Advertising Practice and for funding the self-regulatory system.

The self-regulatory system is funded principally by a levy on advertising and direct marketing expenditure collected by ASBOF. The separation of operation and responsibilities helps to ensure that the independent judgement of the ASA is not compromised.

ASBOF's members are advertisers, promoters and direct marketers, their agencies, the media and the trade and professional organisations of the advertising, sales promotion and direct marketing businesses.

## The Committee of Advertising Practice

CAP's role is to ensure that marketing communications within the Code's remit that are commissioned, prepared, placed or published in the UK comply with the CAP Code.

CAP co-ordinates the activities of its members to achieve the highest degree of compliance with the Code. It creates, reviews and amends the Code. From time to time, it produces for the industry Help Notes that give detailed guidance on specific sectors or subjects that are covered only generally in the Code. It oversees the sanctions operated by its members. It operates a website, [www.cap.org.uk](http://www.cap.org.uk), to provide information and guidance to the industry, including access to Help Notes, Advice Online and relevant Ad Alerts. It convenes *ad hoc* Working Groups for limited periods to address specific subjects arising out of the self-regulatory process.

The Code establishes a standard against which marketing communications are assessed. Other codes exist in many sectors; many require practitioners to comply with the CAP Code.

The Chairman of CAP works on a part-time basis and is appointed for an agreed period and remunerated by ASBOF.

CAP actively encourages participation in the self-regulatory system. Suggestions for improving Code rules or modifying their application should be sent in writing to the Chairman. If changes are adopted by CAP their introduction is normally deferred for a short time to give marketers an adequate opportunity to amend their marketing communications.

## CAP Services

As well as writing and maintaining the rules, CAP also places great emphasis on the prevention of breaches and works to promote high compliance. CAP Services are a range of bespoke advice, training seminars and online resources to help all practitioners stay on top of advertising regulation, the requirements of the CAP and BCAP Codes, and how those are interpreted by the ASA.

Full details of CAP Services can be found at [www.cap.org.uk](http://www.cap.org.uk). Practitioners are urged to register on the site and subscribe to the newsletters to help them keep up-to-date with regulatory developments, training events and updates to guidance.



### The Copy Advice team

The Copy Advice team gives advice to marketers, their agencies, the media and other practitioners on the likely conformity with the CAP Code of marketing communications before they are published or distributed. It also checks marketing communications produced by marketers subject to mandatory pre-vetting (for example, those subject to the poster pre-vetting sanction).

Copy Advice is fast, free and confidential from competitors. Bespoke advice is provided by the specialist team of advisers who deal with the vast majority of written enquiries within 24 hours, although lengthy submissions can take longer, especially those that include detailed evidence that needs to be reviewed by external expert consultants. Advice is not binding either on enquirers or on the ASA. Favourable pre-publication advice does not automatically protect marketers from complaints being investigated and upheld by the ASA. It is, however, the best guide to what is likely to comply with the Code.

Online resources are available at [www.copyadvice.org.uk](http://www.copyadvice.org.uk). Visitors can register to access the most comprehensive database of guidance (AdviceOnline and Help Notes) on the CAP Code, as well as case studies and helpful checklists.

Online: [www.copyadvice.org.uk](http://www.copyadvice.org.uk)

Phone: 020 7492 2100

E-mail: [advice@cap.org.uk](mailto:advice@cap.org.uk)

### The Compliance team

The Compliance team ensures that marketing communications comply with the Code to protect consumers and ensure a level playing-field. It enforces ASA adjudications, disseminates any ramifications of them for an industry sector and acts against marketers that persistently break the Code. Exceptionally, if a marketing communication obviously breaches the Code, for example, if it contains a claim that is blatantly misleading, the team takes immediate compliance action to stop the marketing communication from reappearing. If it seems necessary to avoid harm, the Executive may take interim action during an ASA investigation (see “Sanctions”).

