

Compliance Report

Digital Media Survey 2011



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1. Summary

OVERVIEW

- **Scope:** the survey assessed the conformity of companies' own ads on their own websites with the CAP Code¹
- **Coverage:** it covered a range of company websites across eight broad industry sectors.
- **Timing:** It was conducted in the two months before the ASA assumed responsibility for regulating these ads and it serves as a benchmark survey against which the 2012 survey will be compared.
- **Compliance rate:** 95% of the 120 websites surveyed did not include an obvious, prima facie breach of the CAP Code.
- **Main breaches:** four websites included headline ticket prices exclusive of mandatory charges, in breach of the CAP Code.
- **Conclusion:** the findings suggest that websites do not commonly and flagrantly feature ads that are obviously in breach of the CAP Code. That's not to say that that is necessarily true of all advertising sectors. Six of the 120 websites surveyed did include obvious breaches, so there is clearly room for an improvement in the overall compliance rate.

The Advertising Standards Authority (ASA) is the UK self-regulatory body for maintaining standards in advertising. It does this by administering the mandatory Advertising Codes and by actively monitoring compliance with them.

The ASA's Compliance team ('we') have undertaken this survey to determine the compliance rate of:

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.

As of 1 March 2011, these marketing communications must comply with The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing ('the CAP Code').

We assessed marketing communications on 120 websites between 1 January 2011 and 28 February 2011. The websites represented small, medium and large enterprises and were selected from a wide range of different advertising sectors including entertainment, media and leisure; retail; travel; technology; education and charities; automotive; toiletries and cosmetics; and FMCG (fast moving consumer goods).

We assessed five 'pages' on each website. Each page included at least one marketing communication. In common with past ASA surveys, we recorded only what we considered to be obvious breaches of the CAP Code and not potential breaches of the CAP Code. Obvious breaches are those that do not require an investigation to determine if the Code has been breached i.e. if the ad self-evidently does not comply with a rule or if the ASA has previously determined that the particular advertising claim is in breach of the Code. The findings of the survey must be understood in this context.

When a breach was identified, we informed the website owners of their obligation to comply with the CAP Code and advised them to consult the CAP Copy Advice team for guidance on future marketing communications.

We found:

- six of the 120 websites assessed included at least one marketing communication that was clearly in breach of the CAP Code; a compliance rate of 95%
- 22 of the 600 pages assessed included a marketing communication that was clearly in breach of the CAP Code; a compliance rate of 96.3%
- four of the six websites that included a breach of the CAP Code came from the Entertainment, Media and Leisure sector, and all four related to the misleading omission of mandatory charges (e.g. booking charges) from the headline price.

The findings appear to refute a view that websites commonly and flagrantly include advertising that obviously ignores generally accepted standards on truthfulness, harm and offence. That is not to say that every advertising sector claims the same rate of compliance (95%) with the CAP Code. Six of the 120 websites surveyed did include obvious breaches, so there is clearly room for an improvement in the overall compliance rate.

It is worth noting that between 1 March and 1 July 2011 the ASA recorded 693 breaches of the Code under the new remit. 177 of those cases were clear breaches dealt with by compliance.

2. Introduction

2.1 Background

The ASA is the independent body that administers the Advertising Codes¹ which set standards for the content, scheduling and placement of ads. It is responsible for ensuring that the advertising self-regulatory system works in the public interest. It achieves that by investigating complaints, proactively identifying and resolving breaches of the Advertising Codes, using research to ensure its decisions take account of generally accepted standards and by promoting and enforcing high standards in ads generally.

The Committee of Advertising Practice (CAP) is the body that created and revises the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code). Its members include trade and professional bodies representing advertisers, agencies, media owners and the sales promotion and direct marketing industries. CAP provides a pre-publication Copy Advice service and co-ordinates the activities of its members to achieve the highest degree of compliance with the CAP Code. The Compliance teams work to ensure that ads comply with the Advertising Codes and with ASA adjudications. The teams follow up ASA adjudications, monitor both broadcast and non-broadcast ads and take immediate action to ensure ads that breach the Advertising Codes are removed or suitably amended. One of the teams' objectives is to help create a level-playing field for marketers in each sector and it achieves that by communicating decisions with sector-wide ramifications.

