

Misleading advertising: use of qualifications

Advertising Guidance
(non-broadcast)

Foreword

The Committee of Advertising Practice (CAP) offers guidance on the interpretation of the [UK Code of non-Broadcast Advertising, Direct & Promotional Marketing](#) (the CAP Code) in relation to non-broadcast marketing communications.

The Broadcast Committee of Advertising Practice (BCAP) offers guidance on the interpretation of the UK Code of Broadcast Advertising (the BCAP Code) in relation to broadcast marketing communications.

Advertising Guidance is intended to guide advertisers, agencies and media owners on how to interpret the Codes but is not a substitute for those Codes. Advertising Guidance reflects CAP's and/or BCAP's intended effect of the Codes but neither constitutes new rules nor binds the Advertising Standards Authority (ASA) Councils in the event of a complaint about an advertisement that follows it.

For pre-publication advice on specific non-broadcast marketing communications, consult the CAP Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or you can log a written enquiry via our [online request form](#).

For advice on specific TV advertisements, please contact [Clearcast](#).

For clearance advice on specific radio advertisements, please contact [Radiocentre](#).

For the full list of Advertising Guidance, please visit our [website](#).

Committee of Advertising Practice

Castle House, 37-45 Paul Street

London EC2A 4LS

Telephone 020 7492 2200

Email: enquiries@cap.org.uk

 [@CAP_UK](#)

1. Overview

This Advertising Guidance concerns the use of qualifications. These are additional pieces of information the omission of which could result in a primary claim misleading consumers.

Qualifications serve a variety of purposes within a marketing communication. They can clarify or expand on the meaning of a primary claim, provide substantiation to support it or explain important limitations or conditions to which it is subject. It is important to note that they can appear throughout a marketing communication at different levels of prominence and are not limited to footnotes (what is often described as the ‘small print’ in print communications).

The ASA rules frequently on the use of qualifications where marketers have failed to meet the Code’s requirements that qualifying information should:

- be included where it is material to the consumer understanding of the primary claim qualified and/or the marketing communication as a whole;
- not contradict the primary claim being qualified to the extent that consumers are likely to be misled; and
- be presented clearly with an appropriate level of prominence.

Assessing whether claims have been appropriately qualified is a central part of the ASA’s work in enforcing CAP’s rules on misleading advertising.

2. Misleading advertising

The Misleading Advertising section of the CAP Code (section 3) includes extensive rules to prevent marketing communications from misleading consumers. Rule 3.1 is the overarching requirement:

Marketing communications must not materially mislead or be likely to do so.

The ASA’s interpretation of the Misleading Advertising section of the CAP Code takes into account the Unfair Commercial Practices (UCP) provisions in Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024 and The Business Protection from Misleading Marketing Regulations 2008 (BPRs).

The UCP provisions include the requirement that advertising must not contain misleading claims, or omit material information, to the extent that the advertisements are likely to affect adversely consumers’ transactional decisions. The effect on consumers is considered from the point of view of the

average consumer. The average consumer is assumed to be reasonably well-informed, reasonably observant and circumspect. If an advertisement is directed at a particular group of people, it is considered from the point of view of the average member of that group.

They also contain a requirement that certain types of material information must not be omitted from an invitation to purchase, regardless of the transactional decision test. See CAP Code rule 3.4.

The BPRs protect businesses targeted by business-to-business advertising. The BPRs state that an advertisement is misleading if it deceives the traders to whom it is addressed and is therefore likely to affect their economic behaviour.

[Appendix 1 of the CAP Code](#) provides more details of the legal framework upon which the Misleading Advertising rules are based.

3. When should a qualification be used?

The presentation of qualifying information is an important aspect of determining whether a marketing communication is misleading. Rule 3.9 of the CAP Code states:

Marketing communications must not mislead by omitting significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.

Marketers should ensure that claims – particularly those that feature prominently in marketing communications – are either:

- worded to reflect in full the point that the marketer wishes to make about the product, service or promotion; or
- suitably qualified with additional information to ensure that consumers are not likely to be misled.