The team co-ordinates the sanctions operated by the Executive and by CAP members; in particular, it issues Ad Alerts to CAP members, including the media, advising them to withhold their services from non-compliant marketers or deny those marketers access to advertising space.

Information on compliance is available on [www.cap.org.uk](http://www.cap.org.uk). Companies that are members of a CAP trade association or professional body can access a database of relevant Ad Alerts on a secure section of the CAP website.

## The Panels

Much of the detailed work of CAP is done by its Panels. The Sales Promotion and Direct Response Panel concentrates on sales promotions and direct marketing. The Online Publications Media Panel advises on the proper distinction between editorial and advertising in online publications. The General Media Panel concentrates on all other CAP-related and BCAP-related matters. The Sales Promotion and Direct Response Panel and the General Media Panel are composed of industry experts and one ASA Council member; the Online Publications Media Panel is composed of the Chairmen of ASBOF and PRESSBOF

The Panels guide the Executive and help the ASA and CAP to produce advice for the industry and to interpret the Code.

The Panels provide a forum to reassess recommendations and advice given by the Executive. The parties to a complaint can request a Panel assessment before the ASA Council has adjudicated; Council will take account of the Panel's opinion. Council's judgement on the interpretation of the Code is, however, final. Anyone directly affected by copy advice given by the Executive on behalf of CAP can ask for it to be considered by the relevant Panel. The Panel Chairmen can reject requests and will do so if it seems that a Panel is being used to hamper the effective running of the self-regulatory system.

## The Independent Review Procedure

In exceptional circumstances, the ASA Council can be asked to reconsider its adjudication (including a Council decision not to investigate a complaint). Requests for a review should contain a full statement of the grounds, be in writing and be addressed to the Independent Reviewer of ASA Adjudications, 7th Floor North, Artillery House, 11-19 Artillery Row, London, SW1P 1RT. They should be sent within 21 days of the date on the ASA's letter of notification of an adjudication. The Independent Reviewer may waive that 21-day time limit if he judges it fair and reasonable to do so.

Requests should come only from the complainant or the marketer. Those from the marketer or from an industry complainant should be signed by the Chairman, Chief Executive or equivalent; requests made only by its solicitor or agency will not be accepted. All dealings with the Independent Reviewer must be in writing.

Requests may be made on two grounds:

- where additional relevant evidence comes to light that was available at the time, or shortly after, the ad appeared but could not reasonably have been submitted in the course of the investigation,

and/or

- where it is alleged that there is a substantial flaw in the Council's adjudication or in the process by which that adjudication was made.

No review will proceed if the point at issue is the subject of simultaneous or contemplated legal action between anyone directly involved. Requests for review should make plain that no such action is underway or is contemplated.

## HOW THE SYSTEM WORKS

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The ASA will not delay publication of the relevant adjudication pending the outcome of a review save in exceptional circumstances (on the authorisation of the ASA Chief Executive).

The Independent Reviewer will evaluate the substance of the request with advice from two Assessors (except for requests about a Council decision not to investigate a complaint). The two Assessors are the Chairman of ASBOF (or nominee) and the Chairman of the ASA.

If the Independent Reviewer decides not to accept the request (in whole or in part) because he considers that it does not meet either of the two grounds set out above, he will inform the person making the request.

If he decides to accept the request (in whole or in part) he will undertake an investigation, either by himself or with help from the ASA Executive or any other source of help or advice. He will inform the other parties to the Council adjudication or decision that he has accepted a request for review and will invite their comments on the submission made by the party requesting the review. At the end of his investigation, he will make a recommendation to the ASA Council.

The Council's decision on requests for review is final.

The Independent Reviewer will inform all parties of the Council's decision. Adjudications that are revised as a result of a review will be published on [www.asa.org.uk](http://www.asa.org.uk).

