

## SECTION 1: COMPLIANCE

**Question 1: Given BCAP's policy consideration, do you agree that rule 1.2 Advertisements must be prepared with a sense of responsibility to the audience and to society, should be included in the proposed BCAP Code? If your answer is no, please explain why.**

<i>Responses received in favour of BCAP's proposal from:</i> <b>Association for Interactive Media and Entertainment; Changing faces; Charity Law Association; Advertising Association; Christian Concern for our Nation/Christian Legal Centre; An organisation; EoN Energy Ltd; Kraft Foods Ltd; An organisation; Mobile Entertainment Forum; An individual; Quaker Action on Alcohol and Drugs; Square1 Communications Ltd; An organisation;</b>	<i>Summaries of significant points:</i>  <b>1.</b> The respondents listed in the column to the left agree with BCAP's policy considerations outlined in its consultation document that proposed rule 1.2 'Advertisements must be prepared with a sense of responsibility to the audience and to society', should be included in the new BCAP Code.	<i>BCAP's evaluation of those points and action points:</i> <b>1.</b> BCAP agrees.
<b>An organisation</b>	<b>2.</b> Respondent agrees with the policy consideration and inclusion of this rule, however, they have concerns over subjectivity of application by the ASA Council.	<b>2.</b> BCAP considers this is a comment on the application of rule 1.2 and not the rule itself.
<b>KAO Brands (&amp; An organisation)</b>	<b>3.</b> Respondent is concerned the rule is quite broad	<b>3.</b> BCAP considers this rule is intentionally broad to

	<p>and the subjective nature of interpretation may be exploited in the implementation of the codes.</p> <p>Some of this concern may be alleviated with adoption of revised post-broadcast review and appeal processes as parties within the community are proposing.</p>	<p>allow the ASA the scope to apply it as necessary. There are additional sector specific rules and further general rules that can be applied by the ASA should it see fit to do so.</p> <p>BCAP considers this is a comment on the application of rule 1.2 and not the rule itself.</p>
<b>Office of Fair Trading</b>	<p><b>4.</b> Rule 1.3.1 restates the equivalent provision contained in the CPRs (Advertisements must not state or imply that a product can legally be sold if it cannot). We comment only, in relation to this rule, that there may be some room for difference as to the breadth of the scope of this provision in the CPRs, which is unlikely to be resolved until there is clarification from the courts. Respondent would like to see a reference in this section to the need for broadcasters to comply with the CPRs and the BPRs, and a cross-reference to the summary information on the CPRs provided in Appendix 3 (as well to similar summary information on the BPRs).</p>	<p><b>4.</b> BCAP considers any matter that principally concerns a legal dispute will normally need to be resolved through law enforcement agencies or the Courts.</p> <p>The Code operates alongside the law; the courts may also make rulings on matters covered by the Code. In the case of the CPR's certain provisions have been added to reflect the provisions of the CPRs. BCAP considers the requirements of the BPRs are adequately covered by the existing rules in the BCAP Code.</p> <p>The Principle in Section 3 (Misleading) of the proposed Code references Appendix 3, that clearly explains the basis on which the CPRs will be considered:</p> <p><b>Principle</b></p> <p>Other Sections of the Code contain product-specific or audience-specific rules that are intended to protect consumers from misleading</p>

