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MISLEADING ADVERTISING

Background

Most rules in this section engage the transactional decision test (see Appendix 3). Those rules generally refer to marketing communications “misleading” the consumer.
Other rules reflect prohibited practices that are considered unfair in all circumstances, and do not therefore require the application of a transactional decision test. Those rules generally state marketing communications “must not” engage in a practice, rather than referring to misleading the consumer. Where a rule does reflect a prohibited practice, either in part or in its entirety, it is marked with an asterisk.

The ASA will take Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024 into account when it rules on complaints about advertisements that are alleged to be misleading. See Appendix 3 for more information about the Act.
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 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 3).

3.3 For marketing advertisements that quote prices for advertised products, omitting material information (for the purposes of rule 3.2) includes omitting any of the following information, unless it is already apparent from the context:

3.3.1 the main characteristics of the product or service

3.3.2 the identity (and, if different, trading name) and business address (and, if different, the service address) and any business email address of the advertiser and any other trader on whose behalf the advertiser is acting

3.3.3 the total price of the advertised product, including any fees, taxes, charges which or other payments that the consumer will necessarily incur if the consumer purchases the product
If, owing to the nature of the product, the whole or any part of the total price cannot be calculated in advance, how the price (or that part of it) will be calculated

3.3.4 any freight, delivery, or postal charges, including any taxes, not included in the total price of the product but which the consumer may choose to incur (or where those additional taxes or charges cannot reasonably be calculated in advance, the fact that they may be payable)

3.3.5 the arrangements for payment, delivery, performance or complaint handling, if those depart from the advertiser's published practice in relation to those arrangements

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 mislead by implying that expressions of opinion are objective claims.

3.6 Advertisements must not materially 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 not mislead by omitting significant limitations and qualifications. Qualifications may clarify but must not mislead by contradicting the claims that they qualify.

3.11 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

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 mislead by suggesting 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 at risk 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 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 any optional delivery, freight or postal charges, including any taxes, or, if those cannot reasonably be calculated in advance, state that such charges are payable. See rule 3.3.

3.23 If the price of one product or service depends on another, advertisements must not mislead by failing to 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 mislead by exaggerating the availability or amount of benefits likely to be obtained by consumers.

'Free' claims

3.25 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*, including 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

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

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

3.27 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.

3.28 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:

Guidance_use_of_free.ashx

Availability

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

3.30 Advertisements that quote prices for featured products must disclose if the advertiser has any reasonable grounds for believing that it will not be possible to supply the advertised (or an equivalent) product at the advertised price, within a reasonable period and in reasonable quantities.*

3.31 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.*

3.32 Advertisements must not falsely claim that the advertiser is about to stop trading 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 limited time to deprive consumers of the time or opportunity to make an informed choice.*

3.33 Advertisements must not provide materially inaccurate information on market conditions or the availability of the product or service with the intention of inducing consumers to acquire 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

3.34 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.

3.35 Advertisements must compare products or services meeting the same needs or intended for the same purpose.

3.36 Advertisements must objectively compare one or more material, relevant, verifiable and representative feature of those products or services, which may include price.

3.37 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.

3.38 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.

Other Comparisons

3.39 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

3.40 Advertisements that include a price comparison must not mislead by failing to make the basis of the comparison clear.

3.41 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

3.42 Advertisements must not mislead consumers about who manufactures the product.*

3.43 Advertisements that include a comparison with an identifiable competitor must not discredit or denigrate another product, advertiser or advertisement or a trade mark, trade name or other distinguishing mark.

3.44 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.

3.45 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

NOTE

The below rules relate to advertisements under the remit of the BCAP Code (see Introduction). Advertisers are advised to seek legal advice on other obligations in relation to the prohibition on fake consumer reviews.

3.46 Advertisements must not contain fake consumer reviews.
“Consumer review” means a review of a product, a trader or any other matter

relevant to a transactional decision.
A fake consumer review is a consumer review that purports to be, but is not, based on a person's genuine experience.*

3.47 Advertisements must make clear where consumer reviews have been incentivised.*

3.48 Advertisers must not publish consumer reviews, or consumer review information, in a misleading way in advertisements. Publishing in a misleading way includes (for example):

- Failing to publish, or removing from publication, negative consumer reviews whilst publishing positive ones (or vice versa)
- Giving greater prominence to positive consumer reviews over negative ones (or vice versa)
- Omitting information that is relevant to the circumstances in which a consumer review has been written (including that a person has been commissioned to write the review).

"Consumer review information" means information that is derived from, or is influenced by, consumer reviews.*

3.49 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 advertisements must not mislead or be likely to mislead.

3.50 Advertisements must not feature testimonials without permission.

3.51 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 a product or service has been approved, endorsed or authorised by any public or private body if it has not or without complying with the terms of the approval, endorsement or authorisation.*

3.52 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 private body.*

Guarantees and after-sales service

3.53 Advertisements must not use the word "guarantee" in a way that could cause confusion about a consumer's rights.

3.54 Advertisements must not mislead by omitting significant limitations 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.

3.55 Broadcasters must be satisfied that advertiser will promptly refund consumers who make valid claims under an advertised money-back guarantee.

3.56 Advertisements must not falsely claim or imply that after-sales service is available, including falsely claiming that it is available in, or accessible from, any particular country or location.*

3.57 If an advertisement 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.*