Introduction

This twelfth edition of the Code comes into force on 1 September 2010. It replaces all previous editions.

As well as this Code, non-broadcast marketing communications are subject to legislation.

The advertising rules that apply to video-on-demand services which are subject to statutory regulation are reflected in the rules set out in Appendix 2.

I The Code applies to:

a. advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions (including SMS and MMS), fax transmissions, catalogues, follow-up literature and other electronic or printed material

b. posters and other promotional media in public places, including moving images, except where they appear unlawfully

c. cinema, video, DVD and Blu-ray advertisements

d. advertisements in non-broadcast electronic media, including but not limited to: online advertisements in paid-for space (including banner or pop-up advertisements and online video advertisements); paid-for search listings; preferential listings on price comparison sites; viral advertisements (see III l); in-game advertisements; commercial classified advertisements; advergames that feature in display advertisements; advertisements transmitted by Bluetooth; advertisements distributed through web widgets and online promotions and prize promotions

e. marketing databases containing consumers' personal information

f. promotions in non-broadcast media

g. advertorials (see III k)

h. Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities.

II The Code does not apply to:

a. broadcast advertisements (The BCAP Code sets out the rules that govern broadcast advertisements on any television channel or radio station licensed by Ofcom)

b. the contents of premium-rate services, which are the responsibility of the Phone-paid Services Authority; marketing communications that promote those services are subject to Phone-paid Services Authority regulation and to the CAP Code

c. marketing communications on websites, apps and cross-border platforms (for example, social media platforms or retail platforms) unless they meet at least one of the following criteria:

- Non-paid-for marketing communications from or by marketers with a UK registered company address and / or who are subject to licensing conditions requiring compliance with the CAP Code, which are imposed by either a UK public authority or UK public body.
- Marketing communications appearing on websites with a ".uk" top-level domain.
- Paid-for marketing communications from or by marketers targeting people in the UK.

Marketing communications on websites, apps and cross-border platforms that do not meet at least one of these criteria will fall outside of the scope of the CAP Code.

Most members of the European Union, and many non-European Union countries, have a self-regulatory organisation that is a member of the European Advertising Standards Alliance (EASA). EASA co-ordinates the cross-border complaints system for its members (which include the ASA). The ASA will use the cross-border complaints system in the following situations involving marketing communications on websites, apps and cross-border platforms:

- Where non-paid-for marketing communications which are outside the remit of the CAP Code target UK consumers, the ASA will refer complaints about them to the relevant authority in the country in which the marketer is registered if that authority operates a suitable cross-border complaint system. If a suitable cross-border complaint system is not operated, the ASA will take what action it can.
- Where the ASA receives complaints about paid-for marketing communications by marketers without a UK-registered address which target UK consumers, and the ASA considers that it is unable to take action in response to such complaints, the ASA will

refer the complaints to the relevant authority in the country in which the marketer is registered if that authority operates a suitable cross-border complaint system.

Direct marketing communications by or from marketers with a non-UK-registered company address are subject to the jurisdiction of the relevant authority in the country in which the marketer is registered if that authority operates a suitable cross-border complaint system. If a suitable cross-border complaint system is not operated, the ASA will take what action it can.

d. claims, in marketing communications in media addressed only to medical, dental, veterinary or allied practitioners, that relate to those practitioners' expertise

e. classified private advertisements, including those appearing online

f. statutory, public, police and other official notices or information, but not marketing communications, produced by public authorities and the like

g. works of art exhibited in public or private

h. private correspondence, including correspondence between organisations and their customers about existing relationships or past purchases

i. live oral communications, including telephone calls and announcements or direct approaches from street marketers

j. press releases and other public relations material not covered by part I above

k. editorial content; for example, of the media or of books and regular competitions such as crosswords

l. [Deleted 10 May 2018].

m. packages, wrappers, labels, tickets, timetables and price lists unless they advertise another product or a promotion or are visible in a marketing communication

n. point-of-sale displays, except those containing promotional marketing (as defined in section 8) or pertaining to rolling papers or filters, in which case the entire Code applies to the promotional material or content which pertains to rolling papers or filters

o. political advertisements as defined in Section 7

p. marketing communications for causes and ideas in non-paid-for space, except where they contain a direct solicitation for donations as part of the marketer's own fund-raising activities

q. website content not covered by I d and I h, including (but not limited to) editorial content, news or public relations material, corporate reports and natural listings on a search engine or a price comparison site

r. sponsorship; marketing communications that refer to sponsorship are covered by the Code

s. customer charters and codes of practice

t. investor relations (see III m)

u. 'heritage advertising' by or from companies, organisations or sole traders on their own websites, or in other non-paid for space online under their control, where that advertising is not part of their current promotional strategy and is placed in an appropriate context. In cases where advertisements or other marketing communications recently ruled against by the ASA are featured, rule 1.2 (the spirit of the Code) may be invoked to bring those advertisements or other marketing communications within remit.

