

Amendments to the Advertising Codes following review in response to the Digital Markets, Competition and Consumers Act 2024

Committee of Advertising Practice and Broadcast Committee of Advertising Practice consultation on amendments based on changes to UK consumer law

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1. Executive summary

The Committee of Advertising Practice (CAP), author of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) and the Broadcast Committee of Advertising Practice (BCAP), author of the UK Code of Broadcast Advertising (BCAP Code) are consulting on proposals to amend some of the rules and other text across a number of sections of their Codes. These proposals arise from review of new UK consumer law in the form of the Digital Markets, Competition and Consumers Act 2024 (DMCCA).

CAP and BCAP consider that it is necessary to amend their rules that reflect the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), as this legislation will be revoked and restated from April 2025 by Chapter 1 of Part 4 of the DMCCA (the unfair commercial practices (UCP) provisions).

In large part, the UCP provisions retain the legal framework around misleading advertising that was set out in the CPRs. However, it contains a range of amendments to wording, definition and structure, as well as the addition of several new categories to the Schedule of commercial practices that are in all circumstances considered unfair (prohibited practices).

These include:

- A new unfair commercial practice on the omission of material information from a price statement (including information on mandatory and optional fees, aimed at tackling online 'drip pricing') (see Question 4, p. 11)
- A new prohibited practice on fake consumer reviews (see Question 21, p. 21)
- Changes broadening the prohibited practice on falsely claiming to cure illness (see Question 34, p.28)
- Changes to the consideration of a commercial practice's effect on vulnerable groups of consumers (see Question 35, p.29)
- Changes to the definition of the transactional decision test (see Question 37, p. 30)

A number of the proposed changes in this consultation do not directly reflect amendments deriving from the new legislation but have been identified in the course of review as areas where the wording of the Codes could better align with the wording of other, pre-existing areas of underpinning law.

The consultation will close at 5pm on 5 February 2025. For more information on how to respond, please see section 6.

2. Introduction to UK advertising regulation

2.1 The Committee of Advertising Practice (CAP)

CAP is the self-regulatory body that creates, revises and enforces the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code). The CAP Code covers non-broadcast marketing communications, which include those placed in traditional and new media, promotional marketing, direct marketing communications and marketing communications on marketers' own websites. The marketer has primary responsibility for complying with the CAP Code and their ads must comply with it. Ads that are judged not to comply with the Code must be withdrawn or amended. Parties that do not comply with the CAP Code could be subject to adverse publicity, resulting from rulings by the Advertising Standards Authority (ASA), or further sanctions including the denial of media space.

CAP's members include organisations that represent advertising, promotional and direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those organisations agree to comply with the Code so that marketing communications are legal, decent, honest and truthful, and consumer confidence is maintained.

By practising self-regulation, the marketing community ensures the integrity of advertising, promotions and direct marketing. The value of self-regulation as an alternative to statutory control has been recognised across Europe (including in legislation) for a number of years. Self-regulation is accepted by the Department for Business and Trade, Trading Standards and the CMA as a first line of control in protecting consumers and the industry.

Further information about CAP is available at www.cap.org.uk.

2.2 The Broadcast Committee of Advertising Practice (BCAP)

BCAP is the regulatory body responsible for maintaining the UK Code of Broadcast Advertising (the BCAP Code) under agreement with the Office of Communications (Ofcom). Ofcom has a statutory duty, under the Communications Act 2003, to maintain standards in TV and radio advertisements. In 2004, Ofcom entrusted BCAP and the broadcast arm of the ASA with the regulation of broadcast advertisements in recognition of CAP and the ASA's successful regulation of non-broadcast marketing for over 40 years, and in line with better regulation principles.

The BCAP Code regulates all advertisements on television channels and radio stations licensed by Ofcom and all advertisements on Sianel Pedwar Cymru (S4C) and S4C digital, including teleshopping channels and any additional television service (including television text services and interactive television services). The BCAP Code is enforced against Ofcom-licensed broadcasters, Sianel Pedwar Cymru (S4C) and S4C digital. Broadcasters are required by the terms of their Ofcom licence, and, for S4C, by statute, to adhere to the standards set out in the BCAP Code.

BCAP members include broadcasters and trade associations representing advertisers, broadcasters and agencies. BCAP must seek advice on proposed Code changes from an expert consumer panel, the Advertising Advisory Committee (AAC). Under Section 324 of the Communications Act 2003, BCAP must consult on proposed Code changes. BCAP strives to ensure that its rule-making is transparent, accountable, proportionate, consistent

and targeted where action is needed, in accordance with the Communications Act 2003. Ofcom must approve Code changes before BCAP implements them.

Further information about BCAP and the AAC is available at www.cap.org.uk.

2.3 The Advertising Standards Authority (ASA)

The ASA is the independent body responsible for administering the CAP and BCAP Codes and ensuring that the self-regulatory system works in the public interest. The Codes require that all advertising is legal, decent, honest and truthful.

The ASA assesses complaints from the public and industry. Decisions on investigated complaints are taken by the independent ASA Council. The ASA Council's rulings are published on the ASA's website and made available to the media. If the ASA Council upholds a complaint about an ad, it must be withdrawn or amended.

An Independent Review Procedure exists for interested parties who are dissatisfied with the outcome of a case. CAP conducts compliance, monitoring and research to help enforce the ASA Council's decisions. Information about the ASA is available at www.asa.org.uk.

2.4 Funding

The entire system is funded by a levy on the cost of advertising space, administered by the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof). Both finance boards operate independently of the ASA to ensure there is no question of funding affecting the ASA's decision-making.

Information about Asbof and Basbof is available at www.asbof.co.uk and www.basbof.co.uk.

3. Regulatory framework of the BCAP Code

3.1 Communications Act 2003

The [Communications Act 2003](#) (the Act) sets out provisions for the regulation of broadcasting and television and radio services, including provisions aimed at securing standards for broadcast advertisements. The most relevant standards objective to this consultation is:

[319\(2\)\(h\)](#) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented.

The Act requires Ofcom to set and, from time to time, review and revise, a Code containing standards for the content of broadcast advertisements carried by TV and radio services licensed under the Broadcasting Acts [1990](#) and [1996](#). Ofcom has contracted out the setting of advertising standards to BCAP under the [Contracting Out \(Functions Relating to Broadcast Advertising\) and Specification of Relevant Functions Order 2004](#). That function is exercised in consultation with and agreement of Ofcom.

4. Background

The Digital Markets, Communications and Consumers Act 2024¹ (DMCCA) received Royal Assent in May 2024. Among other things, this legislation revoked and restated the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs), the legislation from which the majority of the existing CAP and BCAP rules on misleading advertising derive or with which they are otherwise understood to be compatible. CAP and BCAP understand that Chapter 1 of Part 4 of the DMCCA, including provisions pertaining to unfair commercial practices (UCP provisions), will come into force in April 2025.

In large part, the UCP provisions retain the legal framework around misleading advertising that was set out in the CPRs. However, it contains a range of amendments to wording, definition and structure, as well as the addition of several new categories to the Schedule of commercial practices that are in all circumstances considered unfair (prohibited practices).

Objectives

As a result of the above, CAP and BCAP have reviewed their Codes and proposed amendments to bring their rules in line with the wording of the new legislation, where relevant. In doing so, their objective has been to align the rules with the wording of the DMCCA as closely as possible, while making certain adaptations. In some cases, these are intended to render the wording more accessible and less 'legalistic' to the end user while ensuring that there is no material difference in the standards being set. CAP and BCAP and the ASA will always apply the correct legal tests. Other divergences acknowledge that the scope of the Codes is narrower than that of the legislation, in that they apply only to marketing communications falling within the remit of the CAP and BCAP Codes rather than to commercial practices more broadly. This is intended to avoid giving advertisers the false impression that the ASA is responsible for enforcing aspects of the legislation that go beyond its remit – for example, business practices – or that the Codes provide a complete account of advertisers' obligations under the DMCCA.

Scope

The scope of the changes being consulted on covers all sections of the Codes that include rules derived from CPRs provisions which are to be revoked and restated by the UCP provisions within the DMCCA. The changes cover only those rules that reflect elements of the law that have been amended; other rules reflecting the CPRs have been unaffected by the new legislation as they have been restated with no change.

The majority of rules subject to these proposals are part of Section 3 – Misleading advertising in the respective Codes, however others are included in various specific subject- and sector-based sections throughout the Codes.

In the course of reviewing the misleading advertising rules, CAP and BCAP also identified certain other areas not connected to changes in the DMCCA, where rules could benefit from more precise wording in alignment with the relevant underlying law, and where that could be achieved in a straightforward manner. These proposed changes are included in the consultation.

Note on differences between the Codes

¹ [Digital Markets, Competition and Consumers Act 2024](#)

These proposals take as their starting point the relevant non-broadcast Code version of the rules. In most, but not all, cases there is an equivalent version of the rule or text in the BCAP Code. Where that is the case, the number of the BCAP code rule has been given in square brackets.

There are a number of divergences between the versions of the rules in both Codes, that do not have a significant bearing on the matters being considered here. Largely these are result of the different media types they apply to, or to historic versions of the Codes or their predecessors. For example, the non-broadcast Code refers to 'marketers' and 'marketing communications' whereas the broadcast Code refers to 'advertisers' or 'broadcasters' and 'advertisements'. There are slight variations in grammar and structure and in the rule numbers and Code sections referenced.

CAP and BCAP have, overall, adopted a minimal approach and left these minor variations in place where they do not impact on the objective of reflecting the underlying law.

For reference, the full text of current and proposed changes in both Codes can be found in the mapping document in the Annex.

Please note that the mapping document includes some minor changes (for example, references to legislation and names of sections) that are not covered in the consultation questions below.

5. Proposed amendments to present CAP and BCAP Code sections

Square brackets [] indicate the equivalent BCAP Code rule number or wording variant, where relevant.

Underlined text indicates where changes have been proposed (unless they are purely structural).

Where a rule reflects a prohibited practice from Schedule 20 of the DMCCA (considered in all circumstances unfair), either in part or its entirety, it is marked with an asterisk *.

Preface (CAP Code only)

Question 1

Present text:

The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including those on misleading and comparative advertising (Directives 2005/29/EC and 2006/114/EC). Self-regulation is accepted by the Department for Business, Innovation and Skills and Trading Standards as a first line of control in protecting consumers and the industry.

Proposed text:

The value of self-regulation as an alternative to statutory control has been recognised across Europe (including in legislation) for a number of years. Self-regulation is accepted by the Department for Business and Trade, Trading Standards and the CMA as a first line of control in protecting consumers and the industry.

