

CAP and BCAP's evaluation of responses to consultation on amendments to the Advertising Codes following review in response to the Digital Markets, Competition and Consumers Act 2024



1. Introduction

Following public consultation, the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) have decided to adopt amendments to misleading advertising rules in their Codes, following a review in response to Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024 (DMCCA) (the unfair commercial practices (UCP) provisions), which come into force on 6 April 2025.

These proposals were set out in the consultation document.

CAP and BCAP have published a separate Regulatory Statement summarising the rationale for their decision and confirming the outcomes on the various points that were consulted on. The tables below in this document sets out CAP and BCAP's detailed evaluation of all significant comments received. It should also be read alongside the [regulatory statement](#) and the [consultation document](#).

Full copies of non-confidential responses have been published on the [consultation output page](#).

2. List of respondents and their abbreviations used in this document

The following parties responded to the consultation.

	Organisation / Individual	Abbreviation
1	Organisation A	OA
2	Organisation B	OB
3	Organisation C	OC
4	Medicines and Healthcare Products Regulatory Agency	MHRA
5	The Very Group	VG

3. Evaluation of consultation responses

Note: Rule numbers referenced in relation to each question follow the previous Code rule numbering, which in some cases has been amended in the final revisions. BCAP Code rule equivalents are given in square brackets.

1. Preface			
	Respondent	Comments	CAP and BCAP's evaluation
1.1	VG	Text should state that self-regulation is “widely recognised” rather than “recognised across Europe” as Europe is not relevant to a UK advertising code.	The European context remains relevant with regard to the ASA system's relationship with other regional advertising self-regulation bodies in Europe.
2. Rule 2.3 [3.7]			
	Respondent	Comments	CAP and BCAP's evaluation
2.1	VG	Agree.	CAP and BCAP agree.
3. Section 3 Background			
	Respondent	Comments	CAP and BCAP's evaluation
3.1	VG	Agree.	CAP and BCAP agree.
4. Rule 3.3 [3.2]			
	Respondent	Comments	CAP and BCAP's evaluation
4.1	OA	<p>Agree it is sensible to retain wording that explains that the ASA will have regard to limitations on time and space in particular media when assessing whether or not an advertiser has included sufficient material information for the average consumer to make a transactional decision.</p> <p>Would welcome greater clarity either in the Code rule or additional guidance on how the ASA will assess the distinction between information that is required to be included by law (so no longer assessed with the transactional decision test, as set out in the list at rule 3.4), and the limitations in time and space that result from the means of communication used.</p>	<p>The reference to ‘information required to be included by law’ reflects DMCCA section 227(1)(b)</p> <p><i>For the purposes of this Chapter, a commercial practice involves a misleading omission if, considering the matters mentioned in subsection (3), the practice [...] omits information which the trader is required under any other enactment to give to a consumer as part of the practice.</i></p> <p>This is not a specific reference to the information set out at rule 3.4 [3.3], but rather to any information that is required to be included in advertising under any piece of legislation. Various pieces of</p>

		<p>For example, “material information”, for the purpose of rule 3.4 includes the business email address and the business address of the marketer.</p> <p>Respondent does not currently include this information in price-led advertising, and considers it would not fit in a TV ad, nor would it be necessary.</p>	<p>legislation impose specific requirements on traders to provide consumers with certain information about matters ranging from product matters to the consumer protection rights that apply. The omission of such information may constitute an infringement under those other pieces of legislation, which may carry a variety of civil and/or criminal sanctions. In addition to being a breach of the underlying legislation, a failure to provide consumers with the required information may also amount to a misleading omission under the UCP provisions¹.</p> <p>The comments on limitations on time and space are more appropriately addressed in the section on rule 3.4 [3.3].</p>
4.2	VG	<p>Material information needs to be made available in good time to consumers as part of the transactional journey. That does not mean that adverts, which are effectively signposting consumers to retailers’ website where the transaction will take place, need to include all the material information, if the material information is readily available on the retailers’ website.</p>	<p>A transactional decision is not limited to the decision to make a purchase. The Explanatory Notes to the DMCCA state it includes both pre-purchase and post-purchasing decisions and includes decisions on whether to do something, or not to do something. There does not need to be an actual transaction between the consumer and trader. For example, it includes decisions on whether to visit a shop, to click through to a website, to exercise a cancellation right or to pay a debt as well as a decision to purchase a product or to enter a contract.</p> <p>As stated in the rule, regard is 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.</p>

