

The Regulation of Unfair Practices in TV and Radio Advertisements

Attachment C

Marked-up version of the BCAP Television Advertising Standards Code

Proposed deletions are ~~struck through~~
Proposed insertions are underlined
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The Broadcast Committee of Advertising Practice

Television Advertising Standards Code

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Foreword

The BCAP Television Advertising Standards Code sets out the rules that govern advertisements on any television channel licensed by Ofcom. The rules are framed to ensure that advertisements are 'legal, decent, honest and truthful' and do not mislead or cause harm or serious or widespread offence.

Since 1 November 2004, the Code has been the responsibility of the Broadcast Committee of Advertising Practice (BCAP), under contract from the broadcasting and telecommunications regulator Ofcom.

More information about BCAP is available on the BCAP section of the Committee of Advertising Practice website, www.cap.org.uk.

Ofcom took over the responsibilities of the former Independent Television Commission (ITC) in December 2003. Under the Communications Act 2003, Ofcom was encouraged towards contracting-out functions and to a co-regulatory partnership with effective self-regulation.

After public consultation and parliamentary approval, Ofcom has authorised BCAP to take responsibility for maintaining, reviewing and updating the Code.

Complaints about apparent breaches of the Code are considered by the Advertising Standards Authority, through its broadcasting arm ASA(B) and references to the ASA in this Code should be read as references to the broadcasting arm. Complaints to the ASA can be made via www.asa.org.uk.

The Code is an updated edition of the 2002 ITC Advertising Standards Code. The changes reflect only the new co-regulatory partnership between Ofcom, ASA and BCAP. References in the previous Code to the ITC have been reviewed and changed, where necessary, to BCAP, Ofcom or the ASA. References to legislation have also been brought up to date. Amendments have been made to the rules on alcohol and gambling advertisements, for example advertising. The Code has also been amended to incorporate the requirements of the Consumer Protection from Unfair Trading Regulations 2008(see Appendix 4 for a summary of the effect of the Regulations). Otherwise, this is the same Code as the former ITC Code.

Advertisers and broadcasters should also be aware of BCAP's other Advertising Standards Codes:

Code for Text Services

Advertising Guidance Notes

1 - On-Screen Text and Subtitling in Television Advertisements

2 - Betting Tipster Advertising

3 - ASA Complaints procedure

5 - Audience Indexing: identification of programmes likely to appeal to young people and children

6 – Guidance notes for the TV alcohol advertising rules
Radio Advertising Standards Code
Rules on the Scheduling of Television Advertisements
Guidance to Broadcasters on the Regulation of Interactive Television
Services

INTRODUCTION

(a) This Code applies to all the Ofcom licensees listed below¹ and is designed to inform advertisers and broadcasters of the standards expected in television advertising. It is based on enduring principles; that advertising should not mislead, cause deep or widespread offence or lead to harm, particularly to the vulnerable.

(b) It is the responsibility of the broadcasters themselves to ensure the advertising they transmit complies with both the spirit and the letter of the Code. Licensees must therefore satisfy Ofcom that they themselves have the staff and procedures to manage compliance. ~~Clearcast~~ ~~The Broadcast Advertising Clearance Centre (BACC)~~ can offer its clients a useful pre-transmission advertising checking and approval service (including Notes of Guidance). However, not all licensees use the service and its use does not remove the licensee's own responsibility.

(c) This Code was updated in 2002 on the basis of wide consultation and with the aim of making it simpler and easier to use. Each group of rules – whether, for example, on editorial independence, misleadingness or particular types of advertising – is grouped with a note of explanation about their rationale and any exceptions. These explanatory notes also offer definitions, cross-references and guidance intended to help advertisers and licensees avoid common pitfalls.

(d) BCAP is willing to give advice on the interpretation of the Code but it does not offer pre-transmission clearance of advertising. Any advice it gives is without prejudice to the right of both it and the ASA to investigate and act in the event of a breach. BCAP cannot accept liability for loss or damage alleged to result from reliance placed on such advice.

(e) Licensees should use the ASA or CAP website, www.asa.org.uk and www.cap.org.uk, to inform themselves of recent ASA adjudications or BCAP policy interpretations of the Code and ads that raised significant issues and which were identified either by staff monitoring or as a result of complaints. In borderline cases, if the ASA decides intervention is not justified, it may conclude “complaint not upheld (or no intervention) but guidance given”. The guidance will indicate the factors which made the case borderline and which, if circumstances were slightly different in future cases, might result in a requirement to remove or modify the advertisement or restrict its times of transmission.

(f) Given the frequency of repetition of many advertisements, anything misleading or harmful needs to be quickly dealt with. The ASA will on

occasion require the suspension of an advertisement during an investigation and before the adjudication is finalised.

(g) For the purposes of the Code, 'licensees' means Ofcom licensees and the terms 'advertisement' and 'advertising' mean any publicity by advertisers in breaks during or between programmes. This is irrespective of whether payment is made. The rules also apply to 'teleshopping' channels, windows and spots.

(h) The protection of young viewers is always a priority. Section 7 (Children) should be considered for all advertising which:

- is aimed at children or is likely to be of interest to them
- features children whether as professionals or amateurs
- could harmfully influence children even if not of direct interest to them.

(i) Some rules which are to be found in Code Sections dedicated to particular categories of products or services (such as alcoholic drinks, medicines or food) also apply to any advertising which includes or refers to them. The phrasing of such rules omits the product category in order to indicate their wider scope: ('No advertising may...'; 'Advertisements must...' etc).

(j) For more detailed guidance on the statutory framework for television advertising, see Appendix 1.

1 These are ITV, GMTV, Channel 4, Channel 5, satellite television services provided by broadcasters within UK jurisdiction (whether or not their main audience is in the UK), licensable programme services, local delivery services, digital programme services and services provided under Restricted Service Licences (local television). The Code also applies to the Welsh Fourth Channel which is regulated by S4C. (Advertising on regulated text services is subject to the BCAP Code for Text Services.)

SECTION 1: COMPLIANCE

1.1 Complying with the law

Advertisements must comply with the law and licensees must make that a condition of acceptance.

1.2 The spirit of the rules

Advertisements must reflect the spirit, not just the letter of the rules

1.3 Legal sale

Advertisements must not state or otherwise create the impression that a product can legally be sold when it cannot

Annex practice 9: Stating or otherwise creating the impression that a product can legally be sold when it cannot.

SECTION 2: PROGRAMMES AND ADVERTISING

Background:

(1) Section 2 has two purposes. The first is to ensure that viewers know at all times whether they are watching programming or advertising. The second relates to editorial independence and is to ensure that programmes are not distorted for commercial purposes; links between advertisers and programme properties are restricted for that purpose.

(2) Unless otherwise stated, Section 2 also applies to programme promotions.

(3) 'Programme' in this rule is defined as any current or recent programme on any UK television service. 'Current' refers to series still running or likely to be resumed. 'Recent' is defined as any programme or series last transmitted (including repeats) in the previous two years.

(4) The Ofcom Rules on the Amount and Distribution of Advertising and the BCAP Rules on the Scheduling of Advertising contain rules on specific separations of programmes and advertising.

2.1 Separation of advertisements and programmes

2.1.1

There must be a clear distinction between programmes and advertisements

Note:

In ambiguous cases, advertisements must be identified as such on screen.

Annex practice 11: Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial). This is without prejudice to Council Directive 89/552/EEC (1).

2.1.2

Advertisements must not:

- (a) use expressions reserved for important news and public service announcements (eg 'news flash')
- (b) use a situation, performance or style reminiscent of a programme in a way that might confuse viewers as to whether they are watching a programme or an advertisement
- (c) refer to themselves in a way that might lead viewers to believe they are watching a programme (eg by adopting the title 'Programme')
- (d) include extracts from broadcasts of parliamentary proceedings
- (e) feature, visually or orally, anyone who regularly presents news or current affairs on television

Notes to 2.1.2(c) – (e):

- (1) Rules 2.1.2(c) – (e) do not apply to programme promotions.*
- (2) Ofcom can offer licensees advice on 2.1.2(e).*

2.2 Editorial independence

2.2.1

Broadcasters must retain editorial independence and responsibility for the content and scheduling of programmes

2.2.2

Advertisements must not:

- (a) refer to the use or appearance of any product or service in any programme
- (b) feature a person who appears in any current programme which the advertiser would be precluded from sponsoring. (See Section 9 of the Ofcom Broadcasting Code (Sponsorship))
- (c) include extracts from any recent or current programme (with limited exceptions)
- (d) include titles, logos, sets or theme (ie start/end) music from any programme (with limited exceptions)

Notes to 2.2.1 and 2.2.2:

- (1) 2.2.2(c) and (d) do not apply to programme promotions.*
- (2) Other exceptions to 2.2.2(c) and (d) concern advertisements for products or services based on a particular programme. In these cases, if an actual programme extract is used, the programme extract must not appear to endorse the product or service advertised. Care must also be taken to ensure the advertisement as a whole is not mistaken for an extract from the programme.*
- (3) 2.2.2(c) does not apply to news footage or brief extracts from interviews where the interviewer is not identified or in the case of programmes not readily identifiable as such (e.g. typical wildlife footage).*
- (4) 2.2.2(d) only applies to music predominantly associated or identified in viewers' minds with a particular programme.*
- (5) There are further exceptions to 2.2.1 and 2.2.2 for some sponsors and programmes subject to Section 9 of the Ofcom Broadcasting Code (Sponsorship).*

The promotion of programme support material is subject to Section 10 of the Ofcom Broadcasting Code (Commercial References and Other Matters).

Notes: Permissions and Copyright

- (1) Advertisements have the potential to impinge on intellectual property rights if they are linked to a programme, for example by featuring actors playing the*

same characters they play in the programme. Advertisers are advised to obtain any necessary permissions before committing themselves to production.

(2) Licensees are free to give advertisers permission to use elements of a programme but are advised to take account of the likely effect on the programme's reputation. Any references in the programmes to the relevant products, services or advertising are likely to contravene the 'no undue prominence' requirements of the Ofcom Broadcasting Code (Sponsorship and Commercial References sections).

SECTION 3: UNACCEPTABLE PRODUCTS AND SERVICES

Background:

The advertising of a number of products and services is not permitted either because there is a statutory prohibition, or because there is the potential for harm from the power of television advertising being used to promote them. In some areas, for example, it is not possible for the broadcaster to make a judgement about harm or misleadingness because the services are of an individual and personal nature. In these cases, the standard of the service delivered to the individual is difficult to assess and the services themselves are often not subject to independent, recognised regulation or mediation. In other areas, where services would normally be accessed through a professional intermediary (as with some medical services) direct advertising to the consumer carries the risk that viewers might not seek that advice.

3.1 Unacceptable categories

Advertisements for products or services coming within the recognised character of, or specifically concerned with the following are not acceptable:

- (a) breath-testing devices and products that purport to mask the effects of alcohol
- (b) betting tips
- (c)
- (d) all tobacco products. Also non-tobacco products or services which share a name, emblem or other feature with a tobacco product where these are prohibited by law from advertising in other UK media. See the Tobacco Advertising and Promotion (Brandsharing) Regulations 2004.
- (e) private investigation agencies
- (f) guns and gun clubs
- (g) escort agencies
- (h) pornography

Note to 3.1(h):

This includes publications of the kind commonly referred to as ‘top shelf’. Encrypted elements of adult entertainment channels may however carry advertising for categories of ‘top shelf’ publications designated from time to time by BCAP.

- (i) the occult etc. (See 10.3 – The occult, psychic practices and exorcism – for details and some exceptions)

(j) commercial services offering individual advice on personal or consumer problems

Notes to 3.1(j):

(1) This does not prevent advertisements for financial advice services which comply with Section 9 (Finance and Investment).

Nor does it prevent advertising by solicitors. Further exceptions may be made for other services if BCAP is satisfied that, for example, they are subject to credible and effective independent regulation.

(k) pyramid promotional schemes

Note to 3.1(k)

Pyramid promotional schemes are those under which consumers pay or give other consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme, not the sale or consumption of products.

Annex practice 14: Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.

Note to 3.1:

Details of other unacceptable categories of advertising can be found in the following Sections:

4 *Bodies with political objectives*

8.2.1(a) *Prescription only medicines (POM)*

(b) *Products for the treatment of alcohol and substance dependence*

(c) *Hypnosis-based procedures (including techniques commonly referred to as hypnotherapy), psychiatry, psychology, psychoanalysis and psychotherapy*

(d) *Remote medical prescription or treatment*

8.2.2 *Homeopathic medicines without UK registration*

9.5 *Some investment products*

10.2 *Some bodies subject to the rules on religion, faith and systems of belief*

11.1.2 *Most 0909 premium rate phone services*

11.4.2 *Some homeworking schemes*

11.5(c) *Some instructional courses*

3.2 Indirect promotion

No advertisement may indirectly publicise an unacceptable product or service

Notes:

- (1) [Clarification of rule 3.2, published 14 January 2003]** No advertisement is acceptable if a significant effect of it would be to publicise an unacceptable product or service by, for example, referring viewers to a website, publication etc where the product or service is promoted to a significant extent. (This applies to categories listed in both rule 3.1 and the Note to 3.1.)
- (2) Where non-tobacco products or services are linked to a tobacco brand because they share a name, emblem or other feature (See 3.1(d) above), they may be advertised only if the advertising:
- (a) complies with 3.1(d) and
 - (b) is clearly aimed at an adult audience and
 - (c) makes or implies no other reference to smoking or to the tobacco product and does not lead the viewer to other material promoting tobacco or smoking and
 - (d) does not include any elements of design, colour, imagery, logo style etc which are associated with tobacco products, apart from the brand name.
- (3) There must be no references to tobacco products or smoking in advertising which might be of particular interest to children or teenagers. There will be few occasions when their inclusion in other advertising is acceptable but two exceptions are health-related public service advertising and incidental images of smoking in clips from films made before the dangers of smoking were widely recognised.

SECTION 4: POLITICAL AND CONTROVERSIAL ISSUES

No advertisement:

(a) may be inserted by or on behalf of any body whose objects are wholly or mainly of a political nature

(b) may be directed towards any political end

(c) may have any relation to any industrial dispute (with limited exceptions)

Note to 4(c):

The Broadcasting Act 1990 specifically exempts public service advertisements by or on behalf of a government department from the prohibition of advertisements having 'any relation to any industrial dispute'.

(d) may show partiality as respects matters of political or industrial controversy or relating to current public policy

Notes to Section 4:

(1) The purpose of this prohibition is to prevent well-funded organisations from using the power of television advertising to distort the balance of political debate. The rule reflects the statutory ban on 'political' advertising on television in the Broadcasting Act 1990.

(2) The term 'political' here is used in a wider sense than 'party political'. The rule prevents, for example, issue campaigning for the purpose of influencing legislation or executive action by legislatures either at home or abroad. Where there is a risk that advertising could breach this rule, prospective advertisers should seek guidance from licensees before developing specific proposals.

(3) The setting of standards and investigations of complaints in relation to political advertising have not been contracted out to BCAP and the ASA and remain matters for Ofcom. The ASA refers complaints about political advertising to Ofcom.

SECTION 5: MISLEADING ADVERTISING

Background:

Television advertising can be a powerful medium for communicating advertising messages but is unsuited to providing consumers with detailed, permanent information about products and services. The rules in this Section are therefore designed (amongst other things) to ensure that advertising does not misrepresent the nature, benefits and limitations of advertised offers.

5.1 DEFINITION OF MISLEADING ADVERTISING

5.1.1 No advertisement may directly or by implication mislead about any material fact or characteristic of a product or service or advertiser

5.1.2 No advertisement may mislead by omission about any material fact or characteristic of a product or service or advertiser

Article 7 of the Directive / Section 6 of the Regulations (misleading omissions).

Notes:

(1) See also 7.1 (Misleading advertising and children) for additional rules about advertising for products and services likely to be of interest to children.

(2) Advertising is likely to be considered misleading if, for example, it contains a false statement, description, illustration or claim about a material fact or characteristic. Material characteristics include price, availability and performance. Any ambiguity which might give a misleading impression must be avoided.

(3) Even if everything stated is literally true, an advertisement may still mislead if it conceals significant facts or creates a false impression of relevant aspects of the product or service.

(4) Scientific terms or jargon, statistics and other technical information should not be used to make claims appear to have a scientific basis that they do not possess. Equally, statistics of limited validity must not be presented in such a way as to mislead, for instance by implying that they are universally true.

(5) An advertisement may be misleading even if it does not directly lead to financial loss or a misguided purchasing decision. The ASA and BCAP may also regard an advertisement as misleading if, for example, it causes viewers to waste their time making enquiries, only to find that offers are unavailable or that there are important limitations. This could involve encouraging viewers to visit shops, or to make lengthy telephone calls ~~(including freephone calls)~~.

(6) When assessing whether an advertisement is misleading, the ASA and BCAP consider the overall impression likely to be conveyed to ~~a reasonable viewer~~ the average consumer who it reaches. They do not consider the intentions of the advertiser, nor simply whether the advertising meets legal or other regulatory requirements.