### Administration of the system

The ASA and CAP share a joint Executive whose duties are organised to recognise the distinct functions of the two bodies. The Executive carries out the day-to-day work of the system and acts as a channel of communication, ensuring that industry expertise, specialist advice and the decisions of the ASA Council are co-ordinated and disseminated. The ASA Council and CAP form an independent judgement on any matter reported to them after they have considered the Executive's recommendation.

Marketers bear principal responsibility for the marketing communications they produce and must be able to prove the truth of their claims to the ASA; they have a duty to make their claims fair and honest and to avoid causing serious or widespread offence. Agencies have an obligation to create marketing communications that are accurate, ethical and neither mislead nor cause serious or widespread offence. Publishers and media owners recognise that they should disseminate only those marketing communications that comply with the Code. That responsibility extends to any other agent involved in producing, placing or publishing marketing communications. They accept the rulings of the ASA Council as binding.

The ASA Council judges whether marketing communications breach the Code. Everyone responsible for commissioning, preparing, placing or publishing a marketing communication that breaches the Code is asked to act promptly to amend or withdraw it.

## The law

Marketers, agencies and publishers have primary responsibility for ensuring that everything they do is legal. Since the Code was first published, the number of laws designed to protect consumers has greatly increased. More than 200 UK statutes, orders and regulations as well as several directly effective European laws affect marketing communications here (see [www.asa.org.uk](http://www.asa.org.uk) or [www.cap.org.uk](http://www.cap.org.uk) for a non-exhaustive list). The ASA maintains a rapport with those responsible for initiating or administering any law that has a bearing on marketing communications. The system is reinforced by the legal backup provided for the work of the ASA by the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008 (see Scope of the Code).

The Code, and the self-regulatory framework that exists to administer it, was designed and has been developed to work within and to complement those legal controls. It provides an alternative, and in some instances the only, means of resolving disputes about marketing communications. It stimulates the adoption of high standards of practice in matters, such as taste and decency, that are extremely difficult to judge in law but fundamentally affect consumer confidence in marketing communications.

Some important aspects are governed by legislation enforced by local authority trading standards and environmental health officers. They include product packaging (except for on-pack promotions), weights and measures, statements on displays at point-of-sale and the safety of products.

Many Government agencies administer consumer protection legislation that ranges far wider and deeper than could be enforced through self-regulatory codes of practice. Marketers who break the law risk criminal prosecution or civil action. The Code requires marketers to ensure that all their marketing communications are legal but any matter that principally concerns a legal dispute will normally need to be resolved through law enforcement agencies or the Courts.

## Europe

Most member States of the European Union, and many non-EU European countries, have self-regulatory organisations (SROs) that are broadly similar to those in the self-regulatory system in the UK. Together with organisations representing the advertising industry in Europe, those SROs are members of the European Advertising Standards Alliance (EASA), the single voice of the advertising industry in Europe on advertising self-regulation. The ASA is a founder member of EASA. EASA is located in Brussels and meets regularly to co-ordinate the promotion and development of self-regulation at a European level.

Among its wide range of operations, EASA acts as a focal point for cross-border complaints investigated by individual members; consumers need complain only to the SRO in their country, no matter where the marketing communication originated. EASA is a source of information and research on self-regulation. It helps in the development and establishment of SROs in Europe and corresponds internationally.

EASA has published a statement of common principles, the core values that underpin each of its constituent SROs, and recommended standards for operating best practice in self-regulation that all SROs should seek to achieve. Both are available on [www.easa-alliance.org](http://www.easa-alliance.org).

Information on EASA's objectives, activities and publications, including the Alliance Update and order forms for *The Blue Book*, which contains an analysis of self-regulation in 24 European countries, is available from the EASA website, [www.easa-alliance.org](http://www.easa-alliance.org).

### Sanctions

Compliance surveys published periodically by the Executive have demonstrated that the vast majority of marketing communications comply with the Code. By providing advice, guidance or pressure, media owners, agencies and other intermediaries play a crucial role in ensuring compliance. If a marketing communication breaks the Code, the marketer responsible is told to amend or withdraw it.

