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## MISLEADING ADVERTISING

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## Background

The ASA may take the Consumer Protection from Unfair Trading Regulations 2008 into account when it rules on complaints about advertisements 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 advertisements as well as specific claims. It will rule on the basis of the likely effect on consumers, not the advertiser's intentions.

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

If an advertisement encourages consumers to buy a product or service through a distance-selling mechanism, broadcasters should seek legal advice to ensure they comply with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

## Rules

### General

- 3.1 Advertisements must not materially mislead or be likely to do so.
- 3.2 Advertisements must not mislead consumers 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 consumers need in context to make informed decisions about whether or how to buy a product or service. Whether the omission or presentation of material information is likely to mislead consumers depends on the context, the medium and, if the medium of the advertisement is constrained by time or space, the measures that the advertiser takes to make that information available to consumers by other means.

- 3.3 For advertisements that quote prices for an advertised product or service, material information [for the purposes of rule 3.2] includes:
  - 3.3.1 the main characteristics of the product or service
  - 3.3.2 the identity (for example, a trading name) and geographical address of the marketer and any other trader on whose behalf the advertiser is acting
  - 3.3.3 the price of the advertised product or service, including taxes, or, if the nature of the product or service is such that the price cannot be calculated

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in advance, the manner in which the price is calculated

3.3.4 delivery charges

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

3.3.6 that consumers have the right to withdraw or cancel, if they have that right.

3.4 Obvious exaggerations ("puffery") and claims that the average consumer who sees the advertisement is unlikely to take literally are allowed provided they do not materially mislead.

3.5 Subjective claims must not mislead the audience; advertisements must not imply that expressions of opinion are objective claims.

3.6 Advertisements must not mislead by omitting the identity of the advertiser.

Advertisers should note the law requires advertisers to identify themselves in some advertisements. Advertisers should take legal advice.

3.7 Advertisements must not falsely imply that the advertiser is acting as a consumer or for purposes outside its trade, business, craft or profession. Advertisements must make clear their commercial intent, if that is not obvious from the context.

3.8 No advertisement may use images of very brief duration, or any other technique that is likely to influence consumers, without their being fully aware of what has been done.

## Substantiation

3.9 Broadcasters must hold documentary evidence to prove claims that the audience is 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.

## Qualification

3.10 Advertisements must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.

3.11 Qualifications must be presented clearly.

BCAP has published Guidance on Superimposed Text to help television

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broadcasters ensure compliance with rule 3.11. The guidance is available at:

[http://www.cap.org.uk/~media/Files/CAP/Help%20notes%20new/BCAP\\_Advertising\\_Guidance\\_Notes\\_1.ashx](http://www.cap.org.uk/~media/Files/CAP/Help%20notes%20new/BCAP_Advertising_Guidance_Notes_1.ashx)

## Exaggeration

- 3.12 Advertisements must not mislead by exaggerating the capability or performance of a product or service.
- 3.13 Advertisements must not present rights given to consumers in law as a distinctive feature of the advertiser's offer.
- 3.14 Advertisements must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.
- 3.15 Advertisements must not mislead about the nature or extent of the risk to consumers' personal security, or that of their families, if they do not buy the advertised product or service.

## Prohibited claims

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

- 3.16 Advertisements must not claim that a product or service is able to facilitate winning in games of chance.
- 3.17 Advertisements must not explicitly claim that the advertiser's job or livelihood is in jeopardy if consumers do not buy the advertised product or service.

## Prices

### Background

Price statements in advertisements should take into account the Chartered Trading Standards Institute's Guidance for traders on pricing practices.

### Definition

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

- 3.18 Price statements must not mislead by omission, undue emphasis or distortion. They must relate to the product or service depicted in the advertisement.
- 3.19 Quoted prices must include non-optional taxes, duties, fees and charges that

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apply to all or most buyers. However, VAT-exclusive prices may be given if all those to whom the price claim is clearly 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.

- 3.20 If a tax, duty, fee or charge cannot be calculated in advance, for example, because it depends on the consumer's circumstances, the advertisement must make clear that it is excluded from the advertised price and state how it is calculated.
- 3.21 Advertisements that quote instalment costs must state the total price of the advertised product or service and the instalment frequency as prominently as the cost of individual instalments.
- 3.22 Advertisements 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.
- 3.23 If the price of one product or service depends on another, advertisements must make clear the extent of the commitment consumers must make to obtain the advertised price.
- 3.24 Price claims such as "up to" and "from" must not exaggerate the availability or amount of benefits likely to be obtained by consumers.

## 'Free' claims

### Principle

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

- 3.25 Advertisements must make clear the extent of the commitment consumers must make to take advantage of a "free" offer.

Advertisements must not describe items as "free" if:

- 3.25.1 consumers have to pay for packing, packaging, handling or administration of the "free" product or service
- 3.25.2 the cost of response, including the price of a product or service that consumers 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

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3.25.3 the quality of the product or service that consumers must buy has been reduced.