Rationale:

This change acknowledges the on-going recognition of self-regulation in the broader European context, while removing references to specific EC Directives following the UK's exit from the European Union. The name of the relevant Government department has been updated. A reference to the Competition and Markets Authority has been added to underline that body's regard to the self-regulatory system as one of the 'established means' of consumer protection.

Question 1: Do you agree with the amended wording of this text? If not, please explain why.

Section 2 Recognition of marketing communications²

Question 2

Present rule:

2.3 [3.7] Marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession; marketing communications must make clear their commercial intent, if that is not obvious from the context.

Proposed rule:

2.3 [3.7] Marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession^{*}; marketing communications must make clear their commercial intent, if that is not apparent from the context.

Rationale:

The word change more closely reflects the wording of the law, as it was in the CPRs, and which has been replicated in DMCCA Part 4 Chapter 4 paragraph 227(1)(c). ASA rulings and CAP guidance provide extensive advice³ on how the ASA determines whether the commercial intent of an ad is sufficiently clear, including by taking account of its context. This change does not affect those established principles of interpretation.

Question 2: Do you agree with the amended wording of this rule? If not, please explain why.

Section 3 - Misleading advertising

Question 3

Present text:

N/A

Proposed text:

Most rules in this section engage the transactional decision test (see Appendix 1). 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.

² Note that in this instance, the equivalent BCAP Code rule is found in Section 3 – Misleading advertising, as indicated by the rule number. The BCAP Code does not contain an equivalent dedicated section on the Recognition of marketing communications.

³ [Recognising Ads: Overview - ASA | CAP](#)

Rationale:

The addition of this text to the Background section is intended to signal up front to Code users that the rules engage different legal tests under the UCP provisions. Some require the consideration of the transactional decision test (see question 37), while others reflect practices that are prohibited in all circumstances, and the transactional decision test therefore does not apply. The wording of the rules (some of which, where indicated below, have been altered in these proposals to better reflect the underlying law) should, in most cases, inform Code users as to which test should be applied. This will aid understanding and help avoid incorrect applications of the rules.

Question 3: Do you agree with the amended wording of this text? If not, please explain why.

Question 4

Present rule:

3.3 [3.2] Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the marketer takes to make that information available to the consumer by other means.

Proposed rule:

3.3 [3.2] Marketing communications 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).

Rationale:

The changes reflect the updated wording of the DMCCA.

Question 4: Do you agree with the amended wording of this rule? If not, please explain why.

Question 5

Present rule:

3.4 [3.3] For marketing communications that quote prices for advertised products, material information [for the purposes of rule 3.3] includes:

3.4.1 [3.3.1] the main characteristics of the product

3.4.2 [3.3.2] the identity (for example, a trading name) and geographical address of the marketer and any other trader on whose behalf the marketer is acting

3.4.3 [3.3.3] the price of the advertised product, including taxes, or, if the nature of the product is such that the price cannot be calculated in advance, the manner in which the price is calculated

3.4.4 [3.3.4] delivery charges

3.4.5 [3.3.5] the arrangements for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely to reasonably expect

3.4.6 [3.3.6] that consumers have the right to withdraw or cancel, if they have that right (see rule 3.55).

Proposed rule:

3.4 [3.3] For marketing communications that quote prices for advertised products, omitting material information (for the purposes of rule 3.3) includes omitting any of the following information, unless it is already apparent from the context:

3.4.1 [3.3.1] the main characteristics of the product

3.4.2 [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 marketer and any other trader on whose behalf the marketer is acting

3.4.3 [3.3.3] the total price of the advertised product, including any fees, taxes, charges which cannot be calculated in advance, 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

3.4.4 [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)

3.4.5 [3.3.5] the arrangements for payment, delivery, performance or complaint handling, if those depart from the marketer's published practice in relation to those arrangements

3.4.6 [3.3.6] that consumers have the right to withdraw or cancel, if they have that right (see rule 3.55).

Rationale:

Under DMCCA Part 4 Chapter 1 section 225 (4)(b), omission of material information from an invitation to purchase is considered an unfair commercial practice separate to that of a misleading omission. As a result, there is no longer a requirement to consider the impact on

the average consumer (the transactional decision test) when assessing whether information on the prescribed list of material information has been omitted, as omission of such information will always be considered unfair. The proposed amendment to the rule reflects this change.

The proposed sub-rules reflect a number of further wording amendments from the DMCCA. Most notably, rule 3.4.3 now refers to the 'total price', which is defined as including any mandatory charges that the consumer will be unable to avoid as part of their purchase. Information about optional charges is, necessarily, set out separately at 3.4.4. In both cases, if charges, owing to their nature, cannot reasonably be calculated in advance, then how those charges will be calculated constitutes material information.

Question 4: Do you agree with the amended wording of this rule? If not, please explain why.

Question 5

Present rule:

3.6 [3.5] Subjective claims must not mislead the consumer; marketing communications must not imply that expressions of opinion are objective claims.

Proposed rule:

3.6 [3.5] Subjective claims must not mislead the consumer; marketing communications must not mislead by implying that expressions of opinion are objective claims.

Rationale:

This change reflects the transactional decision test more clearly.

Question 5: Do you agree with the amended wording of this rule? If not, please explain why.

Question 6 (CAP Code only)

Present rule:

3.8 Claims for the content of non-fiction publications should not exaggerate the value, accuracy, scientific validity or practical usefulness of the product. Marketers must ensure that claims that have not been independently substantiated but are based merely on the content of a publication do not mislead consumers.

Proposed rule:

3.8 Claims for the content of non-fiction publications must not mislead by exaggerating the value, accuracy, scientific validity or practical usefulness of the product. Marketers must ensure that claims that have not been independently substantiated but are based merely on the content of a publication do not mislead consumers.

Rationale:

This change reflects the transactional decision test more clearly.

Question 6: Do you agree with the amended wording of this rule? If not, please explain why.

Question 7

Present rule:

3.9 [3.10] Marketing communications must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.

Proposed rule:

3.9 [3.10] Marketing communications must not mislead by omitting significant limitations and qualifications. Qualifications may clarify but must not mislead by contradicting the claims that they qualify.

Rationale:

This change reflects the transactional decision test more clearly.

Question 7: Do you agree with the amended wording of this rule? If not, please explain why.

Question 8

Present rule:

3.10 [3.11] Qualifications must be presented clearly.

Proposed rule:

3.10 [3.11] Qualifications must not mislead by not being presented clearly.

Rationale:

This change reflects the transactional decision test more clearly.

Question 8: Do you agree with the amended wording of this rule? If not, please explain why.

Question 9

Present rule:

3.13 [3.14] Marketing communications must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.

Proposed rule:

3.13 [3.14] Marketing communications must not mislead by suggesting that their claims are universally accepted if a significant division of informed or scientific opinion exists.

Rationale:

This change reflects the transactional decision test more clearly.

Question 9: Do you agree with the amended wording of this rule? If not, please explain why.

Question 10

Present rule:

3.15 [3.17] Marketing communications must not explicitly claim that the advertiser's job or livelihood is in jeopardy if the consumer does not buy the advertised product.

Proposed rule:

3.15 [3.17] Marketing communications must not explicitly claim that the advertiser's job or livelihood is at risk if the consumer does not buy the advertised product*.

Rationale:

This reflects a change to the wording of prohibited practice 32 of Schedule 20 of the DMCCA. CAP and BCAP understand that the multi-lingual nature of the drafting process of the Unfair Commercial Practices Directive in some cases resulted in less UK-familiar language, and in this instance, as in some others, the wording has been altered making it more familiar to the UK courts. CAP and BCAP consider there is no material difference between the terms used.

Question 10: Do you agree with the amended wording of this rule? If not, please explain why.

Question 11

Present rule:

3.20 [3.22] Marketing communications that state prices must also state applicable delivery, freight or postal charges or, if those cannot reasonably be calculated in advance, state that such charges are payable.

Proposed rule:

3.20 [3.22] Marketing communications that state prices must also state any optional delivery, freight or postal charges or, if those cannot reasonably be calculated in advance, state that such charges are payable.

Rationale:

This is in line with the changes to rule 3.4, reflecting amended requirements in the DMCCA for the total price of a product to include all non-optional charges. Therefore, only optional charges may be stated separately from the price itself.

Question 11: Do you agree with the amended wording of this rule? If not, please explain why.

Question 12

Present rule:

3.21 [3.23] If the price of one product depends on another, marketing communications must make clear the extent of the commitment the consumer must make to obtain the advertised price.

Proposed rule:

3.21 [3.23] If the price of one product depends on another, marketing communications must not mislead by failing to make clear the extent of the commitment the consumer must make to obtain the advertised price.

Rationale:

This change reflects the transactional decision test more clearly.

Question 12: Do you agree with the amended wording of this rule? If not, please explain why.

Question 13

Present rule:

3.22 [3.24] Price claims such as "up to" and "from" must not exaggerate the availability or amount of benefits likely to be obtained by the consumer.

Proposed rule:

3.22 [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 the consumer.

Rationale:

This change reflects the transactional decision test more clearly.

Question 13: Do you agree with the amended wording of this rule? If not, please explain why.

Question 14

Present rules:

Principle

Marketing communications must not describe a product as "free", "gratis", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding and collecting or paying for delivery of the item.

3.23 [3.25] Marketing communications must make clear the extent of the commitment the consumer must make to take advantage of a "free" offer.

3.24 [3.25] Marketing communications must not describe items as "free" if:

3.24.1 [3.25.1] the consumer has to pay packing, packaging, handling or administration charges for the "free" product

3.24.2 [3.25.2] the cost of response, including the price of a product that the consumer 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, or

3.24.3 [3.25.3] the quality of the product that the consumer must buy has been reduced.

CAP and BCAP have published joint guidance on the use of "free".

3.25 [3.26] Marketers 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*.

3.26 [3.27] Marketers must not use the term "free trial" to describe "satisfaction or your money back" offers or offers for which a non-refundable purchase is required.

Proposed rules:

3.23 [3.25] Marketing communications must not describe a product as "free", "gratis", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding and collecting or paying for delivery of the item*, including if:

3.23.1 [3.25.1] the consumer has to pay packing, packaging, handling or administration charges for the "free" product

3.23.2 [3.25.2] the cost of response, including the price of a product that the consumer 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, or

3.23.3 [3.25.3] the quality of the product that the consumer must buy has been reduced.

CAP and BCAP have published joint guidance on the use of "free".

3.24 [3.26] Marketing communications must make clear the extent of the commitment the consumer must make to take advantage of a "free" offer.

3.25 [3.27] Marketers 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.

3.26 [3.28] Marketers must not use the term "free trial" to describe "satisfaction or your money back" offers or offers for which a non-refundable purchase is required.

