

Compliance Report

Non-broadcast Utilities Ads Survey 2007



CONTENTS

1.	Summary	3
2.	Introduction	4
	2.1 Background	
	2.2 Advertising Self-regulation	
	2.3 The relevant CAP Code rules	
	2.4 Notes about the ads included in the survey	
3.	Methodology	6
4.	Findings	7
	4.1 Compliance rate	
	4.2 Breakdown by media type (excluding duplicates)	
	4.3 Breaches by media type (excluding duplicates)	
	4.4 A closer look: compliance by media type (excluding duplicate	
	4.5 Analysis of breaches by category (excluding duplicates)	
	4.5.1 Switching companies – 13 breaches	
	4.5.2 No qualifying Statements – 6 breaches	
	4.5.3 0845 pricing	
	4.5.4 Banners and asterisks	
	4.5.5 Promotion	
	4.5.6 Breach of previous adjudication	
	4.5.7 Improper qualification of renewable energy product	
	4.6 Action taken	
5.	Complaints	14
6.	Conclusions	14
7.	Pre-Publication Advice	15
	Appendix 1: Code clauses used to judge ads in the Survey	15
	Appendix 2: ASA adjudications published during the Survey period	17
	Appendix 3: CAP Help Note on Utilities Prices Claims	22

1 Summary

We monitored a representative sample of 338 advertisements between January 15 and February 28 2007. The survey included direct mailings, circulars, ads in the national and regional press and ads on posters and online. The ads were assessed under the British Code of Advertising, Sales Promotion and Direct Marketing (the Code) and guidance within the CAP Help Note on Utilities Price Claims, updated in November 2006 (see Appendix 2).

Of the 338 ads, 135 were duplicates (ads with identical copy and images but perhaps in different sizes or formats). Excluding the duplicates, we monitored 203 unique ads.

We identified 26 breaches among the 203 ads. The breach rate was 13% and the compliance rate was 87%.

When a breach was found, the Compliance team contacted the advertisers and obtained an assurance about future Code compliance. Four of the ads that breached the Code were the subject of complaints to the ASA.

Although 26 ads breached the Code, we found only seven causes of breach. Nearly one third of the breaches were found in ads placed by one switching company. Over half of all breaches were in ads placed by switch-providing companies.

Three of the breaches (12%) were found in circulars from companies that sold solar energy products.

Although the compliance rate of 87% was disappointing, the circumstances suggest that compliance within the sector is generally good. The results suggest one or two weaknesses that CAP will address as it strives to maintain high standards in utilities advertisements.

2 Introduction

2.1 Background

The de-regulated utilities market is competitive and features several companies that spend millions of pounds advertising their products and services to UK consumers. Recently, rising prices, new entrants to the market, growing public concern about global warming and the advent of switching companies, which can help consumers find the cheapest deals, have caused the market to become more complicated, more competitive and faster-moving. Against that backdrop, it is more important than ever for companies to ensure their advertising hits its intended target with a clear and decisive message that can make all the difference when it comes to obtaining new customers and hanging on to existing ones. In trying to do that, companies run the risk of falling foul of the Code. With that in mind, CAP determined that the time was right for its Compliance team to undertake a survey of Compliance in Utilities Advertising. The survey was designed to ensure that a representative sample of ads across the non-broadcast media spectrum was collected, analysed and interpreted to allow us to gauge compliance and to identify problems for which follow-up action might be required.

2.2 Advertising Self-regulation

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code), which applies to non-broadcast marketing communications. It is responsible for ensuring that the self-regulatory system works in the public interest. It achieves that by investigating complaints, identifying and resolving problems through research and by promoting and enforcing high standards in marketing communications. The ASA ensures that everyone who commissions, prepares or publishes a marketing communication observes the CAP Code for non-broadcast advertisements.

The Committee of Advertising Practice (CAP) is the body that created and revises the CAP Code. It represents advertisers, promoters and direct marketers, their agencies, the media and other trade and professional organisations in the advertising, sales promotion and direct marketing industries. CAP provides a pre-publication copy advice service for non-broadcast advertisements 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 marketing communications comply with the CAP Codes and with ASA adjudications. The teams follow-up ASA adjudications, monitor marketing communications and take immediate action to ensure marketing communications that breach the Code are removed or amended. One of their objectives is to create a level-playing field for marketers in each sector and to ensure that decisions with sector-wide

ramifications are communicated. The Compliance teams conduct surveys (such as this) to assess compliance rates in industry sectors; those surveys help to identify marketing trends and to anticipate subjects of concern that need to be addressed by the ASA or CAP.

2.3 The relevant CAP Code rules

The Code lays down the criteria for acceptable marketing communications and states that all marketing communications should be legal, decent, honest and truthful. Specific rules apply to sectors of advertising such as alcoholic drinks, children, motoring, weight control, distance selling and sales promotions. No specific rules exist for Utilities advertising but many of the general rules can be applicable to Utilities ads. A list of Code clauses referred to in this Survey can be found in Appendix 1. The full CAP Code can be viewed at or downloaded from www.cap.org.uk

The Code rules applies to ads in UK non-broadcast media, ranging from the press, direct mailings and on-pack sales promotions to roadside posters, cinema, SMS text messages and Internet pop-up and banner ads. The Code rules on sales promotions state that the promotions should be conducted equitably, promptly and efficiently and should be seen to deal fairly and honourably with consumers. Promoters should avoid causing unnecessary disappointment.

