

APPENDIX 3: THE CPRS AND BPRS



Background

As well as this Code, advertising is subject to legislation. See www.cap.org.uk for a non-exhaustive list.

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

One important piece of legislation that affects broadcast advertising is the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). For the purpose of the Regulations and in this Appendix, "consumers" refers to individuals acting outside the course of their business. The CPRs prohibit unfair advertising to consumers, including misleading or 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 Broadcast Advertising Code. Relevant principles established in the CPRs are summarised below. The summary is not an exhaustive statement of the effect of the CPRs and licensees who would like detailed guidance on the CPRs, 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 this summary:

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 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 identifiable group of people who are especially vulnerable, in a way that the advertiser could reasonably foresee, because of for example, mental or physical infirmity, age or credulity, the advertisement will be considered from the point of view of the average member of the affected group.

Misleading advertisements

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.

"Transactional decisions" are consumers' decisions about whether to buy, pay for, exercise contractual rights in relation to, keep or dispose of goods or services. They include decisions to act and decisions not to act.

Advertisements can mislead consumers even if they do not include false information; for example, they can deceive through presentation or by omitting important information that consumers need to make an informed transactional decision.

Aggressive advertisements

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

Unfair advertisements

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.

The Business Protection from Misleading Marketing Regulations 2008 (the BPRs)

Business-to-business advertisements are subject to the Business Protection from Misleading Marketing Regulations 2008 (the BPRs). Under the BPRs, an advertisement is misleading if it:

- in any way, including its presentation, deceives or is likely to deceive the traders to whom it is addressed or whom it reaches and by reason of its deceptive nature, is likely to affect their economic behaviour

- or, for those reasons, injures or is likely to injure a competitor.

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