The Compliance teams conduct surveys to assess compliance rates for ads in particular industries, sectors or media. The surveys help to identify marketing trends and to anticipate subjects of concern that might need to be addressed by the ASA, in its interpretation of the Advertising Codes, or CAP in its setting of standards in the Advertising Codes.

As of 1 March 2011, the remit of the CAP Code was extended to cover companies' own marketing communications on their own websites and in other non-paid space under their control such as social networking sites like Facebook and Twitter.

This landmark development brings enhanced protection for consumers and businesses. The CAP Code already applied to internet ads in paid-for space, like banner ads, pop-ups and paid search results. The new remit now extends the same standards to all ads online,

The CAP Code, which includes rules to make sure ads do not mislead, harm or offend, applies to all marketing communications² on UK websites regardless of the sector or size of business or organisation behind the website.

¹ The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing and The UK Code of Broadcast Advertising

² Except marketing communications for causes or ideas

2.2 CAP Code

The purpose of the Advertising Code is to maintain, in the best and most flexible way possible, the integrity of marketing communications in the interests of both the consumer and the industry. All ads should be legal, decent, honest and truthful. They should be prepared with a sense of responsibility to consumers and society and be in line with the accepted principles of fair competition. Ads should not mislead or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

2.3 Survey Objectives

The purpose of the survey was to:

- Establish a benchmark compliance rate for companies' own ads on their own websites before the ASA assumed responsibility for regulating these ads and against which the 2012 Digital Media Survey can be compared;
- Identify obvious breaches of the CAP Code; and
- Contact advertisers responsible for ads that obviously breach the CAP Code and obtain an assurance that those ads will comply fully with the CAP Code in future;

In general terms, undertaking and publishing proactive surveys like this one acts as a deterrent to bad practice and an encouragement to good practice. It is one in a range of means and ways that the ASA can demonstrate that it does not rely on complaints only to enforce compliance with the Advertising Codes.

3. Methodology

3.1 Method

General

The objective of this survey is to establish a general compliance rate for marketing communications falling within CAP's extended digital remit. To realise this, we initially established a pool of websites representing a broad range of industries and from within each of those industry pools, identified a broad range of companies. Based on marketing spend on third party websites, we identified a broad range of companies from within those industries.

Given our limited time and human resources, we set out to assess five pages (each of which contains at least one marketing communication) from 120 websites. The 120 websites were comprised of companies, which proportionally represented the industries from which they were randomly drawn i.e. as we found more websites in the 'travel sector' than in the 'toiletries and cosmetics sector', we selected proportionately more travel websites than toiletries and cosmetics websites. We also ensured that the selected travel websites, for example, were randomly drawn from pools of travel companies that have a relatively high, medium or relatively low spend on marketing communications on third party websites, thereby ensuring as far as is appropriate that we did not survey companies with a high marketing spend only.

Detail

We used Ebiquity, an online provider of ad monitoring in the UK, to identify websites for assessment. Using the Ebiquity Media Monitoring database, we located the spend figures for internet advertising for the year 2009. Ebiquity explains how they capture this data

Ebiquity internet spend data is calculated from capturing mainly JPG, GIF and Flash advertising from around 380 UK Internet sites. Those sites include the top sites as measured by comScore, although they don't currently include areas where a log on is required. The spend is calculated for each captured advert, based on the volume of daily comScore impression data and our estimate of the cost for each type of advert within each type of website. The resulting cost is the most accurate reflection of the spend for each ad on the sites it appeared, but DOES NOT reflect the expenditure for either the entire campaign or the entire Internet display market.