CAP publishes industry Help Notes that provide information for specific sectors, based not only on the Code rules but also on the findings of ASA adjudications. CAP Help Notes help advertisers, agencies and publishers ensure their advertising adheres to the Code. Advertisements in the survey were judged against the Code and the guidance set out in the Utilities Price Claims Help Note (see copy attached at Appendix 2).

2.4 Notes about the ads in the survey

Most of the ads featured price comparisons or savings claims for dual fuel providers. The survey period coincided with the “run-up” to one major company lowering its prices in mid-March 2007. Other major companies offered online deals, savings, price reductions and price freezes. One company offered a Wembley ticket promotion as a reward for switching to its dual fuel deal. Switching companies accounted for a crop of ads offering help on how to switch to the best company. Other ads offered renewable energy products, alternative (solar) energy installation, grants or subsidies. A few of the ads offered insulation, new boilers, energy-efficient light bulbs and ways of saving water and energy.

3 Methodology

The survey sample consisted of a selection of 203 unique ads that appeared between January 15 and February 28. The ads were sourced and collated from Thomson Intermedia PLC. We found only one utilities TV ad so this study concentrates on non-broadcast media only.

The ads were assessed against the CAP Code rules and guidance in the Utilities Prices Claims Help Note (revised November 2006). The Help Note gives detailed guidance on single and dual fuel offers, the importance of qualifying savings claims, competitor price comparisons, the clarity of conditions and exclusions, prize freeze tariffs and switching companies.

In assessing the ads, the Compliance team took account of these points:

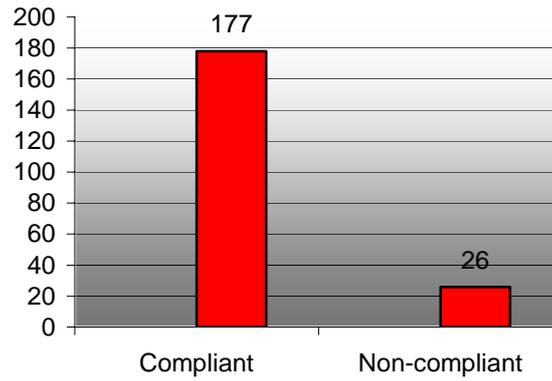
- Was the ad for a single-fuel or dual-fuel product and was it made clear to consumers what was on offer?
- Were savings claims absolute?
- Did price comparison ads state the amount of fuel consumed and were the figures based on low, average or high use?
- Did price comparison ads explain competitor rates and dates of comparisons?
- Was the payment method required to achieve a saving made clear?
- Did the savings claim refer to online, direct debit or monthly payments?
- Did discounts depend on having a specific tariff (for example, standard) and, if so, was that made clear?
- In savings claims, who would save? Were exclusions clear?
- Did the ad use the conditional tense (“up to”, “could”) where necessary and could at least 10% of consumers achieve the claimed savings?
- If advertised as such, were switching companies independent? Were savings figures explained clearly?
- Did price-freezing ads include relevant dates and other qualifying conditions?
- Were VAT charges in price savings ads clear?
- Did ads ensure that correct terminology and pricing information was included for ads featuring 0845 or 0870 telephone numbers?

4 Findings

4.1 Compliance rate

Excluding the 135 duplicates, 26 of the 203 ads breached the Code. The compliance rate was 87%.

Figure 1. Numbers of compliant and non-compliant ads from the sample (excluding duplicates)



4.2 Breakdown by media type (excluding duplicates)

Table 1: Survey sample breakdown by media type

Medium	Number of ads	% of total
Press	101	50.0
Online	34	16.5
Direct Mailing	49	24.0
Circulars	11	5.5
Cinema	2	1.0
Outdoor	6	3.0
Total	203	100

4.3 Breaches by media type (excluding duplicates)

From a sample of 203 ads, we identified 26 breaches.

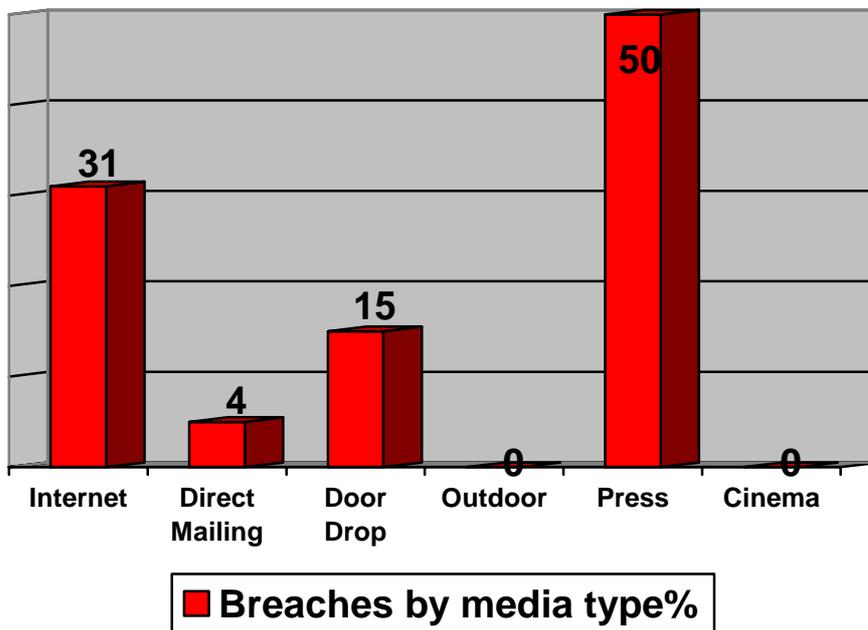
Table 2: Breaches by media type

Media	Number of breaches
Press	13
Online	8
Direct Mailing	1
Circulars	4
Cinema	0
Outdoor	0
Total	26