~~(7) In addition to its delegated powers under the Communications Act 2003, the ASA has a duty to enforce the Control of Misleading Advertisements Regulations 1988 (as amended).~~

An advertisement is misleading if:

- ~~—— (a) it is likely to deceive those who see it and~~
- ~~—— (b) as a result of that deception, is likely to affect consumers' economic behaviour or~~
- ~~—— (c) for the reasons given in (a) and (b), it injures or is likely to injure a competitor of the person whose interests the advertisement promotes.~~

5.1.3 Marketing communications must not omit, hide or provide in an unclear, unintelligible, ambiguous or untimely manner material information if that omission or presentation is likely to affect consumers' decisions about whether and how to buy the advertised product, unless the information is obvious from the context. If the advertisement is limited by time or space, the ASA will take into account steps that the advertiser has taken to make that information available to consumers by other means.

5.1.4 For advertisements that quote prices for advertised products, material information includes:

- a. the main characteristics of the product
- b. the identity (eg trading name) and geographical address of the marketer and any other trader on whose behalf the advertiser is acting
- c. the price of the advertised product, including taxes; or where the nature of the product is such that the price cannot be calculated in advance, the manner in which the price is calculated
- d. delivery charges
- e. the arrangement for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely to reasonably expect
- f. that consumers have the right to withdraw or cancel, if they have that right (see 42.2(f)).

Misleading omissions

6.—(1) A commercial practice is a misleading omission if, in its factual context, taking account of the matters in paragraph (2)—

- (a) the commercial practice omits material information,
- (b) the commercial practice hides material information,
- (c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or
- (d) the commercial practice fails to identify its commercial intent, unless this is already apparent from the context,

and as a result it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

[...]

(3) In paragraph (1) “material information” means—

(a) the information which the average consumer needs, according to the context, to take an informed transactional decision; and

(b) any information requirement which applies in relation to a commercial communication as a result of a Community obligation.

(4) Where a commercial practice is an invitation to purchase, the following information will be material if not already apparent from the context in addition to any other information which is material information under paragraph (3)—

(a) the main characteristics of the product, to the extent appropriate to the medium by which the invitation to purchase is communicated and the product;

(b) the identity of the trader, such as his trading name, and the identity of any other trader on whose behalf the trader is acting;

(c) the geographical address of the trader and the geographical address of any other trader on whose behalf the trader is acting;

(d) either—

(i) the price, including any taxes; or

(ii) where the nature of the product is such that the price cannot reasonably be calculated in advance, the manner in which the price is calculated;

(e) where appropriate, either—

(i) all additional freight, delivery or postal charges; or

(ii) where such charges cannot reasonably be calculated in advance, the fact that such charges may be payable;

(f) the following matters where they depart from the requirements of professional diligence—

(i) arrangements for payment,

(ii) arrangements for delivery,

(iii) arrangements for performance,

(iv) complaint handling policy;

(g) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

5.2 CLAIMS

5.2.1 Evidence

Licensees must obtain adequate objective evidence to support all claims

Notes:

(1) Where a claim is based on scientific research or testing, that work should have been conducted in accordance with recognised best practice. Where licensees lack the specialised knowledge to assess the adequacy of evidence, they must consult independent experts.

(2) Licensees must make their own independent assessment of evidence submitted in support of advertising, and of any advice they have commissioned.

(3) Absolute claims – eg ‘best on the market’, ‘lowest prices guaranteed’ – should be avoided unless they are backed up by clear evidence and are based on a formula on which an advertiser can completely deliver. In particular, licensees should be alert to the fact that such claims may be invalidated by sudden changes in the market or the actions of competitors while the advertising is still on air. For this reason, absolute price claims should be treated with great caution.

(4) Under the Control of Misleading Advertisements Regulations 1988 (as amended), Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008 the ASA is empowered to regard a factual claim as inaccurate unless adequate evidence of accuracy is provided to it when requested.

(5) A claim can be implied or direct, written, spoken or visual. The name of a product or service may in itself be regarded as a claim.

5.2.2 Implications

Descriptions, claims and illustrations must not imply attributes, capabilities or performance beyond those that can be achieved in normal use

5.2.3 Qualifications

All important limitations and qualifications must be made clear

Note:

Important limitations and qualifications include those on availability, particularly where failure to mention such conditions is likely to lead viewers to assume that an advertised offer is available on equal terms to all who might see it. Such restrictions might include geographical restrictions, limited numbers of purchases per person, age or sex restrictions etc.

5.2.4 Use of the word ‘free’

~~(a) Advertisements must not describe an offer as ‘free’ if there are costs to consumers other than actual postage or carriage, non-premium rate telephone charges or reasonable travel required to collect the offer. Advertising must make clear the extent of the consumer’s liability for any costs~~

~~Notes to 5.2.4(a):~~

~~(1) Trials can be described as free even if the customer has to pay the costs of returning the goods, provided this is made clear in the advertising.~~

~~(2) Making clear the extent of liability would include, for example, explaining the need to collect tokens, or to travel a considerable distance to redeem an offer.~~

~~b) No element of an offer may be described as 'free' if viewers are likely to be misled as to whether it is genuinely additional to the offer~~

5.2.4 to be replaced by 5.2.11

5.2.5 Guarantees

Advertisements must make clear significant limitations to an advertised guarantee

Notes:

(1) This rule applies equally to 'warranty' and similar terms.

(2) This does not prevent the colloquial use of the word 'guarantee' where there is no risk of it being construed as part of an offer. For instance 'guaranteed to make you laugh'.

5.2.6 Environmental claims

Advertisements must not make unsubstantiated claims about environmental impact

Note:

Best practice on environmental impact claims is contained in ISO 14021 and the Department for the Environment, Food and Rural Affairs' Green Claims Code. Licensees must satisfy themselves that any departure from this best practice is justified.

5.2.7 Animal testing

Claims that a product has not been tested on animals are unlikely to be acceptable

Notes:

(1) Even though a finished product has not been tested on animals, it will normally be very difficult to prove that none of the materials used in its manufacture have ever been tested in that way.

(2) Some statements about, for example, an advertiser's opposition to animal testing may breach rule 4 (Political and controversial issues). This requires television advertising to be impartial on matters of political controversy and public policy.

5.2.8 Pressure to purchase

a) Advertisements must not falsely claim that the advertiser 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 in order to deprive consumers of the time or opportunity to make an informed choice

Annex practice 15: Claiming that the trader is about to cease trading or move premises when he is not.

Annex practice 7: Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

b) Advertisements must not mislead consumers about market conditions or the possibility of finding the product elsewhere in order to induce consumers to buy the product at conditions less favourable than normal market conditions

Annex practice 18: Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.

c) Advertisements must not explicitly claim that, if consumers do not buy the advertised product or service, the advertiser's job or livelihood will be jeopardised

Annex practice 30: Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.

5.2.9 After-sales service

a) If an advertisement in a language other than English offers after-sales service, licensees must be satisfied that the advertiser will tell consumers, before a contract is concluded, if the after-sales service is not available in the language of the advertisement.

Annex practice 8: Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

b) Advertisements must not falsely claim or imply that after-sales service is available in an EU member state other than the one where the advertised product is sold

Annex practice 23: Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.

5.2.10 Exaggeration

a) Advertisements must not present rights given to consumers in law as distinctive features of the advertiser's offer

Annex practice 10: Presenting rights given to consumers in law as a distinctive feature of the trader's offer.

b) Advertisements must not mislead about the nature or extent of the risk to consumers' personal security if they do not buy the advertised product

Annex practice 12: Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.

5.2.11 Use of the word 'free'

(a) Advertisements must not describe an offer as 'free', or similar, if there are costs to consumers other than actual postage or carriage, non-premium rate telephone charges or reasonable travel required to collect the offer. Advertising must make clear the extent of the consumer's liability for any costs

Notes to 5.2.11(a):

(1) *Trials can be described as free even if the customer has to pay the costs of returning the goods, provided this is made clear in the advertising.*

(2) *Making clear the extent of liability would include, for example, explaining the need to collect tokens, or to travel a considerable distance to redeem an offer.*

b) No element of an offer may be described as 'free' if viewers are likely to be misled as to whether it is genuinely additional to the offer

Annex practice 20: Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

5.3 PRICE CLAIMS

5.3.1 Accurate pricing

Indications of actual or comparative prices, or the manner in which a price is to be calculated, must be accurate and must not mislead by omission, undue emphasis or distortion

Note to 5.3.1:

The Consumer Protection from Unfair Trading Regulations 2008 lay down the statutory framework for indications of price, price comparisons and reductions. In addition the DTI-DBERR has issued a Pricing Practice Guide (October 2005) and licensees are advised to refer to this.

5.3.2 Pricing requirements

~~(a) Quoted prices must be inclusive of all non-optional taxes, duties and fees which apply to all buyers~~

~~Notes to 5.3.2(a):~~

~~(1) Areas where this is particularly relevant include flight and cruise advertising.~~

~~(2) If a non-optional charge is variable and therefore impossible to quantify, advertising should make clear that it is excluded from the quoted price.~~

~~(3) Television advertising is regarded by the ASA and BCAP as generally being a business-to-consumer medium. Advertising quoting only VAT exclusive pricing would be appropriate only in exceptional circumstances.~~

5.3.2 to be replaced by 5.3.3

5.3.3 Pricing requirements

(a) Quoted prices must be inclusive of all non-optional taxes, duties and fees, including freight, delivery or postal charges, which apply to all buyers. If such charges cannot reasonably be calculated in advance, marketers must state that additional charges may be payable.

Misleading omissions

6.—(1) A commercial practice is a misleading omission if, in its factual context, taking account of the matters in paragraph (2)—

- (a) the commercial practice omits material information,
- (b) the commercial practice hides material information,
- (c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or
- (d) the commercial practice fails to identify its commercial intent, unless this is already apparent from the context,

and as a result it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

[...]

(3) In paragraph (1) “material information” means—
(a) the information which the average consumer needs, according to the context, to take an informed transactional decision; and
(b) any information requirement which applies in relation to a commercial communication as a result of a Community obligation.

(4) Where a commercial practice is an invitation to purchase, the following information will be material if not already apparent from the context in addition to any other information which is material information under paragraph (3)—

[...]

(d) either—
(i) the price, including any taxes; or
(ii) where the nature of the product is such that the price cannot reasonably be calculated in advance, the manner in which the price is calculated;

Notes to 5.3.23(a):

(1) Areas where this is particularly relevant include flight and cruise advertising.

~~*(2) If a non-optional charge is variable and therefore impossible to quantify, advertising should make clear that it is excluded from the quoted price.*~~

(3) Television advertising is regarded by the ASA and BCAP as generally being a business-to-consumer medium. Advertising quoting only VAT exclusive pricing would be appropriate only in exceptional circumstances.

(b) Where goods are available on an instalment basis and the individual instalment costs are given, the total price of the goods must be equally prominent. If the instalment frequency is other than monthly, this must be made clear

Note to 5.3.23 (b):

In practice, this is likely to apply only when goods are to be paid for in four or fewer instalments. Advertising for schemes involving more than four instalments is likely to be subject to the Consumer Credit (Advertisements) Regulations 2004.

(c) Where the headline cost of goods and services available by mail order or other distance selling means does not include delivery, the delivery charge must be clearly indicated beside the headline price

Note to 5.3.23 (c):

Rule 11.2 deals specifically with distance selling. Licensees should also refer to the Consumer Protection (Distance Selling) Regulations 2000.

5.3.5 Availability of products advertised at a specified price

a) Advertisements must state any reasonable grounds the advertisers might 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

Annex practice 5: Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).

(b) licensees must be satisfied that the advertisers will not use the technique of switch selling, where their sales staff refuse to show the advertised product, refuse to take orders for it or to deliver it within a reasonable time, or demonstrate a defective sample of it, in order to promote a different product

Annex practice 6: Making an invitation to purchase products at a specified price and then:

- (a) refusing to show the advertised item to consumers; or
 - (b) refusing to take orders for it or deliver it within a reasonable time; or
 - (c) demonstrating a defective sample of it,
- with the intention of promoting a different product (bait and switch)

5.4 CREATIVE TREATMENTS

5.4.1 Visual techniques and special effects

Advertisements must not use any technique that is likely to give a misleading or unfair impression of the product or service

Note:

This does not prevent the use of techniques to overcome technical problems in filming: for example, the use of a visually identical material as a substitute for ice cream which would melt under lights. But it would prevent the use of glass sheeting to exaggerate the effects of floor polish.

5.4.2 Superimposed text

(a) Text in advertisements must be legible and must comply with BCAP Guidance on On-screen Text and Subtitling in Television Advertisements

(b) Whilst text may expand or clarify a claim, or add minor qualifications, it must not contradict the claim

Notes to 5.4.2:

(1) Advertising can mislead if text intended to qualify a claim or offer is too long, complicated or obscurely expressed to be easily absorbed by viewers in one viewing.

5.4.3 Denigration

Advertisements must not discredit or unfairly attack other products or services, advertisers or advertisements either directly or by implication

5.4.4 Testimonials

~~Testimonials or endorsements used in advertising must be genuine and be supported by documentary evidence. Fictitious testimonials must not be presented as genuine. Any statement in a testimonial that is likely to be interpreted as a factual claim must be substantiated~~

Note:

~~In ambiguous cases it may be necessary to indicate, for example, that an advertisement features actors presenting the advertiser's opinion, or that those giving testimonials are employees or relatives of employees of the advertiser.~~

See 5.4.9

5.4.5 Subliminal advertising

No advertisement may use images of very brief duration, or any other technique which is likely to influence viewers, without their being fully aware of what has been done

5.4.6 Comparative advertising

There must be no realistic likelihood that viewers will be misled as a result of any comparison, whether about the product or service advertised or that with which it is compared

Notes:

(1) Comparative advertising is regulated by ~~the Control of Misleading Advertisements Regulations 1988 (as amended)~~ the Business Protection from Misleading Marketing Regulations 2008. They state that an advertisement is 'comparative' if it explicitly or by implication identifies a competitor or its goods or services.

(2) For the purposes of this Code, however, 'comparative advertising' extends beyond the narrow definition contained in the statutory regulations and covers comparisons of a more general kind where a competitor is not identified.

(3) Whilst only the courts can decide the precise meaning of the law, the following points may be helpful:

A comparative advertisement is acceptable if:

(a) it is not misleading

(b) it compares goods or services meeting the same needs or intended for the same purpose

(c) it objectively compares material, relevant, verifiable and representative features (which may include price)

(d) it does not create confusion between the advertiser and the competitor, or between their respective

trade marks, trade names, other distinguishing marks, goods or services

(e) it does not discredit or denigrate

(f) it does not take unfair advantage of a competitor's trade marks, trade names or other distinguishing marks, or of the designation of origin of competing products

(g) it does not present goods or services as imitations or replicas.

In addition:

(h) products with designation of origin may only be compared with other products with the same designation

(i) comparisons relating to special offers must indicate when the offer ends or, where appropriate, that the offer is subject to availability.

5.4.7 Identification of the advertiser

~~The identity of the advertiser must be made clear if advertising might otherwise be misleading~~

Note:

~~Viewers could be misled if, for example, advertising by a commercial company appeared to be part of a charity or public service campaign.~~

5.4.7 to be replaced by 5.4.11

5.4.8 Imitation

Advertisements must not mislead consumers about who manufactures the product

Annex Practice 13: Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

5.4.9 Testimonials

Testimonials or endorsements used in advertising must be genuine and be supported by documentary evidence. Fictitious testimonials must not be presented as genuine. ~~Any statement in a~~ Testimonials that is are likely to be interpreted as a factual claims must not mislead consumers ~~be substantiated~~.

Note:

In ambiguous cases it may be necessary to indicate, for example, that an advertisement features actors presenting the advertiser's opinion, or that those giving testimonials are employees or relatives of employees of the advertiser.

5.4.10 Endorsements

a) Advertisements must not display a trust mark, quality mark or equivalent without the necessary authorisation and must not claim that the advertiser (or any other entity referred to in the advertisement), the advertisement or the advertised product has been approved, endorsed or authorised by a public or private body if it has not or without complying with the terms of the approval, endorsement or authorisation

Annex practice 2: Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.

Annex practice 4: Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.

b) Advertisements must not falsely claim that the advertiser, or other entity referred to in the advertisement, 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

Annex practice1: Claiming to be a signatory to a code of conduct when the trader is not.

Annex practice 3: Claiming that a code of conduct has an endorsement from a public or other body which it does not have.

5.4.11 Identification of the advertiser

a) The identity of the advertiser must be made clear if advertising might otherwise be misleading

b) Advertisements must not create a false impression that the advertisers are acting as consumers or for purposes that do not relate to their trade, business, craft or profession

Annex practice 22: Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.

Note:

Viewers could be misled if, for example, advertising by a commercial company appeared to be part of a charity or public service campaign.

SECTION 6: HARM AND OFFENCE

Background:

(1) The rules in this Section (and in 7.3: Harm and Distress to Children) are intended to prevent advertising leading to harm. They are also to prevent advertising causing offence to viewers generally or to particular groups in society (for example by causing significant distress, disgust or insult, or by offending against widespread public feeling).

The ASA and BCAP will not act, however, where advertising is simply criticised for not being in 'good taste' unless the material also offends against generally accepted moral, social or cultural standards. Apart from freedom of speech considerations, there are often large and sometimes contradictory differences in views about what constitutes 'bad taste' or what should be deplored. Nevertheless, licensees may wish to make judgements about matters of taste in order to cater for their particular audiences.

(2) The use of humour may reduce the risk of offence in borderline cases. But where there is a risk of significant offence, humour will rarely help. Nor will it usually reduce the likelihood of harmful influence, particularly on children.