		<p>advertisements. For example, the “Children” and “Medicines” Sections of the Code contain rules that apply, as well as the general rules, to advertisements that fall under those Sections. The ASA will take into account the impression created by advertisements as well as specific claims. It will adjudicate on the basis of the likely effect on consumers, not the advertiser’s intentions. The rules in this Section apply to implicit as well as direct claims and to visual as well as oral claims. The name of a product can constitute a claim. Cross-reference: Appendix 3 explains how the ASA will assess whether marketing communications are misleading.</p> <p>BCAP considers reference to the CPRs in this section, a section that closely reflects the Regulation following a public consultation on the effect of the CPR’s on the BCAP Codes, is adequate. (<a href="http://www.cap.org.uk/CAP-and-BCAP-Consultations/Closed-consultations/BCAP-the-regulation-of-unfair-practices-in-TV-and-radio-advertisements.aspx">http://www.cap.org.uk/CAP-and-BCAP-Consultations/Closed-consultations/BCAP-the-regulation-of-unfair-practices-in-TV-and-radio-advertisements.aspx</a>)</p>
<b>The RACC</b>	<p><b>5.</b> RACC feels the rule on social responsibility would fit better in the face of the Code, in a dedicated Section and recommends it is moved to Section 4 Harm &amp; Offence (as new rule 4.2). This will achieve faster and clearer referencing for Code users of an important and new rule.</p>	<p><b>5.</b> BCAP considers the location of rule 1.2 should remain in the compliance section of the Code. This is where over arching principles of the BCAP Code are listed. Additionally, the social responsibility rule is not only limited to issues of harm or offence, it is intentionally broad to allow the ASA the scope to apply it as necessary.</p>

<p><b>The Royal Society for the Prevention of Cruelty to Animals</b></p>	<p><b>6.</b> Respondent considers rule 1.2 supplements the existing rules and questions whether this overarching rule will be used to find against adverts that do not explicitly breach other rules?</p>	<p><b>6.</b> BCAP's sister body, the Committee of Advertising Practice (CAP) contains similar rules in its non-broadcast advertising Code but those are supplemented by a rule that ensures marketing communications must be prepared with a due sense of responsibility to consumers and to society. CAP's social responsibility rule gives the ASA the flexibility and necessary means to react proportionately to emerging public concerns and to find against unacceptable advertising practices that are not explicitly or adequately covered by other rules in the Code, for example an advertisement that glamorised knife crime and an advertisement for a device that detects roadside speed recording equipment and implied that drivers could speed with impunity. BCAP considers a social responsibility rule is in keeping with its general policy objectives and, both in its expression in the Code and in its application will prevent irresponsible broadcast advertisements.</p>
<p><b>RWE NPower</b></p>	<p><b>7.</b> We duly note the coming into force of the CPRs in 2008 and the read across from them in relation to marketing communications. It is therefore right that the Code is amended to take account of the CPRs and that the former should be the primary vehicle for ensuring, monitoring compliance with the latter in a marketing context. This will avoid any duplication of activity and effort, say by local authorities, and</p>	<p><b>7.</b> BCAP Agrees.</p>

	<p>also limit the risk of potential double jeopardy for marketers from issues being pursued by different bodies or regulatory/legal frameworks.</p> <p>There is clearly a shift of emphasis and tone within the Code and its rules, principally from “shall” to “must”, to reflect and be compatible with consumer law. Our internal review processes are geared up to cope with this, but again we would repeat that the risk of double jeopardy is mitigated by ensuring that the self-regulatory framework overseen by the ASA and CAP is the means of oversight and enforcement.</p> <p>This ensures the consistent application of the rules, with advice but not interjection by other bodies, and a proportionate response based around the merits of each case, as now.</p>	
<i>Responses received against BCAP’s proposal:</i>	<i>Summaries of significant points:</i>	<i>BCAP’s evaluation of those points and action points:</i>
<b>An organisation</b>	<p><b>8.</b> Respondent considers proposed rule 1.2 will create confusion as a result of its interpretation. We consider that the term “sense of responsibility” is too subjective and believe that the specific rules detailed throughout the BCAP Code should provide sufficient governance.</p>	<p><b>8.</b> See BCAP’s response to point 6</p>
<b>An organisation</b>	<p><b>9.</b> Respondent accepts this follows the equivalent</p>	<p><b>9.</b> See BCAP’s response to point 6</p>

