



Pricing Practices Guide Review
Trading Standards Institute
1 Sylvan Court
Sylvan Way
Southfields Business Park
Basildon
Essex SS15 6TH
ppgreview@tsi.org.uk

Advertising Standards Authority
Mid City Place, 71 High Holborn
London WC1V 6QT
Telephone 020 7492 2222
Textphone 020 7242 8159
Email enquiries@asa.org.uk
www.asa.org.uk

9 May 2014
By post and email

Dear Sir / Madam,

ASA submission to the Trading Standards Institute's Review of the Pricing Practices Guide Call for Evidence

1 Introduction

- 1.1** The Advertising Standards Authority (ASA) is grateful for the opportunity to respond to the Trading Standards Institute's Review of the Pricing Practices Guide Call for Evidence.
- 1.2** The ASA is the UK's self-regulatory body for ensuring that all advertisements, wherever they appear, are legal, decent, honest and truthful for the benefit of consumers, business and society. For 50 years the ASA has provided effective advertising regulation at no cost to the tax payer.
- 1.3** We enjoy a close and effective working relationship with Trading Standards, which recognises the ASA system as the established means for regulating misleading and comparative ads in non-broadcast media in the UK. Around two-thirds of the approximately 30,000 complaints we receive each year pertain to examples of potentially misleading advertising, and our work in this area allows Trading Standards to focus its resources on other consumer issues. On the rare occasions when we are unable to secure advertiser compliance with the Codes, we can ask Trading Standards to consider taking action under the Consumer Protection from Unfair Trading Regulations (CPRs) or the Business Protection from Misleading Marketing Regulations (BPRs).

Legal, decent, honest and truthful

Chairman Rt Hon Lord Smith of Finsbury **Chief Executive** Guy Parker
ASA Council Kate Bee, Alan Bookbinder, Rachel Childs, Roisin Donnelly, Ray Gallagher, David Hepworth, John Mayhead, Sir Martin Narey, Shireen Peermohamed, Hamish Pringle, Ruth Sawtell, Anthony Wilkes and Sam Younger

The Advertising Standards Authority Limited, registered in England No 733214, Mid City Place, 71 High Holborn, London WC1V 6QT.
The Advertising Standards Authority (Broadcast) Limited, registered in England No 05130991, Mid City Place, 71 High Holborn, London WC1V 6QT.

1.4 This submission provides:

- an overview of the ASA's role as the UK's advertising regulator; and
- answers to specific questions relating to the ASA's work.

2 The ASA's role as the UK's advertising regulator

- 2.1** The independent ASA administers the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code) and the UK Code of Broadcast Advertising (the BCAP Code), known collectively as "the Codes". The Codes are written and maintained by two industry bodies, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP)¹. Members of these bodies include representatives of advertisers, agencies, media owners, broadcasters and other industry groups, all of which are committed to upholding the highest standards in advertising.
- 2.2** The Codes² are developed in line with widely accepted better regulation principles. These require that regulation is transparent, accountable, proportionate, consistent and targeted.
- 2.3** The Codes cover ads in all media including broadcast (television and radio), non-broadcast (e.g. billboards, magazines, newspapers, direct mail and including video-on-demand), which also includes online (e.g. marketing communications on companies' own websites and social media under their control, pop-up and banner ads, email, paid-search).
- 2.4** In 2012 the ASA received complaints about 18,990 ads across all media (31,298 complaints). As a result of ASA action, 3,700 ad campaigns were amended or withdrawn.
- 2.5** Compliance with the Codes is mandatory for all advertisers and broadcasters; there is no opt-out. Our compliance surveys show that the majority of advertisers, and the millions of ads that appear in the UK each year, overwhelmingly comply with the rules.

3 ASA response to questions

- 3.1** We note that some of the questions overlap so we have responded selectively to those questions we feel relate most closely to our work.
- 3.2** For ease of reference and to avoid confusion, we have emboldened the numbers of parts of the PPG where we have referred to them and separated our response by subject matter.

¹ www.cap.org.uk

² <http://asa.org.uk/Advertising-Codes.aspx>

Q5: Should the PPG better promote fair trading practices by referring to general principles rather than specific practices?