5. Rule 3.4 [3.3]			
	Respondent	Comments	CAP and BCAP’s evaluation
5.1	OA	<p>The vast majority of advertising media are not capable of including all of the information listed in rule 3.4[3.3].</p> <p>There is no indication of how limitations on time and space will be assessed under the amended rule, in the absence of the transactional decision test.</p> <p>Industry requires guidance explaining how the rule will be applied in practice.</p>	<p>CAP and BCAP note the comments made. However, the proposed revised rules reflect the legislation, and considerations around interpretation are not going to have an impact on the wording of the rules themselves, which is the subject of this consultation.</p> <p>CAP and BCAP will consider whether additional guidance or amendments to existing guidance are needed, in discussion with their regulatory partners.</p>

¹ CMA draft guidance on UCP provisions

5.2	OA	<p>Unclear at the reference to including any “freight, delivery or postal charges not included in the total price of the product but which the consumer may choose to incur”.</p> <p>Had understood that the purpose of the update to the DMCCA and the CAP Code was to capture non-optional fees, not fees or charges a consumer may choose to incur.</p>	<p>The amendment to rule 3.4.5 [3.3.5] reflects section 230 (2) (g) of the DMCCA. It provides that charges that are genuinely optional for consumers, and that would not be reflected in the inclusive ‘total price’, are nevertheless material information for the purpose of an invitation to purchase.</p>
5.3	OA	<p>Material information now includes the “total price”, which is defined in draft CMA guidance as a single figure inclusive of all mandatory charges. The guidance provides an example of a gym membership and states that the ad should include the total cost of the gym membership over the full contract term, rather than the monthly price.</p> <p>Respondent seeks confirmation of whether the “total price” for a telecoms contract will be considered by the ASA to be “apparent from the context”, given that existing guidance requires ads to state the monthly cost, in-contract price increases, contract length and all up-front costs with equal prominence in the body of the ad.</p> <p>Providing a total contract price is not straightforward as price points change depending on offers available at any given time. It will also vary depending when in the year the customer begins their contract, therefore an invitation to purchase would risk being out of date within a short time.</p> <p>They set out various arguments as why they believe that this application of the law would not be appropriate and proportionate and why they believe it would be onerous to implement in practice.</p>	<p>CAP and BCAP note the comments made. However, the proposed revised rules reflect the legislation, and considerations around interpretation are not going to have an impact on the wording of the rules themselves, which is the subject of this consultation.</p> <p>CAP and BCAP understand that the CMA will be running further consultation on this and other aspects of their drip pricing guidance in the summer, with a view to producing finalised guidance in the autumn. Following confirmation of the CMA’s position, CAP and BCAP will consider the implications for their own guidance.</p>
5.4	OB	<p>Respondent disagrees with amendments to the law to address ‘drip pricing’ being applied to ads for telecoms contracts, in line with draft guidance set out by the CMA on the interpretation of ‘total price’ in relation to contract-based products.</p> <p>They argue that displaying a monthly charge of a phone or broadband contract alongside the length of the contract is not drip pricing.</p> <p>They state that Ofcom’s General Conditions require all providers to provide consumers with information in a prescribed format to allow consumers to make a detailed comparison of the offerings that are available from different providers.</p>	<p>See 5.3.</p>

		They set out various arguments as to why they believe that this application of the law would not be appropriate and proportionate and why they believe it would be onerous to implement in practice.	
5.5	VG	Disagree. It is not necessary to include all material information on the advert if the material information is readily available on the website where the consumer transacts.	See 5.3.