Please note that the results gleaned from Ebiquity do not include paid-for search advertising (i.e. sponsored advertising on search engine websites). Figures for sponsored search advertising were not available.

We used the above data because it was more likely that this approach would capture advertisers who had an internet presence as opposed to those who might only advertise in the press or broadcast medium. It was logical to assume that the businesses returned in the search results had websites (accessible from their banner ads, for example). The businesses, listed in Ebiquity, that spent money on display internet advertising gave us a method of finding a 'universe of websites' owned by businesses operating in the UK.

Ebiquity divides total spend into the following sectors and ranks the sectors in order of spend: Entertainment Media and Leisure (EML), Finance, Retail, Technology, Travel, Education and Charities, Automotive, Toiletries and Cosmetics, Fast Moving Consumer Goods (FMCG), Government and Utilities, Pharmaceutical, Electrical and Household and "Other". We excluded Finance because the ASA only regulates the non-technical elements of advertising in this area. Those aspects of non-broadcast financial advertising that the ASA does regulate, i.e. serious or widespread offence, social responsibility and the truthfulness of claims not related to the technical elements of the product or service, would be too subjective for us to assess effectively as part of a survey. The spend of the last three sectors i.e. Government & Utilities, Electrical and Household, and "Other" was minute in comparison to the other eight sectors. They only comprised four percent of the total spend. So we omitted these sectors to give us a total of eight sectors to examine.

Ebiquity lists the total number of advertisers per sector. We divided the number of advertisers in any given sector by the total number of advertisers for the eight sectors to establish a percentage figure for each sector based on size. Because each of the 120 websites typically includes a large amount of marketing communication we decided that it was practicable to review five 'pages' from each website only. If the advertiser concerned had a Facebook or Twitter page then we assessed those pages as well. Each page had to include an ad or other form of marketing communication directly connected with the supply or transfer of goods, services, opportunities and gifts. We divided the 120 websites by the relevant percentage figure to establish how many websites we needed to assess in any given sector.

This gave us:

- 47 websites in Entertainment, Media and Leisure (EML)
- 22 websites in Retail
- 15 websites in Travel
- 12 websites in Technology
- 11 websites in Education and Charities
- 6 websites in Automotive
- 4 websites in Toiletries and Cosmetics
- 3 websites in Fast Moving Consumer Goods (FMCG)

Ebiquity provides a breakdown, per sector, of spend by individual advertisers on third party websites. The results were ranked in order of spend by individual advertisers. So that we had an impartial selection of websites we randomised the results in each category using Excel so that we had a mix of large, medium and small spenders. Once each list for each sector had been randomised, we had a list of advertisers which we then assessed.

The sampling period ran from 1 January 2011 to 28 February 2011.

Firstly, we had to determine if a website fell within the ASA's jurisdiction. A website is determined to fall within the remit of the ASA if it:

- originates in the UK;
- has a top level domain "UK"; or
- gives a registered office address in the UK.

Websites which include marketing communications that are clearly targeted at UK consumers and which originate in a country that does not have an established complaints referral system with the ASA were also considered to fall within the jurisdiction of the ASA. Criteria which helps to determine if a marketing communication is directed at UK consumers include those that:

- provide prices in sterling;
- invite consumers to contact a UK telephone number or UK geographic address for support;
- invite consumers to visit physical premises in the UK;
- are subject to regulation under UK regulators (for example, being subject to regulation by the Gambling Commission)

If the website was within the remit of the ASA and included five pages containing marketing communications, then we assessed those pages.

CAP's extended digital remit was drafted with the intention of defining website content that could be properly accepted as constituting an advertisement or other marketing communication. We assessed the website material with particular regard to the content of the communication and the context in which the communication appeared. This was necessary in order to determine if it was a marketing communication directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consisted of direct solicitations of donations as part of the website owner's own fund-raising activities. The entirety of the CAP Code applies to marketing communications that fall within the extended remit.