(3) There are additional rules about health, safety and social harm which apply to all advertising but which are focused on particular issues or categories of product or service (such as Driving Standards, Alcohol, Medicines, Food or Lotteries, Pools & Bingo).

6.1 Offence

Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards, or offend against public feeling

Notes:

(1) Although no list can be exhaustive, and values evolve over time, society has shared standards in areas such as:

(a) the portrayal of death, injury, violence (particularly sexual violence), cruelty or misfortune

(b) respect for the interests and dignity of minorities

(c) respect for spiritual beliefs, rites, sacred images etc

(d) sex and nudity, and the use of offensive language. (For further information see the ITC research reports Nudity in Television Advertising and the ASA/ITC report Delete Expletives. The latter reports on attitudes to swearing and offensive language.)

(2) The ASA does not judge cases simply, or even primarily, on the number of complaints received. It makes judgements about the likelihood of widespread offence as well as taking into account the possibility of deep, usually unintentional, offence to sections of the audience which have particular vulnerabilities.

(3) Particular circumstances can result in otherwise unobjectionable material causing offence. For example, a joke may cease to be acceptable if it seems to refer to a recent tragedy or if it appears close to a programme about a serious, related issue. On the other hand, if material might be on the edge of acceptability for a general audience but would be perfectly acceptable to, for

example, young adults, careful scheduling in 'youth' programmes may be sufficient to avoid causing offence.

(4) Whilst commercials for media products such as CDs and videos must not mislead about their content, any extracts from the products should not cause offence.

6.2 Violence and cruelty

(a) Advertisements must not encourage or condone violence or cruelty

(b) Gratuitous and realistic portrayals of cruel or irresponsible treatment of people or animals are not acceptable

Notes to 6.2:

(1) Careful judgements are needed in this area. 'Theatrical' violence (for example, the mayhem common in action/adventure films) is generally acceptable, as is violence which has a stylised 'cartoon' or slapstick quality. Problems are more likely to arise where the violence seems to take place in everyday life and to involve ordinary people. However, care should be taken to avoid giving young viewers the impression that copying wrestling, martial arts etc would be safe, harmless fun.

(2) Advertisements must not appear to condone people using violence or aggression to get their own way in everyday life.

(3) Jokes about or involving violence require care and will usually need to be distanced from everyday life by being, for example, in cartoon form.

(4) Scenes which would otherwise be inappropriate may be acceptable to the audience in, for example, charity advertising or newsreel footage in advertisements for news media.

(5) Timing restrictions are necessary for advertising featuring violence. See 7.4.6 (Distress) and 7.4.7 (Scheduling) below.

6.3 Use of animals in filming

Where the behaviour of animals has been controlled for the purpose of making an advertisement, licensees must not show it without satisfactory evidence that the animals were not killed or caused pain or distress

Note:

A vet or other qualified person must care for animals and be able to attest to their well-being during the making of commercials. The RSPCA's Guidelines for the Use of Animals in Advertising may also be helpful.

6.4 Personal distress

Advertisements must not, without good reason, contain material which is likely to cause serious distress to significant numbers of viewers

Notes:

(1) Any appeal to fear should be justified and proportionate. Only mild material is likely to be acceptable in demonstrating, for example, the risks in not buying life insurance. More disturbing material might be acceptable in, for example, road safety advertising. See also 8.2.11(a) (re Medicines etc) and 10.14 (re Doctrinal Advertising).

(2) Scenarios which might be distressing reminders of tragic personal experiences for significant numbers of viewers should be carefully judged. For example, at any given time, many viewers will be recently bereaved.

6.5 Protection of privacy and exploitation of the individual

With limited exceptions, living people must not be portrayed, caricatured or referred to in advertisements without their permission

Note:

Exceptions are made only for:

(a) advertisements for specific publications (books, films or specific editions of radio or television programmes, newspapers, magazines etc) which feature the person referred to in the advertisement. This is provided the reference or portrayal is neither offensive nor defamatory.

(b) generic advertising for news media. Prior permission is not required if it would be reasonable to expect that the individuals concerned would not object. If they do object, however, the advertising must be suspended immediately pending resolution of the complaint.

(c) advertisements where the appearance is brief and incidental, for example in a crowd scene.

6.6 Harmful or negative stereotypes

Advertisements must not prejudice respect for human dignity or humiliate, stigmatise or undermine the standing of identifiable groups of people

Notes:

(1) The ASA and BCAP recognise that the use of stereotypes is an inevitable part of establishing characters within the brief span of a TV commercial. But some stereotypes can be harmful or deeply insulting to the groups in question and care is needed that they do not condone or feed prejudice or perpetuate damaging misconceptions. The ASA and BCAP would not, however, object to the use of stereotypes which, though objectionable to a few people, seem generally acceptable to most members of the group in question as well as to the broader public.

(2) Mild comments or humour about many characteristics can be harmless but sensitivity is always needed. Acceptability may depend on whether the characteristic is simply a matter of personal choice and whether it is of relatively minor significance. For example, hairstyles or hobbies lie at the 'safer' end of the spectrum whilst characteristics such as accent, disability, nationality and skin colour are at or towards the 'sensitive' end. Even gentle humour involving the latter characteristics has significant potential for offence or distress.

(3) Anything which could encourage or condone the idea that some serious negative characteristic is associated with a particular group must be avoided.

(4) Particular sensitivity is required where the group in question is generally recognised to encounter prejudice. The kind of humour which may be acceptable in other contexts can seem patronising or demeaning in these cases.

(5) Care is needed with stereotypes of children to avoid the risk of taunting or bullying. Children who are 'different' physically or in their behaviour, ability or background must not be presented as unpopular or unsuccessful. Nor should they normally be presented as non-users of a product or service or unworthy of it. Even if an advertisement portrays only adults being stereotyped, an ill-judged stereotype could still be harmful to children (for example, by encouraging bullying).

(6) Experience has shown that well-meaning attempts by commercial advertisers to counter prejudice about, for example, race or disability can sometimes backfire. Appropriate guidance should be sought.

(7) Further background about public attitudes to stereotyping can be found in the ITC research report Boxed In.

6.7 Health and safety

Advertisements must not encourage or condone behaviour prejudicial to health and safety and advertisements must not use techniques that may directly harm viewers

Notes:

(1) This does not prevent responsible advertising for products and services which, used to excess or abused, could endanger health or safety.

(2) The use of proper safety equipment or working practices must not be mocked or discouraged.

(3) Tools, hazardous substances etc should normally be shown being used and stored in accordance with their manufacturers' instructions, relevant law and safety regulations.

(4) Where appropriate, licensees should seek appropriate 'best practice' advice relating to activities which can be dangerous, either in all circumstances or if undertaken without proper precautions. Relevant sources might be the codes of statutory bodies, statements of established public policy or published guidance from recognised independent safety organisations.

(5) Photo-Sensitive Epilepsy: See Ofcom's Guidance Note for Licensees on Flashing Images and Regular Patterns in Television.

6.8 Protection of the environment

Advertisements must not encourage or condone behaviour prejudicial to the environment

Notes:

(1) This does not prevent responsible advertising for products or services which may have adverse environmental impact in normal use or in their manufacturing processes.

(2) See also 5.2.6 (Environmental claims).

6.9 Sound levels in advertisements

Advertisements must not be excessively noisy or strident. Studio transmission power must not be increased from normal levels during advertising breaks

Note:

The peak level of sound at the studio output should not exceed +8dBm. To ensure that the subjective volume is consistent with adjacent programming, whilst also preventing excessive loudness changes, highly compressed commercials should be limited to a Normal Peak of 4 and a Full Range of 2–4 (measured on a PPM Type IIa, specified in BS6840: Part 10, Programme Level Meters). A fairly constant average level of sound energy should be maintained in transitions from programmes to advertising breaks and vice versa so that listeners do not need to adjust the volume. A perceived loudness meter may be useful where sound levels might cause problems.

SECTION 7: CHILDREN

Background:

(1) The ASA and BCAP are required to have special concern for the protection of children. The ASA and BCAP regard people of 15 and under as children.

(2) The rules in this Section can and should be applied flexibly, taking into account the vulnerabilities and capabilities of both the target age groups and other age groups which might see the advertising.

(3) Emulation, Fears and Misunderstandings is an ITC-commissioned independent review of research into the potential for television advertising to distress or harm children and into children's ability to understand the commercial objectives of advertising at different developmental stages.

7.1 MISLEADING ADVERTISING AND CHILDREN

7.1.1 Children's inexperience

Advertising must not take advantage of children's inexperience or their natural credulity and sense of loyalty

Notes:

(1) The rules in this Section should be read in conjunction with those in Section 5 (Misleading Advertising).

(2) Children often buy products whose advertising reflects their appeal to a wider audience (for example, snacks or computer games). For the purposes of this Code, the term 'product of interest to children' describes this wider category of products or services. 'Children's product' means a product of more or less exclusive interest to children.

7.1.2 Unrealistic expectations

Advertisements for products of interest to children must take account of the level of experience of those in the relevant age groups so as to avoid arousing unrealistic expectations

Notes:

(1) This rule is not relevant if the advertising is only broadcast when those children are unlikely to be watching. (For example, a commercial for a video game broadcast during a late-night film.)

(2) Children's ability to distinguish between straightforward product demonstrations and imaginative scenes varies with age and the two elements should normally be clearly distinguishable to the relevant age groups. ('Imaginative scenes' include, for example, fantasy sequences and shots of the real-life counterparts of toys such as dolls or model trains.)

(3) Children under four typically have little ability to distinguish between imaginative scenes and reality. Those over about 12 generally have adult skills in this area.

(4) Verbal or visual ambiguity which could mislead children must be avoided.

Slogans and comments

which adults will recognise as exaggeration or irony may be taken more literally by children. Care is therefore needed.

(5) Backgrounds, sets and special effects must not give the impression that a product includes more, or does more, than is the case.

(6) Quick cuts, unusual camera angles etc may confuse very young children.

(7) Where accessories to a children's product cost a significant amount, there should normally be no suggestion that they are essential for the enjoyment of the basic product.

(8) The chances of winning a prize, and the value of it, must not be exaggerated, bearing in mind the age and sophistication of the relevant age groups. Licensees should examine the rules of competitions etc to ensure they are reflected fairly in advertising.

7.1.3 Product characteristics

If advertisements for products of interest to children show or refer to characteristics which might influence a child's choice, those characteristics must be easy for children of the appropriate age to judge

Notes:

(1) This rule is not relevant if the advertising is only broadcast when such children are unlikely to be watching.

(2) If a child might reasonably expect particular parts or accessories to be included with a product but they are supplied separately, this must be made clear. If essential parts (such as batteries) are not included, this should also be explained.

(3) Demonstrations of toys etc should normally reflect accurately what a child would experience when using them. In particular, if a toy is shown moving, it should be clear whether it can move independently or must be hand operated. Where construction or kit toys are being demonstrated, it is acceptable to show the toys apparently assembling themselves without human help. However, if there is ambiguity about what the product can really do, it may also be necessary to show how the product is really put together.

(4) Where the size of toys etc may be a relevant factor, the actual size must be made easy to judge. This is often done by comparison with a familiar object of unambiguous size. The comparison must not be distorted by, for example, perspective.

(5) The speed of toy cars etc must not be exaggerated by, for example, the use of close-ups.

(6) The rule also applies to free promotional items and premium items. Where proofs of purchase are necessary, advertising should normally explain the number and type required.

7.1.4 Expensive toys

Except in the case of television services carrying advertising directed exclusively at non-UK audiences, advertisements for expensive toys, games and comparable children's products must include an indication of their price

Notes:

- (1) For this purpose, a product will not be regarded as 'expensive' if it, plus any essential accessories, are reasonably widely available at a retail price below a figure specified by ASA and BCAP. (At September 2002, this was £25 but is subject to change.)
- (2) Where a range of products is featured in an advertisement, only the most expensive item need be priced.
- (3) Where it is impossible to show a precise cost, because retail prices are likely to vary, an approximation is acceptable so long as it is presented as simply indicative. For example, 'Around £x' or 'Costs between £y and £z'.

7.1.5 Prices

Where advertising for a children's product contains a price, the cost must not be minimised by the use of words such as 'only' or 'just'

7.2 Food and Soft Drink Advertising and Children**Notes:**

1. The rules in 7.2 must be read in conjunction with the other rules in this Code, especially section 8.3, 'Food and Dietary Supplements'. For rules on the scheduling of HFSS product advertisements, please see the BCAP Rules on the Scheduling of Television Advertisements. References to food apply also, where relevant, to beverages.
2. The spirit, as well as the letter, of the rules in this section applies to all advertisements that promote, directly or indirectly, a food or soft drink product.
3. These definitions apply in rule 7.2:
- *Children* - refers to persons below the age of 16.
 - *Advertisements targeted directly at pre-school or primary school children* – advertisements that directly target pre-school or primary school children through their content as opposed to their scheduling. For rules on the scheduling of HFSS product advertisements, please see the BCAP Rules on the Scheduling of Television Advertisements.
 - *Licensed Characters* - those characters that are borrowed equities and have no historical association with the product.
 - *Equity Brand Characters* - those characters that have been created by the advertiser and have no separate identity outside their associated product or brand.
 - *HFSS products* - those food or drink products that are assessed as high in fat, salt or sugar in accordance with the nutrient profiling scheme published by the Food Standards Agency (FSA) on 6 December 2005. Information on the FSA's nutrient profiling scheme is available on the FSA website at: <http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>

7.2.1 Diet and lifestyle.

Advertisements must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle in children.

Notes:

- (1) This rule does not preclude responsible advertising for any products including those that should be eaten only in moderation.*
- (2) In particular, advertisements should not encourage excessive consumption of any food or drink, frequent eating between meals or eating immediately before going to bed.*
- (3) It is important to avoid encouraging or condoning attitudes associated with poor diets, for example, a dislike of green vegetables.*
- (4) Portion sizes or quantities of food shown should be responsible and relevant to the scene depicted, especially if children are involved. No advertisement should suggest that a portion intended for more than one person is to be consumed by a single individual or an adult's portion, by a small child.*
- (5) Advertisements for food should not suggest that an inactive or sedentary lifestyle is preferable to physical activity.*

7.2.2 Pressure to purchase

Note: Please see also 7.3 (Pressure to purchase)

(a) Although children may be expected to exercise some preference over the food they eat or drink, advertisements must be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases

Notes:

- (1) This extends to behaviour shown: for example, a child should not be shown asking for a product or putting it into the parent's trolley in the supermarket.*
 - (2) Phrases such as "Ask Mummy to buy you" are not acceptable.*
- (b) Nothing in an advertisement may seem to encourage children to pester or make a nuisance of themselves.
- (c) Advertisements must not imply that children will be inferior to others, disloyal or will have let someone down, if they or their family do not buy, consume or use a product or service.
- (d) Advertisements must neither try to sell to children by appealing to emotions such as pity, fear, loyalty or self-confidence nor suggest that having the advertised product somehow confers superiority, for example making a child more confident, clever, popular, or successful.
- (e) Advertisements addressed to children should avoid 'high pressure' and 'hard sell' techniques, i.e. urging children to buy or persuade others to buy. Neither the words used nor the tone of the advertisement should suggest that

young viewers are being bullied, cajoled or otherwise put under pressure to acquire the advertised item.

(f) If an advertisement for a children's product contains a price, the price must not be minimised by the use of words such as "only" or "just".

Note:

Products and prices should not be presented in a way that suggests children or their families can easily afford them.

7.2.3 Promotional offers

Promotional offers should be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

(a) Advertisements featuring promotional offers linked to food products of interest to children must avoid creating a sense of urgency or encouraging the purchase of excessive quantities for irresponsible consumption.

(b) Advertisements should not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Advertisements featuring a promotional offer should ensure a significant presence for the product.

(c) Advertisements for collection-based promotions must not seem to urge children or their parents to buy excessive quantities of food. They should not directly encourage children only to collect promotional items or emphasise the number of items to be collected. If promotional offers can also be bought, that should be made clear. Closing dates for collection-based promotions should enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time. There should be no suggestion of "Hurry and buy".

(d) If they feature large pack sizes or promotional offers, e.g. "3 for the price of 2", advertisements should not encourage children to eat more than they otherwise would.

(e) The notion of excessive or irresponsible consumption relates to the frequency of consumption as well as the amount consumed.

7.2.4 Use of characters and celebrities

Licensed characters and celebrities popular with children must be used with a due sense of responsibility. They may not be used in HFSS product advertisements targeted directly at pre-school or primary school children.

Notes:

(1) Advertisements must not, for example, suggest that consuming the advertised product will enable children to resemble an admired figure or role-model or that by not doing so children will fail in loyalty or let someone down.

(2) This prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.

(3) Persons such as professional actors or announcers who are not identified with characters in programmes appealing to children may be used as presenters.

(4) Celebrities and characters well-known to children may present factual and relevant generic statements about nutrition, safety, education, etc.

7.3 PRESSURE TO PURCHASE

7.3.1 Direct exhortation

Advertisements must not directly advise or ask children to buy or to ask their parents or others to make enquiries or purchases

Annex practice 28: Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.

