

ASA system submission to the UK Government's consultation on Voluntary Carbon and Nature Markets: Raising Integrity.

1. Background and introduction

- 1.1.** This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the 'ASA system.'
- 1.2.** The ASA system is providing this written submission in response to the UK Government's consultation on Voluntary Carbon and Nature Markets: Raising Integrity.
- 1.3.** The ASA is the UK's independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for over 60 years and the Broadcast Advertising Code (written and maintained by BCAP) for 19, with our remit further extended in 2011 to include companies' advertising claims on their own websites and in social media spaces under their control.
- 1.4.** We work closely with a network of partner regulators including Ofcom, the Gambling Commission, the Information Commissioner's Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority and the Competition and Markets Authority. Our frontline ad regulation often complements their activities, or even frees them up entirely to concentrate on their other duties. Through the sharing of information, joined-up enforcement action and referral processes, our partners bolster our regulation and assist us, where necessary, to bring non-compliant advertisers into line.
- 1.5.** As the UK's frontline advertising regulator, the ASA brings together different statutory, co-regulatory and self-regulatory enforcement mechanisms so they appear seamless to people and businesses. Our system involves the active participation of a range of legal backstops in the consumer protection landscape. We work closely with a network of partners including the Medicines and Healthcare products Regulatory Agency (MHRA), the General Pharmaceutical Council (GPhC), COSLA, Trading Standards, the Competition and Markets Authority and Ofcom.
- 1.6.** We call our model of partnering with businesses and other regulators 'collective ad regulation.' Our independence and the buy-in and support we receive through collective ad regulation delivers faster, more flexible, more joined-up and proportionate regulation.
- 1.7.** The UK Advertising Codes include rules reflecting specific legal provisions and rules developed through separate regulatory process, which in combination ensure ads don't mislead, harm, or seriously offend their audience. The inclusion of the rules in the UK Advertising Codes has enormous benefits for responsible businesses and for consumers, who benefit from the protection the rules afford.
- 1.8.** We think it prudent, in the context of consultation questions about the VCMI Claims Code (including Q1 and Q18), to outline what is required by the [CAP](#) and [BCAP](#) UK Advertising Codes, particularly in the context of environmental claims and claims concerning carbon and nature credits. It is also important to note that marketing communications' compliance with the VCMI Claims Code does not by itself entail compliance with the CAP and BCAP Codes, and our Codes address advertising in UK media.

2. Consultation Response

Section 3 rules

Section 3 of the CAP and BCAP Codes concerns Misleading Advertising which reflects and builds upon relevant legal provisions. It includes the following rules:

3.1 CAP & BCAP: *Advertisements must not materially mislead or be likely to do so.*

3.3 CAP, 3.2 BCAP: *Advertisements must not omit material information or information required to be included by law. This includes providing such information in a way that is unclear or untimely, or in a way that the consumer is unlikely to see or hear it.*

Regard will be had to any limitations (e.g. as to time or space) resulting from the means of communication used and steps taken by the marketer to overcome these by providing the information by other means. "Material information" is information that the average consumer needs to take an informed transactional decision (as defined in Appendix 1 / 3).

3.7 CAP: *Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are 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.*

3.9 BCAP: *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.*

3.9 CAP, 3.10 BCAP: *Marketing communications [BCAP: "Advertisements"] must not mislead by omitting significant limitations and qualifications. Qualifications may clarify but must not mislead by contradicting the claims that they qualify.*

3.10 CAP: *Qualifications must not mislead by not being presented clearly. CAP has published Advertising Guidance on [Misleading advertising: use of qualifications](#).*

3.11 BCAP: *Qualifications must not mislead by not being presented clearly. BCAP has published guidance on superimposed text to help television broadcasters ensure compliance with rule 3.11. The guidance is available at: [Use of superimposed text in television advertising](#).*

3.11: *Marketing communications [BCAP: "Advertisements"] must not mislead consumers by exaggerating the capability or performance of a product.*

Environmental Claims rules

The CAP and BCAP Codes also contain sections dedicated to environmental claims, which include the following provisions:

11.1 CAP, 9.2 BCAP: *The basis of environmental claims must be clear. Unqualified claims could mislead if they omit material information.*

11.3 CAP, 9.4 BCAP: *Absolute claims must be supported by a high level of substantiation. Comparative claims such as "greener" or "friendlier" can be justified, for example, if the advertised product provides a total environmental benefit over that of the marketer's previous product or competitor products and the basis of the comparison is clear.*

11.4 CAP: *Marketers must base environmental claims on the full life cycle of the advertised product, unless the marketing communication states otherwise, and must make clear the limits of the life cycle. If a general claim cannot be justified, a more limited claim about specific aspects of a product might be justifiable. Marketers must ensure claims that are based on only part of the advertised product's life cycle do not mislead consumers about the product's total environmental impact.*

9.5 BCAP: *Environmental claims must be based on the full life cycle of the advertised product or service, unless the advertisement states otherwise, and must make clear the limits of the life cycle. If a general claim cannot be justified, a more limited claim about specific aspects of a product or service might be justifiable. Claims that are based on only part of an advertised product or service's life cycle must not mislead consumers about the product or service's total environmental impact.*

CAP Guidance & ASA Research

[CAP Guidance](#) on misleading environmental claims and social responsibility in advertising is designed to help marketers and agencies interpret CAP and BCAP's rules that concern environment-related advertising issues. It includes the following elements for advertisers to bear in mind when preparing their marketing communications, particularly in relation to making specific environmental claims:

1. Avoid using unqualified "carbon neutral", "net zero" or similar claims.
2. Ensure that they include accurate information about whether (and the degree to which) they are actively reducing carbon emissions or are basing claims on offsetting.
3. Claims based on future goals relating to reaching net zero or achieving carbon neutrality should be based on a verifiable strategy to deliver them.
4. Where it is necessary to include qualifying information about a claim, that information should be sufficiently close to the main aspects of the claim for consumers to be able to see it easily and take account of it before they make any decision.

The guidance also outlines the broad findings of [the ASA's Environmental Claims in Advertising research](#), which is relevant to the topic. The consumer research found that there was little consensus about the meaning of the terms "carbon neutral" and "net zero", but there was consensus that standardising definitions was a key, first step. Participants identified a need for significant reform to be enacted and enforced by an official or government body. The research also found that participants tended to believe that carbon neutral claims implied that an absolute reduction in carbon emissions had taken place or would take place, and, when the potential role of offsetting in supporting those claims was revealed, this could result in consumers feeling that they had been misled.

Help and advice

CAP's Copy Advice team offer a range of fast and confidential bespoke advice on non-broadcast advertising, including advertising which makes environmental claims, and which invokes carbon and nature credits in the claims made. They also offer a range of [advice and training services](#) to help advertisers understand and comply with the rules, including an [online database](#) of advice.

Cross-regulatory working group

We acknowledge the potential for a cross-regulatory working group and are happy to be involved.

Contact

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