The three formats with the most breaches were:

- 1) Press 50%
- 2) Online 31%
- 3) Door Drops 15%

Figure 3: Breaches by media type (%)



4.4 A closer look: compliance by media type (excluding duplicates)

With 50% of breaches appearing in press ads, the data suggested press could be a problem medium but press ads made up 50% of the total sample so in fact the number of breaches in pres ads was proportional within the sample. For press ads the compliance rate was 87%.

Circulars had the worst compliance rate (64%) with 4 breaches identified from a total of 11 ads.

Cinema and outdoor ads had the best compliance rate (100%) with no breaches spotted from a small sample of 2 and 6 ads respectively.

Finding: cinema and outdoor ads were the most compliant; circulars the least.

Table 3: Sample size, breaches and compliance by media type

Medium	Number in sample (%)	Breaches	Breach rate %	Compliance rate %	Total proportion of breaches%
Online	34 (17.0%)	8	24%	76%	31%
Direct Mailing	49 (24.5%)	1	2%	98%	4%
Circulars	11 (5.5%)	4	36%	64%	15%
Outdoor	6 (3.0%)	0	0	100%	0
Press	101 (50.0%)	13	13%	87%	50%
Cinema	2 (1.0%)	0	0	100%	0
TOTAL	203 (100%)	26	13%	87%	100%

4.5 Analysis of breaches by category (excluding duplicates)

We identified seven distinct breach categories, which are listed in the table below. Most breaches (14) were identified in ads for switch companies: the ads did not qualify claims adequately. No, or inadequate, qualification of savings claims was the next worst category with 6 breaches. Clearly, inadequate qualification would appear to be the biggest problem identified within the survey.

Table 4: Number of breaches by category

Issue	Number of breaches
Switch Companies, caveats	13
No qualifiers for savings claims	6
0845 pricing	1
Banner asterisks do not click through to T&C	2
Promotion problem	2
Breach of previous adjudication	1
Inadequate qualification of renewable energy offer	1
Total	26

4.5.1 Switch companies – 13 breaches

The sample included 13 ads for one switching company and eight ads for another. Ads for switching companies constituted 11% of the sample.

Five from 13 of one company's ads were in breach, yielding a 43% company compliance rate. All the other switching company's ads were in breach, yielding a 0% company compliance rate

13 of the 26 breaches (50%) appeared in ads for switch companies.

What went wrong?

Switching companies' ads breached of the Code for one or more of these reasons:

- a) Did not make clear whether reductions were for single-fuel or dual-fuel products
- b) Did not explain adequately the data on which savings figures were based
- c) Did not state average annual consumption figures given by Ofgem as 20,500 kWh for gas and 3,300kWh for electricity
- d) Did not make clear that savings did not apply for all regions
- e) Did not give competitor comparisons and dates of comparisons
- f) Did not state the payment method, tariff (or both) to obtain savings
- g) Did not state exclusions

4.5.2 No qualifying statements – 6 breaches

A lack of qualifying statements in ads accounted for a quarter of breaches. Six ads fell foul for not giving enough qualifying information.

Five advertisers published those ads.

4.5.3 0845 pricing – one circular

One company produced and delivered a circular that included an 0845 number, which was wrongly described as "local rate", and gave no pricing information for calls to the number.

4.5.4 Banners and asterisks – two online ads

One company ran two banner ads with asterisks that did not click through to a landing page with qualifying text and terms and conditions. Even the page beyond the landing page offered no click through to the terms and conditions.

4.5.5 Promotion – two press ads

One company published two press ads in late January offering two free tour tickets for consumers who switched to it for electricity and gas. The footnotes did not give the dates of the offer and the ads therefore breached the Code.

4.5.6 Breach of previous adjudication – one circular

One company produced and delivered a circular in early February for a subsidised solar energy system. The claims in the circular breached an ASA investigation that was published at the end of January 2007 (see page 15 for the adjudication).

4.5.7 Improper qualification of renewable energy product

One company published a press ad in late January for a renewable energy tariff. The body copy suggested energy was sourced direct from renewables whereas the suppliers bought renewable energy to replace that taken from the National Grid by each customer. The Executive considered that an explanatory footnote contradicted, not qualified, the impression given by the body copy.

4.6 Action taken:

For those ads in clear breach of the Code or the Utilities Help Note, the CAP Compliance team contacted the advertisers (and publishers where relevant) to alert them to the problems and to obtain an assurance that future ads would comply with the Code.

5. Complaints

During the period May 2006 to May 2007, the ASA received 206 complaints about utilities ads. The ASA investigated 38 of those complaints on either a formal or informal basis.