The first approach is most straight-forward route to ensuring compliance with the Code. However, CAP recognizes that in many cases marketers may choose or find it necessary to provide additional information through qualifications. This might be due, for instance, to a creative decision taken by the marketer or because the product, service, promotion etc. advertised is subject to significant limitations or qualifications that cannot easily be reflected in the primary claim.

4. Using qualifications

The most common use of qualifications is to ensure that consumers are made aware of any significant limitations to which a primary claim is subject, including:

- conditions of an offer (e.g. information on what a consumer has to do to take advantage of an offer); and
- factors relating to the product, service, offer etc. advertised that restrict the scope of a primary claim (e.g. time limits, geographical availability or exclusions from an offer).

Promotional marketing is a particular area covered by the Code where use of qualifications is especially important given the nature of many promotions; CAP's [guidance on promotional marketing](#) includes a list of technical requirements for marketing communications including such offers.

The ASA will assess the use of qualifications in accordance with the Code's general test of misleading advertising (see section 2). In doing so, it will have regard to factors like the context in which a marketing communication appears and the wider content, such as imagery and themes, where they are likely to affect consumers' understanding of claim.

Although issues are assessed on a case-by-case basis, marketers should have regard to the following key considerations:

- Qualifications should not be so significant as to contradict the primary claim. For example, a headline price claim qualified by an indication that additional, non-optional costs will be incurred.
- There may be occasions when a qualification, however prominent, does not go far enough in removing the misleading impression given by the primary claim. For example, a claim that a product, service or offer is "free" when there is a cost to consumers (CAP has dedicated guidance on the use of "free" claims available [here](#)).
- The information presented in a qualification, even if it is correct, can still mislead if it is not presented clearly and afforded the appropriate level of prominence (see the sections below for more detail on this point).

5. Clarity and prominence

Qualifications should be clear and legible; they should be prominent enough to capture a consumer's attention in a given media or ad format.

Rule 3.10 includes a link to this Advertising Guidance and states:

Qualifications must not mislead by not being presented clearly.

Decisions on whether the clarity and prominence of qualifications are appropriate, and other factors, such as whether qualifications need be

asterisked to primary claims, depends on a wide range of factors including but not limited to:

- their size (having regard to how consumers view ads in different circumstances, for example, on devices with different screen sizes);
- their positioning (vertical footnotes, for example, are less likely to be acceptable as they are more difficult to read than horizontal ones);
- the significance of the qualification;
- the content and layout of the rest of the marketing communication (qualifications that are only viewable on a website or in an email by scrolling down, for instance, may not be sufficiently prominent to qualify a primary claim appearing at the top);
- the nature of the medium (posters, for example, usually contain limited amounts of text); and
- the prominence of the primary claim.

The ASA will assess issues relating to clarity and prominence in the use of qualifications in accordance with the Code's general test for misleading advertising on a case-by-case basis, in other words from the perspective of the average consumer or, if it is directed to a particular audience group, from the point of view of the average member of that group. The sections below provide further guidance and examples on how to best comply with the Code's requirements.

6. The 'Qualifying Ladder' and prominence

As part of the considerations set out in section 5, the 'qualifying ladder' is a useful tool for marketers to understand the ASA's likely expectations of the necessary prominence of qualifications.

Most claims in marketing communications fall into one of four categories from the most to the least prominent:

- headline;
- sub-heading;
- body copy; and,
- footnote.

In the event of a complaint, marketers should be able to justify to the ASA why they consider a particular level of prominence (in other words, the relationship between primary claim and its qualification) appropriate to ensure that

consumers are not likely to be misled by a primary claim. Where there is doubt, CAP advises that a qualification be moved up the ladder.