Rationale:

The change to this section of rules on 'free' claims is simply structural. The text most closely reflecting the relevant prohibited practice (now replicated without change in paragraph 23 of the Schedule 20 of the DMCCA) was formerly set out as a general principle at the beginning of the section, rather than as a rule. The proposals reflect the prohibited practice more appropriately as a rule, combining it with the sub-rules formerly at 3.24, which add further illustrative examples.

Question 14: Do you agree with the amended wording and structure of these rules? If not, please explain why.

Question 15

Present rules:

3.27 [3.28] Marketers must make a reasonable estimate of demand for advertised products.

3.28 [3.29] Marketing communications that quote a price for a featured product must state any reasonable grounds the marketer has for believing that it might not be able to supply the advertised (or an equivalent) product at the advertised price within a reasonable period and in reasonable quantities. In particular:

3.28.1 [3.29.1] if estimated demand exceeds supply, marketing communications must make clear that stock is limited

3.28.2 [3.29.2] if the marketer does not intend to fulfil orders, for example, because the purpose of the marketing communication is to assess potential demand, the marketing communication must make that clear

3.28.3 [3.29.3] marketing communications must not mislead consumers by omitting restrictions on the availability of products; for example, geographical restrictions or age limits.

3.29 [3.30] Marketers must monitor stocks. If a product becomes unavailable, marketers must, whenever possible, withdraw or amend marketing communications that feature that product.

Proposed rules:

3.27 [3.29] Marketers must make a reasonable estimate of demand for advertised products.

3.28 [3.30] Marketing communications that quote a price for a featured product must disclose if the marketer 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*.

Rationale:

The proposed rule 3.28 reflects prohibited practice 5 of Schedule 20 of the DMCCA, again replicated without change from its form in the CPRs. CAP and BCAP propose removing most of the other rules in the section. Rules 3.28.1-3 and 3.29 do not derive directly from

legislation are already adequately covered by the proposed rule 3.27, general misleading advertising and CAP guidance on availability.

Rule 3.26 does not directly reflect legislation but supports a useful condition for pre-clearance centres and publishers who wish to satisfy themselves that advertisers have taken appropriate steps to comply with standards on availability.

Question 15: Do you agree with the amended wording and structure of these rules? If not, please explain why.

Question 16

Present rule:

3.31 [3.31] Marketing communications must not falsely claim that the marketer is about to cease trading or move premises. They must not falsely state that a product, or the terms on which it is offered, will be available only for a very limited time to deprive consumers of the time or opportunity to make an informed choice.

Proposed rule:

3.29 [3.32] Marketing communications must not falsely claim that the marketer is about to cease trading or move premises. They must not falsely state that a product, or the terms on which it is offered, will be available only for a very limited time to deprive consumers of the time or opportunity to make an informed choice*.

Rationale:

This reflects a change to the wording of prohibited practice 7 of Schedule 20 of the DMCCA. It is a very slight lowering of the bar for the test that would need to be met.

Question 16: Do you agree with the amended wording of this rule? If not, please explain why.

Question 17

Present rule:

3.32 [3.32] Marketing communications must not mislead the consumer about market conditions or the possibility of finding the product elsewhere to induce consumers to buy the product at conditions less favourable than normal market conditions.

Proposed rule:

3.30 [3.33] Marketing communications must not provide materially inaccurate information on market conditions or the availability of the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions*.

Rationale:

This aligns the wording of the rule more closely with that of prohibited practice 20 of Schedule of the DMCCA.

Question 17: Do you agree with the amended wording of this rule? If not, please explain why.

Question 18

Present rule:

3.34 [3.34] [Marketing communications that include a comparison with an identifiable competitor] must compare products meeting the same need or intended for the same purpose.

Proposed rule:

3.34 [3.35] [Marketing communications that include a comparison with an identifiable competitor] must compare products meeting the same needs or intended for the same purpose.

Rationale:

This more accurately reflects the underlying Business Protection from Misleading Marketing Regulations 2008 (BPRs), paragraph 4(c).

Question 18: Do you agree with the amended wording of this rule? If not, please explain why.

Question 19

Present rule:

3.39 [3.39] Marketing communications that include a price comparison must make the basis of the comparison clear.

Proposed rule:

3.37 [3.40] Marketing communications that include a price comparison must not mislead about the basis of the comparison.

Rationale:

This change reflects the transactional decision test more clearly.

Question 19: Do you agree with the amended wording of this rule? If not, please explain why.

Question 20

Present rule:

3.42 [3.42] Marketing communications must not discredit or denigrate another product, marketer, trade mark, trade name or other distinguishing mark.

Proposed rule:

3.40 [3.43] Marketing communications that include a comparison with an identifiable competitor must not discredit or denigrate another product, marketer, trade mark, trade name or other distinguishing mark.

Rationale:

This more accurately reflects the underlying Business Protection from Misleading Marketing Regulations 2008 (BPRs), Regulation 4(f).

Question 20: Do you agree with the amended wording of this rule? If not, please explain why.

Question 21

Present rules:

N/A

Proposed rules:

The below rules relate to marketing materials under the remit of the CAP Code (see the Scope of the Code). Marketers are advised to seek legal advice on their other obligations in relation to the prohibition on fake consumer reviews.

3.43 [3.46] Marketing communications 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*.

3.44 [3.47] Marketing communications must make clear where consumer reviews have been incentivised*.

3.45 [3.48] Marketers must not publish consumer reviews, or consumer review information, in a misleading way in marketing communications. 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*.

Rationale:

These are new rules to reflect new prohibited practice 13, as introduced in Schedule 20 of the DMCCA. The new prohibited practice is wide-ranging. The ASA does not regulate aspects of the prohibited practice that go beyond the bounds of marketing material falling within the remit of the CAP and BCAP Codes. For example, the obligation to take reasonable steps to prevent publication of fake reviews, remove them, and to not provide services to create fake reviews all relate to broader business practices and fall outside the remit of the ASA. CAP and BCAP consider that to reflect the law in full would imply that the ASA had responsibility for regulating matters that go beyond its marketing remit.

The proposed new rules are drafted to reflect only those elements of the prohibited practices that relate to marketing communications within the scope of the Codes. They are preceded by wording to state that the Code rules only apply to such content as falls within remit and advising marketers to seek legal advice on their wider obligations under the DMCCA.

There is a degree of overlap between the proposed new rules and pre-existing rules in the Codes on endorsements and testimonials. CAP and BCAP propose retaining those rules as they add useful detail not directly covered by the new rules, for example, reminding marketers of their responsibility to hold evidence that testimonials are genuine.

The new provisions in the DMCCA add greater certainty around the area of fake online consumer reviews. However, they do not have the effect of significantly expanding the scope of marketing material that was already covered by the CPRs and reflected in the advertising Codes. CAP and BCAP will issue further guidance on interpretation of the new rules in due course, drawing on any future official guidance.

Question 21: Do you agree with the wording of the proposed new rules? If not, please explain why.

Question 22

Present rule:

3.50 [3.47] Marketing communications must not display a trust mark, quality mark or equivalent without the necessary authorisation. Marketing communications must not claim that the marketer (or any other entity referred to), the marketing communication or the advertised product has been approved, endorsed or authorised by any public or other body if it has not or without complying with the terms of the approval, endorsement or authorisation.

Proposed rule:

3.51 [3.51] Marketing communications must not display a trust mark, quality mark or equivalent without the necessary authorisation. Marketing communications must not claim that the marketer (or any other entity referred to), the marketing communication or a product 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*.

Rationale:

This reflects a change to the wording of DMCCA Schedule 20 prohibited practice 4.

Question 22: Do you agree with the amended wording of this rule? If not, please explain why.

Question 23

Present rule:

3.51 [3.48] Marketing communications must not falsely claim that the marketer, or other entity referred to in the marketing communication, is a signatory to a code of conduct. They must not falsely claim that a code of conduct has an endorsement from a public or other body.

Proposed rule:

3.52 [3.52] Marketing communications must not falsely claim that the marketer, or other entity referred to in the marketing communication, is a signatory to a code of conduct. They must not falsely claim that a code of conduct has an endorsement from a public or private body*.

Rationale:

This reflects a change to the wording of DMCCA Schedule 20 prohibited practice 2.

Question 23: Do you agree with the amended wording of this rule? If not, please explain why.

Question 24 (CAP Code only)

Present rule:

3.52 Marketing communications must not use the Royal Arms or Emblems without prior permission from the Lord Chamberlain's office.

References to a Royal Warrant should be checked with the Royal Warrant Holders' Association.

Proposed rule:

3.53 Marketing communications must not use the Royal Arms or Emblems in a misleading way. The Royal Arms or Emblems should not be used in marketing communications without prior permission from the Lord Chamberlain's office, where required.

References to a Royal Warrant should be checked with the Royal Warrant Holders' Association.

Rationale:

This change more accurately reflects the underlying legislation⁴ and includes reference to the transactional decision test.

⁴ Section 99(1) of the Trade Marks Act 1994

Question 24: Do you agree with the amended wording of this rule? If not, please explain why.

Question 25

Present rule:

3.54 [3.50] Marketing communications must make clear each significant limitation to an advertised guarantee (of the type that has implications for a consumer's rights). Marketers must supply the full terms before the consumer is committed to taking up the guarantee.

Proposed rule:

3.55 [3.54] Marketing communications must not mislead by omitting significant limitations to an advertised guarantee (of the type that has implications for a consumer's rights). Marketers must supply the full terms before the consumer is committed to taking up the guarantee.

Rationale:

This change reflects the transactional decision test more clearly.

Question 25: Do you agree with the amended wording of this rule? If not, please explain why.

Question 26

Present rule:

3.56 [3.52] Marketing communications must not falsely claim or imply that after-sales service is available in an EEA member state in which the advertised product is not sold.

Proposed rule:

3.57 [3.56] Marketing communications 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*.

Rationale:

This reflects a change to the wording of DMCCA Schedule 20 prohibited practice 9 to apply more generally to false claims to provide after-sales service in a location where it is not available, rather than focussing solely on EEA states.

Question 26: Do you agree with the amended wording of this rule? If not, please explain why.

Question 27

Present rule:

3.57 [3.53] If a marketing communication in a language other than an official language of the EEA State where the trader is located offers after-sales service but the after-sales service is not available in the language of the marketing communication, the marketer must explain that to the consumer before the contract is concluded.

Proposed rule:

3.58 [3.57] If a marketing communication ~~in a language other than an official language of the EEA State where the trader is located~~ offers after-sales service but the after-sales service is not available in the language of the marketing communication, the marketer must explain that to the consumer before the contract is concluded*.

Rationale:

This reflects a change to the wording of DMCCA Schedule 20 prohibited practice 8, similar to the previous amendment.