6. Conclusions

At first glance, the compliance rate of 87% seems discouraging. But because we discovered only seven categories of breach, the outcome is arguably more encouraging than the headline compliance figure would suggest.

Switching companies were responsible for half of the breaches. Despite information given in the recently revised CAP Help Note, switching companies are not yet taking note of the explanatory information they need to include in their ads. Switching companies were, however, fully co-operative when contacted by the CAP Compliance team so follow-up monitoring should show an improvement for ads in this sector.

Circulars distributed by solar energy companies had a negative impact on the compliance rate. They accounted for around a fifth of the breaches. The three companies involved gave the Compliance team their assurance that they would use Copy Advice and they would correct their circulars.

Online ads accounted for 17% of the survey sample yet we identified eight breaches. That suggests online ads are a high risk for consumers: the breach rate was 25%. Clearly the Compliance team needs to concentrate its efforts on monitoring online ads in the Utilities sector. Outdoor and cinema ads had the best compliance rates, 100%. Direct mailings accounted for nearly a quarter of the survey but yielded just one breach.

Utilities advertising is a complicated sector and complainants are often competitors who know the Code requirements and guidance in the Help Note. Understandably, competitors are sensitive to ads with savings claims or comparisons.

The Compliance team's actions yielded positive assurances from all the advertisers involved. That outcome is encouraging and should help us ensure an improved compliance rate across the industry in future.

The ASA will continue to monitor the compliance of Utilities ads and will work with the industry to improve standards across the board.

7. Pre-publication advice

Seeking advice from the CAP Copy Advice team is the best way to ensure that an ad does not break the Code and we urge advertisers to use our service. The team can draw on ASA research and previous ASA adjudications. Consult the team on 020 7580 4100 (telephone), 020 7580 4072 (fax) or on copyadvice@cap.org.uk. The team responds to almost 90% of written enquiries within 24 hours.

Also, utilities companies, their agencies and the media can stay the right side of the line by using AdviceOnline, an up-to-date database of advice that tells you what you can and cannot do and links users to relevant Code clauses, Help Notes and past ASA decisions. We encourage users to subscribe to Update@CAP, an e-mail newsletter. Both services are free and available on www.cap.org.uk.

APPENDIX 1: Code clauses used to judge ads in the survey

Substantiation

- 3.1 Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation.

Relevant evidence should be sent without delay if requested by the ASA or CAP. The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the marketing communication. The full name and geographical business address of marketers should be provided without delay if requested by the ASA or CAP

Truthfulness

- 7.1 No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

Prices

- 15.2 Prices quoted in marketing communications addressed to the public should include VAT and other non-optional taxes and duties imposed on all buyers. In some circumstances, for example where marketing communications are likely to be read mainly by businesses able to recover VAT, prices may be quoted exclusive of VAT or other taxes and duties, provided prominence is given to the amount or rate of any additional costs.

Comparisons with identified competitors and/or their products

- 18.1 Comparative claims are permitted in the interests of vigorous competition and public information. They should neither mislead nor be likely to mislead.
- 18.2 They should compare products meeting the same needs or intended for the same purpose.
- 18.3 They should objectively compare one or more material, relevant, verifiable and representative features of those products, which may include price.

Other comparisons

- 19.1 Other comparisons, for example those with marketers' own products, those with products of others who are not competitors or those that do not identify competitors or their products explicitly or by implication, should be clear and fair. They should neither mislead nor be likely to mislead. The elements of comparisons should not be selected in a way that gives the marketers an artificial advantage.

Significant conditions for promotions

- 34.1 Promotions should specify clearly before any purchase (or before or at the time of entry/application, if no purchase is required):
- a ***How to participate***
how to participate, including significant conditions and costs, and any other major factors reasonably likely to influence consumers' decisions or understanding about the promotion
 - b ***Start date***
the start date, in any comparison referring to a special offer if the special offer has not yet begun
 - c ***Closing date***

a prominent closing date, if applicable, for purchases and submissions of entries/claims. Prize promotions and promotions addressed to or targeted at children always need a closing date. Some others do not, for example: comparisons that refer to a special offer (whether the promoter's previous offer or a competitor's offer), so long as they are and are stated to be "subject to availability"; promotions limited only by the availability of promotional packs (e.g. gifts with purchase, extra volume packs and reduced price packs); and loyalty schemes run on an open-ended basis. Promoters must be able to demonstrate that the absence of a closing date will not disadvantage consumers. Promoters should state if the deadline for responding to undated promotional material will be calculated from the date the material was received by consumers. Closing dates should not be changed unless circumstances outside the reasonable control of the promoter make it unavoidable. If they are changed, promoters should take all reasonable steps to ensure that consumers who participated within the original terms are not disadvantaged.

These are the clauses referred to in the Survey. Advertisers should refer to the CAP Code and to the following Utilities Help Note (Nov 2006).

APPENDIX 2 - ASA adjudications published during the survey period

The ASA published three adjudications for utilities ads during the survey period.

