

# The Regulation of Unfair Practices in TV and Radio Advertisements

## Attachment A

### Outline of the effects of The Consumer Protection from Unfair Trading Regulations 2008

As well as this Code, television / radio advertising is subject to legislation. You can find a non-exhaustive list of legislation affecting broadcasting in Appendix 2.

One important piece of legislation that affects television / radio advertising is the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). The CPRs prohibit unfair advertising to consumers, including misleading and aggressive advertising. Whenever it considers complaints that an advertisement misleads consumers or is unfair or aggressive 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 advertisements breach the BCAP Television Advertising Standards Code. Relevant principles established in the CPRs are summarised below. The summary is not an exhaustive statement of the effect of the Regulations and licensees who would like detailed guidance on the Regulations, as opposed to the Code, should seek legal advice.

Many rules in this Code prohibit misleading advertising. All rules that refer to misleading advertising should be read, in relation to business-to-consumer advertising, in conjunction with the summary below.

### **Consumers**

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

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

- If the ad is directed to a particular audience group, the advertisement will be considered from the point of view of the average member of that group.
- If an advertisement is likely to affect the economic behaviour only of a clearly identifiable group of people who are particularly vulnerable to its contents, in a way that the advertiser could reasonably be expected to foresee, because of mental or physical infirmity, age or credulity, then the advertisement will be considered from the point of view of the average member of the affected group.

### **Unfair advertising**

Advertisements 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 which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader’s field of activity.

### **Misleading advertising**

Advertisements 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 to refrain from acting, concerning whether, how and on what terms to purchase, make payment 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.

Advertisements 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 advertising**

Advertisements 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.