

APPENDIX 1: THE CPRS AND BPRS



Background

Non-broadcast marketing communications are subject to legislation as well as to this Code. See www.asa.org.uk or www.cap.org.uk for a non-exhaustive list.

The Consumer Protection from Unfair Trading Regulations 2008 (the CPRs)

One important piece of legislation that affects marketing communications is the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs). For the purpose of the Regulations and in this Appendix, "consumers" refers to individuals acting outside the course of their business. The CPRs prohibit unfair marketing to consumers, including misleading or aggressive advertising. Whenever it considers complaints that a marketing communication misleads consumers or is aggressive or unfair to consumers, the ASA will have regard to the CPRs. That means it will take factors identified in the CPRs into account when it considers whether a marketing communication breaches the CAP Code.

The notes below summarise those factors.

Code rules that refer to misleading marketing communications should be read, in relation to business-to-consumer marketing communications, in conjunction with these notes.

Consumers

The likely effect of a marketing communication is generally considered from the point of view of the average consumer whom it reaches or to whom it is addressed. The average consumer is assumed to be reasonably well-informed, observant and circumspect.

In some circumstances, a marketing communication may be considered from the point of view of the average member of a specific group:

- 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.
- 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.

Unfair marketing communications

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.

Misleading marketing communications

Marketing communications are misleading if they

- are likely to deceive consumers and
- are likely to cause consumers to take transactional decisions that they would not otherwise have taken.

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.

Marketing communications can deceive consumers by ambiguity, through presentation or by omitting important information that consumers need to make an informed transactional decision, as well as by including false information.

Aggressive marketing communications

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.

The Business Protection from Misleading Marketing Regulations 2008

Business-to-business marketing communications are subject to the Business Protection from Misleading Marketing Regulations 2008 (the BPRs). Business-to-business marketing communications that breach the CAP Code may be referred to Trading

Standards for consideration under the BPRs. Under the BPRs, a marketing communication is misleading if it:

- in any way, including its presentation, deceives or is likely to deceive the traders to whom it is addressed or whom it reaches and by reason of its deceptive nature, is likely to affect their economic behaviour
- or, for those reasons, injures or is likely to injure a competitor.

The BPRs also set out the conditions under which comparative marketing communications, directed at either consumers or business, are permitted. This Code incorporates those conditions.