

# CAP Regulatory Statement

The CAP Code Review has now concluded and a new Code is in place. CAP is pleased to have received more than 200 responses from a wide variety of stakeholders in industry, in the regulatory and not-for-profit sectors and crucially from the public too. CAP is grateful to all who took part in the consultation process and helped to shape the new Code.

## Aims

CAP's general policy objective is to ensure that all non-broadcast marketing communications covered by the CAP Code are legal, decent, honest and truthful and prepared with a due sense of social and professional responsibility. It aims to ensure that consumers are protected while allowing the UK advertising industry to maintain and enhance its worldwide reputation for creativity and integrity. For the first time in the UK, CAP's review has been able to proceed in close co-ordination with a review of the rules for broadcast advertising, striving to ensure a greater degree of consistency across media than ever before. Lastly, CAP intends its rules to be transparent, accountable, proportionate, consistent, targeted only where regulation is needed and written so that they are easily understood, easily implemented and easily enforced.

## Background

The Code Review began two and a half years ago when CAP representatives from the advertising, sales promotion, direct marketing and media businesses met, under the chairmanship of Andrew Marsden, for the first of a series of meetings where they identified those rules that still stood the test of time, others that no longer offered meaningful protection, and new areas of development where regulation might be needed. That process culminated in the public consultation that took place between 26 March and 19 June 2009. CAP members then reconvened to evaluate all the points made by consultation respondents.

## The Code and the law

Responses to the Code Review have covered a wide range of topics, but one area that has been brought into particularly close focus by respondents has been the relationship between the Code and the law. With regard to the Consumer Protection from Unfair Trading Regulations (CPRs) and the Nutrition and Health Claims Regulations (NHCR), some respondents have questioned CAP's decision to reflect certain legal requirements and its determination to maintain detailed provisions on subjects that are addressed prescriptively in law.

The relation of the Code to the law has always been complex. It has been made more so by maximum harmonisation measures that include provisions on marketing. Where such measures do not apply, CAP has sometimes deemed it necessary to go beyond the law, just as some trade and professional associations choose to go beyond the requirements of the CAP Code in relation to their sectors. CAP takes the position that if the ASA is to be the established means of consumer protection in advertising, and if it is to ensure that advertising remains legal as well as decent, honest and truthful, then it cannot credibly do so without a Code that takes legal provisions as its minimum standard. Furthermore, it is in the interest of marketers that the Code acts, as far as it can, as a plain-English quick reference guide to the main provisions of law in important sectors like food advertising. The complex requirements, and the occasionally opaque wording, of recent European regulations are a particular challenge in that regard, but they represent a challenge that CAP believes it must face head-on.

## A comprehensive and inclusive process

CAP has reviewed every rule in every section of the Code. Both the rules CAP has maintained and those it has introduced have received the appropriate level of scrutiny to ensure they are necessary and in line with CAP's regulatory objectives. Some changes appear minor but they address real problems that can cause significant difficulty for marketers, consumers and the ASA. By tackling ambiguous wording for example, many rules are now easier to implement and easier to enforce. Where it has reflected law, CAP has listened to respondents and taken the best advice to ensure marketers and consumers benefit from a clear and accurate reflection of key legal provisions. And the

Code continues to include social responsibility provisions that reflect generally accepted standards in society and respond proportionately to evidence about the impact of categories of advertising.

### Codes that stand the test of time

To mark the occasion of the first concurrent review of the non-broadcast and broadcast advertising Codes, CAP and BCAP have agreed a common commencement date of 1 September. Between now and then, CAP and BCAP will offer general and sector-specific presentations and training to ensure that marketing campaigns appearing after that date are compliant with the new rules.

The new CAP Code is intended to provide the basis for advertising self-regulation for the foreseeable future. However, CAP is of course aware that it takes its place in an ever faster-changing landscape. Developments in new media, in European and domestic law and in UK society will continue apace. However, CAP is confident that the Code provides the best, most robust and evidence-based approach to consumer protection and industry integrity to take marketers into the new decade.

Finally, CAP extends its thanks to industry in particular for its involvement throughout the Code Review: it is, after all, as a result of the marketing community's determination to create and follow self-imposed rules that self-regulation exists and flourishes. The process of consultation and evaluation has enriched the self-regulatory system and helped to develop the mutual understanding and co-operation between stakeholders on which successful self-regulation depends.