Electro Warm (UK & NI) Ltd

Number of complaints: 1

Ad

A leaflet for storage heaters was headlined "Plug in and warm up". Text beneath the headline stated "Innovative storage heating; better for you, your wallet and the environment. Plug in and warm up!" The leaflet featured a numbered list under the subheading "Heating with electricity offers considerable advantages". Point five on the list stated "Overall lifetime costs (Initial investment, maintenance, running costs) lower than other systems". Another list on the reverse of the leaflet, headlined "Advantages", included text that stated "Lower heating costs than other systems - much cheaper than night storage!"

Issue

The complainant challenged whether the claims

1. "Lower heating costs than other systems - much cheaper than night storage!" and

2. "better for you, your wallet and the environment" were misleading and could be substantiated.

3. The ASA challenged whether the claim "Overall lifetime costs (Initial investment, maintenance, running costs) lower than other systems" could be substantiated.

Response

1. Electro Warm explained that the largest radiator they sold weighed 65Kg and had a maximum storage input of 2.5 kilowatts (kW). They compared that product with a heater sold by one of their competitors, which weighed 157Kg and had a maximum storage input of 3.4kW. They argued that, because their product required a lower input than their competitor's product, it would cost less to run. They said their product could work on off-peak or on-peak tariffs and asserted that their competitor's product required both. They argued that, if their product was used on an off-peak tariff only, it would be cheaper to run than products that used electricity at off-peak and on-peak rates. They said they offered a ten year guarantee with a promise to exchange any damaged component for free or to replace the heater entirely, but said their competitor only offered a two year guarantee, after which customers would be required to pay for servicing. They sent a press release from their competitor which they believed showed that electric heating was cheaper than gas. They argued that, because their system was cheaper than their competitor's, it was the cheapest system overall.

2. Electro Warm asserted their heating system was better than other currently available products because:

- it could be installed without major disruption to the home;
- it was easy to use;
- it did not require a boiler, so there was no risk of poisoning or environmental damage by defective, leaking boilers;
- the combination of radiant and convected heat was healthier;
- their competitor's product needed a booster at daytime rate running at 3.4kW to restore a room's temperature if windows were opened, but Electro Warm's radiators only needed an input of 2.5kW for 15 minutes within any 60 minute period to provide an hour's heating;
- there were no hidden costs beyond sales and installation cost;
- there were no service or maintenance charges;
- its lower storage input ensured a lower contribution to carbon emission;
- unlike older night storage heaters, their product did not contain asbestos or nickel;
- the product was easily used with renewable energy sources, such as wind turbines or solar power;
- unlike other storage heaters, their product did not produce carbon dioxide during usage;
- night heaters baked a heating block overnight, so that the next day's heating had to be decided the day before, which could lead to waste if there was a sudden change in outside temperature that required either a booster operating at a more expensive day tariff or the opening of windows to let out excess heat.

3. Electro Warm asserted that, for an average three bedroom terrace house requiring five heaters, no more than £3,000 would be spent on Electro Warm radiators. They argued that the initial investment needed for gas or solid/liquid oil heating systems, added to mandatory annual cleaning and maintenance costs and the rising cost of gas and oil, resulted in higher overall lifetime costs.

Assessment

1. Upheld

The ASA noted Electro Warm's comments. We considered that, without evidence to show that the products compared had a similar heat output, Electro Warm had not demonstrated that they had compared their product with their competitor's most similar heater. We did not consider that a comparison with one other product was sufficient to substantiate the claim and were concerned that Electro Warm had not provided comparative data on the cost of currently available heating systems. We did not consider that a longer guarantee or a press release could demonstrate that Electro Warm's product cost less than other heating systems. We did not see evidence that showed Electro Warm's product could run on off-peak electricity only, or that other heating systems could not do so as well. We reminded Electro Warm of their responsibility to hold evidence in support of all claims capable of objective substantiation. We concluded that the claim was misleading.

2. Upheld

We noted that Electro Warm had not provided comparative data to demonstrate that their radiators required less input to deliver the same amount of heat to a room or that their radiators could respond more quickly to changes in outside temperature than other systems. We noted that no new storage system currently provided would include asbestos. We did not consider that Electro Warm had demonstrated that the absence of asbestos or ease of use with renewable energy sources were advantages of their product only. We concluded that the claim was misleading.

3. Upheld

We noted that Electro Warm had not sent comparative data that showed their system had lower overall lifetime costs than other heating systems. We concluded the claim was misleading.

On all points, the ad breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 19.1 (Other comparisons) and 49.1 (Environmental claims).

Action

We told Electro Warm to remove the claims from future ads and advised them to seek guidance from the CAP Copy Advice team before advertising in future.

Powergen plc

Date: 17 January 2007

Number of complaints: 3

Ad

A TV and press ad for Powergen energy.

a. The TV ad featured three men drinking in a bar. One man said "Yeah so Powergen are cheaper than ... actually it's bad karma to say it out loud." A footnote stated "Standard Dual Fuel Customers. Standard Domestic Consumption 3,300 kWh pa for electricity and 20,500 kWh pa for gas." Further on-screen text stated "Cheaper than Grittish Bass" while a voice-over stated "Positive energy from

Powergen".

b. The press ad stated "Powergen are still cheaper than British Gas. Still cheaper for electricity. Still cheaper for gas. Still Cheaper for combined electricity and gas ... You can avoid any increases for the next four winters by switching to our Price Protection 2010 electricity or, if you have gas as well, our Price Protection 2010 dual fuel offer."