3.26 Advertisements 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.

3.27 Advertisements must not use the term "free trial" to describe a "satisfaction or your money back" offer or an offer for which a non-refundable purchase is required.

BCAP and CAP have published joint guidance on the use of "free". The guidance is available at:

[http://www.cap.org.uk/~media/Files/CAP/Help%20notes%20new/Guidance\\_use\\_of\\_free.ashx](http://www.cap.org.uk/~media/Files/CAP/Help%20notes%20new/Guidance_use_of_free.ashx)

## Availability

3.28 Broadcasters must be satisfied that advertisers have made a reasonable estimate of demand.

3.29 Advertisements that quote prices for featured products must state any reasonable grounds the advertisers have for believing that they 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:

3.29.1 if estimated demand exceeds supply, advertisements must make clear that stock is limited

3.29.2 if the advertiser does not intend to fulfil orders, because the purpose of the advertisement is to assess potential demand, the advertisement must make that clear

3.29.3 advertisements must not mislead consumers by omitting restrictions on the availability of products; for example, geographical restrictions or age limits.

3.30 Broadcasters must be satisfied that advertisers who advertise products at specific prices will not use the technique of switch selling, in which their sales staff refuse 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 Advertisements must not falsely claim that the advertiser is about to stop trading

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or move premises. They must not falsely state that a product or service, 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** Advertisements must not mislead consumers about market conditions or the possibility of finding the product or service elsewhere to induce consumers to buy the product or service at conditions less favourable than normal market conditions.

## Comparisons

### Principle

The ASA will consider unqualified superlative claims as comparative claims against all competing products or services.

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 service or the advertiser's performance that is claimed to be superior.

### Comparisons with Identifiable Competitors

- 3.33** Advertisements that include a comparison with an identifiable competitor must not mislead, or be likely to mislead, consumers about either the advertised product or service or the competing product or service.
- 3.34** Advertisements must compare products or services meeting the same need or intended for the same purpose.
- 3.35** Advertisements must objectively compare one or more material, relevant, verifiable and representative feature of those products or services, which may include price.
- 3.36** Advertisements must not create confusion between the advertiser and its competitors or between the advertiser's product or service, 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 that are registered as having a "designation of origin" should be compared only with other products with the same designation.

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## Other Comparisons

- 3.38** Advertisements that include comparisons with unidentifiable competitors must not mislead, or be likely to mislead, consumers. The elements of the comparison must not be selected to give the advertiser an unrepresentative advantage.

## Price Comparisons

- 3.39** Advertisements that include a price comparison must make the basis of the comparison clear.
- 3.40** Price comparisons must not mislead by falsely claiming a price advantage. Comparisons with 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** Advertisements must not mislead consumers about who manufactures the product.
- 3.42** Advertisements must not discredit or denigrate another product, advertiser or advertisement or a trade mark, trade name or other distinguishing mark.
- 3.43** Advertisements 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 competitor product or service.
- 3.44** Advertisements must not present a product as an imitation or replica of a product or service with a protected trade mark or trade name.

## Endorsements and testimonials

### Background

Advertisements that include endorsements or testimonials might also be subject to Section 6: Privacy.

### Rules

- 3.45** Testimonials or endorsements used in advertising must be genuine, unless they are obviously fictitious, and be supported by documentary evidence. Testimonials and endorsements must relate to the advertised product or service. Claims that are likely to be interpreted as factual and appear in



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advertisements must not mislead or be likely to mislead.

- 3.46 Advertisements must not feature testimonials without permission.
- 3.47 Advertisements must not display a trust mark, quality mark or equivalent without the necessary authorisation. Advertisements must not claim that the advertiser (or any other entity referred to in the advertisement), the advertisement or the advertised product or service has been approved, endorsed or authorised by any person or body if it has not or without complying with the terms of the approval, endorsement or authorisation.
- 3.48 Advertisements must not falsely claim that the advertiser, or other entity referred to in the advertisement, is a signatory to a code of conduct. Advertisements must not falsely claim that a code of conduct has an endorsement from a public or other body.

### **Guarantees and after-sales service**

- 3.49 Advertisements must not use the word "guarantee" in a way that could cause confusion about a consumer's rights.
- 3.50 Advertisements must make clear each significant limitation to an advertised guarantee (of the type that has implications for a consumer's rights). Broadcasters must be satisfied that the advertiser will supply the full terms of the guarantee before the consumer is committed to taking it up.
- 3.51 Broadcasters must be satisfied that advertiser will promptly refund consumers who make valid claims under an advertised money-back guarantee.
- 3.52 Advertisements must not falsely claim or imply that after-sales service is available in an EEA member state in which the advertised product or service is not sold.
- 3.53 If an advertisement 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 advertisement, broadcasters must be satisfied that the advertiser will explain that to consumers before a contract is concluded.