Most willingly undertake to do so. If they do not, the Compliance team will consider the sanctions available to it.

The ASA and CAP do not adopt a legalistic attitude towards sanctions and they ensure that sanctions are both proportionate to the nature of the breach and effective. They focus on ensuring that non-compliant marketing communications are amended, withdrawn or stopped as quickly as possible.

The ASA and CAP are not restricted to applying sanctions only against marketers that have been subject to a formal investigation. If a marketing communication is obviously misleading or offensive, the ASA and CAP may take compliance action in the absence of complaints or during an investigation (see "The Compliance team").

### Adverse publicity

Publicising the ASA's adjudications is essential to sustaining wide acceptance of the system's integrity and the principal sanction available to the ASA is the unwelcome publicity that could result from the adjudications it publishes weekly on [www.asa.org.uk](http://www.asa.org.uk). Adverse publicity is damaging to most marketers and serves to warn the public. Marketers may face more adverse publicity if they cannot or will not amend their own non-compliant marketing communication on their own website or in other non-paid-for space online under their control. Their name and their non-compliance may be featured on a dedicated section of the ASA website and, if necessary, in an ASA advertisement appearing on an appropriate page of an internet search website. Anyone who is interested can access ASA adjudications quickly and easily on the website and can set up a profile-specific account so they are automatically notified by e-mail of relevant adjudications as soon as they are published. ASA adjudications receive a substantial amount of coverage in local, regional, national and international media.

An adverse ASA adjudications could have consequences for compliance with other codes or legal requirements. For example, personal data gathered as a result of a misleading marketing communication might not comply with the fair processing requirement in the first data protection principle of the Data Protection Act 1998.

### **Denial of media space**

CAP may issue Ad Alerts to its members, including the media, advising them to consult the Copy Advice team before accepting advertisements for publication or, in some circumstances, to withhold their services from non-compliant marketers or deny the latter access to advertising space. Ad Alerts are issued at short notice, are carefully targeted for greatest impact, are sent electronically and, once issued, are available on a secure section of [www.cap.org.uk](http://www.cap.org.uk) to those who might need to consult them. They contain the name and contact details of the non-compliant marketer, a description of the compliance problem and, if possible, a scanned image of the marketing communication in question. CAP may issue Ad Alerts that cover an entire sector if it perceives a widespread problem. CAP may ask internet search websites to remove a marketer's paid-for search advertisement if that links directly to a page hosting the marketer's own non-compliant marketing communication on the its own website or in other non-paid-for space under the marketer's control.

### **Trading privileges and recognition**

Many CAP trade associations and professional bodies offer their members, and others, recognition and trading privileges, which they may revoke, withdraw or temporarily withhold. For example, agency recognition offered by the print media members of CAP may be withdrawn or the substantial direct mail discounts offered by the Royal Mail on bulk mailings withheld. In exceptional cases of non-compliance, CAP members may expel companies from membership.

### **Pre-publication vetting**

The ASA and CAP may require persistent offenders to have some or all of their marketing communications vetted by the CAP Copy Advice team until the ASA and CAP are satisfied that future communications will comply with the Code.

The poster industry members of CAP operate a poster pre-vetting sanction to deter abuse of the medium. If the ASA adjudicates against a poster on the grounds of serious or widespread offence or social irresponsibility, the poster advertiser becomes a candidate for mandatory pre-vetting. If they believe that the advertiser either is incapable of complying with the Code or seems to have deliberately flouted the Code with the intention of generating complaints, PR and subsequent notoriety, the poster industry members of CAP and the CAP Executive will compel the advertiser to check future posters with the CAP Copy Advice team for a fixed period (usually two years).