Issue

1. British Gas Trading Ltd (British Gas) and two members of the public complained that the claim "Cheaper than Grittish Bass" in the TV ad was misleading because they believed Powergen was not the cheaper provider of energy for existing British Gas customers at the time the ad appeared.

2. British Gas also complained that the press ad was misleading because they believed it implied the Powergen Price Protection Plan was cheaper than British Gas standard tariffs.

The CAP Code: 3.1;7.1;18.1;18.2

BCAP TV Advertising Code: 5.1;5.2.1;5.3.1

Response

1. Powergen said they implemented price increases for existing and acquisition standard customers on 21 August and British Gas had implemented their price increases for acquisition customers on 27 July and for existing customers on 4 September. They told the ASA the TV ad appeared between 21 and 27 August and was not shown again until 11 September.

They submitted comparative tables showing savings on gas and electricity against British Gas prices for new customers up to and from 21 August.

Powergen conceded that, during the period between the implementation of their new prices (21 August) and the new prices for existing British Gas customers (4 September), their dual fuel unit rates for an existing British Gas customer were on average more expensive in some regions if a direct comparison of unit rates were made.

They nevertheless argued that a comparison of unit rates alone was not reasonable as the process of changing suppliers usually took at least 28 days. They explained that a consumer, acting in response to the TV ad, who switched from British Gas to Powergen, would have continued to pay the British Gas prices for at least the period between 21 August and 4 September until completion of their transfer, when they would receive the cheaper Powergen prices.

They concluded by stating that any British Gas customer transferring to Powergen who met the stated qualifications would have benefited from a lower bill. Powergen said they did not believe the claim was misleading but told us they had no plans to use the ad again.

The Broadcast Advertising Clearance Centre (BACC) told us they approved the ad in December 2005 for air in February 2006. They confirmed that, at that time,

Powergen were cheaper than British Gas. The BACC said they advised Powergen that, should that situation change, they would need to take the ad off air.

2. Powergen told us they believed there was a clear distinction between the part of the press ad that compared their products to those of British Gas and the part of the ad that gave information about their 2010 Price Protection plan. They stated that the comparisons with British Gas were clearly qualified. Powergen said the second claim about Price Protection did not make any reference or comparison to British Gas products and asserted that the press ad was not misleading.

Assessment

1. Upheld

The ASA noted the ad appeared before the price increase for existing British Gas customers on 4 September, but considered that it was unclear that Powergen would not be cheaper for those customers during the period 21 August to 4 September or that they would not benefit from cheaper prices straight away. We noted the BACC had advised that the ad should be withdrawn if the situation changed and considered that most viewers would be likely to understand the claim that Powergen was cheaper in the context of British Gas and Powergen's tariffs at the time the ad was viewed. We noted Powergen was not cheaper for existing British Gas customers at that time and concluded that the ad was misleading.

On this point, the ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) 5.2.1 (Evidence) and 5.3.1 (Accurate pricing).

2. Upheld

We considered that most readers would understand the information presented in the press ad as a whole to relate to the headline claim "Powergen are still cheaper than British Gas". We also noted the font and size of the text in the paragraph referring to price protected fuel offers was identical to that in the preceding paragraph that talked about the comparison between Powergen and British Gas prices. We considered that the ad did not make sufficiently clear that the Powergen Price Protection prices were different from their standard current tariff and that the claim to be cheaper than British Gas did not therefore apply. We considered that most readers were unlikely to make a distinction between the two messages of the ad and concluded that it was likely to mislead.

On this point, the press ad breached CAP Code clauses 7.1 (Truthfulness), 18.1 and 18.2 (Fair comparison), but not 3.1 (Substantiation).

Action

The TV ad should not be shown again in its current form.

Claims in future press ads should be presented in such a way as to avoid ambiguity.

Simplee Solar Ltd

Date: 24 January 2007

Number of complaints: 1

Media: Mailing

A mailing for Simplee Solar stated "... Our Energy Watch team are currently looking for a limited number of households throughout the country to participate in our

Energy Watch programme to help raise awareness of the savings that our Solar Water Heating System can bring. Participating customers will qualify for a significant subsidy towards the cost of installation. To see how you could qualify for a subsidised Simplee Solar Water Heating System please complete and return the enclosed prepaid response card for a free no obligation explanation of the system, survey of your property and price quotation ... Interest free credit is also available (subject to status) for a limited period for qualifying customers ...".

Issue

The complainant, who had a solar panel installed at the "subsidised" rate but was unable to find out what the unsubsidised rate would have been, challenged whether the subsidy was genuine.

Outcome:

The ASA upheld the complaint. Simplee Solar did not confirm what the unsubsidised rate would have been. Nor did they provide evidence of how many customers received a subsidy and how many paid the full price for installation. The ASA asked Simplee Solar to remove the sentence "Participating customers will qualify for a significant subsidy towards the cost of installation" and also remove the word "subsidised" from the mailing. The CAP Compliance team took follow up action regarding this in mid February.

