

BCAP Regulatory statement

The BCAP Code Review has now concluded and a new, unified Broadcast Advertising Code is ready to come into effect from 1 September 2010. This has been the first full review of the regime for UK broadcast advertising regulation administered by an advertising self-regulatory body¹ and BCAP is pleased that the occasion has been marked by such a high level of response from consumers, advertisers, broadcasters and other interested parties.

The present television and radio advertising standards Codes were last reviewed in their entirety over six years ago, and while certain aspects have been amended since then to reflect changes in legislation or in society, the Code Review has presented the first opportunity to consider the system as a whole since the introduction of the co-regulatory arrangements and has enabled us to replace four separate Codes for TV, radio, TV Text and TV scheduling with a single consolidated Code document. The challenge has been to maintain a balance between continuity on the one hand and making good the promise of industry code ownership on the other. The process of consultation and evaluation has been crucial, helping to ensure the broadcast and advertising industries adopt a responsible self-regulatory approach, while maintaining accountability to all other stakeholders, including government and the public.

For the first time, a review of the rules for broadcast advertising has proceeded in close co-ordination with a review of the non-broadcast Code, with the aim of achieving a greater degree of consistency across media than ever before. Perhaps the most significant change that has resulted from this is that the new BCAP Code of Broadcast Advertising now incorporates the long-standing non-broadcast provision for socially responsible advertising. That rule has been invaluable to the ASA in tackling harmful advertising treatments that have not been foreseen or anticipated by specific rules.

BCAP's key policy objective is to ensure that all broadcast advertisements conform to the enduring principles shared by the self-regulatory and statutory systems, namely that advertisements should not mislead, harm or offend. It aims to ensure that consumers are protected while allowing the UK advertising industry to enhance its worldwide reputation for creativity and integrity. BCAP believes the rules in this new Code are transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so that they can be easily understood, easily implemented and easily enforced.

The Code Review began with a pre-consultation period when BCAP representatives from the advertising and broadcast media businesses met, under the chairmanship of Andrew Marsden, for a series of meetings where they identified those rules that still stood the test of time, others that no longer offered meaningful protection, and new areas of development where regulation might be needed. They received advice throughout that process from the Advertising Advisory Committee (AAC), an independent consumer panel established by BCAP to provide a consumer perspective on the drafting and interpretation of the Codes.

The full BCAP Committee approved the proposed Code, which was then subject to a public consultation between 26 March and 19 June 2009. BCAP received over 30,000 responses to the consultation. BCAP members then reconvened to evaluate carefully all the points made by consultation respondents, again consulting the AAC. Having made the amendments it thought necessary to address the points made by respondents, BCAP presented the draft Code, together with its full evaluation, to our co-regulatory partner Ofcom for its approval.

Responses to the Code Review have covered a wide range of topics, but one area that has been brought into particularly sharp focus by respondents has been the relationship between the Code and the law. With regard to the Consumer Protection from Unfair Trading Regulations (CPRs) and the Nutrition and Health Claims Regulations (NHCR), some respondents have questioned BCAP's decision to reflect certain legal requirements and its determination to maintain detailed provisions on subjects that are addressed prescriptively in law.

The relation of the Code to the law is complex: while BCAP is an industry code-owning body, it must ensure that the Code meets statutory objectives laid down in the Communications Act 2003. BCAP

¹ BCAP is responsible for writing and maintaining broadcast advertising standards under delegated authority from Ofcom. Further details of our co-regulatory relationship with Ofcom can be found at www.cap.org.uk.

also takes the position that if the ASA is to be the established means of consumer protection in advertising, and if it is to ensure that advertising remains legal as well as decent, honest and truthful, it cannot credibly do so on the basis of a Code that restricts itself to the bare minimum provisions necessary to meet its statutory objectives. Further, it is in the interest of marketers that the Code acts as far as it can as a plain-English quick reference to the main provisions of law in important sectors like food advertising.

The advent of EU maximum harmonisation measures (like the CPRs and the NHCR) that include provisions on advertising presents a further challenge. Indeed, the complex requirements and the occasionally opaque wording of such European regulations are a particular challenge in that regard, but are a challenge that BCAP believes it must face head-on. Finally, some aspects of the Code that are not subject to those measures may go beyond the law for the further protection of consumers, just as some trade and professional associations choose to go beyond BCAP's requirements for advertising in their sectors.

BCAP has reviewed every rule in every section of the Code. Both the rules BCAP has maintained and those it has introduced have received the appropriate level of scrutiny to ensure they are necessary and in line with BCAP's regulatory objectives. Some changes appear minor but they address real problems that can cause significant difficulty for marketers and the ASA alike. For example, by tackling ambiguous wording, many rules are now easier both to implement and enforce. Where it has reflected law, BCAP has listened to respondents and taken best advice to ensure marketers and consumers benefit from a clear and accurate reflection of key legal provisions.

To mark the occasion of the first concurrent review of the broadcast and non-broadcast advertising Codes, BCAP has agreed with CAP a common grace period of six months: the new BCAP Code will come into effect on 1 September 2010. Between now and then, BCAP and CAP will offer general and sector-specific presentations and training to ensure that marketing campaigns appearing after that date are compliant with the new rules.

The new BCAP Code is intended to provide a firm basis for advertising self-regulation operating within a co-regulatory framework for the foreseeable future. BCAP is confident that the Code provides the robust and fully evidence-based approach to consumer protection that UK industry and consumers deserve.