III These definitions apply to the Code:

a. a product encompasses goods, services, ideas, causes, opportunities, prizes or gifts

b. a consumer is anyone who is likely to see a given marketing communication, whether in the course of business or not

c. the United Kingdom covers the Isle of Man and the Channel Islands

d. a claim can be implied or direct, written, spoken or visual; the name of a product can constitute a claim

e. the Code is divided into numbered rules

f. a marketing communication includes all forms of communication listed in part I

g. a marketer includes an advertiser, promoter or direct marketer

h. a supplier is anyone who supplies a product that is sold by a distance-selling marketing communication (and can be the marketer)

i. a child is anyone under 16

j. a corporate subscriber includes corporate bodies such as limited companies in the UK, limited liability partnerships in England, Wales and Northern Ireland or any partnerships in

Scotland. It also includes schools, hospitals, Government departments or agencies and other public bodies. It does not include sole traders or non-limited liability partnerships in England, Wales and Northern Ireland. See rule 10.14

k. An advertorial is an advertisement feature, announcement or promotion, the content of which is controlled by the marketer, not the publisher, that is disseminated in exchange for a payment or other reciprocal arrangement

l. A viral advertisement is an e-mail, text or other non-broadcast marketing communication designed to stimulate significant circulation by recipients to generate commercial or reputational benefit to the marketer. Viral advertisements are usually put into circulation ("seeded") by the marketer with a request, either explicit or implicit, for the message to be forwarded to others. Sometimes they include a video clip or a link to website material or are part of a promotional campaign

m. Investor relations material is information about an organisation (including its goods or services) addressed to the financial community, including shareholders and investors, as well as others who might be interested in the company's stock or financial stability.

IV These criteria apply to the Code:

a. the ASA Council's interpretation of the Code is final

b. if it is not clear whether a communication falls within the remit of the Code, the ASA will be more likely to apply the Code if the material complained about is in paid-for space

c. compliance with the Code is assessed according to the marketing communication's probable impact when taken as a whole and in context. That will depend on the medium in which the marketing communication appeared, the audience and its likely response, the nature of the product and any material distributed to consumers

d. the Non-broadcast ASA Council may have regard to decisions made by the Broadcast ASA Council under the BCAP Code and, similarly, the Broadcast ASA Council may have regard to decisions made by the Non-broadcast ASA Council under the CAP Code. Factors that help to determine whether an ASA ruling is likely to apply across media include, but are not limited to, the characteristics of the medium, how the advertisement is targeted, the context in which a claim is made and the extent to which the relevant CAP Code provisions correspond to those in the BCAP Code

e. the Code does not have the force of law and its interpretation will reflect its flexibility. The Code operates alongside the law; the Courts may make rulings on matters covered by the Code

f. an indication of the statutory rules governing marketing communications is given on www.asa.org.uk; professional advice should be taken about their application

g. no spoken or written communication from the ASA or CAP should be understood as containing legal advice

h. the Code is primarily concerned with the content of advertisements, promotions and direct marketing communications and not with terms of business or products. Some rules, however, go beyond content; for example, those that cover the administration of promotions, the suitability of promotional items and the use of personal information in direct marketing. Editorial content is specifically excluded from the remit of the Code (see II k) although it might be a factor in determining the context in which a marketing communication is judged (see IV c)

i. the Code makes due allowance for public sensitivities but will not be used by the ASA to diminish freedom of speech unjustifiably

j. the ASA does not arbitrate between conflicting ideologies

k. in assessing compliance with the Code, the ASA may take account of honest market practices and the general principle of good faith in the traders' field of activity

l. in relevant cases the ASA will have regard to existing statutory enforcement bodies. The ASA reserves the right to refer complainants to the relevant statutory regulator in cases where a complaint about a marketing communication relates to a Code rule that reflects a legal provision for a regulated product.