Question 27: Do you agree with the amended wording of this rule? If not, please explain why.

Section 5 Children

Question 28

Present rule:

5.4 [5.9] Marketing communications addressed to or targeted directly at children:

[...]

5.4.2 must not include a direct exhortation to children to buy an advertised product or persuade their parents or other adults to buy an advertised product for them.

Proposed rule:

5.4 [5.9] Marketing communications ~~addressed to or targeted directly at children:~~

[...]

5.4.2 must not include a direct appeal to children to buy an advertised product or persuade their parents or other adults to buy an advertised product for them*.

Rationale:

This rule reflects DMCCA Schedule 20 prohibited practice 30, which applies to any advertisement, not just those addressed to or targeted directly at children. The proposal also reflects a change to the wording in the DMCCA, exchanging 'exhortation' for 'appeal', which was intended to make the language more familiar to UK courts. In CAP and BCAP's view, the difference in the meaning of the words is not material.

Question 28: Do you agree with the amended wording of this rule? If not, please explain why.

Question 29 (CAP Code only)

Present rule:

5.5 Marketing communications that contain a direct exhortation to buy a product via a direct-response mechanism must not be directly targeted at children.

Direct-response mechanisms are those that allow consumers to place orders without face-to-face contact with the marketer.

Proposed rule:

5.5 Marketing communications that contain a direct appeal to buy a product via a direct-response mechanism must not be directly targeted at children. Direct-response mechanisms are those that allow consumers to place orders without face-to-face contact with the marketer.

Rationale:

This aligns the rule with the language of amended prohibited practice 30, as above.

Question 29: Do you agree with the amended wording of this rule? If not, please explain why.

Question 30

Present rule

5.7 [5.14] Promotions that require a purchase to participate and include a direct exhortation to make a purchase must not be targeted directly at children. Advertisements for promotions directly targeted at children should comply with Section 28: Competitions.

Proposed rule:

5.7 [5.14] Promotions that require a purchase to participate and include a direct appeal to make a purchase must not be addressed to or targeted at children. See Section 8: Promotional Marketing.

Rationale:

This aligns the rule with the language of amended prohibited practice 30, as above.

Question 30: Do you agree with the amended wording of this rule? If not, please explain why.

Section 10 – Use of data for marketing (CAP Code only)

Amendments have been made in a number of places to the titles of legislation only – to refer more precisely to retained EU General Data Protection Regulation as UK GDPR. See Annex.

Question 31

Present rule:

10.1 Marketers must not make persistent and unwanted marketing communications by telephone, fax, mail, e-mail or other remote media.

Proposed rule:

10.1 Marketers must not make persistent and unwanted marketing communications by any means*

Rationale:

This reflects a change to DMCCA Schedule 20 prohibited practice 28, which accounts for the expansion in digital media by which marketing can be distributed since the previous legislation was written. The exception in the law for attending the consumer's home, and for circumstances justified to enforce a contractual obligation, are not reflected here as they are not relevant to marketing communications, as opposed to direct communication with an individual consumer.

Question 31: Do you agree with the amended wording of this rule? If not, please explain why.

Section 11 [9] – Environmental claims

Question 32

Present rule:

11.1 [9.2] The basis of environmental claims must be clear. Unqualified claims could mislead if they omit significant information.

Proposed rule:

11.1 [9.2] The basis of environmental claims must be clear. Unqualified claims could mislead if they omit material information.

Rationale:

This change more clearly reflects the wording of the transactional decision test.

Question 32: Do you agree with the amended wording of this rule? If not, please explain why.

Section 12 [11] - Medicines, medical devices, health-related products and beauty products

Question 33

Present text:

N/A

Proposed text:

“Disease” includes any injury, ailment or adverse condition, whether of body or mind.

Rationale:

As disease (in line with the definition under the Human Medicines Regulations 2012) is referenced in multiple rules in this section, CAP and BCAP propose placing the definition within the introduction rather than adding to the length of individual rules.

Question 33: Do you agree with these amendments to the structure of the section? If not, please explain why.

Question 34

Present rule:

12.6 Marketers should not falsely claim that a product is able to cure illness, dysfunction or malformations.

[**11.15** Unless allowed by a product licence, words, phrases or illustrations that claim or imply the cure of an ailment, illness, disease or addiction, as distinct from the relief of its symptoms, are unacceptable.]

Proposed rule:

12.6 [11.15] Marketers should not falsely claim that a product is able to prevent or treat disease or a malformation; restore, correct or modify a physiological function; or modify a person’s appearance*.

Rationale:

This change reflects amendments to DMCCA Schedule 20 prohibited practice 19. It replaces ‘cure’ with ‘prevent or treat’. This addresses the narrowness of the wording that originated in the UCPD.

The scope of the practice is further widened to include false claims to ‘modify a person’s appearance’ or ‘modify a physiological function’.

The proposed amendment to the BCAP rule aligns it with the wording of the law, from which the previous form notably diverges, as it reflects a rule that pre-dated the CPRs. BCAP do not consider that the proposed change results in the removal of any separate protections that are not covered by the prohibited practice or elsewhere in the Code section.

Question 34: Do you agree with the amended wording of this rule? If not, please explain why.

Appendix 1 [3]

Question 35

Present text:

Consumers

[...]

If it is likely to affect the economic behaviour only of a clearly identifiable group of people who are especially vulnerable, in a way that the advertiser could reasonably foresee, because of mental or physical infirmity, age or credulity, the marketing communication will be considered from the point of view of the average member of the affected group.

Proposed text:

If an advertisement is likely to affect the economic behaviour only of an clearly identifiable group of people who are particularly vulnerable, in a way that the advertiser could reasonably be expected to foresee, because of for example, mental or physical health, age, credulity, or the circumstances that group of people is in, the advertisement will also be considered from the point of view of the average member of the affected group.

Rationale:

This reflects amendments to the DMCCA under which a communication no longer has to be directed 'only' at a clearly identifiable vulnerable group to be considered from their perspective. This removes the need to prove that the practice did not affect the average consumer before considering vulnerable groups, which previously made the provision difficult to apply in practice.

CAP and BCAP understand that this would permit the ASA to consider the likely impact of an ad on a particular vulnerable group if there is reason to believe it will particularly affect that group – even if the ad is aimed at a general audience.

The basis for vulnerability has also been updated to refer to 'mental and physical health' instead of 'infirmity', and to account for vulnerability due to circumstances. As elsewhere, CAP and BCAP will consider drafting further guidance to aid interpretation drawing on any future guidance from Government and the CMA.

Question 35: Do you agree with the amended wording of this text? If not, please explain why.

Question 36

Present text:

Marketing communications are unfair if they

are contrary to the requirements of professional diligence and

are likely to materially distort the economic behaviour of consumers in relation to the advertised goods or services.

"Professional diligence" is the standard of special skill and care that a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and the general principle of good faith in the trader's field of activity.

Proposed text:

Marketing communications are unfair if they:

- are likely to cause the average consumer to take a transactional decision that the consumer would not have taken otherwise, as a result of a practice involving one or more of the following:
 - a misleading action
 - a misleading omission
 - an aggressive practice
 - a contravention of the requirements of professional diligence
- omit material information from an invitation to purchase
- involve a practice prohibited in all circumstances under the DMCCA

"Professional diligence" is the standard of ~~special~~ skill and care that a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice or the general principle of good faith in the trader's field of activity.

An "invitation to purchase" is a commercial practice involving the provision of information to a consumer which indicates the characteristics of a product and its price, and which enables, or purports to enable, the consumer to decide whether to purchase the product or take another transactional decision in relation to the product.

Rationale:

These amendments are largely structural, to set out the full list of unfair commercial practices under DMCCA in one place, details of which are elaborated upon elsewhere. It adds the new unfair commercial practice of omitting material information from an invitation to purchase (a definition of which is also added).

The proposals reflect an amendment to the DMCCA that reformulates the test of 'professional diligence' to align it with the other unfair commercial practices, which are based on the transactional decision test. This underlines the importance of this broader obligation to treat customers fairly.

The DMCCA also removes 'special' from the 'standard of skill and care that a trader may reasonably be expected to exercise toward consumers' in the definition of professional diligence.

Question 36: Do you agree with the amended wording and structure of this text? If not, please explain why.

Question 37

Present text:

A "transactional decision" is any decision taken by a consumer, whether it is to act or not act, about whether, how and on what terms to buy, pay in whole or in part for, retain or dispose of a product or whether, how and on what terms to exercise a contractual right in relation to a product.

Proposed text:

A "transactional decision" is any decision made by a consumer relating to the purchase or supply of a product (including whether, how or on what terms to make the purchase or supply); the retention, disposal or withdrawal of a product (including whether, how or on what terms to retain or dispose of it); or the exercise of contractual rights in relation to a product (including whether, how or on what terms to exercise such rights).

Rationale:

The definition of the test has been restructured to align more closely with the wording of the law. Changes to the DMCCA broaden the scope of the test slightly, although this unlikely to have a significant impact for its application under the advertising rules.

Most of note is the addition of a consumer's decision to 'supply' a product. As per the Explanatory note to the DMCCA⁵, individuals acting in a capacity to supply goods or services for mainly non-business purposes to a person who receives them for business purposes will still be considered a consumer.

Question 37: Do you agree with the amended wording and structure of this text? If not, please explain why.

Question 38

Present text:

Marketing communications are aggressive if, taking all circumstances into account, they are likely to significantly impair the average consumer's freedom of choice through harassment, coercion or undue influence and are therefore likely to cause consumers to take transactional decisions they would not otherwise have taken.

Proposed text:

Marketing communications are aggressive if they use harassment, coercion or undue influence.

Rationale:

This reflects a simplification of the definition of an aggressive commercial practice in the DMCCA to describe a practice that uses harassment, coercion or undue influence, with references to the transactional decision test removed.

Question 38: Do you agree with the amended wording and structure of this text? If not, please explain why.

Additional question

⁵ [Digital Markets, Competition and Consumers Act 2024](#)

Question 39: Do you have any general comments on the changes proposed by CAP and BCAP to the advertising Codes resulting from the DMCCA?

6. How to respond and next steps

CAP and BCAP are committed to considering all responses carefully and with an open mind. CAP and BCAP would particularly welcome responses from stakeholders with an interest or expertise in digital marketing and the implementation of DMCCA. Responses from other stakeholders and members of the public are also welcome.

The following summarises the consultation process and subsequent stages of CAP and BCAP's consideration of the proposed changes to the Code:

- the consultation will run for 8 weeks, closing at 5pm on 5 February 2025;
- CAP and BCAP will consider each response carefully and evaluate all significant points explaining the reasons behind the decisions they make;
- the evaluation will be published on the CAP website when the outcome of the consultation is announced;
- BCAP will seek sign-off from Ofcom for changes to the BCAP Code.