### **Legal backstop**

The self-regulatory system is recognised by the Government, the Office of Fair Trading (OFT) and the Courts as one of the "established means" of consumer protection in non-broadcast marketing communications. If certain types of marketing communication, including those that are misleading or contain an impermissible comparison, continue to appear after the ASA Council has ruled against them, the ASA can refer the matter to the OFT for action under the Consumer Protection from Unfair Trading Regulations 2008 or the Business Protection from Misleading Marketing Regulations 2008. The OFT can seek an undertaking that the marketing communication will be stopped from anyone responsible for commissioning, preparing or disseminating it. If that is not given or is not honoured, the OFT can seek an injunction from the Court to prevent its further appearance. Anyone not complying can be found to be in contempt of court and is liable to be penalised.

## HOW THE SYSTEM WORKS

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The ASA and CAP maintain a rapport with the OFT and with other bodies that have a responsibility for creating, administering or enforcing laws that have a bearing on marketing communications. If necessary, they may notify those bodies of non-compliant marketers and work with them to ensure that unacceptable marketing communications are amended, withdrawn or stopped.

The OFT and other “qualified entities”, such as Trading Standards Authorities, can use the Enterprise Act 2002 Part 8 to enforce consumer protection laws, including the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008. Those regulations provide that, before taking action, qualified entities should have regard to the desirability of encouraging control by the “established means”.

# History of self-regulation





### Cross-border marketing communications

The Code does not apply to marketing communications in foreign media. If marketing communications appear in media based in countries that have self-regulatory organisations (SROs) that are members of EASA or if direct marketing originates from countries that have SROs that are members of EASA, EASA will co-ordinate cross-border complaints so the SRO in the country of origin of the marketing communication has jurisdiction; consumers need complain only to their SRO. If not, the ASA will take what action it can. The SROs with jurisdiction are formally responsible for applying any sanctions, though the ASA and CAP will, whenever they can, adopt a pragmatic approach to ensure that consumers are protected.

The ASA and CAP work closely with CAP trade associations and professional bodies, Trading Standards officers, Government departments, the OFT and other UK regulators, EASA and overseas SROs and statutory authorities to stop unacceptable marketing communications, especially misleading or offensive mailings sent direct to UK consumers from overseas. That work has achieved some success but the ASA, CAP and other authorities, whether statutory or self-regulatory, experience difficulties in enforcing the Code and laws against companies based overseas. “Qualified entities” can, however, act to ensure compliance with Directive 2005/29/EC “concerning unfair business-to-consumer commercial practices in the internal market” throughout the European Union.

To clarify what can and cannot be done, the ASA and CAP have produced a fact sheet, “Overseas Mailings”, to explain how they tackle unacceptable mailings that originate outside the UK and to warn consumers to treat those mailings with the utmost caution. That fact sheet is available on [www.asa.org.uk](http://www.asa.org.uk).

Self-regulation is nothing new: the medieval guilds practised self-regulation in that they inspected markets and measures, judged the quality of merchandise and laid down rules for their trades.

In advertising and marketing, self-regulation can be traced back to the poster industry in the 1880s. The first code of advertising was launched in 1925 by the Association of Publicity Clubs. And systematic scrutiny of advertising claims operated from 1926, when the newly established Advertising Association set up its Advertising Investigation Department to “investigate abuses in advertising and to take remedial action”.

In 1937, the International Chamber of Commerce developed an international code of advertising practice, the first of several international marketing codes that have provided a bench mark for many national systems of self-regulation.

The Committee of Advertising Practice (or the British Code of Advertising Practice Committee, as it then was) came into existence in 1961 and was responsible for the first British Code of Advertising Practice and all subsequent Codes including this one. The Code covered all non-broadcast advertisements and, in 1962, an independent body – the Advertising Standards Authority (ASA) – was established to administer the first Code.

1974 saw the creation of a new, improved funding mechanism for self-regulation in the form of the Advertising Standards Board of Finance (ASBOF). The new system brought an automatic levy of 0.1% on all display advertisements to fund the system. With it came an increased emphasis on public awareness of self-regulation and increased staffing to facilitate pre-vetting and monitoring.

1974 also saw the establishment of the first Code of Sales Promotion Practice – a recognition of the need to expand the role of the system to encompass promotional marketing.