The CAP Code excludes from remit editorial content, press releases, political advertisements, corporate reports, natural search results on price comparison websites, heritage advertising, investor relations material and content that promotes causes or ideas.

If we identified a probable breach of the CAP Code, the Compliance team informed the advertiser (typically the website owner) of its obligation to comply with the CAP Code and from 1 March 2011 advised it to consult the CAP Copy Advice team for guidance on future marketing communications.

4. Findings

4.1 Compliance rate

The survey sought to establish the rate of compliance with the CAP Code for organisations' own marketing communications on their own websites, or in other non-paid-for space online under their control, that appeared between 1 January 2011 and 28 February 2011. The Compliance team considered 120 websites and five pages from each website. Out of 120 websites, six contained marketing communications (5%) that seemed to breach the CAP Code. This gave an overall compliance rate of 95%.

4.2 Compliance by media

The team noted that of the six websites that seemed to breach the CAP Code, four breaches were from the Entertainment Media and Leisure sector. The other two were from the retail sector.

Table 1: Number of websites assessed by sector

Sector	Total amount of advertisers per sector³	Relative size of sector in relation to all advertisers⁴ by %	Total number of websites assessed by sector
Entertainment Media & Leisure	3223	39%	47
Retail	1491	18%	22
Travel	1061	12.84%	15
Technology	817	9.88%	12
Education & Charities	734	8.88%	11
Automotive	442	5.35%	6
Toiletries & Cosmetics	278	3.36%	4
FMCG	217	2.60%	3
Total	8263	100%	120

³ Ebiquity figures on the total number of companies, per sector, who spend on internet display / flash ads

⁴ spending on internet display/flash ads

Table 2: Number of breaches by sector

	Number of websites assessed	Websites including at least one clear breach of the CAP Code
Entertainment Media & Leisure	47	4
Retail	22	2
Travel	15	0
Technology	12	0
Education & Charities	11	0
Automotive	6	0
Toiletries & Cosmetics	4	0
FMCG	3	0
Total	120	6

The likely Code breaches mainly related to websites that offer tickets for events. We found four breaches in the Entertainment Media and Leisure sector where advertisers offered face value ticket prices exclusive of compulsory ticket charges such as booking fees or did not use “from” prices to indicate that mandatory but variable delivery charges applied. These marketing communications seemed likely to be in breach of CAP Code rules 3.18 and 3.20.

We considered that one marketing communication from the retail sector was likely to breach the Code because it made efficacy claims for supplements that, to date, neither CAP nor the ASA has seen robust scientific evidence for. The ad seemed to be in breach of CAP Code rules 15.1 and 15.1.1.

We considered one other marketing communication was likely to breach the CAP Code because it was clearly aimed at consumers (not acting in the course of business) and did not include VAT inclusive prices on its website. The ad seemed to break CAP Code rule 3.18.

5. Conclusions

We found:

- six of the 120 websites assessed included at least one marketing communication that was clearly in breach of the CAP Code; a compliance rate of 95%
- 22 of the 600 pages assessed included a marketing communication that was clearly in breach of the CAP Code; a compliance rate of 96.3%
- four of the six websites that included a breach of the CAP Code came from the Entertainment, Media and Leisure sector, and all four related to the misleading omission of mandatory charges (e.g. booking charges) from the headline price.

The Compliance team contacted the website owners whose marketing communications seemed to breach the CAP Code and sought an assurance that they would amend their advertising to ensure compliance with the CAP Code from 1 March 2011.

The Compliance rate was encouraging but it would be difficult to draw too many conclusions from the survey given the small number of websites we assessed. This was the first time the Compliance team had conducted a survey of this kind. The inherent difficulties of selecting a methodology given the sheer volume of websites that exist provoked much deliberation in how to evaluate a representative number of websites. But, ultimately, the results generated from Ebiquity provided a healthy mix of those advertisers who spend heavily on advertising and who have a large website presence, and those with smaller budgets and a relatively smaller website presence. It is also worth noting that the survey was undertaken before the remit of the CAP Code was officially extended, and that the results should be cautiously considered positive given that advertisers were not officially required to adhere to the CAP Code.