CAP and BCAP will seek to implement rules as soon as is practicable, and prior to the relevant parts of the DMCCA taking effect in April 2025 (unless otherwise specified).

How to respond

CAP and BCAP invite written comments and supporting information on the proposals contained in this document by 5pm on 5 February 2025.

Responses via email with attachments in Microsoft Word format are preferred to assist in their processing.

Please send responses to: AdPolicy@cap.org.uk

If you are unable to respond by email you may submit your response by post to: Regulatory Policy Team, Committee of Advertising Practice, Castle House, 37-45 Paul Street, London EC2A 4LS

Confidentiality

CAP and BCAP considers that everyone who is interested in the consultation should see the consultation responses. In its evaluation document, CAP will publish all the relevant significant comments made by respondents and identify all non-confidential respondents. The evaluation and copies of original consultation responses will be published with the outcome of the consultation.

All comments will be treated as non-confidential unless you state that all or a specified part of your response is confidential and should not be disclosed. If you reply by email or fax, unless you include a specific statement to the contrary in your response, the presumption of non-confidentiality will override any confidentiality disclaimer generated by your organisation's IT system or included as a general statement on your fax cover sheet. If part of a response is confidential, please put that in a separate annex so that nonconfidential parts may be published with your identity. Confidential responses will be included in any statistical summary of numbers of comments received.



Annex – Mapping document

CAP Code	
Preface	
The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including those on misleading and comparative advertising (Directives 2005/29/EC and 2006/114/EC). Self-regulation is accepted by the Department for Business, Innovation and Skills and Trading Standards as a first line of control in protecting consumers and the industry.	The value of self-regulation as an alternative to statutory control has been recognised across Europe (including in legislation) for a number of years. Self-regulation is accepted by the Department for Business and Trade, Trading Standards and the CMA as a first line of control in protecting consumers and the industry.
Section 2 – Recognition of marketing communications	
2.3 Marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession; marketing communications must make clear their commercial intent, if that is not obvious from the context.	2.3 Marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession; marketing communications must make clear their commercial intent, if that is not apparent from the context*.
Section 3 – Misleading advertising	
N/A	Most rules in this section engage the transactional decision test (see Appendix 1). 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

	<p>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.</p>
<p>3.3 Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.</p> <p>Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the marketer takes to make that information available to the consumer by other means.</p>	<p>3.3 Marketing communications 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.</p> <p>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).</p>
<p>3.4 For marketing communications that quote prices for advertised products, material information [for the purposes of rule 3.3] includes:</p> <p>3.4.1 the main characteristics of the product</p> <p>3.4.2 the identity (for example, a trading name) and geographical address of the marketer and any other trader on whose behalf the marketer is acting</p>	<p>3.4 For marketing communications that quote prices for advertised products, omitting material information (for the purposes of rule 3.3) includes omitting any of the following information, unless it is already apparent from the context:</p> <p>3.4.1 the main characteristics of the product</p> <p>3.4.2 the identity (and, if different, trading name) and business address</p>

<p>3.4.3 the price of the advertised product, including taxes, or, if the nature of the product is such that the price cannot be calculated in advance, the manner in which the price is calculated</p> <p>3.4.4 delivery charges</p> <p>3.4.5 the arrangements for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely to reasonably expect</p> <p>3.4.6 that consumers have the right to withdraw or cancel, if they have that right (see rule 3.55).</p>	<p>(and, if different, the service address) and any business email address of the marketer and any other trader on whose behalf the marketer is acting</p> <p>3.4.3 the total price of the advertised product, including any fees, taxes, charges which cannot be calculated in advance, or other payments that the consumer will necessarily incur if the consumer purchases the product</p> <p>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</p> <p>3.4.4 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)</p> <p>3.4.5 the arrangements for payment, delivery, performance or complaint handling, if those depart from the marketer's published practice in relation to those arrangements</p> <p>3.4.6 that consumers have the right to withdraw or cancel, if they have that right (see rule 3.55).</p>
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<p>3.5 Marketing communications must not materially mislead by omitting the identity of the marketer.</p> <p>Some marketing communications must include the marketer's identity and contact details. Marketing communications that fall under the Database Practice or Employment sections of the Code must comply with the more detailed rules in those sections.</p> <p>Marketers should note the law requires marketers to identify themselves in some marketing communications. Marketers should take legal advice.</p>	<p>3.5 Marketing communications must not materially mislead by omitting the identity of the marketer.</p> <p>Some marketing communications must include the marketer's identity and contact details. Marketing communications that fall under the Use of Data for Marketing or Employment sections of the Code must comply with the more detailed rules in those sections.</p> <p>Marketers should note the law requires marketers to identify themselves in some marketing communications. Marketers should take legal advice.</p>
<p>3.6 Subjective claims must not mislead the consumer; marketing communications must not imply that expressions of opinion are objective claims.</p>	<p>3.6 Subjective claims must not mislead the consumer; marketing communications must not mislead by implying that expressions of opinion are objective claims.</p>
<p>3.8 Claims for the content of non-fiction publications should not exaggerate the value, accuracy, scientific validity or practical usefulness of the product. Marketers must ensure that claims that have not been independently substantiated but are based merely on the content of a publication do not mislead consumers.</p>	<p>3.8 Claims for the content of non-fiction publications must not mislead by exaggerating the value, accuracy, scientific validity or practical usefulness of the product. Marketers must ensure that claims that have not been independently substantiated but are based merely on the content of a publication do not mislead consumers.</p>
<p>3.9 Marketing communications must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.</p>	<p>3.9 Marketing communications must not mislead by omitting significant limitations and qualifications. Qualifications may clarify but must not mislead by contradicting the claims that they qualify.</p>

3.10 Qualifications must be presented clearly.	3.10 Qualifications must not mislead by not being presented clearly.
3.13 Marketing communications must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.	3.13 Marketing communications must not mislead by suggesting that their claims are universally accepted if a significant division of informed or scientific opinion exists.
3.15 Marketing communications must not explicitly claim that the advertiser's job or livelihood is in jeopardy if the consumer does not buy the advertised product.	3.15 Marketing communications must not explicitly claim that the advertiser's job or livelihood is at risk if the consumer does not buy the advertised product*.
3.20 Marketing communications that state prices must also state applicable delivery, freight or postal charges or, if those cannot reasonably be calculated in advance, state that such charges are payable.	3.20 Marketing communications that state prices must also state any optional delivery, freight or postal charges or, if those cannot reasonably be calculated in advance, state that such charges are payable.
3.21 If the price of one product depends on another, marketing communications must make clear the extent of the commitment the consumer must make to obtain the advertised price.	3.21 If the price of one product depends on another, marketing communications must not mislead by failing to make clear the extent of the commitment the consumer must make to obtain the advertised price.
3.22 Price claims such as "up to" and "from" must not exaggerate the availability or amount of benefits likely to be obtained by the consumer.	3.22 Price claims such as "up to" and "from" must not mislead by exaggerating the availability or amount of benefits likely to be obtained by the consumer.
Principle Marketing communications must not describe a product as "free", "gratis", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding	3.23 Marketing communications must not describe a product as "free", "gratis", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding and collecting or paying for delivery of the item*.

<p>and collecting or paying for delivery of the item.</p> <p>3.23 Marketing communications must make clear the extent of the commitment the consumer must make to take advantage of a "free" offer.</p> <p>3.24 Marketing communications must not describe items as "free" if:</p> <p>3.24.1 the consumer has to pay packing, packaging, handling or administration charges for the "free" product</p> <p>3.24.2 the cost of response, including the price of a product that the consumer 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, or</p> <p>3.24.3 the quality of the product that the consumer must buy has been reduced.</p> <p>CAP and BCAP have published joint guidance on the use of "free".</p> <p>3.25 Marketers 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.</p> <p>3.26 Marketers must not use the term "free trial" to describe "satisfaction or your money back" offers or offers for which a non-refundable purchase is required.</p>	<p>including if:</p> <p>3.23.1 the consumer has to pay packing, packaging, handling or administration charges for the "free" product</p> <p>3.23.2 the cost of response, including the price of a product that the consumer 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, or</p> <p>3.23.3 the quality of the product that the consumer must buy has been reduced.</p> <p>CAP and BCAP have published joint guidance on the use of "free".</p> <p>3.24 Marketing communications must make clear the extent of the commitment the consumer must make to take advantage of a "free" offer.</p> <p>3.25 Marketers 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.</p> <p>3.26 Marketers must not use the term "free trial" to describe "satisfaction or your money back" offers or offers for</p>
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	which a non-refundable purchase is required.
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<p>3.27 Marketers must make a reasonable estimate of demand for advertised products.</p> <p>3.28 Marketing communications that quote a price for a featured product must state any reasonable grounds the marketer has for believing that it might not be able to supply the advertised (or an equivalent) product at the advertised price within a reasonable period and in reasonable quantities. In particular:</p> <p>3.28.1</p> <p>if estimated demand exceeds supply, marketing communications must make clear that stock is limited</p> <p>3.28.2</p> <p>if the marketer does not intend to fulfil orders, for example, because the purpose of the marketing communication is to assess potential demand, the marketing communication must make that clear</p> <p>3.28.3</p> <p>marketing communications must not mislead consumers by omitting restrictions on the availability of products; for example, geographical restrictions or age limits.</p> <p>3.29</p> <p>Marketers must monitor stocks. If a product becomes unavailable, marketers must, whenever possible, withdraw or amend marketing communications that feature that product.</p>	<p>3.27 Marketers must make a reasonable estimate of demand for advertised products.</p> <p>3.28 Marketing communications that quote a price for a featured product must disclose if the marketer 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*.</p>
<p>3.31 Marketing communications must not falsely claim that the marketer is about to cease trading or move premises. They must not falsely state that a product, or the terms on which it</p>	<p>3.29 Marketing communications must not falsely claim that the marketer is about to cease trading or move premises. They must not falsely state that a product, or the terms on which it</p>

is offered, will be available only for a very limited time to deprive consumers of the time or opportunity to make an informed choice.	is offered, will be available only for a limited time to deprive consumers of the time or opportunity to make an informed choice*.
3.32 Marketing communications must not mislead the consumer about market conditions or the possibility of finding the product elsewhere to induce consumers to buy the product at conditions less favourable than normal market conditions.	3.30 Marketing communications must not provide materially inaccurate information on market conditions or the availability of the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions*.
3.34 [Marketing communications that include a comparison with an identifiable competitor] must compare products meeting the same need or intended for the same purpose.	3.34 [Marketing communications that include a comparison with an identifiable competitor] must compare products meeting the same needs or intended for the same purpose.
3.39 Marketing communications that include a price comparison must make the basis of the comparison clear.	3.37 Marketing communications that include a price comparison must not mislead about the basis of the comparison.
3.42 Marketing communications must not discredit or denigrate another product, marketer, trade mark, trade name or other distinguishing mark.	3.40 Marketing communications that include a comparison with an identifiable competitor must not discredit or denigrate another product, marketer, trade mark, trade name or other distinguishing mark.
N/A	<p>The below rules relate to marketing materials under the remit of the CAP Code (see the Scope of the Code). Marketers are advised to seek legal advice on their other obligations in relation to the prohibition on fake consumer reviews.</p> <p>3.43 Marketing communications must not contain fake consumer reviews.</p>