Making a series of reductions

- 3.3** We consider that it would be useful to examine how prescriptive the guidance in **1.2.11** on running a series of reductions should be. It may be simpler to refer to misleadingness, considering whether the information given is likely to mislead a consumer by causing them to take a transactional decision they would not otherwise have taken. The information in subsections (a), (b) and (c) could be required to be included, except in situations where its omission would not be likely to mislead.

Comparisons with another trader's prices

- 3.4** The guidance in **1.5** does not appear to be an accurate reflection of the requirements of Directive (EC) 2006/114, which concerns misleading and comparative advertising, as implemented by the BPRs. **1.5.1 (d)**, for example, refers to "substantially similar" products whereas the legislation refers to "meeting the same needs or intended for the same purpose".

Comparisons with trader's own previous price

- 3.5** We would suggest amending **1.2.3** and **1.2.4** so that the basis of the comparison insofar as it differs from the points in **1.2.3** only must be made clear where it would be misleading to not do so. This is particularly relevant to **1.2.3 (a)** and **(c)**.

Q6: Should the PPG better promote fair trading practices by providing more detailed guidance?

RRPs and similar

- 3.6** We consider the guidance under **1.6.1** would benefit from an explanation of what is considered similar to a recommended retail price; what equates to a price that differs significantly; and what criteria must be satisfied to demonstrate that the product is generally sold at an RRP.

Extension of sales

- 3.7** Further clarification would be useful in this section, specifically on extending a time-limited sale. There appear, by implication from **1.9.4**, to be circumstances in which it is acceptable to extend a sale/price reduction. [Guidance](#) from the OFT (specifically on supermarkets) suggests that it is permissible to advertise a sale price with an end date, and once that end date has passed, maintain the lower price of a product, as long as it is no longer promoted as a sale.
- 3.8** This appears to allow an advertiser to artificially present discounts to consumers by advertising a sale with an end date, and then continuing to sell a product at the sale

price after that date. It would also appear to render the closing date in the ad misleading.

- 3.9** We feel that this section could benefit from further clarification, so it is clear when a sale price is allowed to continue past the end date, without rendering the initial ad misleading, either as an extension of the sale, or as a genuine price reduction.

Actual price to the consumer

- 3.10** Both UK Advertising Codes contain provisions which relate to the issues covered by **2.1** and **2.2** of the PPG:

“Price statements must not mislead by omission, undue emphasis or distortion. They must relate to the product featured in the marketing communication.” (CAP rule 3.17 and BCAP rule 3.18) and *“Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers...”* (CAP rule 3.18 and BCAP rule 3.19).

- 3.11** Although the PPG states (at **2.2.1**) that *“the consumer should always be fully aware of the total cost in such communications”*, we consider that it would avoid ambiguity if it explicitly stated that quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers.

- 3.12** Both Codes contain a provision relating to the issue covered by **2.2.2**:

“If a tax, duty, fee or charge cannot be calculated in advance, for example, because it depends on the consumer’s circumstances, the marketing communication must make clear that it is excluded from the advertised price and state how it is calculated.” (CAP rule 3.19 and BCAP rule 3.20)

- 3.13** We note that **2.2.2** broadly mirrors these, but does not state that this should be made clear in the commercial communication or invitation to purchase, instead stating that information must be “given”. To avoid ambiguity, we would suggest that the PPG specifies that the information must be made clear in the commercial communication or invitation to purchase. The ASA understands that this would be required by the law and is also a point on which the ASA has upheld complaints; for example, in relation to letting agents’ fees.

4 Value Added Tax (VAT)

- 4.1** CAP Code rule 3.19 and BCAP rule 3.20 state the following:

“Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers. However, VAT-exclusive prices may be given if all those to whom the price claim is clearly addressed pay no VAT or can recover VAT. Such VAT-exclusive prices must be accompanied by a prominent statement of the amount or rate of VAT payable.”