It is worth noting one area of concern that emerged from the survey:

- Although we did not find any prima facie breaches of the CAP Code in the area of pricing we noted the widespread use of RRPs and price claims. Marketers should ensure price comparisons comply with the CAP Code and the Department for Business Innovation & Skills (BIS) Pricing Practices Guide. Rule 3.40 of the CAP Code states “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.”

The Compliance team will endeavour to monitor across all media to ensure a continuing high level of compliance with the Advertising Codes and help to maintain a level-playing field for advertisers. Marketers are urged to ensure that marketing communications on their own websites comply with the CAP Code.

6. Advice and Training

CAP Services

CAP supports the commitment of advertisers to communicate responsibly by providing a comprehensive range of advice and training resources. Collectively known as CAP Services, those include bespoke advice, online tools, advice newsletters and training seminars – all designed to raise awareness of the rules and to prevent breaches.

To keep up-to-date with the latest advice, training seminars, ground-breaking ASA adjudications, regulatory developments and changes to the Advertising Codes, we encourage all industry practitioners to sign up to receive the e-newsletters - *Update* and *Insight* - provided by CAP and Copy Advice respectively. To sign up, go to www.cap.org.uk or www.copyadvice.org.uk. For full details of CAP Services, visit www.cap.org.uk/capservices.aspx.

Of particular note is the pre-publication Copy Advice service which offers convenient and comprehensive online resources as well as a bespoke service. The dedicated website brings together more than 400 AdviceOnline entries and HelpNotes. Practitioners are urged to register to access the full database as well as case studies and other practical information.

The team of eight experts also provide fast, free and confidential bespoke advice by e-mail or telephone on specific queries for practitioners who want to check whether or not their campaigns comply with the CAP Code before publishing. The dedicated and experienced team can draw on ASA research, previous adjudications and the likely reaction of the ASA Council, making Copy Advice the most authoritative provider of compliance advice on the CAP Code. For bespoke advice, consult the Copy Advice team on 020 7492 2100 or by fax on 020 7404 3404, or you can log a specific written enquiry via our online request form www.copyadvice.org.uk/Ad-Advice/Bespoke-Copy-Advice.aspx.

CAP now offers an audit service for websites. The Audits involve a dedicated and expert assessment of marketing communications on your website with a view to encouraging and promoting compliance with the advertising rules. With tips and tools to guide you online and offline, CAP Website Audits will help you to comply with the advertising rules now and in the future. For more information, visit www.copyadvice.org.uk/Ad-Advice/Website-audit.aspx.

7. Appendices

Appendix 1 - CAP Code – Relevant Code Rules in Relation to Identified Breaches

3.18

Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers. VAT-exclusive prices may be given only if all or most consumers pay no VAT or can recover VAT; marketing communications that quote VAT-exclusive prices must prominently state the amount or rate of VAT payable if some consumers are likely to pay VAT.

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.

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 by the European Commission. Claims must be presented clearly and without exaggeration.

15.1.1

Only Nutrition Claims listed in the Annex of EC Regulation 1924/2006 on Nutrition and Health Claims Made on Foods or claims that would have the same meaning may be used in marketing communications.

Authorised health claims in the Community Register or claims that would have the same meaning may be used in marketing communications.

Depending on the nature of the claim EC Regulation 1924/2006 contains a number of complex transitional periods, including those for health claims which are still being assessed for adoption to the EU list of permitted health claims (and which comply with existing national provisions), and for trademarks or brand names in use prior to 1 January 2005. There is no transition period for reduction of disease risk claims, which are prohibited until authorised. CAP advises advertising industry stakeholders to take advice on the effect of the Regulation.