- Marketers should select an appropriate level of prominence relative to the position of their primary claim. The main determinate of this is the importance of the information contained in the qualification to consumers' understanding of the primary claim; the more important the qualifier, the greater prominence is likely to be necessary (in other words there are fewer steps in the qualification ladder between the two). Less important qualifying information may be placed further steps away from the primary claim (see also section 7 on the use of asterisks to make qualifications more readily apparent to consumers).
- It is possible to move up or down the "qualifying ladder". For instance, if a primary claim in a headline requires a particularly significant qualification (for example in a sub-heading immediately following it), it is reasonable to expect that were that same primary claim to appear in a sub-heading it can then be qualified in the body copy; and
- It is not always possible to divide claims in a marketing communication into the qualification ladder categories as boundaries between the categories can often be blurred. For example, there may be occasions when the first line of the body copy, if near to the headline, has the effect of being as prominent as a sub-heading. The ASA will assess such instances on a case-by-case basis.

7. Use of asterisks

If a qualification is at least two "steps" less prominent than the primary claim, the use of an asterisk will normally allow a marketer to account for one "step" of the "qualifying ladder". For example, if a primary headline claim requires qualifying in the body copy, marketers can instead place the qualification in a footnote linked to the headline by an asterisk.

8. Use of footnotes

Footnotes and other qualifications using small text should be clearly legible to the average consumer to which a marketing communication is directed reading it once, from a reasonable distance and at a reasonable speed.

The prominence of a qualification contained in a footnote may also depend on the total amount of copy in the footnote. If the small text is extensive and relates to matters unconnected to the primary claim, the marketer can qualify a claim with more prominence (for example in the body copy).

9. Taking media characteristics into account

Marketers should have appropriate regard to the nature of the media. The same marketing communication appearing in different media could require different approaches to the use of qualifications.

CAP advises marketers to have due regard to the way consumers are likely to consume the media in which their marketing communications appear; including where the same content can be viewed in different ways across different types of device and online platforms. For example:

- Printed matter that consumers handle directly generally allows a greater opportunity for consumers to read qualifications, for instance, those contained in a footnote. That is less likely to be the case for media or ad types viewed from a distance (for example posters) or limited by time and space (for example audio-visual communications).
- Posters and ambient media are likely to be viewed from a significant distance. Marketers should ensure that text used is likely to be of an appropriate size and to be clearly legible to the average consumer reading the marketing communication once from a reasonable distance and at a reasonable speed. Where a post appears on a digital outdoor site, marketers should further consider the implications for consumers of the marketing communication appearing only for set period of time.
- Online and other non-broadcast audio-visual marketing communications often allow for information to be presented visually and in audio, as well as at different times during the communication. Marketers should ensure that qualification text included in video or other moving image formats is:
 - sized appropriately (in other words clearly legible to the average consumer reading the marketing communication once from a reasonable distance and at a reasonable speed),
 - Displayed on screen long enough for consumers to read it; and
 - sufficiently clear in relation to the imagery of the main creative (for example the text should be presented with appropriate contrast to avoid it being obscured avoiding difficult to read contrasts such as light-on-light colour combinations), and

Marketers should also consider the need for certain particularly significant qualifying information to be emphasised using both visual and audio channels where the latter is available.

Marketers should also note that BCAP has produced separate guidance on the requirements for the [Use of superimposed text in TV](#) advertising.

- Marketing communications in online media significantly limited by time and space (for example sponsored search advertising) may, in some cases, present some qualifications ‘one-click’ away, ensuring that consumers are made aware of those qualifications immediately upon visiting the landing page. Consumers should not, however, have been misled materially by an omission into clicking the ad in the first place. Marketers should take care with the headline claims they use in such media and include as much of the qualifying information as reasonably possible (for example although social network site posts are sometimes limited in terms of text, the inclusion of a graphic allows for significant qualifying information to be provided immediately).

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Advice on specific non-broadcast marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, or you can log a specific written enquiry via the [online request form](#).

The [Advice and Training](#) section of the CAP website contains a full list of Advertising Guidance notes as well as access to the full AdviceOnline database, which links through to relevant Code rules and ASA rulings.

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