- 4.2** These rules were amended in 2011 to refer to those whom the price claim was addressed, rather than to those who would see the marketing communication as a whole. This allows marketers to display both VAT-inclusive and VAT-exclusive prices with equal prominence, provided it is clear to whom each claim is addressed.
- 4.3** The reason for the change was largely due to the increased likelihood that consumers and businesses would view prices online on marketers' own websites, and in this situation it would be disproportionate to view the entire website as a consumer-focused marketing communication merely because some of the audience might be consumers. The rule change now means that a marketer could, for example, ask customers before they enter their website whether they were a trade customer or consumer, and display prices on that basis; or they could display a 'trade' and a 'consumer' price with equal prominence for each item.
- 4.4** We therefore consider that **2.2.9** and **2.2.10** of the PPG could be usefully amended to provide helpful guidance to traders, given the changes to how they interact with customers, and would invite TSI to consider changes to the PPG in line with the CAP Code. It might also be useful for specific examples, such as those outlined above, to be included to assist traders in applying the guidance in practice.

Holiday and travel prices

- 4.5** This is a relatively prolific sector for the ASA and CAP and the number and range of rulings have resulted in some very detailed guidance. We would therefore welcome an expansion of this section and invite TSI to consider some of the principles and guidelines that we have adopted.
- 4.6** **2.2.16** deals with brochures in the following terms:

Brochures for package holidays are required to indicate the price of each package in a legible, comprehensive and accurate manner. All price indications, including those on websites, etc., should make clear the basis for the price shown, e.g., departure date or standard of accommodation. You should include any non-optional extra charges in the basic price and should not show them as additions, unless they are only payable by some consumers, e.g., single room supplements.

- 4.7** We have a number of points relating to this section:
- Is 2.2.16 only intended to apply to package holidays (because of sector-specific legislation)? What about airline or hotel prices that are not in a package?
 - ASA rulings from 2009 highlighted a practice by cruise companies and cruise agents of inflating brochure prices to artificially increase the size of advertised

savings; this is now explicitly prohibited in [CAP's Help Note on Travel Marketing](#) so it might be helpful to reference this.

- We would suggest inserting “or they are not payable when travellers buy their tickets” at the end of the paragraph (this point is reflected in CAP's Guidance)

- 4.8** We feel that **2.2.17** would benefit from guidance on paying with credit/debit cards. This would follow the same rationale for our comments in paragraphs 3.3 to 3.6.
- 4.9** Where prices may rise before a consumer makes a booking (as described in **2.2.18**), or if not all packages/seats are available at that price, CAP Help Note on Travel Marketing states that they must be prefixed with “from”.
- 4.10** The ASA and CAP have consistently applied the 10% rule (as outlined in **1.9.3**) to travel marketing (where a “from”, not fixed, price is quoted), most notably in airline seat sales, but also to rail and cruise travel. Does TSI agree with this approach and, if so, does TSI consider that the section could benefit from more detailed guidance on how to calculate and apply the 10% rule to travel marketing, particularly air travel marketing?
- 4.11** This section also omits guidance on the use of “free” (the CPRs and [CAP guidance](#) states that this is only acceptable if there are no taxes and charges to pay). We would also ask TSI to consider specifying that the headline price for package holidays must include local payments for all tours, trips, excursions and the like, where that payment is non-optional.

Q7: Should the PPG better promote fair trading practices by providing specific guidance?

Online advertising

- 4.12** Many complaints we receive relate to advertising online (28% of cases in 2012), and this includes misleading price claims (70% of cases in 2012). It is clear that technological changes have transformed how consumers and marketers interact, and it is important this is taken into account by TSI when considering changes to all sections of the PPG to ensure it remains relevant and helpful to traders.
- 4.13** Purchasing, or enquiring further, online often involves a customer journey through several web pages, and this introduces the challenge of determining how soon on this customer journey specific price information and qualifications need to be displayed. Guidance that specifically addresses this issue may therefore be helpful.

Hotels

- 4.14** The hotel sector is an area in which advertisers have displayed VAT-exclusive prices that are not clearly addressed to business customers. CAP has carried out sector compliance work recently in this area; however, it might be useful for the PPG to offer sector-specific guidance to make it clear to marketers what is required.

