

“Free trial” or other promotional offer subscription models

Guidance for advertisers

Legal, decent, honest and truthful



Foreword

The Committee of Advertising Practice (CAP) offers guidance on the interpretation of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (the CAP Code) in relation to non-broadcast marketing communications.

The Broadcast Committee of Advertising Practice (BCAP) offers guidance on the interpretation of the UK Code of Broadcast Advertising (the BCAP Code) in relation to broadcast advertisements.

Research¹ shows that ads for “free trials” or other such promotional offers, which fail to make clear that the customer will be subsequently enrolled in an ongoing subscription arrangement, have the potential to mislead. This guidance is intended to help advertisers, agencies and media owners who devise or distribute these promotions to comply with the Codes.

The guidance reflects lessons from ASA rulings and research. However, it neither constitutes new rules nor binds the ASA Councils in the event of a complaint about an ad that follows it.

As always with advice about potential misleadingness, the guidance is not intended to prescribe or proscribe any approaches and the ASA will always consider ads on a case-by-case basis. References to “should” or “must” in the guidance are made with this in mind, and constitute recommended approaches. If marketers follow the advice in the guidance, however, they are much less likely to breach the Codes.

For pre-publication advice on specific non-broadcast marketing communications, consult the CAP Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or you can log a written enquiry via our [online request form](#).

For advice on specific TV advertisements, please contact [Clearcast](#).

For clearance advice on specific Radio advertisements, please contact [Radiocentre](#).

For more information, please [visit our website](#).

¹ [Locked in; Consumer Issues with Subscription Traps \(Citizen's Advice: 2016\)](#) ; [Misleading "Free" Trials and Subscription Traps for Consumers in the EU \(European Commission: 2017\)](#)

1. Scope



This guidance applies to:

- Ads in all media covered by the CAP² and BCAP³ Codes

Ads for a “free trial” or other promotional offer that enrol the customer in an ongoing payment arrangement in order to take advantage of the trial, where the paid subscription continues after the trial period, unless cancelled



This guidance does not apply to:

- Business practices involved in the “free trial” or other promotional offer subscription model beyond advertising e.g. problems cancelling the subscription, use of personal data

- Ads for a “free trial” or other promotional offer that do not involve the customer being enrolled in an ongoing payment arrangement in order to take advantage of the trial e.g. instances where customers do not need to submit their bank details to access the trial or where, if they do, they do not need to cancel during the trial to avoid charges

- Other claims in ads for “free trial” or other promotional offers not related to the offer itself e.g. efficacy claims for the product. These claims, however, must also comply with the Codes

² https://www.asa.org.uk/type/non_broadcast/code_folder/scope-of-the-code.html

³ https://www.asa.org.uk/type/broadcast/code_folder/introduction-1.html

2. What is a “free trial” or promotional offer subscription model?

In a “free trial” or other promotional offer subscription model, a consumer enrolls in an ongoing payment arrangement⁴ to take advantage of a “free trial” product offer, test subscription, or other promotional benefit. If the consumer does not cancel the trial (often within the “free trial” period) they become liable to make a payment, or ongoing payments, as part of the subscription plan to which they signed up, knowingly or otherwise.

European Commission research states⁵:

Free trials are not harmful per se. Traders often use this marketing technique to showcase their confidence that their product will satisfy the consumer, many without malicious intent

Ads for “free trial” or other promotional offers are not intrinsically problematic. Problems arise, however, when a consumer unknowingly agrees to an ongoing payment plan. This may be the result of an ad that misleads by:

- omitting significant conditions, or;
- significant conditions not being sufficiently clear.

This situation has been described as a “subscription trap”.

Remember:

A “free” claim is not necessarily misleading in itself; but ads must make clear the extent of the commitment required to take advantage of the “free” offer e.g. enrolment in a subscription plan⁶

The nature of “free trial” and promotional offer subscription models, the types of products and services offered and how they are advertised vary greatly. Marketers should apply this guidance to their advertising accordingly to ensure it does not mislead consumers, whether through the absence of significant conditions or the overall presentation of the ad, even if the significant conditions are present.