Since 1962, advertising self-regulation has grown in stature. It now has all-party support and enjoys a widespread acceptance of its role in protecting the consumer. That acceptance led to European legislation governing misleading advertising being implemented nationally in 1988 in a way that allowed the ASA to remain the principal regulator for misleading advertisements in non-broadcast media but with statutory reinforcement through the Office of Fair Trading (OFT). It is a measure of the success of that approach that the ASA has referred few advertisers to the OFT.

Nothing better illustrates the maturity of the self-regulatory system than the extension, in 2004, of the ASA's remit to cover broadcast advertisements. Previously, broadcast advertising had been the subject of a separate statutory regime. The change came in 2003, when the Communications Act gave the newly formed Office of Communications (Ofcom) statutory responsibility for broadcasting standards. Using its powers under the Act, Ofcom contracted out responsibility for advertising standards to the ASA in the guise of a separate, but related, body called ASA (Broadcast) in a partnership often referred to as co-regulation.

# Appendix 1:

## The CPRs and BPRs



As a result, all licensed broadcast services carrying advertisements fall within the extended remit of the self-regulatory system; they include television, radio and teletext services, which were previously regulated by the Independent Television Commission or the Radio Authority. The broadcast self-regulatory system has powers to direct advertisements to be taken off air, amended or re-scheduled and broadcasters fund and use pre-vetting services. The system provides for the ASA to refer to Ofcom any broadcaster that flouts an ASA adjudication or instruction.

A separate body known as the Broadcast Committee of Advertising Practice (BCAP) took over responsibility for the existing television and radio advertising codes. Its members include representatives from the advertising and marketing industry with an interest in broadcast advertising: advertisers, agencies and television and radio broadcasters.

Today, the self-regulatory system covers non-broadcast advertising, sales promotion and many aspects of direct marketing. It is supported by a range of other self-regulatory initiatives by the industry, including the various preference services run by the Direct Marketing Association.

From its limited original remit, the UK system of self-regulation has, with the ASA as its public face, evolved into a comprehensive one-stop shop for regulating marketing communications, both broadcast and non-broadcast.

With a degree of flexibility denied to statutory controls, the self-regulatory system is constantly reviewing both the content of its codes and its remit, recently especially in relation to digital media and the challenges presented by the growth of online marketing communications.

The world of advertising and marketing has changed beyond recognition since the inception of the UK self-regulatory system in the early 1960s. Yet the purpose of self-regulation remains as it was in the beginning: to maintain, in the best way possible, the integrity of marketing communications in the interests of both the consumer and business.

## Background

Non-broadcast marketing communications are subject to legislation as well as to this Code. See [www.asa.org.uk](http://www.asa.org.uk) or [www.cap.org.uk](http://www.cap.org.uk) for a non-exhaustive list.

## The Consumer Protection from Unfair Trading Regulations 2008 (the CPRs)

One important piece of legislation that affects marketing communications is the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs). For the purpose of the Regulations and in this Appendix, “consumers” refers to individuals acting outside the course of their business. The CPRs prohibit unfair marketing to consumers, including misleading or aggressive advertising. Whenever it considers complaints that a marketing communication misleads consumers or is aggressive or unfair to consumers, the ASA will have regard to the CPRs. That means it will take factors identified in the CPRs into account when it considers whether a marketing communication breaches the CAP Code. The notes below summarise those factors.

Code rules that refer to misleading marketing communications should be read, in relation to business-to-consumer marketing communications, in conjunction with these notes.

### Consumers

The likely effect of a marketing communication is generally considered from the point of view of the average consumer whom it reaches or to whom it is addressed. The average consumer is assumed to be reasonably well-informed, observant and circumspect.