	<p>“Consumer review” means a review of a product, a trader or any other matter relevant to a transactional decision.</p> <p>A fake consumer review is a consumer review that purports to be, but is not, based on a person’s genuine experience*.</p> <p>3.44 Marketing communications must make clear where consumer reviews have been incentivised*.</p> <p>3.45 Marketers must not publish consumer reviews, or consumer review information, in a misleading way in marketing communications. Publishing in a misleading way includes (for example):</p> <ul style="list-style-type: none"> • 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). <p>“Consumer review information” means information that is derived from, or is influenced by, consumer reviews*.</p>
<p>3.50 Marketing communications must not display a trust mark, quality mark or equivalent without the necessary authorisation. Marketing</p>	<p>3.51 Marketing communications must not display a trust mark, quality mark or equivalent without the necessary authorisation. Marketing</p>

<p>communications must not claim that the marketer (or any other entity referred to), the marketing communication or the advertised product has been approved, endorsed or authorised by any public or other body if it has not or without complying with the terms of the approval, endorsement or authorisation.</p>	<p>communications must not claim that the marketer (or any other entity referred to), the marketing communication or a product 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*.</p>
<p>3.51 Marketing communications must not falsely claim that the marketer, or other entity referred to in the marketing communication, is a signatory to a code of conduct. They must not falsely claim that a code of conduct has an endorsement from a public or other body.</p>	<p>3.52 Marketing communications must not falsely claim that the marketer, or other entity referred to in the marketing communication, is a signatory to a code of conduct. They must not falsely claim that a code of conduct has an endorsement from a public or private body*.</p>
<p>3.52 Marketing communications must not use the Royal Arms or Emblems without prior permission from the Lord Chamberlain's office.</p> <p>References to a Royal Warrant should be checked with the Royal Warrant Holders' Association.</p>	<p>3.53 Marketing communications must not use the Royal Arms or Emblems in a misleading way. The Royal Arms or Emblems should not be used in marketing communications without prior permission from the Lord Chamberlain's office, where required.</p> <p>References to a Royal Warrant should be checked with the Royal Warrant Holders' Association.</p>
<p>3.54 Marketing communications must make clear each significant limitation to an advertised guarantee (of the type that has implications for a consumer's rights). Marketers must supply the full terms before the consumer is committed to taking up the guarantee.</p>	<p>3.55 Marketing communications must not mislead by omitting significant limitations to an advertised guarantee (of the type that has implications for a consumer's rights). Marketers must supply the full terms before the consumer is committed to taking up the guarantee.</p>

<p>3.56 Marketing communications must not falsely claim or imply that after-sales service is available in an EEA member state in which the advertised product is not sold.</p>	<p>3.57 Marketing communications 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*.</p>
<p>3.57 If a marketing communication in a language other than an official language of the EEA State where the trader is located offers after-sales service but the after-sales service is not available in the language of the marketing communication, the marketer must explain that to the consumer before the contract is concluded</p>	<p>3.58 If a marketing communication offers after-sales service but the after-sales service is not available in the language of the marketing communication, the marketer must explain that to the consumer before the contract is concluded*.</p>
<p>Section 5 - Children</p>	
<p>5.4 Marketing communications addressed to or targeted directly at children:</p> <p>[...]</p> <p>5.4.2 must not include a direct exhortation to children to buy an advertised product or persuade their parents or other adults to buy an advertised product for them.</p>	<p>5.4 Marketing communications:</p> <p>[...]</p> <p>5.4.2 must not include a direct appeal to children to buy an advertised product or persuade their parents or other adults to buy an advertised product for them*.</p>
<p>5.5 Marketing communications that contain a direct exhortation to buy a product via a direct-response mechanism must not be directly targeted at children.</p> <p>Direct-response mechanisms are those that allow consumers to place orders without face-to-face contact with the marketer.</p>	<p>5.5 Marketing communications that contain a direct appeal to buy a product via a direct-response mechanism must not be directly targeted at children. Direct-response mechanisms are those that allow consumers to place orders without face-to-face contact with the marketer.</p>
<p>5.7 Promotions that require a purchase to participate and include a direct</p>	<p>5.7 Promotions that require a purchase to participate and include a direct</p>

<p>exhortation to make a purchase must not be addressed to or targeted at children. See Section 8: Promotional Marketing.</p>	<p>appeal to make a purchase must not be addressed to or targeted at children. See Section 8: Promotional Marketing.</p>
<p>Section 10 – Use of data for marketing</p>	
<p>In considering complaints under these rules, the ASA will have regard to Regulation (EU) 2016/679 (the General Data Protection Regulation, “GDPR”) and the Data Protection Act 2018 in the case of personal data, and the Privacy and Electronic Communications (EC Directive) Regulations 2003 in the case of activities relating to electronic communications. Marketers must comply with this legislation and guidance is available from the Information Commissioner's Office. Although the legislation has a wide application, these rules relate only to data used for direct marketing purposes. The rules should be observed in conjunction with the legislation, and do not replace it: in the event of doubt, marketers are urged to seek legal advice.</p>	<p>In considering complaints under these rules, the ASA will have regard to retained Regulation (EU) 2016/679 (the General Data Protection Regulation, “UK GDPR”) and the Data Protection Act 2018 in the case of personal data, and the Privacy and Electronic Communications (EC Directive) Regulations 2003 in the case of activities relating to electronic communications. Marketers must comply with this legislation and guidance is available from the Information Commissioner's Office. Although the legislation has a wide application, these rules relate only to data used for direct marketing purposes. The rules should be observed in conjunction with the legislation, and do not replace it: in the event of doubt, marketers are urged to seek legal advice.</p>
<p>These rules do not seek to cover all circumstances. Other narrow grounds for processing or limited exemptions set out in the GDPR may be available to marketers, but if a marketer wishes to rely on them it would need to be able readily to explain how they are applicable.</p>	<p>These rules do not seek to cover all circumstances. Other narrow grounds for processing or limited exemptions set out in UK GDPR may be available to marketers, but if a marketer wishes to rely on them it would need to be able readily to explain how they are applicable.</p>
<p>10.1 Marketers must not make persistent and unwanted marketing communications by telephone, fax, mail, e-mail or other remote media.</p>	<p>10.1 Marketers must not make persistent and unwanted marketing communications by any means*.</p>

<p>10.2.6 [At the time of collecting consumers' personal data from them, marketers must provide consumers with the following information (in, for example, a privacy notice), unless the consumer already has it:]</p> <p>where applicable, that the marketer intends to transfer personal data to a recipient in a third country or international organisation. If so, marketers must refer to the existence or absence of an adequacy decision by the European Commission, or to the appropriate or suitable safeguards or binding corporate rules referred to in Article 46 or 47 of the GDPR, or to the compelling legitimate interests under the second subparagraph of Article 49(1) GDPR, and the means to obtain a copy of the transfer mechanisms relied on or where they have been made available</p>	<p>10.2.6 [At the time of collecting consumers' personal data from them, marketers must provide consumers with the following information (in, for example, a privacy notice), unless the consumer already has it:]</p> <p>where applicable, that the marketer intends to transfer personal data to a recipient in a third country or international organisation. If so, marketers must refer to the existence or absence of an adequacy decision by the European Commission, or to the appropriate or suitable safeguards or binding corporate rules referred to in Article 46 or 47 of UK GDPR, or to the compelling legitimate interests under the second subparagraph of Article 49(1) UK GDPR, and the means to obtain a copy of the transfer mechanisms relied on or where they have been made available</p>
<p>10.2.12 the existence of automated decision-making, including profiling producing legal or similarly significant effects on consumers, referred to in Article 22(1) and (4) of the GDPR and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the consumer.</p>	<p>10.2.12 the existence of automated decision-making, including profiling producing legal or similarly significant effects on consumers, referred to in Article 22(1) and (4) of UK GDPR and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the consumer.</p>
Section 11- Environmental claims	
<p>11.1 The basis of environmental claims must be clear. Unqualified claims could mislead if they omit significant information.</p>	<p>11.1 The basis of environmental claims must be clear. Unqualified claims could mislead if they omit material information.</p>

Section 12- Medicines, medical devices, health-related products and beauty products	
<p>Definition</p> <p>[...]</p> <p>N/A</p>	<p>Definitions</p> <p>[...]</p> <p>“Disease” includes any injury, ailment or adverse condition, whether of body or mind.</p>
<p>12.1 Objective claims must be backed by evidence, if relevant consisting of trials conducted on people. Substantiation will be assessed on the basis of the available scientific knowledge.</p> <p>Medicinal or medical claims and indications may be made for a medicinal product that is licensed by the MHRA, VMD or under the auspices of the EMA, or for a medical device with the applicable conformity marking. A medicinal claim is a claim that a product or its constituent(s) can be used with a view to making a medical diagnosis or can treat or prevent disease, including an injury, ailment or adverse condition, whether of body or mind, in human beings.</p> <p>[...]</p>	<p>12.1 Objective claims must be backed by evidence, if relevant consisting of trials conducted on people. Substantiation will be assessed on the basis of the available scientific knowledge.</p> <p>Medicinal or medical claims and indications may be made for a medicinal product that is licensed by the MHRA, VMD or under the auspices of the EMA, or for a medical device with the applicable conformity marking. A medicinal claim is a claim that a product or its constituent(s) can be used with a view to making a medical diagnosis or can treat or prevent disease in human beings.</p> <p>[...]</p>
<p>12.6 Marketers should not falsely claim that a product is able to cure illness, dysfunction or malformations.</p>	<p>12.6 Marketers should not falsely claim that a product is able to prevent or treat disease or a malformation; restore, correct or modify a physiological</p>

	function; or modify a person's appearance*.
How the system works	
<p>The law</p> <p>Marketers, agencies and publishers have primary responsibility for ensuring that everything they do is legal. Since the Code was first published, the number of laws designed to protect consumers has greatly increased. More than 200 UK statutes, orders and regulations as well as several directly effective European laws affect marketing communications here (see www.asa.org.uk or www.cap.org.uk for a non-exhaustive list). The ASA maintains a rapport with those responsible for initiating or administering any law that has a bearing on marketing communications. The system is reinforced by the legal backup provided for the work of the ASA by the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008 (see Scope of the Code).</p>	<p>The law</p> <p>Marketers, agencies and publishers have primary responsibility for ensuring that everything they do is legal. Since the Code was first published, the number of laws designed to protect consumers has greatly increased. More than 200 statutes, orders and regulations affect marketing communications here (see www.asa.org.uk or www.cap.org.uk for a non-exhaustive list). The ASA maintains a rapport with those responsible for initiating or administering any law that has a bearing on marketing communications. The system is reinforced by the legal backup provided for the work of the ASA by the Digital Markets Competition and Consumers Act 2024 and the Business Protection from Misleading Marketing Regulations 2008 (see Scope of the Code).</p>
<p>The self-regulatory system is recognised by the Government, Trading Standards and the Courts as one of the "established means" of consumer protection in non-broadcast marketing communications. If certain types of marketing communication, including those that are misleading or contain an impermissible comparison, continue to appear after the ASA Council has ruled against them, the ASA can refer the matter to Trading Standards for action under the Consumer Protection from Unfair</p>	<p>The self-regulatory system is recognised by the Government, the Competition and Markets Authority (CMA), Trading Standards and the Courts as one of the "established means" of consumer protection in non-broadcast marketing communications. If certain types of marketing communication, including those that are misleading or contain an impermissible comparison, continue to appear after the ASA Council has ruled against them, the ASA can refer the matter to Trading Standards for action under the</p>