7.3.2 Unfair pressure

Advertisements must not imply that children will be inferior to others, disloyal or will have let someone down, if they or their family do not use a particular product or service

7.3.3 Children as presenters

Children in advertisements must not comment on product or service characteristics in which children their age would not usually be interested

7.3.4 Direct response

Advertisements which offer to sell products or services by mail, telephone, email, internet or other interactive electronic media must not be aimed at children

7.4 HARM AND DISTRESS

7.4.1 Mental harm

Advertisements must not contain material which could lead to social, moral or psychological harm to children

Note:

Negative or anti-social attitudes reflected in commercials may endorse similar attitudes amongst children. For example, advertisements should not:

- (a) present criminal activities in a way which is likely to condone comparable behaviour in real life. (Scenarios which are clearly comedy or drama do not generally cause problems.)*
- (b) disparage education, high personal standards or caring qualities*
- (c) appear to condone boorish, greedy or anti-social behaviour*
- (d) present aggression as admirable or suggest it is an acceptable means of resolving problems or getting one's own way in real life.*

7.4.2 Physical harm

Advertisements must not contain material which could lead to physical harm to children

Notes:

This guidance indicates particular areas of risk but is not exhaustive.

(1) Harmful emulation: Children sometimes copy dangerous or anti-social behaviour shown in advertisements. Experience and research have indicated that the following can be contributory factors:

- a) the behaviour is easy to copy (ie without special preparations)*
- b) the scenario seems realistic rather than fantasy; live action rather than cartoon*
- c) the behaviour and the hero are 'cool'*
- d) the product or advertising appeals to the relevant age groups.*

Even if no children appear in an advertisement, it may be possible for examples set by adults to encourage or condone dangerous or anti-social behaviour by children. Experience has also shown that even advertisements with no obvious youth appeal can trigger emulation if the action itself is particularly intriguing. Care should be taken that dangerous behaviour will not be seen as a challenge or dare.

Licensees should balance the risk of the behaviour (or similar actions) actually being copied by children against how serious the consequences could be if there was emulation. Clearly, the less serious the potential consequences, the more leeway is available. For further information see Copycat Kids? an ITC-commissioned report on research into emulation risks.

(2) Safety: Advertisements must not encourage or condone potentially dangerous behaviour and should not discourage children from following established safety guidelines. The advice of relevant safety organisations should be sought where there is doubt.

Particular care should be taken with:

- a) road safety for children as pedestrians, cyclists or passengers*
- b) domestic situations (where most accidents happen)*
- c) medicines and chemicals, or items which could be mistaken for them*
- d) dangerous machinery, fire, matches etc. (Because children may be particularly attracted to what other children are seen doing in commercials, they should not normally be shown using products which are not intended for them and which can be dangerous.)*
- e) playing in or near water, or digging 'caves' in sand dunes etc.*

(Children have died when caves have collapsed.)

(3) Clubs: Licensees should normally obtain satisfactory evidence that children's clubs promoted in advertising are responsibly supervised.

7.4.3 Bullying

Advertisements must not encourage or condone bullying

Notes:

(1) Except in appropriate charity or public service advertising, advertisements should not normally show scenes of bullying, taunting or teasing, or of children being ostracised or criticised behind their backs.

(2) Care is needed with stereotypes of children to avoid the risk of bullying. Children who are 'different' physically or in behaviour, ability or background must not be presented as unpopular or unsuccessful. Nor should they normally be presented as non-users of a product or service or unworthy of it. However, even if an advertisement portrays only adults being stereotyped, an ill-judged stereotype could still be harmful to children (for example, by encouraging bullying).

7.4.4 Vulnerability

Advertisements must neither encourage children to go off alone or with strangers nor show them doing so

7.4.5 Sexuality

Advertisements must not portray children in a sexually provocative manner

Note:

Scenes in which children are not fully clothed require careful consideration.

7.4.6 Distress

Advertisements likely to cause distress to children must not be shown in children's programmes, or in programmes likely to be seen by significant numbers of younger children

Notes:

(1) Distress may be caused, particularly to younger children, by frightening material, extreme appeals to the emotions etc. However, there can be cases where a very few children, because of their individual circumstances or experiences, may be upset by material which would not affect the vast majority of children. In those cases, the ASA and BCAP would not be justified in taking action. Experience has shown that children up to four years can be upset if their feelings of security are undermined by, for example, the use of 'morphing' (computer effects) to distort real human faces grotesquely. Young children often sit close to the screen and this can magnify the impact of disturbing material.

Some children up to about ten years old may also be distressed by, for example, aggression or inter-personal violence which seems 'real'.

(2) Advertisements likely to distress children will require timing restrictions whether or not the campaign is intended for a young audience. (See 7.3.7)

7.4.7 Use of scheduling restrictions

Appropriate timing restrictions must be applied to advertisements which might harm or distress children of particular ages or which are otherwise unsuitable for them

Notes:

(1) Please also see the BCAP Rules on the Scheduling of Advertising.

(2) The following advice reflects decisions and guidance derived from past cases including those previously published in Ofcom Advertising Complaints Reports.

The ASA and BCAP distinguish between two kinds of advertising problem in this area:

- Inappropriate advertising – advertising which is regarded as relatively harmless but would be considered inappropriate by many parents in either children’s programmes or family viewing time*
- Harmful advertising – advertising (rarely encountered) which could be a direct harmful influence on children or teenagers, or could be seriously distressing to younger children.*

Inappropriate advertising

The ASA and BCAP believe that parents should feel confident that they can allow even the youngest children to watch, unaccompanied, programmes made specifically for children. Excluding advertising from breaks in or around these programmes, or from children’s channels, is often called an ‘Ex Kids’ restriction. It is a suitable restriction for advertising which is inappropriate for children up to about eight years old (as long as it is not likely to be harmful or distressing to them). Even mildly sexual or aggressive content must be excluded.

If advertising is inappropriate for children over eight, Ex Kids may not be sufficient.

The following may be useful in considering which timing restrictions are appropriate:

- Inappropriate for children under eight: Consider Ex Kids*
- Inappropriate for children over eight: Consider further restriction*

Harmful Advertising

When an advertisement has been tested against the rules in 7.3 and a judgement has been made that it could be a harmful influence or could cause distress to particular age groups, a more stringent restriction is required than for advertising which is simply ‘inappropriate’. A restriction which will minimise the chances of those in the relevant age groups seeing the advertising is needed. (Even conscientious parents cannot, in practice, control their children’s viewing of advertising because, unlike programmes which are scheduled, advertisements appear unpredictably.)

Once the difficult judgement has been made that there is a significant risk of harm or distress, the choice of an appropriate restriction can be based on children’s and teenagers’ viewing patterns.

In these fairly uncommon cases, the following guidance may be helpful in minimising the chance of the identified age group seeing the advertising:

- *Ex Kids restriction* *Will avoid most children up to 4 years old*
- *Post 9pm restriction* *Will avoid most 5-8 year olds*
- *Later restriction (eg post 11pm)* *Will avoid most 9-12 year olds*

Where a realistic risk of harm to those over 12 years old is perceived, consideration will need to be given to whether the advertising should be shown at all.

Making judgements

In judging the suitability of a timing restriction, the ASA and BCAP will take account of the seriousness of any potential consequences, the realistic likelihood of a problem arising, and the age of the children likely to be affected.

The ASA and BCAP acknowledge that it is not easy to predict the reactions of children of particular ages and recognise that cases must be judged on their individual merits.

Note: Specific Scheduling Restrictions

See the BCAP Rules on the Scheduling of Television Advertisements for mandatory scheduling restrictions which relate to young viewers and which apply to all advertising in the following categories:

- (a) alcoholic drinks and liqueur chocolates*
- (b) condoms*
- (c) lotteries, pools or bingo*
- (d) matches*
- (e) medicines, vitamins or other dietary supplements and including:*
 - 1. advertising in any category in which children are shown having any of these products administered to them*
 - 2. advertising for products which cannot easily be distinguished from a medicine or where the advertising itself could cause such confusion*
- (f) merchandise based on children's programmes*
- (g) personalities or other characters (including puppets etc) who appear regularly in a current or recent children's programme on any UK television channel. Restrictions apply where such characters present or endorse products or services of particular interest to children. (The restrictions do not apply to public service advertisements or to characters specially created for advertisements)*
- (h) religion, faith or systems of belief*
- (i) sanitary protection etc*
- (j) slimming products, treatments or clinics*
- (k) 15- and 18-rated films and videos.*
- (l) HFSS food or soft drink products*

SECTION 8: MEDICINES, TREATMENTS, HEALTH CLAIMS AND NUTRITION

Background:

The rules in this section are designed to ensure that advertising for medicines and other treatments receive the necessary high level of scrutiny. This section also covers claims relating to the nutritional, therapeutic or prophylactic effects of products, including food, toiletries and cosmetics. Independent expert advice will usually be needed in assessing advertising which is subject to this Section. (See 8.1.1 below.)

Medical Advisory Panel

Clearcast ~~The Broadcast Advertising Clearance Centre (BACC)~~ retains a panel of eminent consultants to advise it on health and medical aspects of advertising. Members are appointed after consultation with the leading medical professional bodies. Licensees may also consult the panel but will be responsible for the costs involved. Licensees should initially contact Clearcast ~~the BACC~~ if they wish to make use of this facility. The ASA and BCAP may seek a further medical opinion if there is a significant challenge to an advertisement that has been accepted by a licensee on the advice of a member of the panel.

8.1 GENERAL

8.1.1 Assessment of claims

Licensees must seek appropriate independent medical advice where this is necessary for a proper assessment of claims

8.1.2 Impressions of professional advice and support

The following are not acceptable in advertisements for products or treatments within the remit of Section 8:

(a) presentations of doctors, dentists, veterinary surgeons, pharmaceutical chemists, nurses, midwives etc, which give the impression of professional advice or recommendations

(b) statements giving the impression of professional advice or recommendation by people who are presented, whether directly or by implication, as being qualified to give such advice or recommendation

Note to 8.1.2(b):

In ambiguous cases, it may be necessary to make clear that the presenter is not a professionally qualified person.

(c) references to approval, recommendation of, or preference for, any relevant product or its ingredients or their use by the professions referred to in (a) above

8.1.3 Medical or health advice given remotely

(a) Licensees may only accept advertising for services offering remote personalised advice on medical or health matters where all staff who provide such advice are subject to regulation by a statutory or recognised medical or health professional body

(b) Services that offer to prescribe or treat remotely may not be advertised

Notes to 8.1.3:

(1) 'Remotely' includes by phone, post, internet, email and fax.

(2) This does not prevent advertising offering general information on health matters.

(3) The ASA and BCAP maintains a list of the statutory and professional bodies covered by this rule and will consider proposals for amendments or additions to the list.

8.1.4 Encouragement of excess

No advertisement may encourage indiscriminate, unnecessary or excessive use of products within the remit of Section 8

8.1.5 Tonic

Unless authorised by its product licence, the word 'tonic' is not acceptable in advertisements for products making health claims. Claims must not suggest that a product has tonic properties

Note:

This does not prevent the use of the word 'tonic' in the description 'Indian tonic water' or 'quinine tonic water'.

8.2 MEDICINAL PRODUCTS AND TREATMENTS

Notes:

(1) With the introduction of new or changed products, the diverse licensing requirements of the Medicines Act 1968 and changes in medical opinion on particular issues, this Code cannot provide a complete guide to required standards in relation to health claims or to the advertising of particular products or classes of medicines and treatments. The general principles governing the advertising of medicines, treatments and health claims are set out below. These also apply, where relevant, to veterinary products and services.

(2) EC Council Directive 92/28/EEC (codified under Title VIII of Directive 2001/83/EC)

The Directive concerns 'The Advertising of Medicinal Products for Human Use' and has been implemented in the UK by The Medicines (Advertising) Regulations 1994 and The Medicines (Monitoring of Advertising) Regulations 1994 (both as amended). The ASA is under an obligation to consider

complaints about breaches of Regulation 9 of the Advertising Regulations, and these have been incorporated in the rules below.

(3) Medicines Act 1968

Advertisements for products subject to licensing under the Medicines Act 1968 must comply with the requirements of the Act, Regulations made under it and any conditions contained in the current marketing authorisation.

(4) Directive 2001/82/EC as amended deals with veterinary medicinal products and its provisions have been implemented in the Veterinary Medicines Regulations 2005, which contain requirements for the advertising of such products.

8.2.1 Unacceptable products and services

Advertisements for the following are not acceptable:

(a) medicinal products or treatments available only on prescription (POM)

(b) products for the treatment of alcohol and substance misuse or dependence

Note to 8.2.1(b):

An exception is made for smoking deterrents.

(c) hypnosis-based procedures (including techniques commonly referred to as hypnotherapy), psychiatry, psychology, psychoanalysis and psychotherapy

Note to 8.2.1(c):

An exception is made for clinics and institutions and certain types of publications, where these have been approved by BCAP after consulting its medical advisors.

(d) services that offer to prescribe or treat remotely (see 8.1.3(b))

Teleshopping for the following is not acceptable:

(e) medicinal products for humans that are subject to a marketing authorisation within the meaning of Directive 2001/83/EC as amended by Directive 2004/27/EC and on the General Sale List (GSL), available as a pharmacy medicine (P) or as a prescription-only medicine (POM)

(f) veterinary medicinal products that are subject to a marketing authorisation within the meaning of Directive 2001/82/EC as amended by Directive 2004/28/EC and are available as an authorised veterinary medicine on the General Sales List (AVMGSL), a non-food animal medicine from a veterinarian, pharmacist or suitably qualified person or as a prescription-only medicine from a veterinarian (POM-V) or from a veterinarian, pharmacist or suitably qualified person (POM-VPS)

(g) medical treatments for humans or animals

8.2.2 Homeopathic medicinal products

(a) Only homeopathic medicinal products which are registered in the UK may be advertised

(b) The only information which may be included is that which is allowed to appear on product labelling. Advertisements may not, therefore, include medicinal or therapeutic claims or refer to a particular ailment

Note to 8.2.2:

This rule incorporates the requirements of EC Directive 2001/83/EC (as amended by EC Directive 2004/27/EC) on Medicinal Products For Human Use.

8.2.3 Products without a marketing authorisation

No medicinal claims may be made for products that do not hold a marketing authorisation under the Medicines Act 1968

(Registered homeopathic medicinal products are dealt with separately at 8.2.2 above)

8.2.4 Mandatory information

Advertisements for medicinal products must include the following information:

(a) the name of the product

(b) the name of the active ingredient, if it contains only one

(c) the indication (ie what the product is for)

(d) wording such as 'always read the label' or 'always read the leaflet' as appropriate

8.2.5 Unacceptable references

(a) Advertisements must not suggest that a product is special or different because it has been granted a marketing authorisation. Nor may they contain any references to the European Commission or the Medicines and Healthcare Products Regulatory Agency (MHRA) unless the MHRA requires it

(b) No advertisement may suggest that a medicinal product is a food, cosmetic or other consumer product

(c) Advertisements for medicinal products must not offer to donate money to charity. (See 11.3.6(f))

8.2.6 Conditions requiring medical attention

No advertisement may give the impression that a medical consultation or surgical operation is not necessary for conditions for which qualified medical advice should be sought (either instead of self-treatment or prior to it), in particular by offering a diagnosis or by suggesting treatment by post, fax or telephone.

Note:

This does not prevent advertising for spectacles and contact lenses.

8.2.7 Self diagnosis

No advertisement for a medicinal product may contain any description or case history which could lead to a wrong self-diagnosis

8.2.8 Guarantee of efficacy

No advertisement for a medicinal product may claim that its effects are guaranteed

Note:

This does not prevent the offering of refunds, providing that there is no suggestion that efficacy is guaranteed.

8.2.9 Cure

Unless allowed by a marketing authorisation, words, phrases or illustrations that claim or imply the cure of any ailment, illness, disease or addiction, as distinct from the relief of its symptoms, are unacceptable

Annex practice 17: Marketers must not falsely claim that a product is able to cure illness, dysfunction or malformations.

8.2.10 Claims of recovery

No advertisement for a medicinal product may refer in improper, alarming or misleading terms to claims of recovery

8.2.11 Appeals to fear and exploitation of credulity

(a) Advertisements must not, without good reason, make viewers anxious that they may be suffering from disease or ill-health or might do so if they do not respond to the advertising

(b) No advertisement may falsely suggest that any product is necessary for the maintenance of physical or mental health, whether by people in general or by particular groups, or that health could be enhanced by taking the product or affected by not taking the product

8.2.12 Side effects

No advertisement for a medicinal product may suggest that it has no side effects

Note:

It is acceptable to refer to the likely absence of a specific side effect eg 'unlikely to cause drowsiness'.

8.2.13 Comparisons

No advertisement for a medicinal product may suggest that its effects are better than, or equivalent to, those of another identifiable medicinal product or treatment

8.2.14 'Natural' products

No advertisement for a medicinal product may suggest that its safety or efficacy are due to it being 'natural'

8.2.15 Medicines and children

No advertisement for a medicinal product or treatment may be directed at people under the age of 16

Note:

See also Section 7 for additional rules about advertising for products or services likely to interest children and BCAP's Rules on the Scheduling of Advertising for scheduling restrictions.