6. Rule 3.6 [3.5]			
	Respondent	Comments	CAP and BCAP's evaluation
6.1	VG	Agree.	CAP and BCAP agree.

7. Rule 3.8			
	Respondent	Comments	CAP and BCAP's evaluation
7.1	VG	Agree.	CAP and BCAP agree.

8. Rule 3.9 [3.10]			
	Respondent	Comments	CAP and BCAP's evaluation
8.1	VG	Agree.	CAP and BCAP agree.

9. Rule 3.10 [3.11]			
	Respondent	Comments	CAP and BCAP's evaluation
9.1	OA	<p>When applying rule 3.10, the ASA is considering whether the qualification adequately clarifies the impression created by the primary claim. It is not assessing whether the qualification is itself misleading. The proposed changes are therefore unhelpful, as they indicate that qualifications could be analysed in isolation. It also suggests that the only criterion for evaluating whether a qualification is misleading is its presentation, rather than the extent to which the content clarifies the primary claim.</p> <p>In their view, neither 3.9 nor 3.10 add to the provisions of rule 3.3 and could be removed.</p> <p>The observation that information should be presented clearly and that contradictory information is likely to be unclear and therefore</p>	<p>3.9 and 3.10 are pre-existing rules that, while not explicitly reflecting legislation, serve to provide further detail to advertisers on how they can avoid misleading by omission. Rule 3.10 does not pertain solely to qualifications, in isolation, but to the relationship of a qualification to the claim it qualifies. If a qualification is not presented clearly, it may have the effect of misleading the consumer about the headline claim.</p> <p>CAP and BCAP do not agree that the revised wording of 3.10 suggests that the only criterion for evaluating whether a qualification is misleading is its presentation.</p>

		misleading would be better placed in guidance (if it needs to be stated anywhere).	
9.2	VG	Agree.	CAP and BCAP agree.

10. Rule 3.13 [3.14]

	Respondent	Comments	CAP and BCAP's evaluation
10.1	VG	Agree.	CAP and BCAP agree.

11. Rule 3.15 [3.17]

	Respondent	Comments	CAP and BCAP's evaluation
11.1	VG	Agree.	CAP and BCAP agree.

12. Rule 3.20 [3.22]

	Respondent	Comments	CAP and BCAP's evaluation
12.1	OA	There appears to be a typo here, this should refer to “non-optional” charges. In any case, is this provision still necessary, given proposed rule 3.4.4?	<p>The reference to optional charges is correct, as all non-optional charges would form part of the ‘total price’, as per rule 3.4.</p> <p>As with the previous version of the Code, this section of the Code on price statements restates some of the principles set out earlier under rule 3.4. However, CAP and BCAP consider that the rule continues to have relevance as practitioners may look specifically at the section on prices.</p> <p>CAP and BCAP appreciate that the explanation could more clearly link the amendment with the changes to omission of material information from an invitation to purchase.</p> <p>Amendments will be made to refer Code users more explicitly to rule 3.4 [3.3].</p>
12.2	VG	Understand the purpose of the revised wording, however believe it will cause confusion for advertisers by using the word ‘optional’ without being read in conjunction with the rationale.	See 12.1.

13. Rule 3.21 [3.23]

	Respondent	Comments	CAP and BCAP's evaluation
13.1	VG	Agree.	CAP and BCAP agree.

14. Rule 3.22 [3.24]

	Respondent	Comments	CAP and BCAP's evaluation
14.1	VG	Agree.	CAP and BCAP agree.

15. 'Free' rules 3.23 [3.25] – 3.26 [3.27]

	Respondent	Comments	CAP and BCAP's evaluation
15.1	VG	Agree.	CAP and BCAP agree.

16. 'Availability' rules 3.27 [3.28] – 3.29 [3.30]

	Respondent	Comments	CAP and BCAP's evaluation
16.1	VG	Agree.	CAP and BCAP agree.

17. Rule 3.31 [3.31]

	Respondent	Comments	CAP and BCAP's evaluation
17.1	VG	Agree.	CAP and BCAP agree.

18. Rule 3.32 [3.32]

	Respondent	Comments	CAP and BCAP's evaluation
18.1	VG	Agree.	CAP and BCAP agree.

19. Rule 3.34 [3.34]

	Respondent	Comments	CAP and BCAP's evaluation
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19.1	VG	Agree.	CAP and BCAP agree.
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20. Rule 3.39 [3.39]

	Respondent	Comments	CAP and BCAP's evaluation
20.1	OA	<p>The original wording of the rule emphasises the need to include additional information to explain any differences between the products being compared, and the basis on which they are being compared. (For example contract length, or differences between the products likely to affect a consumer's understanding of the comparison.)</p> <p>The new wording loses that clarity, and suggests it is possible to make a price comparison without stating the basis on which it has been made. This is unhelpful.</p>	<p>CAP and BCAP agree that revised wording would more accurately retain the meaning of the rule while including the transactional decision test:</p> <p>"Marketing communications that include a price comparison must not mislead by failing to make the basis of the comparison clear".</p>
20.2	VG	Agree.	CAP and BCAP agree.