<p>Trading Regulations 2008 or the Business Protection from Misleading Marketing Regulations 2008. Trading Standards can seek an undertaking that the marketing communication will be stopped from anyone responsible for commissioning, preparing or disseminating it. If that is not given or is not honoured, Trading Standards can seek an injunction from the Court to prevent its further appearance. Anyone not complying can be found to be in contempt of court and is liable to be penalised.</p>	<p>Digital Markets, Competition and Consumers Act 2024 or the Business Protection from Misleading Marketing Regulations 2008. Trading Standards can seek an undertaking that the marketing communication will be stopped from anyone responsible for commissioning, preparing or disseminating it. If that is not given or is not honoured, Trading Standards can seek an injunction from the Court to prevent its further appearance. Anyone not complying can be found to be in contempt of court and is liable to be penalised.</p>
<p>The ASA and CAP maintain a rapport with Trading Standards and with other bodies that have a responsibility for creating, administering or enforcing laws that have a bearing on marketing communications. If necessary, they may notify those bodies of non-compliant marketers and work with them to ensure that unacceptable marketing communications are amended, withdrawn or stopped.</p>	<p>The ASA and CAP maintain a rapport with Trading Standards and with other bodies that have a responsibility for creating, administering or enforcing laws that have a bearing on marketing communications. If necessary, they may notify those bodies of non-compliant marketers and work with them to ensure that unacceptable marketing communications are amended, withdrawn or stopped.</p>
<p>"Qualified entities" such as Trading Standards Authorities can use the Enterprise Act 2002 Part 8 to enforce consumer protection laws, including the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008. Those regulations provide that, before taking action, qualified entities should have regard to the desirability of encouraging control by the "established means".</p>	<p>The CMA, Trading Standards Authorities and other enforcement bodies have powers to enforce consumer protection laws, including under the Digital Markets Competition and Consumers Act 2024, and the Business Protection from Misleading Marketing Regulations 2008. Both the Act and the Regulations provide that, before taking action, qualified entities should have regard to the desirability of encouraging control by the "established means".</p>
<p>The ASA and CAP work closely with CAP trade associations and professional bodies, Trading Standards officers, Government departments, the</p>	<p>The ASA and CAP work closely with CAP trade associations and professional bodies, Trading Standards officers, Government departments, the</p>

<p>OFT and other UK regulators, EASA and overseas SROs and statutory authorities to stop unacceptable marketing communications, especially misleading or offensive mailings sent direct to UK consumers from overseas. That work has achieved some success but the ASA, CAP and other authorities, whether statutory or self-regulatory, experience difficulties in enforcing the Code and laws against companies based overseas. "Qualified entities" can, however, act to ensure compliance with Directive 2005/29/EC "concerning unfair business-to-consumer commercial practices in the internal market" throughout the European Union.</p>	<p>CMA and other UK regulators, EASA and overseas SROs and statutory authorities to stop unacceptable marketing communications, especially misleading or offensive mailings sent direct to UK consumers from overseas. That work has achieved some success but the ASA, CAP and other authorities, whether statutory or self-regulatory, experience difficulties in enforcing the Code and laws against companies based overseas. Statutory authorities can, however, act to ensure compliance with Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market throughout the European Union.</p>
<p>Appendix 1</p>	
<p>Consumers</p> <p>[...]</p> <p>If it is directed to a particular audience group, the marketing communication will be considered from the point of view of the average member of that group.</p> <p>If it is likely to affect the economic behaviour only of a clearly identifiable group of people who are especially vulnerable, in a way that the advertiser could reasonably foresee, because of mental or physical infirmity, age or credulity, the marketing communication will be considered from the point of view of the average member of the affected group.</p>	<p>Consumers</p> <p>[...]</p> <p>If it is likely to affect the economic behaviour of a group of people who are particularly vulnerable, in a way that the advertiser could reasonably be expected to foresee, because of mental or physical health, age, credulity, or the circumstances that group of people are in, the marketing communication will also be considered from the point of view of the average member of the affected group.</p>
<p>Marketing communications are unfair if they</p> <p>are contrary to the requirements of professional diligence and</p>	<p>Unfair marketing communications</p> <p>Marketing communications are unfair if they:</p> <ul style="list-style-type: none"> • are likely to cause the average consumer to take a transactional

<p>are likely to materially distort the economic behaviour of consumers in relation to the advertised goods or services.</p> <p>"Professional diligence" is the standard of special skill and care that a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and the general principle of good faith in the trader's field of activity.</p>	<p>decision that the consumer would not have taken otherwise, as a result of a practice involving one or more of the following:</p> <ul style="list-style-type: none"> ○ a misleading action ○ a misleading omission ○ an aggressive practice ○ a contravention of the requirements of professional diligence <ul style="list-style-type: none"> ● omit material information from an invitation to purchase ● involve a practice prohibited in all circumstances under the DMCCA <p>"Professional diligence" is the standard of skill and care that a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice or the general principle of good faith in the trader's field of activity.</p> <p>An "invitation to purchase" is a commercial practice involving the provision of information to a consumer which indicates the characteristics of a product and its price, and which enables, or purports to enable, the consumer to decide whether to purchase the product or take another transactional decision in relation to the product.</p>
<p>A "transactional decision" is any decision taken by a consumer, whether it is to act or not act, about whether, how and on what terms to buy, pay in whole or in part for, retain or dispose of a product or whether, how and on what terms to exercise a contractual right in relation to a product.</p>	<p>A "transactional decision" is any decision made by a consumer relating to the purchase or supply of a product (including whether, how or on what terms to make the purchase or supply); the retention, disposal or withdrawal of a product (including whether, how or on what terms to retain or dispose of it); or the exercise of contractual rights in relation to a product (including whether, how or on what terms to exercise such rights).</p>

<p>Marketing communications are aggressive if, taking all circumstances into account, they are likely to significantly impair the average consumer's freedom of choice through harassment, coercion or undue influence and are therefore likely to cause consumers to take transactional decisions they would not otherwise have taken.</p>	<p>Marketing communications are aggressive if they use harassment, coercion or undue influence.</p>
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BCAP Code	
Section 3 – Misleading advertising	
<p>The ASA may take the Consumer Protection from Unfair Trading Regulations 2008 into account when it rules on complaints about advertisements that are alleged to be misleading. See Appendix 1 for more information about those Regulations.</p>	<p>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.</p>
<p>N/A</p>	<p>Most rules in this section engage the transactional decision test (see Appendix 3). Those rules generally refer to marketing communications “misleading” the consumer.</p> <p>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.</p>
<p>3.2 Advertisements must not mislead consumers by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.</p> <p>Material information is information that consumers need in context to make informed decisions about whether or how to buy a product or service. Whether the omission or presentation of material information is likely to mislead consumers depends on the context, the medium and, if the medium of the</p>	<p>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.</p> <p>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</p>

<p>advertisement is constrained by time or space, the measures that the advertiser takes to make that information available to consumers by other means.</p>	<p>information” is information that the average consumer needs to take an informed transactional decision (as defined in Appendix 3).</p>
<p>3.3 For advertisements that quote prices for an advertised product or service, material information [for the purposes of rule 3.2] includes:</p> <p>3.3.1 the main characteristics of the product or service</p> <p>3.3.2 the identity (for example, a trading name) and geographical address of the marketer and any other trader on whose behalf the advertiser is acting</p> <p>3.3.3 the price of the advertised product or service, including taxes, or, if the nature of the product or service is such that the price cannot be calculated in advance, the manner in which the price is calculated</p> <p>3.3.4 delivery charges</p> <p>3.3.5 the arrangements for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely to reasonably expect</p> <p>3.3.6 that consumers have the right to withdraw or cancel, if they have that right.</p>	<p>3.3 For marketing communications 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:</p> <p>3.3.1 the main characteristics of the product or service</p> <p>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</p> <p>3.3.3 the total price of the advertised product, including any fees, taxes, charges which cannot be calculated in advance, or other payments that the consumer will necessarily incur if the consumer purchases the product</p> <p>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</p> <p>3.3.4 any freight, delivery, or postal charges, including any taxes, not included in the total</p>

	<p>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)</p> <p>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</p> <p>3.3.6 that consumers have the right to withdraw or cancel, if they have that right.</p>
<p>3.5 Subjective claims must not mislead the audience; advertisements must not imply that expressions of opinion are objective claims.</p>	<p>3.5 Subjective claims must not mislead the audience; advertisements must not mislead by implying that expressions of opinion are objective claims.</p>
<p>3.6 Advertisements must not mislead by omitting the identity of the advertiser.</p> <p>Advertisers should note the law requires advertisers to identify themselves in some advertisements. Advertisers should take legal advice.</p>	<p>3.6 Advertisements must not materially mislead by omitting the identity of the advertiser.</p> <p>Advertisers should note the law requires advertisers to identify themselves in some advertisements. Advertisers should take legal advice.</p>
<p>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.</p>	<p>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 apparent from the context.</p>