8.2.16 Unacceptable images

No advertisement for a medicinal product may use in improper, alarming or misleading terms images of changes in the human body caused by disease, injury or a medicinal product

8.2.17 Celebrity testimonials and presentations

No advertisement for a medicinal product or treatment may include a testimonial by a person well known in public life, sport, entertainment etc, or be presented by such a person

8.2.18 Analgesics

A 'tension headache' is a recognised medical condition and analgesics may be advertised for the relief of pain associated with this condition. However, no simple or compound analgesic may be advertised for the direct relief of tension. There must be no references to depression

8.2.19 Smoking deterrents

Advertisements for smoking deterrents:

- (a) must make clear that the indispensable factor in giving up smoking is will-power and that the products are no more than an aid to breaking the habit
- (b) must not claim that smoking is made safer whilst the habit is being reduced

Note to 8.2.19:

Advertisements for smoking deterrents must be approved by Clearcast's the BACC's Medical Advisory Panel who will only give clearance to products that appear to offer genuine assistance in giving up smoking.

8.3 Food and dietary supplements

Notes:

(1) The rules in 8.3 must be read in conjunction with the relevant legislation including the Food Labelling Regulations 1996 (as amended) and especially Schedule 6. They apply to all advertising for food products. If an advertisement is targeted at children, Section 7 of this Code also applies. For HFSS product advertisements scheduled in and around programmes of particular appeal to children, please see the BCAP Rules on the Scheduling of Television Advertisements.

(2) Public health policy increasingly emphasises good dietary behaviour and an active lifestyle as a means of promoting health. Commercial product advertising cannot reasonably be expected to perform the same role as education and public information in promoting a varied and balanced diet but should not undermine progress towards national dietary improvement by misleading or confusing consumers or by setting bad examples, particularly to children. Advertisements for food should not suggest that an inactive or sedentary lifestyle is preferable to physical activity.

(3) The spirit, as well as the letter, of the rules in this section applies to all advertisements that promote, directly or indirectly, a food or soft drink product.

8.3.1 Accuracy in food advertising

(a) Nutrition claims (e.g. "full of the goodness of vitamin C") or health claims (e.g. "aids a healthy digestion") must be supported by sound scientific evidence. Advertising must not give a misleading impression of the nutritional or health benefits of the product as a whole and factual nutrition statements should not imply a nutritional or health claim that cannot be supported. Ambiguous wording that could be understood as a nutritional claim must be avoided. For example, "goodness" should not be used as a synonym for "wholesomeness" and, if a claim relates to taste, that should be made clear, e.g. "It tastes good", not "It is good". The scientific meaning of the word "energy", i.e. calorific value, should not be confused with its colloquial meaning of physical vigour

(b) Nutritional claims and health claims should relate to benefits that are significant and relevant to groups likely to be strongly interested in the advertisement. Claims should be presented clearly and without exaggeration

(c) No nutritional or health claim may be used in HFSS product advertisements targeted directly at pre-school or primary school children

Notes:

(1) Advertisements targeted directly at pre-school or primary school children are advertisements that directly target pre-school or primary school children through their content as opposed to their scheduling. For rules on the scheduling of HFSS product advertisements, please see the BCAP Rules on the Scheduling of Television Advertisements.

(d) The fact that a food product is a good source of certain nutrients does not justify generalised claims of a wider nutritional benefit

Notes:

(1) Claims of nutritional or health benefits should be considered in the context of a balanced diet or lifestyle or both. For the avoidance of doubt, HFSS product advertisements may make nutritional or health claims in accordance with 8.3.1.

(2) A wide range of guidelines that offers best-practice advice for nutritional claims and healthy eating is available. For example, The Food Standards Agency's Guidelines for the Use of Certain Nutrition Claims in Food Labelling and Advertising include a recommendation to avoid "% fat free" claims (issued November 1999). Appropriate consideration and uniform application of such guidelines is needed from the relevant pre-clearance and adjudicatory bodies.

8.3.2 Excessive consumption

Advertisements must not encourage or condone excessive consumption of any food

Notes:

(1) Interpretation of this rule should be by reference to generally accepted nutritional advice. It would clearly not be inconsistent with shots of someone enjoying a chocolate bar; it would, however, preclude someone being shown eating whole boxes of chocolates in one sitting.

(2) Portion sizes or quantities of food shown should be suitable for the occasion and the people portrayed, especially if children are involved. Advertisements should not suggest that a portion intended for more than one person is to be consumed by a single individual or an adult's portion, by a small child.

(3) If they feature large pack sizes or promotional offers, e.g. "3 for the price of 2", advertisements should not encourage people to eat more than they otherwise would.

(4) The notion of excessive consumption relates to the frequency of consumption as well as the amount consumed.

8.3.3 Comparisons and good dietary practice

Advertisements must not disparage good dietary practice. Comparisons between products must not discourage the selection of options such as fresh fruit and vegetables, which accepted dietary opinion recommends should form a greater part of the average diet

Notes:

- (1) Advertisements should not seem to contradict or ignore good dietary practice.*
- (2) To reflect generally accepted good dietary practice, a reasonable variety of other foods should be shown if the advertised product is presented as part of a meal.*
- (3) Food products not intended as substitutes for meals should not be presented as such.*

8.3.4 Oral health

Advertisements must not encourage or condone damaging oral health care practices

Note:

For instance, advertisements must not encourage frequent consumption throughout the day, particularly of potentially cariogenic products such as those containing sugar. This rule has children's dental health particularly in mind.

8.3.5 Dietary supplements

- (a) Advertisements must not suggest that it is necessary or therapeutic for the average person to augment their diet or that dietary supplements can enhance normal good physical or mental condition
- (b) Advertisements must clearly establish those groups of people likely to benefit from a particular form of supplement

Note to 8.3.5(b):

Only certain groups are likely to benefit from particular vitamin or mineral supplements. They might include people on a restricted dietary regimen, those eating unsupplemented, low-energy diets, women of child-bearing age (particularly if they are planning to have a baby, are pregnant or lactating), growing children and some individuals over 50.

8.4 SLIMMING REGIMES & WEIGHT CONTROL PRODUCTS

8.4.1 People under 18

Advertisements for products or services which are subject to 8.4 must not:

- (a) be addressed to people under 18
- (b) use creative treatments likely to appeal particularly to people under 18
- (c) feature any personality who has a particular appeal to those under 18, or whose example they are likely to follow

Note to 8.4.1:

Please refer to Section 7 for additional rules about products or services likely to be of interest to children and to BCAP's Rules on the Scheduling of Advertising for scheduling restrictions. (The latter, however, do not apply to advertisements for calorie/energy-reduced foods and drinks, provided they are not presented as part of a slimming regime and provided the advertisements do not use the theme of slimming or weight control.)

8.4.2 Requirement for medical advice

Licensees must obtain suitably qualified independent medical advice on the safety and efficacy of products or services which are subject to 8.4. This advice must take into account:

- (a) whether there is reputable scientific evidence to support any claims
- (b) whether clinics and other establishments offering medically supervised treatment are run in accordance with General Medical Council guidelines

Note to 8.4.2:

This rule applies to slimming aids (including exercise products that make weight-loss or slimming claims), clinics and other establishments, diets, medicines etc.

8.4.3 Predictions of weight loss

Advertisements must not promise or predict specific weight loss for products or services in this category. Advertisements which refer to specific amounts of weight that have been lost by individuals must also state the period over which that loss was achieved. The rate and amount of weight loss must be compatible with accepted good medical and dietary practice and must be representative of the capabilities of the product or service

8.4.4 Low-calorie foods

In the following circumstances, advertisements for low-calorie foods and drinks must make it clear that the products only assist weight loss as part of a calorie/energy controlled diet:

- (a) if the products are presented as part of a slimming regime or
- (b) if the advertising uses a slimming or weight control theme

8.4.5 Obesity

Advertisements for products and services in this category, other than those for clinics and other establishments offering treatment under medical supervision, must not be directed at the obese or use testimonials or case histories referring to subjects who were or appeared to be obese before using the product or service advertised

Note:

Obese, for the purposes of this rule, means a Body Mass Index of 30 or above.

8.4.6 Underweight

Advertisements for products and services in this category must not suggest that to be underweight is acceptable or desirable. Where testimonials or case histories are used, they must not refer to subjects who are or appear to be underweight

Notes:

(1) Underweight, for the purposes of this rule, means a Body Mass Index of below 20.

(2) Licensees should also be aware that The Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997 may apply to some products. Where products do fall within the remit of the regulations, a number of provisions apply including:

(a) such foods may not be offered under any name other than

- 'total diet replacement for weight control' or

- 'meal replacement for weight control',

(b) advertisements for such foods may not refer to the rate or amount of weight loss that may result

from the use of the product, or to a reduction in the sense of hunger or an increase in the sense of satiety.

(3) Advertisements for Very Low Calorie Diets, those where daily kilo-calorie intake falls below 800, must also comply with the following conditions:

(a) they must advise users to 'consult your doctor' before embarking on the diet

(b) they must position the diet as a short-term measure only

(c) they must not use testimonials or specific case histories.

(4) In addition, licensees must seek independent medical advice on whether the proposed advertisement complies with the recommendations of the Government COMA Report No. 31, The Use of Very Low Calorie Diets.

SECTION 9: FINANCE AND INVESTMENT

Background:

(1) The rules in this Section largely draw attention to statutory regulation with which all advertising must comply. However, selecting the most appropriate financial products or services normally requires consumers to consider many factors and television advertising is not well suited to communicating large amounts of detail. It is not, therefore, an appropriate medium for advertising some particularly high risk or specialist investments or any financial products or services that are not regulated or otherwise permitted in the UK under FSMA.

(2) The Financial Services and Markets Act 2000 (FSMA) unifies much of the structure of financial regulation in the UK by replacing previous legislation and merging existing regulators into the Financial Services Authority (FSA).

(3) The FSA is the regulator for the financial services industry and regulates conduct of business, including advertising, for investment products. It also regulates the advertising of insurance, including the activities of insurance intermediaries (e.g. motor, home and travel insurers).

(4) The FSA is responsible for the regulation of most first charge mortgage lending and selling. Mortgages that are not regulated are those secured on non-UK land, business premises with less than 40% residential occupation, and second charge mortgages. The FSA's Financial promotion rules set out in Mortgage Conduct of Business Chapter 3 (MCOB 3) in the FSA Handbook apply to qualifying credit promotions as defined under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO) and the FSA Handbook glossary.

(5) Unsecured lending, other forms of secured lending and some other credit activities continue to be regulated by the Consumer Credit Act 1974 (as amended) and the Consumer Credit (Advertisements) Regulations 2004.

(6) In this Section, unless otherwise stated, the terms 'financial promotion', 'authorised person' and 'qualifying credit promotion' have the same meanings as in the FSMA and the FPO. Please note that the definition of a financial promotion is broad and includes, for example, advertising for deposits and insurance products.

9.1 Non-UK advertising

Advertisements for financial services which:

(a) are broadcast on Ofcom licensed services that are aimed exclusively at audiences in EU Member States other than the UK and

(b) are not subject to the financial promotion rules of the FSA

need not comply with Section 9. Instead they must comply with the laws and regulations of the relevant Member States

9.2 Legal responsibility

Financial promotions must comply with all legal and regulatory requirements

Notes:

(1) To quote the FSMA, a Financial Promotion is 'an inducement or invitation to engage in investment activity, which is communicated in the course of business'. It is, however, important also to refer to the FSA Handbook, in particular to the rules in Conduct of Business Chapter 3 (COB 3), MCOB and Insurance Conduct of Business Chapter 3 (ICOB 3).

(2) Legal advice, or general advice from the FSA, may be required concerning compliance with FSMA requirements. Please note that the FSA does not pre-approve promotions.

9.3 Misleading advertising

Background:

The ASA and BCAP will apply their usual standards to prevent misleading advertising (see section 5) and require any significant exceptions and qualifications to be made clear (see rule 5.2.3). In addition, Financial Promotions must be "clear, fair and not misleading" as required by the FSA Handbook. Where appropriate, the ASA and BCAP will seek advice from other regulators when investigating possible breaches of the rules in Section 9.

Unless advertisements subject to Section 9 are clearly addressed to a specialist audience and shown either on specialised financial channels or in breaks within appropriate financial programming, they must be considered to be addressing non-specialist audiences

Note:

No specialist knowledge should normally be required for a clear understanding of claims or references. For example, exceptions, conditions or expressions which would be understood by finance specialists must be avoided or explained if they would be unfamiliar to many viewers.

9.4 Direct remittance

Financial promotions must not invite the direct remittance of money

Notes:

(1) It must not be possible to buy 'off the screen' without further formality. There must always be an intermediate stage in which further information is supplied.

(2) See the BCAP Code for Text Services for exceptions to the rule for Ofcom-regulated text services.

9.5 Unacceptable categories

(a) Except on specialised financial channels, the following categories of advertising are not acceptable:

(1) advertisements for the issue of shares or debentures. Exceptions are made for advertisements announcing the publication of listing particulars or a prospectus in connection with an offer of shares or debentures to be listed on the London Stock Exchange or prospectuses approved for the purposes of the Prospectus Directive 2003/71/EC and permitted under FSMA.

(2) advertisements recommending the acquisition or disposal of an investment in any specific company other than an investment trust company listed on the London Stock Exchange

(b) Spread betting may be advertised as an investment on specialised financial channels or in specialised financial programming or on interactive or additional TV services (including text services) only. Spread betting advertisements must comply with the gambling rules (see rule 11.10).

(c) Nothing may be advertised as an investment unless it is regulated or otherwise permitted under FSMA.

Notes to 9.5:

(1) Advertisements for Contracts for Differences (except Spread Betting) are acceptable on specialist financial channels provided the products are available only to clients who have demonstrated through appropriate pre-vetting procedure that they have relevant financial trading experience. (For this purpose, a "specialised financial channel" is an Ofcom licensed channel whose programmes, with few exceptions, are likely to be of particular interest only to business people or finance professionals.)

(2) In this Code, "Spread Betting" and "Contract for Differences" have the same meanings as in the current glossary to the FSA Handbook.

Note to 9.5(c):

Any advertising which implies that, for example, a collectors' item or some other unregulated product or service could have investment potential would normally be unacceptable. ('Investment' is used in its colloquial sense in this note.)

9.6 Financial promotions

Subject to 9.5(a), financial promotions are acceptable if:

(a) they have been approved by an 'authorised person' as defined in the FSMA or

(b) they are exempt as set out in COB 3.2.5R, MCOB 3.2.5R and ICOB 3.3.6R

Note to 9.6:

Advertising by a general insurance intermediary need not be approved by an authorised person if it is a generic promotion under the FPO. (This is usually where the advertising does not identify any particular insurer, insurance intermediary or product, so it will usually apply where the financial promotion refers generally to product types).

9.7 Savings and deposits

(a) References to interest on savings must be accurate at the time of transmission and the advertising must be modified immediately if the rate changes

(b) Calculations of interest must not be based on significant unstated factors

Note to 9.7(b):

It may be necessary to refer to factors such as a minimum deposit, minimum deposit period or minimum period of notice for withdrawal.

(c) Advertisements must make clear whether interest is gross or net of tax

(d) Where the interest rate is variable, this must be stated

(e) Where the investment returns of savings products are compared (eg a unit trust is compared with a bank deposit) any significant differences between the products must be explained

(f) Advertisements subject to Section 9 must comply with Code of Conduct on the Advertising of Interest Bearing Accounts which is published jointly by the Building Societies Association and the British Bankers' Association

9.8 Lending and credit

The advertising of most credit or hire services is acceptable only where the advertiser complies with the Consumer Credit (Advertisements) Regulations 2004 and the Consumer Credit Act 1974 (as amended). The advertising of mortgages regulated by the FSA and secured loans of FSA regulated lenders is only acceptable where the advertiser complies with the FSMA and the FSA Handbook.

Notes:

(1) Credit advertisements that are not qualifying credit promotions must comply with Section 46 of the Consumer Credit Act and Regulations made under it. Where there is doubt about their applicability or interpretation, advice should be sought from the appropriate Trading Standards Department. Such advertisements that involve distance marketing must also comply with the Financial Services (Distance Marketing) Regulations 2004. Other financial advertisements that are distance marketed will be covered by the FSA Handbook.

(2) Qualifying Credit Promotions must comply with the requirements imposed by the FSA Rules contained in MCOB 3.

(3) Please note the Guidance for Debt Management Companies and other guidance issued by the Director General of Fair Trading.

9.9 Financial publications

Advertisements for publications (whether electronic or on paper) must make no recommendations about specific investments

SECTION 10: RELIGION, FAITH AND SYSTEMS OF BELIEF

Background:

(1) BCAP is concerned that the power of television advertising should not be used in ways which could have damaging consequences. These rules seek a balance between freedom of speech and other competing social concerns and objectives. They aim:

a) to reduce the risk of damage to the inter-group relations that are essential to a successful pluralist society

b) to protect the young and safeguard the right of parents to take responsibility for their children's moral and philosophical education without undue interference

c) to protect viewers who are emotionally vulnerable for personal reasons, such as sickness or bereavement

d) to deny the persuasive power and emotional impact of television advertising to potentially harmful or coercive groups.

(2) Neither BCAP or the ASA nor Ofcom or its licensees would be entitled to assess the acceptability of particular organisations by making subjective judgements about their values. The criteria for the acceptability of advertisers are, therefore, objective tests and acceptance or disqualification of an organisation is not an indication of approval or disapproval of the organisation or its objectives or activities.

(3) Licensees should supplement information provided by prospective advertisers with any enquiries of their own which are necessary to ensure compliance with these rules.