	rule in the CAP Code but do consider that the remaining provisions of the BCAP Code adequately cover this point and the new rule is therefore unnecessary.	
<b>Question 2:</b> i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Compliance Section, are necessary and easily understandable? If your answer is no, please explain why.  ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Compliance rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?  iii) Do you have other comments on this section?		
<i>Responses received from:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
<b>Association for Interactive Media and Entertainment; Charity law Association; Christian Concern for our Nation/Christian Legal Centre; An organisation; EoN Energy Ltd; An organisation; Kraft Foods Ltd; An individual; An organisation requesting confidentiality ; Changing faces; An organisation</b>	<b>1.</b> The respondents listed in the column to the left agree that BCAP's rules, included in the proposed Compliance Section are necessary and easily understandable. Those respondents did not identify any changes from the present to the proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document.	<b>1.</b> NA
<b>The Royal Society for the Prevention of Cruelty to Animals</b>	<b>2.</b> Proposed Rule 1.3.1 states that "advertisements must not state or imply that a product can legally be sold if it can not" – as documented at the outset of the document there is a particular problem with	<b>2.</b> CAP and BCAP have explored the option of requiring advertisements to include pet vending licence numbers/logos/symbols denoting membership and/or registration (e.g. gambling –

	<p>the sale of animals, either of prohibited breeds or species and the RSPCA suggest that information setting out the legal requirements upon a business in the trade of advertising animals for sale for the benefit of consumers. Perhaps the use of pet vending licence numbers in ads and a CAP/BCAP guidance note on the legal sale of animals and pets is necessary.</p>	<p>licence number), however the problem lies with those advertisers that use the symbol without permission.</p> <p>BCAP considers the general misleading rules and rule 1.3 'Advertisements must comply with the law and broadcasters must make that a condition of acceptance', adequately caters for the potential harm in this sector of broadcast advertisements.</p> <p>BCAP will consider the need for guidance on this area in due course.</p>
<b>Channel 4</b>	<p><b>3.</b> Respondent considers this section should identify the role of the Code within the CPRs, including the fact that the definitive requirement is to abide by the CPRs and that the Code itself is not definitive in law. It should note that the new legislation is no longer detailed but purposive and principled and the Code should recognise and be adapted to that change.</p> <p>Respondent highlights the broadcaster has responsibility for Code compliance. In practice, many broadcasters use Clearcast for the pre-transmission clearance of advertisements in order to comply with the Code. In the proposed Code, a number of sections set out direct obligations on broadcasters to satisfy themselves about the way in which an advertiser is operating and/or about the claims made for products and services.</p>	<p><b>3.</b> The BCAP Code operates alongside the law; the courts may also make rulings on matters covered by the Code. Any matter that principally concerns a legal dispute will normally need to be resolved through law enforcement agencies or the Courts.</p> <p>In the case of the CPR's certain provisions have been added (particularly to the Misleading section) to reflect the provisions of the CPRs.</p> <p>BCAP considers reference to the CPRs in that section, a section that closely reflects the Regulation following a public consultation on the effect of the CPR's on the BCAP Codes, is adequate. (<a href="http://www.cap.org.uk/CAP-and-BCAP-Consultations/Closed-consultations/BCAP-the-regulation-of-unfair-">http://www.cap.org.uk/CAP-and-BCAP-Consultations/Closed-consultations/BCAP-the-regulation-of-unfair-</a></p>

	<p>Channel 4 would be grateful for confirmation that enquiries and assessments made by Clearcast in the process of vetting advertisements would be sufficient to fulfill a broadcaster's responsibility in these areas.</p>	<p><a href="#">practices-in-TV-and-radio-advertisements.aspx</a>)</p> <p>In the 'Background' and 'Principle' to the compliance section BCAP has explained the responsibility broadcasters have in relation to the advertisements they carry.</p> <p>Specifically: All compliance matters (copy clearance, content, scheduling and the like) are the ultimate responsibility of each broadcaster.</p> <p>A provision of a broadcasters licence requires all advertisements carried to comply with the BCAP Codes.</p> <p>That is not a new requirement and it is current practice by some broadcasters to use Clearcast.</p> <p>BCAP considers a broadcasters' decision to use a clearance body to ensure compliance with the BCAP Codes on their behalf is not a matter for BCAP to comment on, however the role of clearance bodies is acknowledged in the proposed Code.</p>
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