

## SECTION 9: DISTANCE SELLING

**Question 29: Given CAP's policy consideration, do you agree present rule 42.7 (personal calls) should not be included in the proposed Code? If your answer is no, please explain why.**

<i>Responses received in favour of CAP's proposal from:</i>  None	<i>Summaries of significant points:</i>  	<i>CAP's evaluation of those points and action points:</i>  
<i>Responses received against CAP's proposal:</i>  Enable	<i>Summaries of significant points:</i>  There would be no harm in retaining the rule	<i>CAP's evaluation of those points and action points:</i>  CAP considers that the rule is disproportionate; whilst it agrees that traders should tell consumers that they plan to visit, we do not consider that this necessarily needs to be made clear in the advertisement – it might well be discussed during a telephone call.

**Question 30: Given CAP's policy consideration, do you agree that present rule 42.8 (packaging products that might fall into the hands of children) should not be included in the Code? If your answer is no, please explain why.**

<i>Responses received in favour of CAP's proposal from:</i>  None	<i>Summaries of significant points:</i>  	<i>CAP's evaluation of those points and action points:</i>  
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<i>Responses received against CAP's proposal:</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>
Family and Parenting Institute; Direct Marketing Association	The rule should be retained	In practice, the rule ensures the adequate packaging of, for example, adult material or medicinal products, which could be offensive or harmful if opened by a child instead of the addressee. CAP considers that the general principle of social responsibility is suitable to deal with cases where the packaging of distance selling items is inadequate.
<b>Question 31:</b> <b>i) Taking into account CAP's policy consideration, do you agree that CAP's rules on Distance Selling are necessary and easily understandable? If your answer is no, please explain why.</b>  <b>ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?</b>  <b>iii) Do you have other comments on this section?</b>		
<i>Responses received from:</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>
Office of Fair Trading	The Principle to the Distance Selling section presently states that most distance selling contracts are subject to the Consumer Protection (Distance Selling) Regulations 2000; it should also state that distance sellers are subject to the CPRs	CAP does not intend the Code to be a guide to the law and does not intend the principles at the head of each section to be read as an exhaustive list of the legislation that may apply; the references are intended merely to draw

		<p>marketers' attention to the most significant legislation. The Code is clear that, where it has specific rules for a product category or marketing discipline, those rules must be observed in conjunction with the rest of the Code. Adding the CPRs to the principles of every other category to which they might apply would be unhelpful because it would create the false impression that the principles are attempting to give a comprehensive overview of the legal requirements for that category.</p>
Office of Fair Trading	<p>Rule 9.1.1 is permissive in its language regarding what need not be done. This could conflict with what is, or might be in individual circumstances, required under the CPRs (in light of the CPRs provisions on omissions). Because of that, it would be better to use alternative language that makes it clear that these are some of the requirements that must be complied with, and others may also apply. Our interpretation of the provisions in the CPRs that Rule 9.1.1 seeks to reflect is that traders must, under the CPRs, give their geographical address regardless of what type of response mechanism is used by an advertisement, where an invitation to purchase is made.</p>	<p>CAP considers rules such as "other requirements may also apply" to be less than transparent – the Code is written to state clearly the standards against which marketing communications will be assessed by the ASA.</p> <p>CAP notes that requiring advertisers who use telephone response mechanisms to state their geographic address in all circumstances will have a significant impact, particularly on small businesses who advertise in the local press, because the extra space required will increase the cost of advertising. CAP also notes this interpretation is inconsistent with the information currently required for premium rate lines (which are required by PhonepayPlus to give a non-premium rate number for customer services and to supply their geographic address, on request, to consumers who call the customer service number). To impose a greater restriction on</p>

		<p>those who use standard-rate telephone lines than on those who use premium rate lines seems disproportionate.</p> <p>CAP has, however, amended the rule to state:</p> <p><i>Distance selling marketing communications must make clear the marketer's identity and geographic address; these must be given in a form that can be retained by consumers.</i></p> <p>CAP intends this rule to allow the continuing practice, for example in advertising that features premium rate numbers, of referring readers to a route where they may obtain the geographic address. If case law establishes that geographic addresses must be stated in all distance selling advertisements, the ASA will, of course, interpret the rule consistently with the law.</p>
Alliance Boots	The rules are unnecessary because they merely duplicate the law	<p>CAP considers that duplicating the law in the Code is helpful: it allows the ASA to take action on complaints, resolving complaints more quickly than the courts, to the benefit of consumers, and without the cost to marketers of defending legal challenges.</p>

Tesco	The rules go beyond advertising: the ASA's remit should not extend to processes beyond marketing	CAP considers that the fulfilment of orders placed through distance selling advertisements is so closely linked to the advertisements themselves that it needs to maintain rules. Failure to handle properly orders placed through advertisements has the potential to damage the reputation of advertising. The number of complaints received by the ASA under these rules shows that consumers regard distance selling as a type of marketing.
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