(4) For convenience, the terms 'doctrine' and 'doctrinal' are generally used to refer to all advertising subject to this Section of the Code (although BCAP recognises that they are not fully adequate words for the purpose).

(5) All doctrinal advertising must also comply with the rest of the Code. Attention is drawn particularly to Section 4 (Political and controversial issues). This includes a prohibition on advertising which shows partiality in matters of political controversy or current public policy and may be relevant because some moral or other issues which are clear-cut to some groups in society can be controversial within the wider community.

(6) Licensees who do not wish to carry any doctrinal advertising are free to adopt that policy so long as there is no unreasonable discrimination either against or in favour of particular advertisers. On the same even-handed basis, licensees may impose additional, generally applicable requirements which they consider necessary in the interests of viewers. (See Appendix 1, note(c))

10.1 Application of rules

The rules in Section 10 apply to:

(a) advertising by, or on behalf of, any organisation or individual whose objectives are or appear to be wholly or mainly concerned with religion, faith or other philosophies or beliefs

(b) any other advertising which appears to have a doctrinal objective

(c) advertising for commercial products or services which draw on or reflect doctrine

10.2 Unacceptable advertisers

No advertising is acceptable from or on behalf of any body which is subject to 10.1 and

(a) which practises or advocates illegal behaviour or

(b) whose rites or other forms of collective observance are not normally directly accessible to the public (see notes below) or

(c) which has been shown to apply unreasonable pressure on people to join or participate or to obstruct or penalise people who wish to leave or cease contact or

(d) which does not provide written assurances that no representatives will call on any respondent without prior arrangement. (See note below)

Notes to 10.2(b):

(1) For advertisers to qualify, their rites and collective observances should generally be physically accessible to the public without charges or unreasonable conditions being applied. There is a specific exemption under the Sex Discrimination Act for religious organisations to the extent that gender discrimination is necessary to comply with the doctrines or the religion or to avoid offending the religious susceptibilities of a significant number of the followers of the religion. In these circumstances, the fact that the public may not be able to participate fully in services would not normally disqualify the advertiser.

(2) The dates, times and venues of services should normally be publicised locally.

Note to 10.2 (d):

Advertisers should be reminded of the need to comply with current UK data protection legislation and that they should not disclose the names of respondents without their prior permission.

10.3 The occult, psychic practices and exorcism

With very limited exceptions, advertisements for products or services concerned with (a) the occult or (b) psychic practices are not acceptable

Notes:

(1) When appropriate, the ASA and BCAP will make exceptions for specific categories of publications which are of general interest.

[Exceptions published 1 November 2002] The ITC defined two categories of advertising which are exempt and which may therefore be advertised:

a) *Advertisements for tarot-based prediction services where:
the service is pre-recorded and this is explained in the advertising and at the start of the recording and
the service is for entertainment only and this is clear from the advertising and is explained at the start of the recording and
all references to tarot in the service and the advertising are qualified to make clear that it is not a “real” tarot service (e.g. “tarot-based reading” would be acceptable) and
the service does not contain any material which might feel threatening to callers, or which might harm, offend or distress them*

b) *Advertisements for books, newspaper or magazine articles and similar paper or electronic publications which refer to or discuss tarot without recommending or promoting it.*

(2) *For these purposes, ‘the occult’ includes, for example, invocation of spirits, tarot and attempts to contact the dead or demons.*

(3) *Products or services concerned with exorcism may not be advertised since they are concerned with the occult in the sense of being intended to counter it.*

(4) *Psychic practices include astrology, horoscopes, palmistry etc. An exception to part (b) of the rule has been made for the advertising of services (for example, typical newspaper horoscopes) which most viewers are likely to regard simply as entertainment and which offer only generalised comments that would clearly apply to large sections of the population. Such advertising must comply with the rules on misleading advertising in Section 5.*

(5) *Beyond Entertainment is an ITC-commissioned report on research which explored attitudes in this area, including the distinctions the public draw between the occult and psychic issues.*

10.4 Superstition

No advertisement may exploit the superstitious

10.5 Acceptable categories

Doctrinal advertising is acceptable only for the following purposes:

- (a) publicising events such as services, meetings or festivals
- (b) describing an organisation’s or individual’s activities or publicising their name or contact details
- (c) offering publications or merchandise

Note to 10.5:

Advertising which, while ostensibly for one of these purposes, conflicts with other requirements of these rules is not acceptable.

10.6 Fund-raising

Subject to 10.7, doctrinal advertisements must not include appeals for funds

10.7 Religious charities

Advertising for religious charities may include appeals for funds if the charities reliably demonstrate:

(a) that any proceeds will be devoted solely to the benefit of identified categories of disadvantaged third parties

(b) that the conveying of that benefit will not be associated with any other objective (eg proselytising)

Note to 10.7:

The advertising must also comply with 11.3 (Charity Advertising).

10.8 References to beliefs

Advertising must not be used to expound doctrinal beliefs nor suggest that viewers should change their behaviour or beliefs

Notes:

(1) References to doctrine must only be incidental to the acceptable purposes of advertising described

in 10.5. They must not be expressed in ways which suggest they are other than the advertiser's belief.

(2) Rule 6.1 (Offence) should be borne in mind when considering incidental references which might be offensive to those holding other views.

10.9 Services and ceremonies

Doctrinal advertisements must not appear to involve viewers in services or ceremonies

Note:

It is, however, acceptable to include brief extracts of ceremonies or services in ways which do not conflict with other rules.

10.10 Benefit claims

Testimonials and references to individual experiences or personal benefits associated with a doctrine are not acceptable

10.11 Counselling

No doctrinal advertisement may offer counselling

10.12 Denigration

No advertisement may denigrate other doctrines

Note:

Suggestions that, for example, a particular doctrine is the 'only' or 'true' one are not acceptable.

10.13 Vulnerable viewers

No advertisement may exploit children, or the hopes or fears of any other vulnerable category of viewer (eg the elderly, or those who are sick, separated or bereaved)

Note:

References to faith healing, miracle working and directly influencing the future are unlikely to comply with this rule.

10.14 Use of fear

No doctrinal advertisement may play on fear. References to the alleged consequences of not subscribing to a particular doctrine are not acceptable

10.15 Children and young people

(a) In general, no doctrinal advertising is acceptable if it is likely to appeal particularly to people under 18. Nor may it appear in breaks in or adjacent to programmes intended principally for them or likely to appeal particularly to them

(b) The only exception is advertising for publications, merchandise or other items provided there is no recruitment or fund-raising link

Note to 10.15:

Please also refer to 7.2.4 (Direct response advertising to children) and to the BCAP Rules on the Scheduling of Television Advertisements.

10.16 Identification

Doctrinal advertisements must make clear the identity of the advertiser and, where different, the body on whose behalf the advertisement is being broadcast

Note:

Where an organisation is known by more than one name, the one which is likely to be most familiar to viewers should normally be included. There is, however, no requirement to include titles to which the organisation objects.

10.17 Advertising on specialised religious channels

Notes:

(1) The ASA and BCAP accept that the characteristics and expectations of audiences for 'specialised religious channels' justify the relaxation of some rules for those channels.

(2) For these purposes, a 'specialised religious channel' is a television service licensed under section 235 of the Communications Act 2003 by means of a determination under Schedule 142, Part 4 paragraph 15 of the Act.

(3) Under 10.5 (Acceptable categories) the expounding of doctrine will be regarded as an acceptable purpose of advertising on these channels.

(4) The following rules do not apply to these channels:

(a) 10.8 (References to beliefs)

(b) 10.9 (Services and ceremonies) These must not, however, contain material which conflicts with other rules.

(c) 10.10 (Benefit claims)

(d) 10.15 (Children and young people) There must, however, be no recruitment or fund-raising link.

SECTION 11: OTHER CATEGORIES

Background:

This Section contains rules for a range of categories which can have implications for individuals or for society as a whole.

11.1 PREMIUM RATE TELEPHONE SERVICES

11.1.1

Advertisements that include a premium rate telephone number must comply with the PhonepayPlus Code of Practice

11.1.2

Premium rate services of a sexually explicit nature (ie those which operate on the 0909 dialling code) may not be advertised. An exception is made for premium rate voice services of a sexual nature, which may be advertised on encrypted elements of adult entertainment channels only

11.1.3

Advertisements for services (excluding live or virtual chat) that normally involve a call of at least five minutes must alert viewers that use of the service may involve a long call

11.2 DISTANCE SELLING

Notes:

(1) Distance selling includes home shopping by mail order, telephone order and orders placed through interactive television etc. The majority of distance selling contracts are subject to the Consumer Protection (Distance Selling) Regulations 2000 (as amended) and licensees should obtain written assurances that those advertising such contracts comply with the regulations. Licensees operating as teleshopping channels must ensure that they are operating in accordance with the regulations where they apply.

(2) BCAP has a number of additional rules for this category (see below) and these should be read in conjunction with 5.3.2(b) and (c) (the requirements for goods payable by instalments and delivery pricing).

(3) Rule 7.2.4 prohibits advertising that offers to sell goods or services to children by means of distance selling.

11.2.1

Before transmitting advertisements for goods or services offered by distance selling, licensees must make arrangements for enquirers to be given the

name and full postal address of the advertiser if this is not included in the advertisements

11.2.2

Licensees must be satisfied:

(a) that the advertiser is able to meet any reasonably foreseeable demand created by the advertising. Licensees operating as teleshopping channels must have access to adequate stocks to fulfil such demand.

(b) that adequate arrangements have been made for the protection of respondents' money (eg in the form of bonds or bank guarantees drawn up in favour of the licensee)

(c) that adequate arrangements exist for a responsible person to handle enquiries during normal business hours

(d) that samples of the goods are available for public inspection (e) that the advertiser is able to fulfil orders within 28 days unless particular circumstances make it reasonable to specify a longer period in the advertisement

(f) that the advertiser will refund money promptly and in full (but normally excluding return costs) if the buyer can show reasonable cause for dissatisfaction with their purchase or with delay in delivery

(g) that the advertisers do not send the goods advertised, or additional goods, without the authority of the recipient

(h) that advertisers who offer goods by distance selling methods can demonstrate or supply samples of the goods advertised to enable any claims to be assessed both before transmission (see 5.2.1) and in the event of subsequent investigation

11.2.3

If the advertiser is likely to send a representative to call on people who respond to the advertisement, either:

(a) that must be made clear in the advertising or

(b) the licensee must obtain an assurance that respondents will be informed in advance

11.3 CHARITIES

Notes:

- (1) Some viewers may be susceptible to emotive appeals for money or support and the following rules are designed to prevent the abuse of charitable impulses.*
- (2) In the case of charities with religious affiliations, Section 10 of the Code also applies.*
- (3) Section 4 (Political and Controversial Issues) may apply in some circumstances.*

11.3.1 Misrepresentation

Advertisements seeking donations for, or promoting the needs or objects of a charitable body ('charity advertising') must not misrepresent the body, its activities or the use to which donations will be put

Notes:

- (1) To ensure that an organisation is not misrepresenting its status or activities, licensees should normally seek details including, where appropriate, the advertiser's constitution, aims and objects, recent and current activities, audited accounts and the membership of its governing body.*
- (2) Licensees must seek assurances from charity advertisers that the response to their advertising, whether in cash or kind or services, will be applied solely to the purposes implied in the advertising.*
- (3) If, after investigation, licensees still have doubts about the integrity of an advertiser, they should consult BCAP before accepting advertising.*

11.3.2 Acceptable advertisers

Charity advertising is only acceptable from:

- (a) bodies recognised by the appropriate UK authorities as having charitable status
- (b) bodies based outside the UK which supply licensees with confirmation that they comply with all relevant legislation in their home countries

Note to 11.3.2(a):

Charities in England and Wales are registered by the Charity Commission. In Scotland, the Inland Revenue holds a publicly accessible Index of Scottish Charities. There is no equivalent index in Northern Ireland but the Inland Revenue provides recognised bodies with a letter confirming that status. (Neither registration of a charity with the Charity Commission nor recognition by the Inland Revenue indicates that the conduct of its affairs has been investigated and approved.)

11.3.3 Children

No fund-raising message may be addressed to children or be likely to be of particular interest to them

Notes:

(1) This does not, however, prevent advertising simply showing, for example, animals or children if these are the beneficiaries of the charity.

(2) See the BCAP Rules on the Scheduling of Television Advertisements for scheduling restrictions on charity advertising.

11.3.4 Ethical responsibility

Charity advertising must reflect a broad sense of ethical responsibility

Note:

These advertisements should:

(a) not suggest that anyone will lack proper feeling or fail in any responsibility through not supporting a charity

(b) not exaggerate the scale or nature of any social problem

(c) respect the dignity of those on whose behalf an appeal is being made

(d) treat with care and discretion any issues likely to arouse strong emotions.

Although viewers are generally more tolerant of potentially distressing images when the objectives of an advertisement are charitable, sensitivity is still required especially in relation to young viewers.

11.3.5 Comparisons

Advertisements must not include comparisons with other charities, non-charitable voluntary bodies or government aid agencies

11.3.6 References to charities in general advertising

(a) Advertisements by non-charity advertisers which promote the needs or objects of charitable bodies, or offer to assist them, are only acceptable if the bodies would be acceptable advertisers in their own right under 11.3.2

(b) Licensees must obtain evidence that the charities have agreed to the proposed advertising

(c) The advertising must not exaggerate the benefit to the charities

(d) Advertisements which offer to donate money to charity must:

(1) identify the charities which will benefit and

(2) explain the basis on which the amount to be donated will be calculated

(e) Offers to donate money must not depend on sales reaching a given level or be subject to any similar condition. If a target total is stated, any extra money must be donated on the same basis as contributions below that level

(f) Advertisements for medicinal products must not offer to donate money to charity

11.4 HOMEWORKING SCHEMES

11.4.1

Licensees must obtain full details of the scheme and must ensure that advertisements do not give a misleading impression of how it will work or of the likely remuneration

Notes:

(1) For example, any obligation on the homeworker to collect or deliver materials must be explained.

(2) Homeworking schemes are those in which participants, whether employees or not, take on work at or from home on behalf of someone else (for example, addressing envelopes).

11.4.2

No homeworking scheme may be advertised:

- (a) if it involves a charge for raw materials or components or
- (b) if the advertiser offers to buy goods made by the homeworker or
- (c) if a charge or deposit is required to obtain details of the scheme

11.5 INSTRUCTIONAL COURSES

(a) Advertisements offering courses of instruction in trades, or leading to professional or technical examinations, must not exaggerate the resulting opportunities for employment or remuneration

(b) Advertisements must not offer unrecognised qualifications

(c) Advertisements for correspondence schools and colleges, other than those accredited by the Open and Distance Learning Quality Council, are unacceptable except in circumstances approved by BCAP.

11.6 THE NATIONAL LOTTERY

Note:

National Lottery advertising is also subject to the Advertising and Sales Promotion Code of Practice approved by the National Lottery Commission.

Advertisements for the National Lottery:

- (a) must not be directed at people under 16 or use treatments likely to be of particular appeal to them

Note to 11.6(a):

Please refer to the BCAP Rules on the Scheduling of Television Advertisements for scheduling restrictions.

(b) must not feature any personality whose example children under 16 are likely to follow or who has particular appeal to audiences under that age

(c) must not show or encourage excessive or reckless playing

(d) must not present such products as an alternative to work or as a way out of financial difficulties

Note to 11.6(d):

Advertisers may however refer to other benefits of winning a prize.

11.7 INTRODUCTION AND DATING SERVICES

Note to 11.7:

Services operating through premium rate telephone numbers are also subject to the PhonepayPlus Code.

11.7.1

Advertisements for introduction and dating services:

(a) must not suggest that people without a partner are inadequate or unfulfilled

(b) must not contain material that appears to encourage or condone promiscuity

(c) must not be directed at people under 18

(d) must not imply a greater degree of matching of individual clients according to suitability than is the case

11.7.2

For advertising subject to 11.7, licensees must obtain an assurance that the advertiser gives clear advice on precautions to take when meeting people through introduction or dating services

Rule 11.8 ALCOHOLIC DRINKS

The spirit as well as the letter of the rules in this section apply whether or not a product is shown, referred to or seen being consumed. (See also rule 1.2).

Rule 11.8.1 applies to all advertising. 11.8.2 applies only to advertising for alcoholic drinks.

Where soft drinks are promoted as mixers, rules 11.8.1 and 11.8.2 apply in full.

Rule 11.8.1 – Rules which apply to all advertising.

11.8.1(a)

(1) Advertisements must not suggest that alcohol can contribute to an individual's popularity or confidence, or that refusal is a sign of weakness. Nor may they suggest that alcohol can enhance personal qualities.

(2) Advertisements must not suggest that the success of a social occasion depends on the presence or consumption of alcohol.

11.8.1(b)

Advertisements must not link alcohol with daring, toughness, aggression or anti-social behaviour.

11.8.1(c)

Advertisements must not link alcohol with sexual activity or success or imply that alcohol can enhance attractiveness.

11.8.1 (d)

Advertisements must not suggest that regular solitary drinking is acceptable or that drinking can overcome problems.

11.8.1(e)

Advertisements must neither suggest that alcohol has therapeutic qualities nor offer it as a stimulant, sedative, mood-changer or source of nourishment, or to boost confidence. Although they may refer to refreshment, advertisements must not imply that alcohol can improve any type of performance. Advertisements must not suggest that alcohol might be indispensable or link it to illicit drugs.