21. Rule 3.42 [3.42]

	Respondent	Comments	CAP and BCAP's evaluation
21.1	VG	Agree.	CAP and BCAP agree.

22. New rules on fake consumer reviews

	Respondent	Comments	CAP and BCAP's evaluation
22.1	VG	Agree.	CAP and BCAP agree.

23. Rule 3.50 [3.47]

	Respondent	Comments	CAP and BCAP's evaluation
23.1	VG	Agree.	CAP and BCAP agree.

24. Rule 3.51 [3.48]

	Respondent	Comments	CAP and BCAP's evaluation
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24.1	VG	Agree.	CAP and BCAP agree.
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25. Rule 3.52

	Respondent	Comments	CAP and BCAP's evaluation
25.1	OC	<p>It is unlikely that the Royal Arms or Emblems would be used in marketing materials in a way that did not imply approval or authorisation from the relevant member of the Royal Family. Approval or authorisation will almost always be required. It would be more helpful to users of the CAP Code to be clear about this.</p> <p>As such, the respondent suggests changes with direct reference to the relevant legislation, as below:</p> <p><i>Marketing communications must not use the Royal Arms or Emblems in a misleading way that implies due authorisation or approval by a member of the Royal Family where none has been given. If such authorisation or approval is required (which it normally will be), the Lord Chamberlain's office should be contacted in the first instance.</i></p>	CAP and BCAP agree.
25.2	VG	Agree.	CAP and BCAP agree.

26. Rule 3.54 [3.50]

	Respondent	Comments	CAP and BCAP's evaluation
26.1	VG	Agree.	CAP and BCAP agree.

27. Rule 3.56 [3.52]

	Respondent	Comments	CAP and BCAP's evaluation
27.1	VG	Agree.	CAP and BCAP agree.

28. Rule 3.57 [3.53]

	Respondent	Comments	CAP and BCAP's evaluation
28.1	VG	Agree.	CAP and BCAP agree.

29. Rule 5.4 [5.9]

	Respondent	Comments	CAP and BCAP's evaluation
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29.1	VG	Agree.	CAP and BCAP agree.
30. Rule 5.5			
	Respondent	Comments	CAP and BCAP's evaluation
30.1	VG	Agree.	CAP and BCAP agree.
31. Rule 5.7 [5.14]			
	Respondent	Comments	CAP and BCAP's evaluation
31.1	VG	Agree.	CAP and BCAP agree.
32. Rule 10.1			
	Respondent	Comments	CAP and BCAP's evaluation
32.1	VG	Agree.	CAP and BCAP agree.
33. Rule 11.1 [9.2]			
	Respondent	Comments	CAP and BCAP's evaluation
33.1	VG	Agree.	CAP and BCAP agree.
34. Section 12 [11] Background			
	Respondent	Comments	CAP and BCAP's evaluation
34.1	VG	Agree.	CAP and BCAP agree.
35. Rule 12.6 [11.15]			
	Respondent	Comments	CAP and BCAP's evaluation
35.1	MHRA	<p>The new wording of rule 11.15 is less specific than the old rule.</p> <p>A claim could be made for a product to prevent or treat disease, or restore, correct or modify a physiological function and whilst it may not necessarily be false, the issue for MHRA is that these claims would, generally speaking, capture the products under medicines legislation and consequently regulatory requirements would apply. In this case, a Marketing Authorisation granted by MHRA would have to be held by the supplier.</p>	<p>Regulatory requirements of medicines legislation that apply to advertising are already reflected in existing rules within the Code. Rule 12.1 of the CAP Code and rule 11.4 of the BCAP Code state that medicinal claims and indications may only be made for a medicinal product that holds the appropriate license, for example. BCAP does not consider that the original wording of rule 11.15 adds anything to the Code that is not already reflected elsewhere, and its amendment would not remove any protections. The only purpose of this rule was to reflect the prohibited practice in the CPRs, which has been significantly amended in the DMCCA. The amended wording closely aligns with the wording of the law.</p>
35.2	VG	Agree	CAP and BCAP agree.

36-39. Appendix 1 [3]			
	Respondent	Comments	CAP and BCAP's evaluation
36.1	VG	Agree	CAP and BCAP agree.