<p>3.10 Advertisements must state significant limitations and qualifications. Qualifications may clarify but must not contradict the claims that they qualify.</p>	<p>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.</p>
<p>3.11 Qualifications must be presented clearly.</p>	<p>3.11 Qualifications must mislead by not being presented clearly.</p>
<p>3.14 Advertisements must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists.</p>	<p>3.14 Advertisements must not mislead by suggesting that their claims are universally accepted if a significant division of informed or scientific opinion exists.</p>
<p>3.17 Advertisements must not explicitly claim that the advertiser's job or livelihood is in jeopardy if consumers do not buy the advertised product or service.</p>	<p>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*.</p>
<p>3.22 Advertisements that state prices must also state applicable delivery, freight or postal charges or, if those cannot reasonably be calculated in advance, state that such charges are payable.</p>	<p>3.22 Advertisements that state prices must also state any optional delivery, freight or postal charges or, if those cannot reasonably be calculated in advance, state that such charges are payable.</p>
<p>3.23 If the price of one product or service depends on another, advertisements must make clear the extent of the commitment consumers must make to obtain the advertised price.</p>	<p>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.</p>
<p>3.24 Price claims such as "up to" and "from" must not exaggerate the availability or amount of benefits likely to be obtained by consumers.</p>	<p>3.24 Price claims such as "up to" and "from" must not mislead by exaggerating the availability or amount</p>

	of benefits likely to be obtained by consumers.
<p>Principle</p> <p>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.</p> <p>3.25 Advertisements must make clear the extent of the commitment consumers must make to take advantage of a "free" offer. Advertisements must not describe items as "free" if:</p> <p style="padding-left: 40px;">3.25.1 consumers have to pay for packing, packaging, handling or administration of the "free" product or service</p> <p style="padding-left: 40px;">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</p> <p style="padding-left: 40px;">3.25.3 the quality of the product or service that consumers must buy has been reduced.</p> <p>3.26 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.</p> <p>3.27 Advertisements must not use the term "free trial" to describe a "satisfaction or your money back" offer</p>	<p>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:</p> <p style="padding-left: 40px;">3.25.1 consumers have to pay for packing, packaging, handling or administration of the "free" product or service</p> <p style="padding-left: 40px;">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</p> <p style="padding-left: 40px;">3.25.3 the quality of the product or service that consumers must buy has been reduced.</p> <p>3.26 Advertisements must make clear the extent of the commitment consumers must make to take advantage of a "free" offer.</p>

<p>or an offer for which a non-refundable purchase is required.</p> <p>BCAP and CAP have published joint guidance on the use of "free".</p> <p>3.27 Advertisers must not use the term "free trial" to describe "satisfaction or your money back" offers or offers for which a non-refundable purchase is required.</p>	<p>3.27</p> <p>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.</p> <p>3.28 Advertisers must not use the term "free trial" to describe "satisfaction or your money back" offers or offers for which a non-refundable purchase is required.</p>
<p>3.28 Broadcasters must be satisfied that advertisers have made a reasonable estimate of demand.</p> <p>3.29 Advertisements that quote prices for featured products must state any reasonable grounds the advertisers have for believing that they might not be able to supply the advertised (or an equivalent) product at the advertised price, within a reasonable period and in reasonable quantities. In particular:</p> <p>3.29.1 if estimated demand exceeds supply, advertisements must make clear that stock is limited</p> <p>3.29.2 if the advertiser does not intend to fulfil orders, because the purpose of the advertisement is to assess potential demand,</p>	<p>3.29</p> <p>Broadcasters must be satisfied that advertisers have made a reasonable estimate of demand.</p> <p>3.30</p> <p>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*.</p>

<p>the advertisement must make that clear</p> <p>3.29.3 advertisements must not mislead consumers by omitting restrictions on the availability of products; for example, geographical restrictions or age limits.</p>	
<p>3.31 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 very limited time to deprive consumers of the time or opportunity to make an informed choice.</p>	<p>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 very limited time to deprive consumers of the time or opportunity to make an informed choice*.</p>
<p>3.32 Advertisements must not mislead consumers about market conditions or the possibility of finding the product or service elsewhere to induce consumers to buy the product or service at conditions less favourable than normal market conditions.</p>	<p>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*.</p>
<p>3.34</p> <p>Advertisements must compare products or services meeting the same need or intended for the same purpose</p>	<p>3.35</p> <p>Advertisements must compare products or services meeting the same needs or intended for the same purpose.</p>
<p>3.39 Advertisements that include a price comparison must make the basis of the comparison clear.</p>	<p>3.40 Advertisements that include a price comparison must not mislead about the basis of the comparison.</p>

<p>3.42 Advertisements must not discredit or denigrate another product, advertiser or advertisement or a trade mark, trade name or other distinguishing mark.</p>	<p>3.4.3 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.</p>
<p>N/A</p>	<p>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.</p> <p>3.46 Advertisements must not contain fake consumer reviews.</p> <p>“Consumer review” means a review of a product, a trader or any other matter relevant to a transactional decision.</p> <p>A fake consumer review is a consumer review that purports to be, but is not, based on a person’s genuine experience*.</p> <p>3.47 Advertisements must make clear where consumer reviews have been incentivised*.</p> <p>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):</p> <ul style="list-style-type: none"> • Failing to publish, or removing from publication, negative consumer reviews whilst publishing positive ones (or vice versa)

	<ul style="list-style-type: none"> • 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). <p>“Consumer review information” means information that is derived from, or is influenced by, consumer reviews*.</p>
<p>3.47 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 the advertised product or service has been approved, endorsed or authorised by any person or body if it has not or without complying with the terms of the approval, endorsement or authorisation.</p>	<p>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*.</p>
<p>3.48 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 other body.</p>	<p>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*.</p>
<p>3.50 Advertisements must make clear each significant limitation 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</p>	<p>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</p>

terms of the guarantee before the consumer is committed to taking it up.	terms of the guarantee before the consumer is committed to taking it up.
3.52 Advertisements must not falsely claim or imply that after-sales service is available in an EEA member state in which the advertised product or service is not sold.	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*.
3.53 If an advertisement in a language other than an official language of the EEA State where the trader is located 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.	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*.
Section 5 - Children	
5.9 Advertisements must not include a direct exhortation to children to buy or hire a product or service or to persuade their parents, guardians or other persons to buy or hire a product or service for them.	5.9 Advertisements must not include a direct appeal to children to buy or hire a product or service or to persuade their parents, guardians or other persons to buy or hire a product or service for them*.
5.14 Promotions that require a purchase to participate and include a direct exhortation to make a purchase must not be targeted directly at children. Advertisements for promotions directly targeted at children should comply with Section 28: Competitions.	5.14 Promotions that require a purchase to participate and include a direct appeal to make a purchase must not be targeted directly at children. Advertisements for promotions directly targeted at children should comply with Section 28: Competitions.
Section 9 – Environmental claims	
9.2 The basis of environmental claims must be clear. Unqualified claims could	9.2 The basis of environmental claims must be clear. Unqualified claims could

mislead if they omit significant information.	mislead if they omit material information.
Section 11 – Medicines	
<p>Definition</p> <p>[...]</p> <p>N/A</p>	<p>Definitions</p> <p>[...]</p> <p>“Disease” includes any injury, ailment or adverse condition, whether of body or mind.</p>
<p>11.4 Medicinal or medical claims and indications may be made for a medicinal product that is licensed by the MHRA, the VMD or under the auspices of the EMA, or for a medical device with the applicable conformity marking. A medicinal claim is a claim that a product or its constituent(s) can be used with a view to making a medical diagnosis or can treat or prevent disease, including an injury, ailment or adverse condition, whether of body or mind, in human beings.</p> <p>[...]</p>	<p>11.4 Medicinal or medical claims and indications may be made for a medicinal product that is licensed by the MHRA, the VMD or under the auspices of the EMA, or for a medical device with the applicable conformity marking. A medicinal claim is a claim that a product or its constituent(s) can be used with a view to making a medical diagnosis or can treat or prevent disease in human beings.</p> <p>[...]</p>
<p>11.15 Unless allowed by a product licence, words, phrases or illustrations that claim or imply the cure of an ailment, illness, disease or addiction, as distinct from the relief of its symptoms, are unacceptable.</p>	<p>11.15 Advertisements should not falsely claim that a product is able to prevent or treat disease or a malformation; restore, correct or modify a physiological function; or modify a person’s appearance*.</p>
Appendix 3	
<p>If an advertisement is likely to affect the economic behaviour only of an identifiable group of people who are</p>	<p>If an advertisement is likely to affect the economic behaviour of an identifiable group of people who are especially</p>

<p>especially vulnerable, in a way that the advertiser could reasonably foresee, because of for example, mental or physical infirmity, age or credulity, the advertisement will be considered from the point of view of the average member of the affected group.</p>	<p>vulnerable, in a way that the advertiser could reasonably be expected to foresee, because of for example, mental or physical health, age, credulity, or the circumstances that group of people is in, the advertisement will also be considered from the point of view of the average member of the affected group.</p>
<p>"Transactional decisions" are consumers' decisions about whether to buy, pay for, exercise contractual rights in relation to, keep or dispose of goods or services. They include decisions to act and decisions not to act.</p>	<p>A "transactional decision" is any decision made by a consumer relating to the purchase or supply of a product (including whether, how or on what terms to make the purchase or supply); the retention, disposal or withdrawal of a product (including whether, how or on what terms to retain or dispose of it); or the exercise of contractual rights in relation to a product (including whether, how or on what terms to exercise such rights).</p>
<p>Advertisements are aggressive if, taking all circumstances into account, they are likely to significantly impair the average consumer's freedom of choice through harassment, coercion or undue influence and are likely to cause consumers to take transactional decisions they would not otherwise have taken.</p>	<p>Advertisements are aggressive if they use harassment, coercion or undue influence.</p>
<p>Advertisements are unfair if they</p> <ul style="list-style-type: none"> • are contrary to the requirements of professional diligence and • are likely to materially distort the economic behaviour of consumers in relation to the advertised goods or services. 	<p>Advertisements are unfair if they</p> <ul style="list-style-type: none"> • are likely to cause the average consumer to take a transactional decision that the consumer would not have taken otherwise, as a result of a practice involving one or more of the following: <ul style="list-style-type: none"> ○ a misleading action ○ a misleading omission ○ an aggressive practice

	<ul style="list-style-type: none">○ a contravention of the requirements of professional diligence● omit material information from an invitation to purchase● involve a practice prohibited in all circumstances under the DMCCA <p>"Professional diligence" is the standard of skill and care that a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice or the general principle of good faith in the trader's field of activity.</p> <p>An "invitation to purchase" is a commercial practice involving the provision of information to a consumer which indicates the characteristics of a product and its price, and which enables, or purports to enable, the consumer to decide whether to purchase the product or take another transactional decision in relation to the product.</p>
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