11.8.1 (f)

Advertisements must not suggest that a drink is to be preferred because of its alcohol content nor place undue emphasis on alcoholic strength. (This does not apply to low alcohol drinks. See 11.8.3).

11.8.1 (g)

(1) Advertisements must not show, imply or encourage immoderate drinking. This applies both to the amount of drink and to the way drinking is portrayed.

(2) References to, or suggestions of, buying repeat rounds of drinks are not acceptable. (Note: This does not prevent, for example, someone buying a drink for each of a group of friends. It does, however, prevent any suggestion that other members of the group will buy any further rounds.)

(3) Alcoholic drinks must be handled and served responsibly.

11.8.1(h)

Advertisements must not link drinking with the use of potentially dangerous machinery, with behaviour which would be dangerous after consuming alcohol (such as swimming) or with driving.

11.8.2 – Additional rules for alcohol advertisements.

11.8.2(a)

(1) Advertisements for alcoholic drinks must not be likely to appeal strongly to people under 18, in particular by reflecting or being associated with youth culture.

(2) Children must not be seen or heard, and no-one who is, or appears to be, under 25 years old may play a significant role in advertisements for alcoholic drinks. No-one may behave in an adolescent or juvenile way.

Notes: (1) See the exception in 11.8.2 (a)(3)

(2) In advertising for low alcohol drinks, anyone associated with drinking must be, and appear to be, at least 18 years old.

(3) There is an exception to 11.8.2 (a)(2) for advertisements in which families are socialising responsibly. In these circumstances, children may be included but they, and anyone who is, or appears to be, under 25 must only have an

incidental role. Nevertheless, it must be explicitly clear that anyone who appears to be under the age of 18 is not drinking alcohol.

11.8.2(b)

Advertisements for alcoholic drinks must not show, imply or refer to daring, toughness, aggression or unruly, irresponsible or anti-social behaviour.

11.8.2(c)

Advertisements for alcoholic drinks must not appear to encourage irresponsible consumption.

11.8.2(d)

Advertisements for alcoholic drinks must not normally show alcohol being drunk in a working environment.

11.8.2(e)

Alcoholic drinks must not be advertised in a context of sexual activity or seduction but may include romance and flirtation subject to rule 11.8.2 (a) (Youth appeal).

11.8.2 (f)

Advertisements for alcoholic drinks may contain factual statements about product contents, including comparisons, but must not make any other type of health, fitness or weight control claim.

11.8.3 – Low alcohol drinks.

Exceptions to 11.8.1 and 11.8.2 apply to advertisements for drinks containing 1.2% alcohol by volume or less so long as the low alcohol content is made clear. (The exceptions are not granted if the advertising might promote a product of higher alcoholic strength or might conflict with the spirit of the rules.)

The exceptions are:

(a) 11.8.2 (a)(2): Anyone associated with drinking must be, and appear to be, at least 18 years old.

(b) The advertisements need not comply with:

11.8.1 (f)

11.8.1 (g)(1) or (2)

11.9 DRIVING STANDARDS

Note to 11.9:

11.9.1 applies to any advertising which features or refers to driving. 11.9.2 contains additional rules for automotive advertising.

11.9.1 Rules for all advertising

No advertisement may encourage or condone dangerous, inconsiderate or irresponsible driving or motorcycling

Note:

This does not prevent flamboyant driving in scenes which are clearly fantasy or 'theatrical' so that the action is distanced from reality (eg scenes of driving mayhem in trailers for action films).

11.9.2 Automotive advertising

Advertisements for cars, motorbikes or other automotive products must not:

- a) encourage or condone fast or irresponsible driving nor
- b) refer to speeds over 70mph nor
- c) demonstrate power, acceleration, handling characteristics etc except in a clear context of safety. Any references to such characteristics must not imply excitement or competitiveness

Background to 11.9.2:

There is a public policy requirement that advertising for vehicles, fuels, accessories etc should be responsible and should not contribute to a culture of competitive, anti-social driving, especially amongst young drivers. Factors other than advertising play a major part in establishing driving culture but television advertising can be powerful and insistent and the way advertisers demonstrate their products may be particularly influential. Problems are more likely to be avoided if the guidance below is followed.

Notes:

- (1) The guidance does not apply to public service advertising about road safety.*
- (2) Highway Code: All driving which appears to be on public roads or in public places should normally comply with the letter and spirit of the Highway Code. Exceptions may be made where there is no indication that the setting is in the UK and the failure to comply would not, in real life, have direct safety implications (eg using fog lights when visibility is good). Sequences which are clearly fantasy (ie which would not be possible in reality) do not normally cause difficulties but care is needed where an advertisement features,*

however fancifully, driving behaviour which could be copied or which might condone other forms of bad driving.

(3) Power and speed: Advertising must not suggest that fast driving is exhilarating nor portray driving as if it were a competitive sport. Conversely, there must be no suggestion that driving safely or cautiously is staid or boring. There must be no suggestion that a vehicle is to be preferred because of its power or speed. Words like 'performance' can be ambiguous and care should be taken to make the meaning clear.

(4) Racing and rallying: Scenes of motor racing, off-road rallying etc rarely cause problems if they are clearly established as such and do not circumvent the spirit of this rule. For example, there should be no emotive references to the power of a rally car which shares the model name of a road car. Vehicles should normally be in racing livery and there must be no suggestion that standard production vehicles might be driven in a competitive way or are particularly suitable for fast driving. There should be no suggestion that competitive sport has been used in the development of increased power, speed etc in road cars (eg 'race-bred engines') but references to other improvements, such as reliability, in that context are harmless.

(5) Foreign settings: Where the setting of an advertisement is clearly a foreign country, driving may comply with less strict local regulations except where this might encourage dangerous emulation (eg motorcyclists riding without helmets) or would run counter to the spirit of this rule. There must be no references to,

or sequences showing driving at speeds in excess of UK limits.

(6) Off-road settings: It is normally acceptable to use a location which is unambiguously not a road or public place in order to demonstrate features of a vehicle when this could not be done within the constraints of the Highway Code. But the use of off-road locations must not circumvent the spirit of these guidelines, for example by showing aggressive driving.

Where such off-road sequences can be justified, it is not normally sufficient simply to indicate that a road has been closed to the public. The location should clearly be of a type which could not be accessible to general road users.

(7) Safety features: Whilst the relative benefits of a safety feature may be claimed, there must be no suggestion that a vehicle's safety features enable it to be driven in complete safety or to be driven faster than would otherwise be the case. When a special feature is to be demonstrated (such as anti-lock brakes or superior manoeuvrability) any sudden stop or manoeuvre should not normally be made necessary by the featured vehicle travelling too fast for the circumstances or being driven badly. Accidents should not be presented as being of little consequence.

11.10 GAMBLING

Notes to 11.10:

1) The rules in this section are designed to ensure that gambling advertisements are socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling.

2) The term “gambling” means gaming, betting, and participating in a lottery, as defined in the Gambling Act 2005, and spread betting. This section does not apply to the UK National Lottery. See Rule 11.6.

3) The Gambling Act does not apply outside Great Britain. Licensees should ensure that specialist legal advice is sought when considering advertising any gambling products in Northern Ireland or the Channel Islands.

4) Spread Betting may be advertised as an investment activity under the Financial Services and Markets Act (FSMA) 2000, the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and other FSA rules and guidance. Spread betting may be advertised on specialised financial channels or in specialised financial programming or on interactive or additional TV services (including text services) only (see Section 9 Rule 9.5). A “Spread Bet” is a contract for differences that is a gaming contract, as defined in the glossary to the FSA Handbook.

5) The rules in this section apply to advertisements for “play for money” gambling products and advertisements for “play for free” gambling products that offer the chance to win a prize or that explicitly or implicitly direct the consumer to a “play for money” gambling product, whether on-shore or off-shore.

6) For the purposes of this section, “children” are people of 15 and under and “young persons” are people of 16 or 17.

11.10.1 – Rules for all advertisements

Rule 11.6.1 is not intended to inhibit advertisements to counter problem gambling that are responsible and unlikely to promote a brand or type of gambling.

(a) Advertisements must not portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm.

(b) Advertisements must not suggest that gambling can provide an escape from personal, professional or educational problems such as loneliness or depression.

(c) Advertisements must not suggest that gambling can be a solution to financial concerns, an alternative to employment or a way to achieve financial security.

(d) Advertisements must not portray gambling as indispensable or as taking priority in life, for example over family, friends or professional or educational commitments.

(e) Advertisements must neither suggest peer pressure to gamble nor disparage abstention.

(f) Advertisements must not suggest that gambling can enhance personal qualities, for example that it can improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration.

(g) Advertisements must not link gambling to seduction, sexual success or enhanced attractiveness.

(h) Advertisements must not portray gambling in a context of toughness or link it to resilience or recklessness.

(i) Advertisements must not suggest gambling is a rite of passage.

(j) Advertisements must not suggest that solitary gambling is preferable to social gambling.

(k) Advertisements must not claim that products or services can facilitate winning in games of chance.

Annex practice 16: Claiming that products are able to facilitate winning in games of chance.

11.10.2 – Rules for gambling advertisements.

Advertisements for events or facilities that can be accessed only by entering gambling premises must make that condition clear.

Unless they portray or refer to gambling, rule 11.10.2 does not apply to advertisements for non-gambling leisure events or facilities, for example hotels, cinemas, bowling alleys or ice rinks, that are in the same complex as but separate from gambling events or facilities.

(a) Advertisements for gambling must not exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons.

(b) Advertisements for gambling must not be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture.

(c) No child or young person may be included in a gambling advertisement. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role. No-one may behave in an adolescent, juvenile or loutish way.

(d) Advertisements for family entertainment centres, travelling fairs, horse racecourses and dog race tracks, and for non-gambling leisure facilities that incidentally refer to separate gambling facilities e.g. as part of a list of facilities on a cruise ship, may include children or young persons provided they are accompanied by an adult and are socialising responsibly in areas that the Gambling Act 2005 does not restrict by age. Advertisements for a lottery

product may include children or young persons. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role.

(e) Advertisements that exclusively feature the good causes that benefit from a lottery and include no explicit encouragement to buy a lottery product may include children or young persons and they may be featured playing a significant role.

(f) Advertisements for gambling products must not exploit cultural beliefs or traditions about gambling or luck.

(g) Advertisements for gambling products must not condone or encourage criminal or anti-social behaviour.

(h) Advertisements for gambling products must not condone or feature gambling in a working environment. An exception exists for licensed gambling premises.

APPENDIX 1: STATUTORY FRAMEWORK FOR THE REGULATION OF BROADCAST ADVERTISING

Advertising Standards

- 1 The Communications Act 2003 requires Ofcom to set, and from time to time review and revise, codes containing such standards for the content of television and radio services licensed under the Broadcasting Acts 1990 and 1996 as appear to Ofcom to be best calculated to secure the standards objectives.
Sections 319(1), 319(3).
- 2 Ofcom has contracted-out its advertising standards codes function to the Broadcast Committee of Advertising Practice Limited (BCAP) under the Contracting Out (Functions Relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004. Such function is to be exercised in consultation with and with the agreement of Ofcom.
- 3 These provisions imposed upon Ofcom by the Communications Act are therefore relevant to BCAP:
 - The standards objectives, insofar as they relate to advertising, include:
 - "(a) *that persons under the age of 18 are protected;*
 - (b) *that material likely to encourage or incite the commission of crime or lead to disorder is not included in television and radio services;*
 - (e) *that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;*
 - (f) *that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from inclusion in such services of offensive and harmful material;*

- (h) *that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;*
- (i) *that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with [in particular those obligations set out in Articles 10, 12-16 and 19-22a of Directive 39/552 EEC as amended by Directive 97/36/EC (the Television without Frontiers Directive)];*
- (l) *that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.*

Section 319(2)

- In setting or revising any such standards, Ofcom must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of these matters:
 - "(a) *the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;*
 - (b) *the likely size and composition of a potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;*
 - (c) *the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of the programme's content can be brought to the attention of potential members of the audience;*
 - (d) *the likelihood of persons who are unaware of the nature of the programme's content being unintentionally exposed, by their own actions, to that content;*
 - (e) *the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in*

particular, a change that is relevant to the application of the standards set under this section ...".

Section 319(4).

- Ofcom must ensure that the standards from time to time in force under this section include:

"(a) minimum standards applicable to all programmes included in television and radio services; and

(b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appeared to them appropriate for securing the standards objectives."

Section 319(6).

- Standards set to secure the standards objectives [specified in para 3(e) above] shall in particular contain provision designed to secure that religious programmes do not involve:

"(a) any improper exploitation of any susceptibilities of the audience for such a programme; or

(b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination."

Section 319(7).

- Standards set by Ofcom to secure the objectives [mentioned in para 3(a), (h) and (i) above]:

"(a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes; and

(b) may include provision prohibiting advertisements and forms of methods of advertising or sponsorship (whether generally or in particular circumstances)."

Section 321(1).

- 4 In addition, the Broadcasting Act 1996 section 24(2) contains provisions permitting advertising on analogue ancillary services on channels 3, 4 and 5 only if directly related to advertising on the main

service and digital ancillary services may carry no advertising of any kind.

5 BCAP has adopted the former ITC and Radio Authority Codes as follows:

- (a) BCAP Television Advertising Standards Code (ex ITC, including teleshopping and other non-advertising content);
- (b) BCAP Radio Advertising Code (extracted from Radio Authority Advertising and Sponsorship Code);
- (c) BCAP Rules on the Scheduling of Advertising (section 4 of the former ITC Rules, relating to the scheduling of individual spot advertisements);
- (d) BCAP Code for Text Services (Part C of former ITC Code);
- (e) BCAP Guidance to Broadcasters on the Regulation of Interactive Television Services (ex ITC);
- (f) BCAP Advertising Guidance Notes 1, 2, 3 and 5 (ex ITC).

(together "the BCAP Codes").

6 BCAP will work closely with the Committee of Advertising Practice to provide, insofar as practicable, a co-ordinated and consistent approach to standards setting across broadcast and non-broadcast media.

7 The procedures for revision of the BCAP Codes, including consultation, are, to the extent applicable to BCAP's exercise of statutory functions, set out at section 324 of the Communications Act 2003.

8 Ofcom retains standards setting functions in respect of:

- (a) political advertising, the inclusion of which in television or radio services is prohibited by section 321(2) Communication Act, including decisions as to whether or not an advertisement is "political advertising". But the rules on that remain in the BCAP Codes;
- (b) unsuitable programme sponsorship;

- (c) discrimination between advertisers who seek to have advertisements included in television and radio services. NB: Subject to this broadcasters, like publishers and other media, are generally entitled to refuse advertising they do not want to carry;
- (d) the amount and scheduling of advertising, save for the scheduling of individual spot advertising.

Investigation and complaints

- 9 The Communications Act requires Ofcom to establish procedures for the handling and resolution of complaints about the observance of standards (as set out in the BCAP Codes) and to include conditions in licences for programme services requiring licence holders to comply with Ofcom's directions in relation to advertising standards.

Sections 325(2), (4) and (5).

- 10 ~~The Control of Misleading Advertisements Regulations 1988 require Ofcom to consider complaints that any advertisement included or proposed to be included in any licensed programme service or S4C is misleading or an impermissible comparative advertisement, unless the complaint seems to Ofcom to be frivolous or vexatious.~~
- 11 The Medicines (Monitoring of Advertising) Regulations 1994 require Ofcom to consider complaints that any advertisement included or proposed to be included in a licensed service or S4C is an impermissible advertisement for a medicinal product, unless the complaint seems to Ofcom to be frivolous or vexatious.
- 12 Ofcom has contracted-out its powers of handling and resolving complaints about breaches of the BCAP Codes and the relevant provisions of ~~The Control of Misleading Advertisements Regulations~~ and Medicines (Monitoring of Advertising) Regulations to the Advertising Standards Authority (Broadcast) Limited (ASA(B)) under The Contracting Out (Functions Relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004.
- 13 ASAB will work closely with and under the umbrella of the Advertising Standards Authority to provide, insofar as is practicable, a coordinated and consistent approach to advertising standards regulation across broadcast and non-broadcast media.

14 Ofcom retains complaint investigation functions in respect of:

- (a) political advertising;
- (b) unsuitable sponsorship;
- (c) discrimination between advertiser and
- (d) scheduling of advertisements.

Statutory sanctions for breaches of advertising standards

15 Ofcom has similarly contracted-out its enforcement powers under the Communications Act, such that ASAB has these powers (including in relation to the Welsh Authority):

- (a) to require a licence holder to exclude from its programme service a particular advertisement or to exclude it in particular circumstances (Section 325(5)(a));
- (b) to require a licence holder to exclude from its service certain descriptions of advertisements and methods of advertising (whether generally or in particular circumstances) (Section 325(5)(b)), such power to be exercised by ASAB only for misleading advertisements or impermissible comparative advertisements or impermissible medical advertisements;

NB: Detailed reasons must be given for any of those actions in respect of a medicinal product advertisement and reference must be made to any remedy available in court and any time limit that must be met. (MMAR 1994 Regulation 9);

- (c) to require, from any person who to ASAB seems to be responsible for an advertisement, provision of evidence relating to the factual accuracy of any claim and to deem a factual claim inaccurate if such evidence is not so provided (Broadcasting Act 1990 s.4(1)(c) and 87(1)(d) and Broadcasting Act 1996 s.4(1)(c) and 43(1)(d)).