Telecommunications

- 4.15** The ASA regularly receives complaints about the clarity of pricing of telecommunications packages; for example, whether the price of compulsory line rental has been made clear. Our position is that, if marketers offer services such as call plans, broadband or TV-on-demand services and consumers are also required to take line rental from the marketer, marketing communications should present the price for line rental clearly alongside the most prominent price for other services. Details of any other compulsory charges or one-off costs should also be made clear. The final price in such packages is often made up of a number of elements, and therefore the potential for consumer confusion is increased and it is particularly important that prices are presented clearly.
- 4.16** Due to the complexity of telecoms package pricing and the potential for misleading price claims in this area, we consider it would be helpful for sector-specific guidance to be included in the PPG.

Tickets

- 4.17** The ASA regularly receives complaints about non-optional fees not being included in prices. We looked at this area in relation to theatre ticket pricing in particular in February 2013, and as a result of four precedent adjudications, established a clearer position, undertook sector compliance action and updated [CAP guidance](#) to assist marketers.
- 4.18** In summary, the ASA position is that a face value ticket price should be quoted without qualification only if no extra charges apply when buying tickets using any of the channels mentioned in the ad. If extra charges (such as booking fees) apply per ticket then they should be included in the ticket price. If extra charges (such as transaction fees) apply per transaction then the cost of that charge should be made clear. For example, on a website the per-transaction charge should be stated both on the first webpage that gives the ticket price, and on the final page of the booking process.
- 4.19** Due to the complexity of ticket pricing and the potential for misleading price claims in this area, we consider it would be helpful for sector specific guidance on ticket pricing and fees to be incorporated into **2.2.19** of the PPG.

Letting agents

- 4.20** The ASA recently upheld a complaint about online ads for a letting agent that did not make clear that an administration fee applied to the quoted prices, or explain how that fee would be calculated. The advertiser charged different non-optional fees depending on the consumer's circumstances and the location of the property, and so it was not possible to calculate them in advance.

- 4.21** We told the advertiser to ensure future ads made clear when non-optional fees were excluded from quoted prices, and to provide enough information to allow the consumer to work out how those charges would be calculated.
- 4.22** Our position is that, in general, advertisers should state the fees that apply immediately alongside the quoted rent. Further information about the fees and how they are calculated could either be provided through a link or via a pop-up. Alternatively, a prominent statement could be provided at the top of the web page or in a footnote in press ads or leaflets. Given the size of the sector and relatively large fees involved, our view is that this area would benefit from specific sectoral guidance in the PPG. We understand that the OFT also recently carried out a consultation in relation to this sector.
- 4.23** We would suggest adding a section on lettings which links to CMA's impending Guidance for Lettings professionals.
- 4.24** This section or **2.2.11** (Professional Fees) could include guidance on letting agents' fees, e.g. "ads should make clear when non-optional fees are excluded from quoted prices, and provide enough information to allow the consumer to work out how those charges will be calculated." A link to the [CAP guidance](#) could be helpful.
- 4.25** **4.4(b)** links to **2.1.2** (which suggests that you cannot show one price in an ad and then charge a higher price at the point of sale). However, CAP guidance states that it is acceptable to use a "from" price in ads for new build properties that show images of upgraded rooms or show homes *provided* that they are clearly disclaimed with "image includes optional upgrades at additional cost". If the cost of the additional upgrade is known, it should be made clear. We would ask TSI to consider whether the PPG could benefit from the same approach.

Q9: Should a breach of the PPG be enforceable as a criminal offence and / or civil infringement? (As was the position under section 25 CPA 1987)

- 4.26** The ASA understands that a breach of the PPG has not been enforceable as a criminal offence and / or civil infringement since Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (UCPD), which has been implemented in the UK by the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs), has been in force. Article 4 of UCPD expressly prohibits Member States from maintaining or adopting more restrictive national measures, even where such measures are designed to ensure a higher level of consumer protection. TSI could consider marking parts of the guidance that have been tested in the courts.

4.27 If you have any further questions or require further information, please contact James Craig:

James Craig
Advertising Standards Authority
Mid City Place
71 High Holborn
London
WC1V 6QT
jamesc@cap.org.uk