In some circumstances, a marketing communication may be considered from the point of view of the average member of a specific group:

- If it is directed to a particular audience group, the marketing communication will be considered from the point of view of the average member of that group.
- If it is likely to affect the economic behaviour only of a clearly identifiable group of people who are especially vulnerable, in a way that the advertiser could reasonably foresee, because of mental or physical infirmity, age or credulity, the marketing communication will be considered from the point of view of the average member of the affected group.

### Unfair marketing communications

Marketing communications are unfair if they

- are contrary to the requirements of professional diligence and
- are likely to materially distort the economic behaviour of consumers in relation to the advertised goods or services.

“Professional diligence” is the standard of special skill and care that a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and the general principle of good faith in the trader’s field of activity.

# Appendix 2:

Advertising rules  
for on-demand  
services regulated  
by statute

### Misleading marketing communications

Marketing communications are misleading if they

- are likely to deceive consumers and
- are likely to cause consumers to take transactional decisions that they would not otherwise have taken.

A “transactional decision” is any decision taken by a consumer, whether it is to act or not act, about whether, how and on what terms to buy, pay in whole or in part for, retain or dispose of a product or whether, how and on what terms to exercise a contractual right in relation to a product.

Marketing communications can deceive consumers by ambiguity, through presentation or by omitting important information that consumers need to make an informed transactional decision, as well as by including false information.

### Aggressive marketing communications

Marketing communications are aggressive if, taking all circumstances into account, they

- are likely to significantly impair the average consumer’s freedom of choice through harassment, coercion or undue influence and
- are therefore likely to cause consumers to take transactional decisions they would not otherwise have taken.

## The Business Protection from Misleading Marketing Regulations 2008

Business-to-business marketing communications are subject to the Business Protection from Misleading Marketing Regulations 2008 (the BPRs). Business-to-business marketing communications that breach the CAP Code may be referred to the Office of Fair Trading for consideration under the BPRs. Under the BPRs, a marketing communication is misleading if it:

- in any way, including its presentation, deceives or is likely to deceive the traders to whom it is addressed or whom it reaches and by reason of its deceptive nature, is likely to affect their economic behaviour
- or, for those reasons, injures or is likely to injure a competitor.

The BPRs also set out the conditions under which comparative marketing communications, directed at either consumers or business, are permitted. This Code incorporates those conditions.

## Principle

**The rules in Appendix 2 reflect the legal requirements in the Communications Act 2003 (as amended) with which media service providers must ensure they comply. Failure to ensure that advertising included in a regulated on-demand service complies with these rules may result in the matter being referred to Ofcom. If Ofcom concludes that the media service provider has contravened the relevant requirements of the Act, this may lead to Ofcom considering imposing a statutory sanction against the provider.**

## Definition

Some video-on-demand services are subject to regulation under the Communications Act 2003 (as amended). ('the Act'). In this section, "regulated on-demand services" refers to those services that are subject to statutory regulation and "media service providers" means providers of regulated on-demand services.

The rules in this section apply only to advertising "included" in a regulated on-demand service, which is advertising that can be viewed by a user of the service as a result of the user selecting a programme to view.

## Rules

- 30.1** Advertising must be readily recognisable as such.
- 30.2** Advertising must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
- 30.3** Advertising must not prejudice respect for human dignity.
- 30.4** Advertising must not contain any material likely to incite hatred based on race, sex, religion or nationality.
- 30.5** Advertising must not include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.
- 30.6** Advertising must not encourage behaviour prejudicial to health or safety.
- 30.7** Advertising must not encourage behaviour grossly prejudicial to the protection of the environment.
- 30.8** Advertising of the following products is prohibited:
  - 30.8.1** cigarettes or other tobacco products
  - 30.8.2** any prescription-only medicine.