APPENDIX 3: CAP Help Note on Utilities Prices Claims



Committee of Advertising Practice
Mid City Place 71 High Holborn London WC1V 6QT
Telephone 020 7492 2200 Fax 020 7404 3404
Textphone 020 7242 8159 Email enquiries@cap.org.uk
Online www.cap.org.uk

Committee of Advertising Practice
(Non-broadcast)

Help Note on Price Claims in Utilities Marketing

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing (the CAP Code). For advice on the rules for TV or radio commercials, consult the BACC www.bacc.org.uk for TV ads or the RACC www.racc.co.uk for radio ads.

Background

These guidelines, drawn up by the Copy Advice team with the help of the utilities industry, are intended to help marketers, agencies, media and those direct sellers who distribute marketing material interpret the rules in the CAP

Code as far as they relate to the subject discussed. They do not constitute legal advice or new Code rules and do not bind the ASA Council in the event of a complaint about a marketing communication that follows them.

1. General

1.1 A savings claim should not exaggerate the availability or extent of benefits likely to be attained by consumers. It should be qualified, if necessary, to refer to the conditions that affect it, for example: the product or service against which the comparison is being made; the fuel or combination of fuels that must be bought for the claim to be valid; the usage pattern of the consumer for the claim to be valid, for example low, average or high; the relevant payment method, for example monthly direct debit or quarterly credit; the relevant tariffs and other relevant discounts, for example early payment discounts and dual fuel discounts.

1.2 A claim that states or implies that all consumers will save, for example “savings on gas”, is unlikely to be acceptable if any do not, even if qualification to that effect, for example “available only to consumers with average consumption”, is made elsewhere in the marketing communication. (Such a claim is ‘absolute’ in that consumers are unlikely to think it subject to significant conditions; any significant qualification might only contradict the claim). The claim should be amended to reflect the condition that applies to it, for example “savings on gas for consumers with average consumption,” and to explain the condition elsewhere in the marketing communication or to remove the implication that all consumers will save, for example “you could save on gas.”

1.3 The prominence of the qualifying claim depends on many factors, not least its size, its clarity and its positioning, and especially on the significance of the qualification. Savings claims are usually phrased conditionally (for example “you could save”) and are therefore subject to qualifying conditions. If a conditionally phrased headline savings claim is likely to apply to a significant proportion of the audience (for example those with average consumption, on the standard tariff and paying by a common payment method), qualification of those conditions might be acceptable only in a footnote. If such a claim is not specific about the extent of the savings, qualification may not be required. If a conditionally phrased headline savings claim is likely to benefit a small proportion of the audience (for example those on the standard tariff and paying by a common payment method but with high consumption), either more prominent explanation of the high consumption condition is likely to be necessary (for example in the body copy) or, if the claim refers to amounts or percentages that can be saved, an “up to” claim may be appropriate (but see section 1.4).

1.4 Claims that refer to amounts or percentages that can be saved should be similarly qualified. If the claim indicates that few will benefit, “up to” and “from” may be used (see section 1.3). If “up to” or “from” are used, at least

10% of consumers should be able to save the stated amount. If at least 10% do save that amount but some consumers save nothing, the claim should reflect that fact, for example “you could save up to ”.

1.5 An average consumption figure quoted in marketing communications and/or used as the basis for claims should be based on up-to-date, industry-recognised figures (for example, those recommended by Energywatch). Marketers should use those figures to quantify what constitutes high or low usage. Consumption figures alone should not be used to qualify that a claim applies to consumers with low, average or high consumption, because consumers might not know that 30,000 kWh of gas, for example, is an unusually high annual consumption.

2. Savings against previous prices

2.1 Marketers making savings claims against their previous prices should state prominently whether a significant proportion of the saving derives not from cheaper fuel but from some other factor, for example changes in the method of payment or level of applicable VAT. A footnote can be used to explain the saving.

3. Savings against a competitor’s prices

3.1 Comparisons should be clear and fair and should compare products meeting the same needs or intended for the same purpose. The ASA will determine fairness on the basis of whether customers would consider services comparable and whether elements of a comparison have been presented in a way that allows customers to make an informed and rational choice. For example, marketers should not, when quoting lower tariff charges than a competitor, imply that customers can save a certain amount on their total bill over a given period if that saving is reduced significantly, or nullified, by higher standing charges.

3.2 Marketers making tariff comparisons should assume that customers act rationally in selecting the best service available to them. When comparing, they should compare their tariff with their competitor’s equivalent or most similar tariff; equivalence will normally be based on frequency of payment, payment method, dual fuel discount if applicable and tariff “bands” (for example, Low User, Standard, Business). For example, they should compare their direct debit (discounted) price with their competitor’s equivalent price, not with their competitor’s non-discounted price (but see section 3.4).

3.3 Similarly, if marketers feature their discounted and non-discounted tariffs in a comparative savings claim, they should include their competitor’s discounted price as well as its non-discounted price. They need not do so if they separate the references to the prices so that customers are unlikely to compare the marketer’s discounted price with the competitor’s non-discounted price.

3.4 A comparison with a competitor's dissimilar tariffs is acceptable only if the ad states prominently that the competitor offers a tariff lower than the one featured. That explanatory statement should be both near to and similar in size to the savings claim or text in a table.

3.5 Marketers should not claim a saving, that includes a dual fuel discount, against a competitor on one fuel if the competitor offers a lower price on the other fuel. Even if the marketer includes the competitor's dual fuel discount, the comparison is likely to mislead because the competitor's lower price on the other fuel will at least partly offset the marketer's lower price on the featured fuel. Marketers who include a dual fuel discount in a saving against a competitor should compare the prices of both fuels.