⁴ This guidance is neutral on the type of ongoing payment arrangement and applies to ads for products that use all forms of payment used for subscriptions, including, but not limited to: continuous payment authorities, direct debit and standing orders.

⁵ [Misleading “Free” Trials and Subscription Traps for Consumers in the EU \(European Commission: 2017\)](#)

⁶ See Section 3, and [ASA ruling on Amazon Europe Core Sarl \(2015\)](#), [ASA ruling on HiLife Health & Beauty Pty Ltd \(2014\)](#) and [ASA ruling on DS Marketing Ltd \(2013\)](#)

3. Guidance

An ad is misleading if it is likely to deceive consumers and cause them to take a transactional decision that they would not have otherwise taken, for example, by containing false information or omitting material information. It is therefore important to ensure that significant terms and conditions of offers are included in ads, and the ad directs consumers to the full terms and conditions.

There are two strands to this guidance:

- The need to make clear all significant conditions where the omission of such conditions or information is likely to mislead.
- Where to position the statement: The positioning of the statement will vary depending on the individual ad and the medium in which it appears. In all cases, the emphasis of the guidance will be to ensure it is sufficiently prominent so consumers are not likely to miss it.

3.1. Significant conditions

Ads for a promotional offer must communicate all significant conditions likely to affect a consumer's decision to participate⁷. If significant conditions are not displayed with sufficient prominence, the ad is likely to break the rules⁸. To clarify, this means stating "T&Cs apply" is not sufficient; the significant conditions must be stated in the ad.

Ads for "free trial" or promotional subscription offers must make clear:

- Whether a paid subscription starts automatically (after the trial) unless cancelled⁹ and
- The extent of the financial commitment if the subscription is not cancelled (during the trial)¹⁰ and
- Any other significant conditions¹¹: for example, significant costs to participate.

⁷ See [CAP Code Rule 8.17](#)

⁸ For non-broadcast advertising, the rules on [promotional marketing](#) and [misleading advertising](#) are relevant. For broadcast advertising, the rules on [misleading advertising](#) would apply.

⁹ [ASA ruling on Amazon Europe Core Sarl \(2015\)](#), [ASA Ruling on Kelly's Vegies Ltd \(2015\)](#), [ASA ruling on Atlas Editions UK Ltd \(2016\)](#), [ASA ruling on HiLife Health & Beauty Pty Ltd \(2014\)](#), [ASA ruling on Body Massco Ltd \(2014\)](#), [ASA ruling on Desert Point Ltd \(2014\)](#), [ASA ruling on slimtoneplus.com \(2012\)](#) and [ASA ruling on Atlas Editions UK Ltd \(2017\)](#)

¹⁰ [ASA ruling on Amazon Europe Core Sarl \(2015\)](#), [ASA ruling on Atlas Editions UK Ltd \(2016\)](#), [ASA ruling on Body Massco Ltd \(2014\)](#), [ASA ruling on Ketone Elite \(2013\)](#) and [ASA ruling on DS Marketing Ltd \(2013\)](#)

¹¹ See [ASA Ruling on Kelly's Vegies Ltd \(2015\)](#). If you are unsure about whether a condition is or is not significant, include it, or contact the [CAP Copy Advice team](#) for advice.

3.2. Placement of significant conditions

3.2.1 Marketers' own websites:

Following ASA rulings and learning from research, we have drafted this example to help advertisers comply with the guidance. There may be other ways to comply with the guidance and this example is by no means prescriptive, but is intended as a best-practice aid for compliance:

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Significant conditions should be prominent and distinct from other information

Significant conditions should immediately follow the most prominent references to the trial or offer *

*Less-prominent references to the trial or offer

We have seen that in some media, particularly websites, there are multiple references to the free trial or offer. For the most prominent references, we advise advertisers to follow the example above. For less prominent references, marketers are advised to ensure no “free trial” or promotional claims for the subscription offer that appear elsewhere in the ad are likely to mislead about the nature of the “free trial” or promotional offer. An easy way to achieve this could be to use asterisks to direct consumers to qualifying information.