- 30.9** Advertising for alcoholic drinks is prohibited unless
- 30.9.1** it is not aimed at persons under the age of eighteen, and
  - 30.9.2** it does not encourage excessive consumption of such drinks.
- 30.10** Advertising must not cause physical or moral detriment to persons under the age of eighteen.
- 30.11** If advertising contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.
- 30.12** Advertising must not directly exhort persons under the age of eighteen to purchase or rent goods or services in a manner which exploits their inexperience or credulity.
- 30.13** Advertising must not directly encourage persons under the age of eighteen to persuade their parents or others to purchase or rent goods or services.
- 30.14** Advertising must not exploit the trust of persons under eighteen in parents, teachers or others.
- 30.15** Advertising must not unreasonably show persons under eighteen in dangerous situations.

Advertisements on regulated on-demand services are also separately subject to the CAP Code. The marketer, not the media service provider, bears the primary responsibility for ensuring compliance with the CAP Code.

## Appendix 3 Online Behavioural Advertising

### Background

Marketers and third parties (defined below) must have regard to privacy and data protection laws. Specifically, they must take note of the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 and the Data Protection Act 1998. Guidance on how to comply with privacy and data protection legislation is frequently issued and updated by the Information Commissioner's Office (ICO). The rules set out below are not designed to provide compliance with the law and companies should seek their own legal advice when working to comply with privacy and data protection legislation.

The rules in this section aim to secure transparency and control for consumers in the use by any third party of Online Behavioural Advertising (OBA) (defined below). The rules require a third party to provide notice to web users in or around an online display advertisement if they are undertaking OBA. The notice should link to a relevant mechanism whereby a web user can opt out of the collection and use of web viewing behaviour data for OBA purposes by that third party or that third party and other parties. These rules are integral to a pan-European initiative – the European Advertising Standards Alliance (EASA) Best Practice Recommendation and an EU industry Framework. Further information can be found here: <http://www.iabeurope.eu/news/self-regulation-framework.aspx>.

### Definitions

“OBA” means: the collection by a third party over a period of time of web viewing behaviour data from a particular computer which takes place across multiple web domains not under common control, and which is used by the third party to deliver advertising to that particular computer based on the preferences or interests inferred from the data by the third party's technology. (These preferences or interests are often categorised into “interest segments” which are then used to target multiple web users with a specific preference or interest.)

The definition above encompasses behavioural re-targeting whereby display advertisements may be served to consumers who have shown a previous interest in a product but may not have made a purchase.

A “third party” is an organisation that engages in OBA (i.e. collects and uses web viewing behaviour data for the purposes of OBA) via websites other than those that it or an entity with which it is under common control owns or operates.

The rules in this section do not apply to: contextual advertising; web analytics; ad reporting or ad delivery; the collection and use of information for behavioural advertising by web site operators on their own website(s) or the use of OBA in rich media, in-stream videos online or on mobile devices.

## Rules

To ensure that consumers are made aware of, and can exercise choice over, the collection and use of information for the purposes of OBA, third parties must:

- 31.1.1** give a clear and comprehensive notice about the collection and use of web viewing behaviour data for the purposes of OBA on their own website, including how a web user can opt out from having web viewing behaviour data collected and used for this purpose. The notice should also link to a relevant mechanism that allows the consumer to opt out of the collection and use of web viewing behaviour data for OBA purposes by that third party or that third party and other third parties.
- 31.1.2** give a clear and comprehensive notice that they are collecting and using web viewing behaviour data for the purposes of OBA, either in or around the display advertisement delivered using OBA. The notice should link to a relevant mechanism whereby a web user can opt out of the collection and use of web viewing behaviour data for OBA purposes by that third party or that third party and other third parties.
- 31.1.3** not create interest segments specifically designed for the purpose of targeting OBA to children aged 12 or under.
- 31.2** Third parties that use technology to collect and use information about all or substantially all websites that are visited by web users on a particular computer in order to deliver OBA to that computer must obtain explicit consent from web users before doing so.

## Compliance section

**1.8.1** Rules in Appendix 3 apply only to third parties as defined. If the ASA is unable to identify the relevant third party, the advertiser - on behalf of whom the OBA advertisement is delivered to web users - must, in good faith, co-operate with the ASA to help determine the identity of the third party.

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