3.6 Marketers may choose which of their competitor's tariffs should be the subject of a comparison if two or more tariffs are equally comparable; they should, however, be able to show that no obviously more comparable tariff exists. The tariffs used as the basis of comparison, and any significant differences between them, should be stated clearly (see section 1.3).

3.7 Marketers who compare their projected prices with a competitor's present prices should state in the body copy when their prices will become available. Marketers should use the most up-to-date prices, or confirmed future prices, as the basis of those comparisons.

4. Savings against an average of competitors' prices

4.1 As well as following the advice in section 3, marketers who compare their prices with an average of their competitors' prices should explain the basis of the comparison and ensure both that the identity of their competitors is clear and that those competitor prices selected for the comparison are relevant to the audience addressed. They should neither unfairly select only those competitor prices that give them an advantage nor include competitor prices that are irrelevant to the audience addressed.

5. Dual fuel offers

5.1 Marketers who offer savings that depend on the supply of more than one type of fuel should explain that dependence prominently (for example, in the body copy if the savings claim is in the headline); they should not imply that customers taking only one type of fuel can benefit from those savings if they cannot.

5.2 If the inclusion or exclusion of prompt-payment discounts or late-payment penalties from price claims is likely to affect consumer's understanding of the claim, marketers should either state that clearly (see section 1.3) or fully describe the competitors' service that is the subject of the comparison. For example, "paid 10 days after billing" (though see section 3.2 for advice on comparisons).

6. “Price Freeze” Products

6.1 Marketing communications for a product of this nature should include all significant conditions that apply to it (for example, premiums that might apply to an existing utilities price, the date to which frozen prices will be available, limited availability, offer open to dual-fuel customers only or cancellation fees that might apply).

6.2 As stated in section 1.2, if the product is subject to conditions that exclude certain consumers or has limited availability, claims should be amended either to reflect the conditions that apply to it (for example, “Price freeze for dual fuel consumers in Greater London”) or to remove the implication that the product is available to all consumers (for example, “your prices could be frozen”) and the conditions should be explained elsewhere in the marketing communication.

6.3 When advertising “price freeze” products, marketers may want to refer to a competitor’s recent price rise. Although it is acceptable to do so, marketers must ensure that they do not misleadingly imply, by omission or otherwise, that they have not implemented price rises in the past unless they have not done so. Assuming that information stated is factually correct, an acceptable claim is “All major suppliers have raised their prices in the last 12 months. (Competitor X) has just raised its prices by x%. By freezing your prices with us...”.

6.4 Marketers should ensure that they make clear the prices that will apply to a “price freeze” product. For example, if a given price freeze offer depends on consumers signing up to a marketer’s new rates after a price increase, that fact should be made clear by, for example, “Sign up for frozen prices at our new rates.”

7. Switching Sites

7.1 Marketing communications should not mislead by omission or otherwise in relation to the nature of a switching site. Special care should be taken with the use of claims such as “Independent” and “Comprehensive.” The presence of a commercial relationship between a switching site and a provider does not necessarily preclude descriptions of such a site as impartial or independent unless the commercial relationship influences the recommendations made by it. To legitimately claim that a site is comprehensive it should compare all of the prices available at any given time.

7.2 A savings claim made for a switching site is subject to the guidance offered in sections 1 to 5.

8. VAT

8.1 Unless addressed exclusively to the trade, quoted prices, including those for unit rates and standing charges, should include payable VAT.

8.2 If marketers include a VAT-exclusive price as well as a VAT-inclusive price, the inclusive price should be the more prominent.

8.3 If VAT is charged at different levels for different customers, prices should include the level of VAT applicable to the largest of the addressed audiences. A footnote should state that level.

9. Regional or local suppliers

9.1 If they refer to either themselves or their competitors as the regional, local or existing supplier, marketers should supply a reasonable proportion (for example, more than half) of consumers at whom the marketing communication is addressed.

9.2 If they refer to a competitor as the regional/local/existing supplier, marketers should state the identity of the competitor; a footnote is acceptable for this statement.

10. Size or degree of qualification

10.1 Footnotes should be legible to a normally-sighted person reading the marketing communication once at a normal speed.

10.2 Marketers who are required to qualify a claim in a footnote may do so with more prominence (for example, in the body copy).

10.3 If a poster contains no body copy but the claim requires more prominent qualification than that provided in a footnote, marketers should add a sub-heading or similar.

10.4 Whether footnotes need to be asterisked to the claim depends on several factors: for example, the importance of the qualification and the prominence of the footnote in the context of the rest of the marketing communication. Marketers who want help should consult the Copy Advice team.

11. The Law

11.1 Marketers should consider the provisions of the Control of Misleading Advertisements Regulations 1988 (as amended), Part III of the Consumer Protection Act 1987, the Price Marking Order 1999 and the guidance in the Code of Practice for Traders on Price Indications. The Consumer Credit (Advertisements) Regulations 1989 apply to comparisons of credit terms.

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or by e-mail on copyadvice@cap.org.uk. The CAP website at www.cap.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

November 1998
Revised: November 2000
Revised: March 2003
Revised: November 2003
Revised November 2006