16 Ofcom retains these powers conferred by the Broadcasting Acts 1990 and 1996 and the Communications Act 2003:

- (a) to direct the broadcast of a correction or statement of findings;
- (b) to impose a financial penalty or shorten a licence period and

- (c) to revoke a licence.

Overseas advertising

- 17 Licensees should seek BCAP's advice if they want to have any rules in the Code disapplied because the advertising is on a programme service addressed exclusively to audiences outside the UK.
- 18 An advertisement that is aimed specifically and with some frequency at audiences in the territory of a single party to the 1989 Council of Europe Convention on Transfrontier Television must, with some exceptions, comply with the television advertising rules of that party. This does not apply:
 - (a) if the party is a Member State of the European Community or
 - (b) if its television advertising rules discriminate between advertising broadcast on television services within its jurisdiction and that on services outside its jurisdiction or
 - (c) if the UK Government has concluded a relevant bilateral or multilateral agreement with the party concerned.

APPENDIX 2: LEGISLATION AFFECTING BROADCAST ADVERTISING

This list of statutes and regulations affecting advertising and promotions relates to England and Wales and is not exhaustive; a considerable amount of legislation is always in the pipeline and cannot therefore be included. Many of these statutes are also applicable to Scotland and Northern Ireland, which have their own additional legislation. Also, in some instances, EC Regulations and Directives are relevant. Businesses have primary responsibility for ensuring that everything they do is legal. The law on matters such as contract, negligence, libel and intellectual property should also be observed.

Accommodation Agencies Act 1953 s.1

Administration of Justice Act 1985 s.9-10 and Solicitors Practice Rules 1990 and Publicity Code 1990

Adoption Act 1976 s.58

Agriculture and Horticulture Act 1964 s.14

Agriculture (Safety, Health and Welfare Provisions) Act 1956

Alcoholic Liquor Duties Act 1979 (as amended) s.71

Animals (Scientific Procedures) Act 1986 s.16

Anti-Social Behaviour Act 2003 s.43-53

Architects Act 1997 s.20

Banking Act 1987 (Advertisements) Regulations (1988) (as amended)

Betting and Gaming Duties Act 1981 (as amended)

Betting Gaming and Lotteries Act 1963 (as amended) s.10 & 22

Biocidal Product Regulations 2001 s.30-33

Bread and Flour Regulations 1998 (as amended)

Broadcasting Act 1990 s.8-9, 60 & 92-93

Broadcasting Act 1996 s.14, 31 & 56

Building Societies Act 1986 (as amended) s.35

Business Advertisements (Disclosure) Order 1977

Business Names Act 1985

Cancer Act 1939 s.4

Care Standards Act 2000 s.26

Charitable Institutions (Fund Raising) Regulations 1994

Charities Act 1992 Part II (as amended)

Charities Act 1993 s.5 and s.67-68

Chemicals (Hazard Information and Packaging for Supply) Regulations 1994

Children Act 1989

Children and Young Persons (Harmful Publications) Act 1955 s.1

Children and Young Persons Acts 1933 s.7 and 1963

Children (Performances) Regulations 1968

Civil Aviation Act 1982 s.82

Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995 (as amended)

Civil Aviation (Aerial Advertising) Regulations 1995

Cocoa and Chocolate Products Regulations 1976 (as amended)

Coffee Extracts and Chicory Extracts (England) Regulations 2000

Communications Act 2003 s.1-6 & s.319-334

Companies Act 1985 s.349 & 351

Competition Act 1998

Condensed Milk and Dried Milk Regulations 1977 (as amended)

Conduct of Employment Agencies and Employment Businesses Regulations 2003

Consumer Credit Act 1974 s.43-50 & s.151

Consumer Credit (Advertisements) Regulations 2004

Consumer Credit (Exempt Advertisements) Order 1985

Consumer Protection Act 1987 s.10-12 and 20 and the Code of Practice for Traders on Price Indications

Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987

Consumer Protection (Distance Selling) Regulations 2000

Consumer Protection from Unfair Trading Regulations 2008

Consumer Transactions (Restrictions on Statements) Order 1976 (as amended)

~~Control of Misleading Advertisements Regulations 1988 (as amended)~~

Control of Pesticides Regulations 1986 (as amended)

Copyright and Rights in Databases Regulations 1997

Copyright Designs and Patents Act 1988 (as amended)

Cosmetic Products (Safety) Regulations 1996 (as amended)

Credit Institutions (Protection of Depositors) Regulations 1995

Credit Unions Act 1979 (as amended) s.3

Crime and Disorder Act 1998 s.1

Criminal Damage Act 1971 s.1

Criminal Justice Act 1988 s.141A

Criminal Justice and Police Act 2001 s.46

Crossbows Act 1987

Dangerous Dogs Act 1991 s.1

Data Protection Act 1998

Data Protection (Conditions under Paragraph 3 of Part II of Schedule I) Order 2000

Defamation Act 1952

Defamation Act 1996

Dentists Act 1984 s.26 & 41-42

Deregulation (Betting and Bingo Advertising etc.) Order 1997

Deregulation (Casinos) Order 1999

Disability Discrimination Act 1995 s.11 & 22

Education Reform Act 1988 s.214

Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (as amended)

Electronic Commerce (EC Directive) Regulations 2002

Employment Agencies Act 1973 s.5

Employment Equality (Religion or Belief) Regulations 2003 (as amended)

Employment Equality (Sexual Orientation) Regulation 2003 (as amended)

Endangered Species (Import and Export) Act 1976 (as amended) s.4

Energy Act 1976 s.15

Enterprise Act 2002 Part 8

Enterprise Act 2002 (Community Infringements specified UK Laws) Order 2003

Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003

Enterprise Act 2002 (Part 8 Designated Enforcers: Criteria for Designation) Order 2003

Environmental Protection Act 1990 s.87

Estate Agents Act 1979 s.10

European Communities Act 1972

Fair Trading Act 1973 (as amended) Part XI

Feeding Stuffs Regulations 2000

Finance Act 1993 s.29 & 33

Financial Services and Markets Act 2000 s. 21-25, 145 & 238-240, 397

Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

Financial Services (Distance Marketing) Regulations 2004

Firearms Act 1968 (as amended) s.3

Fireworks (Safety) Regulations 1997

Flavourings in Food Regulations 1992

Food Labelling Regulations 1996 (as amended)

Food Safety Act 1990 (as amended) s.8, 15 & Schedule 1 and Regulations

Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997

Food Standards Act 1999

Forgery and Counterfeiting Act 1981

Fraudulent Mediums Act 1951

Friendly Societies Acts 1974 and 1992

Fruit Juices and Fruit Nectars Regulations 1977 (as amended)

Gaming Act 1968 (as amended) s.42

General Optical Council (Rules on Publicity) Order of Council 1985

General Optical Council (Contact Lenses) (Qualifications etc) Rules Order of Council 1988

General Product Safety Regulations 1994

Geneva Conventions Act 1957 (as amended) s.6

Hallmarking Act 1973

Health and Medicines Act 1988 s.23

Hearing Aid Council Act 1968 (as amended)

Highways Act 1980 s.132

HIV Testing Kits and Services Regulations 1992

Honey Regulations 1976

Human Organ Transplant Act 1989

Human Rights Act 1998

Immigration and Asylum Act 1999 s.92B

Income and Corporation Taxes Act 1988 s.577

Indecent Displays (Control) Act 1981 s.1

Industrial and Provident Societies Act 1965

Infant Formula and Follow-on Formula Regulations 1995 (as amended)

Insolvency Act 1986 s.137, 216 & 296-297 and Insolvency Rules 4. 226-300

Jam and Similar Products Regulations 1981

Knives Act 1997

Licensing Betting Offices Regulations 1986 (as amended)

Licensing Act 1964 (as amended) s.168

Local Government Act 1992 s.107

Local Government (Miscellaneous Provisions) Act 1982

London Cab Act 1968 s.4

London County Council (General Powers) Act 1938

London County Council (General Powers) Act 1954 s.20

London Local Authorities Act 1994 s.4

London Local Authorities Act 1995 Part III

Lotteries and Amusements Act 1976 and amendments

Malicious Communications Act 1988

Marine etc. Broadcasting (Offences) Act 1967

Meat Products and Spreadable Fish Products Regulations 1984 (as amended)

Medical Act 1983 s.49

Medicines Act 1968 s.85-97

Medicines (Advertising) Regulations 1994 (as amended)

Medicines for Human Use (Marketing Authorisations) Regulations 1994

Medicines (Labelling and Advertising to the Public) Regulations 1978

Medicines (Monitoring of Advertising) Regulations 1994 (as amended)

Metropolitan Police Act 1839 s.54

Metropolitan Streets Act 1867 s.9

Milk and Milk Products (Protection of Designations) Regulations 1990

Misrepresentation Act 1967

Mock Auctions Act 1961 s.1

Motor Cars (Driving Instruction) Regulations 1989 (as amended)

National Lottery etc Act 1993 (as amended)

National Lottery Regulations 1994

Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999

Newspapers, Printers and Reading Room Repeal Act 1869, Schedule 2

Nightwear (Safety) Regulations 1985 (as amended)

Noise and Statutory Nuisance Act 1993 s.2 & Schedule 2

Nurses Agencies Act 1957

Nurses Midwives and Health Visitors Act 1997

Obscene Publications Act 1959 (as amended)

Office of Communications Act 2002

Olympic Symbol etc (Protection) Act 1995

Opticians Act 1989 s.31 and Regulations

Organic Products Regulations 2001

Package Travel, Package Holidays and Package Tours Regulations 1992 (as amended)

Passenger Car Fuel Consumption Order 1983 (as amended)

Pensions Schemes Act 1993 s.117

Personal Pension Schemes (Advertisements) Regulations 1990 (as amended)

Plant Varieties Act 1997

Political Parties, Elections and Referendums Act 2000

Postal Services Act 2000 s.86

Prevention of Corruption Acts 1889-1916

Price Indications (Bureau de Change) (No 2) Regulations 1992

Price Indications (Method of Payment) Regulations 1991

Price Indications (Resale of Tickets) Regulations 1994

Price Marking (Food and Drink on Premises) Order 2003

Price Marking Order 2004

Private Hire Vehicles (London) Act 1998

Property Misdescriptions Act 1991

Protection of Animals Act 1911 (as amended)

Protection of Children Act 1978 s.1

Protection of Children (Tobacco) Act 1986

Public Order Act 1986 s.5 and s.19

Pyramid Selling Schemes Regulations 1989 (as amended)

Race Relations Act 1976 s.29

Registered Designs Act 1949 as amended s.7 & 26

Registered Designs Regulations 2001

Rent Act 1977 s.119-128

Representation of the People Act 1983 s.75, 106, 109-110 & 115

Representation of the People (England and Wales) (Amendment) Regulations 2002

Representation of the People (Form of Canvass) (England and Wales) Regulations 2004

Restriction of Offensive Weapons Act 1959 (as amended) s.1

Restriction on Agreements (Estate Agents) Order 1970

Road Traffic Act 1988 s.135

Road Traffic Regulation Act 1984 s.35

Sale and Supply of Goods to Consumers Regulations 2002

Sale of Goods Act 1979 (as amended) s.14

Seeds (National List of Varieties) Regulations 2001

Sex Discrimination Act 1975 as amended s.38

Solicitors Act 1974 s.21

Specified Sugar Products Regulations 1976 (as amended)

Spreadable Fats (Marketing Standards) (England) Regulations 1999

Sunday Entertainments Act 1932

Sunday Observance Act 1780

Sunday Theatre Act 1972 s.1

Sunday Trading Act 1994

Supply of Extended Warranties on Domestic Electrical Goods Order 2005

Supply of Goods and Services Act 1982 (as amended) s.4, 9 & 11

Supply of New Cars Order 2002 s.3

Surrogacy Arrangements Act 1985 s.3

Tattooing of Minors Act 1969

Telecommunications Act 1984 s. 86-87

Telecommunication Apparatus (Advertisements) Order 1985 (as amended)

Telecommunications (Data Protection and Privacy) Regulations 1999

Terrorism Act 2000 s.12 & 15

Textile Products (Indications of Fibre Content) Regulations 1986

Theft Acts 1968 and 1978

Timeshare Act 1992

Timeshare Regulations 1997

Tobacco Advertising and Promotion Act 2002

Tobacco Advertising and Promotion (Brandsharing) Regulations 2004

Tobacco Advertising and Promotion (Point of Sale) Regulations 2004

Tobacco Products Regulations 2001

Town and Country Planning Act 1990 as amended s.220-224

Town and Country Planning Act (Control of Advertisements) Regulations 1992 (as amended)

Trade Descriptions Act 1968-

Trade Descriptions (Sealskin Goods) (Information) Order 1980

Trade Marks Act 1994 s.9-11

Trade Union and Labour Relations (Consolidation) Act 1992 s.137

Trading Schemes Act 1996

Trading Schemes Regulations 1997

Trading Stamps Act 1964

Unfair Contract Terms Act 1977

Unfair Terms in Consumer Contracts Regulations 1994

Unsolicited Goods and Services Act 1971 as amended s.4

Unsolicited Goods and Services Act 1971 (Electronic Communications) Order 2001

Veterinary Surgeons Act 1966 s.19-20

Video Recording Act 1984

Weights and Measures Act 1985

Wildlife and Countryside Act 1981 s.6

Wireless Telegraphy Act 1949

APPENDIX 3: Extracts from Directive 89/552/EEC as amended by Directive 97/36/EC (Television Without Frontiers Directive)

CHAPTER IV

Television advertising, sponsorship and teleshopping

Article 10

1. Television advertising and teleshopping shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means.
 2. Isolated advertising and teleshopping spots shall remain the exception.
 3. Advertising and teleshopping shall not use subliminal techniques.
 4. Surreptitious advertising and teleshopping shall be prohibited.
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Article 12

Television advertising and teleshopping shall not:

- (a) prejudice respect for human dignity;
- (b) include any discrimination on grounds of race, sex or nationality;
- (c) be offensive to religious or political beliefs;
- (d) encourage behaviour prejudicial to health or to safety;
- (e) encourage behaviour prejudicial to the protection of the environment.

Article 13

All forms of television advertising and teleshopping for cigarettes and other tobacco products shall be prohibited.

Article 14

1. Television advertising for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls shall be prohibited.
2. Teleshopping for medicinal products which are subject to a marketing authorization within the meaning of Council Directive 65/65/EEC of 26

January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products¹, as well as teleshopping for medical treatment, shall be prohibited.

Article 15

Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:

- (a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- (b) it shall not link the consumption of alcohol to enhanced physical performance or to driving;
- (c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success;
- (d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- (e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
- (f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

Article 16

1. Television advertising shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection:

- (a) it shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;
- (b) it shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- (c) it shall not exploit the special trust minors place in parents, teachers or other persons;
- (d) it shall not unreasonably show minors in dangerous situations.

¹ OJ No 22, 9. 2. 1965, p. 369, Directive as amended by Directive 93/39/EEC (OJ No L 214, 24. 8. 1993m p. 22).

2. Teleshopping shall comply with the requirements referred to in paragraph 1 and, in addition, shall not exhort minors to contract for the sale or rental of goods and services.

.....

Article 19

Chapters ... IV, V ... shall apply mutatis mutandis to channels exclusively devoted to teleshopping. ...

Article 19a

Chapters ... IV, V ... shall apply mutatis mutandis to channels exclusively devoted to self-promotion.

Article 20

Without prejudice to Article 3, Member States may, with due regard for community law, lay down conditions other than those laid down in Article 11(2) to (5) ... in respect of broadcasts intended solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States.

CHAPTER V

Protection of minors and public order

Article 22

1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral developments of minors, in particular programmes that involve pornography or gratuitous violence.

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.

3. Furthermore, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

Article 22a

Member States shall ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.

APPENDIX 4: OUTLINE OF THE EFFECTS OF THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008

As well as this Code, television advertising is subject to legislation. You can find a non-exhaustive list of legislation affecting broadcasting in Appendix 2.

One important piece of legislation that affects television advertising is the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). The CPRs prohibit unfair advertising to consumers, including misleading and aggressive advertising. Whenever it considers complaints that an advertisement misleads consumers or is unfair or aggressive 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 advertisements breach the BCAP Television Advertising Standards Code. Relevant principles established in the CPRs are summarised below. The summary is not an exhaustive statement of the effect of the Regulations and licensees who would like detailed guidance on the Regulations, as opposed to the Code, should seek legal advice.

Many rules in this Code prohibit misleading advertising. All rules that refer to misleading advertising should be read, in relation to business-to-consumer advertising, in conjunction with the summary below.

Consumers

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

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

- If the ad is directed to a particular audience group, the advertisement will be considered from the point of view of the average member of that group.
- If an advertisement is likely to affect the economic behaviour only of a clearly identifiable group of people who are particularly vulnerable to its contents, in a way that the advertiser could reasonably be expected to foresee, because of mental or physical infirmity, age or credulity, then the advertisement will be considered from the point of view of the average member of the affected group.

Unfair advertising

Advertisements 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 which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader’s field of activity.

Misleading advertising

Advertisements 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 to refrain from acting, concerning whether, how and on what terms to purchase, make payment 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.

Advertisements 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 advertising

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 therefore likely to cause consumers to take transactional decisions they would not otherwise have taken.