¹² [ASA ruling on Beyond Nutra Ltd \(2013\)](#) and [ASA ruling on JustFab \(UK\) Ltd \(2017\)](#)

Previous ASA rulings have also indicated what marketers should not do in order to comply with the Codes:

Significant conditions should not be placed away from:

- Prominent “free trial” or promotional text
- Prominent action buttons, such as “Start Free Trial” or “Rush my Order”

Significant conditions should be immediately visible e.g. pop-ups are not sufficient



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Significant conditions should be clear and legible both in size and clarity of font

¹³ [ASA ruling on JustFab \(UK\) Ltd \(2017\)](#), [ASA ruling on Body Massco Ltd \(2014\)](#) and [ASA ruling on Beyond Nutra Ltd \(2013\)](#).

3.2.2 Other media not significantly limited by time or space

As well as marketers' own websites, marketing communications in other media, including but not limited to the following, are unlikely to be considered significantly limited by time or space¹⁴: emails, direct mailings, press and magazine ads, leaflets, posters and ads in social media not constrained by low character limits¹⁵.

For marketing communications in these media, the ASA has previously adopted similar principles to those stated in the preceding section, so we would advise marketers to follow the advice given in 3.2.1¹⁶. Marketers are advised to follow these principles as far as they apply to advertisements on television and radio, and online video ads for promotions of this kind.

3.2.3 Media significantly limited by time or space

The ASA would expect advertisers to do all they can to include all significant conditions in an ad. In the case of text messages, for example, the ASA has previously ruled that a significant condition should be included in the message¹⁷. In Twitter ads, marketers could include an image that clearly states the relevant conditions.

Marketing communications that refer to a promotion and are significantly limited by time or space must include as much information about significant conditions as practicable¹⁸. In some rare circumstances, however, it may be acceptable for an ad to direct consumers to an alternative source where all significant conditions of the promotion are prominently stated, provided they are easily accessible.

Where there are options to include information, the ASA expects marketers to use them.



¹⁴ <https://www.asa.org.uk/advice-online/promotional-marketing-terms-and-conditions-tcs.html>

¹⁵ See 3.2.3 below

¹⁶ [ASA ruling on Amazon Europe Core Sarl \(2015\)](#) and [ASA ruling on HiLife Health & Beauty Pty Ltd \(2014\)](#),

¹⁷ [ASA Ruling on Daub Alderney Ltd \(2016\)](#)

¹⁸ See [CAP Code Rule 8.18](#) and <https://www.asa.org.uk/advice-online/promotional-marketing-terms-and-conditions-tcs.html>

Marketers are advised that only in extreme circumstances will a media type be considered “significantly restricted by time or space” and this is likely to be limited to sponsored ads on search engine sites and extremely small banner ads.

If it is not possible to include significant conditions within an ad, marketers should carefully consider whether the media type in question is suitable to promote such an offer.

4. Where can I get further information?

This guidance provides advice about how to comply with the CAP and BCAP Codes.

Guidance and advice are available on the [ASA website](#).

CAP also offers a free and confidential Copy Advice service for non-broadcast marketing communications, which is available [via the ASA website](#).

Advertisers should be aware that they should also comply with the law. A promotion that omits or hides material information about potential ongoing costs may amount to an offence under the Consumer Protection from Unfair Trading Regulations 2008. Advertisers should also consider the Consumer Rights Act 2015, the Data Protection Act 1998 and the Consumer Contracts (Information, Cancellation and additional Charges) Regulations 2013. For further information on compliance with the law, businesses can go to www.businesscompanion.info or seek legal advice.

This guidance may be updated following further ASA rulings on this subject.

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