

SECTION 22: OTHER COMMENTS

Question 74: Do you have other comments or observations on CAP's proposed Code that you would like CAP to take into account in its evaluation of consultation responses?

<i>Responses received from:</i>	<i>Summaries of significant points:</i>	<i>CAP's evaluation of those points and action points:</i>
<p>Alliance Boots; Asda; AIME; British Retail Consortium; Central Office of Information (COI); Charity Law Association; Consumer Focus; E.ON UK Ltd; Nestle UK; RSPCA; Sainsbury's Supermarket Limited</p>	<p>Principles v detailed rules</p> <p>AIME prefers a core Code stating clear principles surrounded by flexible Help Notes or Guidelines, which can be amended at will without costly guidelines. Codes which are too prescriptive may become ineffective as they are too cumbersome and difficult to understand and administer.</p>	<p>Principles v detailed rules</p> <p>The CAP Code includes detailed rules that give effect to general rules and principles set out in the Codes. The detailed rules have been introduced to the Codes over time and make clear advertising practices that the regulator – through consultation – has determined to be unacceptable; either because they mislead, offend, have the clear potential to harm or are otherwise irresponsible. Unlike Guidance, detailed rules are not a 'guide' to complying with general rules and principles; they reflect provisions that must be complied with. Detailed rules provide clarity to advertisers and give – as far as possible – certainty in planning and executing their marketing campaigns before they are published. This is in keeping with better regulation; focusing on prevention rather than cure, by helping the advertiser and the ASA to forgo costly, disruptive and avoidable regulatory action in the future.</p>

	<p>A single media neutral Ad Code?</p> <p>1. AIME and E.ON UK Ltd called for a single, media-neutral Code to avoid unnecessary, costly and potentially confusing duplication of regulatory effort.</p> <p>Alliance Boots; British Retail Consortium and AIME questioned if it is necessary to maintain two Advertising Codes; one for broadcast and one for non-broadcast. A single Code should be the goal.</p> <p>2. Asda said there is a need for greater consistency between the CAP and BCAP Codes.</p>	<p>A single media neutral Ad Code?</p> <p>1. The BCAP Code applies to broadcasters that are licensed by Ofcom. The CAP Code applies primarily to the advertiser. There is a co-regulatory framework for broadcast and a self-regulatory system for non-broadcast. That is the fundamental reason why a single Code cannot be made at this time. However, the Codes do now share many of the same rules as each other in key areas such as misleading advertising, harm and offence.</p> <p>By conducting the reviews of the Codes in parallel, we have tried to ensure the maximum possible consistency of approach.</p> <p>The decision to maintain distinct Codes recognises those fundamental differences and ensures that regulation of advertisements in both media sectors is proportionate.</p> <p>2. By conducting the reviews of the Codes in parallel, we have tried to ensure the maximum possible consistency of approach.</p> <p>The decision to maintain distinct Codes recognises those fundamental differences and ensures that regulation of advertisements in both media sectors is proportionate.</p> <p>By bringing the Advertising Codes ‘under one</p>
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	<p>Reflecting law in the Codes</p> <p>1. Asda said the Code should make reference to ‘must’ only where legislation is in place. It should revert to ‘should’ for other rules.</p> <p>2. Consumer Focus said the Advertising Codes need to incorporate the law at a minimum and give guidance on compliance, not cherry pick aspects of the law.</p> <p>Scope of Code</p> <p><u>On-line marketing communications</u></p> <p>1. Nestle UK Ltd, Consumer Focus and RSPCA</p>	<p>Reflecting law in the Codes</p> <p>1. Compliance with the CAP Code is not voluntary. ‘Must’ accurately reflects the obligation on the part of the advertiser (CAP) to comply with the rules in the Code, irrespective of whether the rules copy out provisions in the law or not.</p> <p>2. It is simply not practical to transpose into the Code every provision of law that is applicable to marketing communications covered by the CAP Code. Quite aside from the impossibility of the task, it would render the Code unwieldy, thereby diminishing the protection it affords to consumers and the level playing field it provides to advertisers.</p> <p>Scope of Code</p> <p><u>On-line marketing communications</u></p> <p>1. CAP welcomes the respondents’ comments</p>

	<p>welcomed the introduction into the CAP Code of new media concepts (e.g. viral marketing, texting etc)</p> <p>2. An individual said rule 1.1(c) should be amended to state: "The Code Applies to... cinema, video and DVD and Blu-ray</p> <p>3. Which? Noted its concern that areas such as product packaging, sponsorship and company websites are not covered by the CAP Code.</p>	<p>2. Blu-ray Disc (BD), sometimes called "Blu-ray," is an optical disc storage medium designed to supersede the standard DVD format.</p> <p>CAP's proposed Code is intended to spell out, for the avoidance of any doubt, the extent to which new forms of digital advertising are already regulated by the ASA.</p> <p>On that basis, CAP agrees with the individual's suggestion and has amended the Code to state:</p> <p>I. The Code applies to:</p> <p>c. cinema, video, DVD and Blu-ray advertisements</p> <p>3. The CAP Code is, in principle, media neutral; by being media-neutral the Code guarantees a high level of protection for consumers across media and ensures a level playing field for businesses. The scope of the Code is determined by the advertising industry mindful of that principle and the practical constraints of regulating a diverse and ever-changing advertising sector.</p>
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	<p>argued that, where it was not clear, the communication should not fall within the remit of the Code irrespective of whether the material was in paid-for space, until such time as the Code could be amended, following consultation, to bring that category of communication within its remit.</p>	<p>assessment of whether a given form of communication falls properly within the remit of the Code on a case by case basis. Paid-for space is not absolutely determinative: vanity publishing, for example, is a form of paid-for space, but neither CAP nor the ASA consider it to be marketing material. However, it is the experience of the ASA that the most frequent shared characteristic of new forms of communication that it finds to be marketing communications is that they fall within paid-for space. The Introduction acknowledges that, for the sake of transparency and accountability.</p>
	<p>6. Executive recommendation</p> <p>The Introduction to the proposed Code may not accurately describe the extent of its remit in regard to premium-rate services.</p>	<p>6. Marketing Communications for PRS</p> <p>The proposed rewording of the Code presented in CAP's consultation document states:</p> <p><i>The Code does not apply to: ...</i></p> <p><i>b) the operation of premium-rate services, which are the responsibility of PhonepayPlus; marketing communications that promote those services are subject to PhonepayPlus regulation and to the CAP Code or the BCAP Code. All marketing communications for premium-rate services are subject to the rules that cover non-operational elements of communications, for example serious or widespread offence, social responsibility and the truthfulness of claims that do not relate to</i></p>

		<p><i>specific characteristics of a premium-rate service</i></p> <p>That proposal unintentionally implies a change to ASA's remit. It states the ASA would consider complaints about "the truthfulness of claims that do not relate to specific characteristics of a premium-rate service". That implies the ASA wouldn't consider complaints about the truthfulness of claims that <u>do</u> relate to specific characteristics of a PRS (the ASA presently may consider such complaints).</p> <p>For example, a PRS ad that claims to provide info about weather forecasts but, in reality, provides info about snow fall in Alpine resorts. The ASA would presently act against such an ad but would be prevented, unintentionally, from doing so under the revised CAP Code.</p> <p>To avoid that unintended consequence, CAP has reverted to the original wording:</p> <p><i>The Code does not apply to:</i></p> <p><i>b) the contents of premium-rate services, which are the responsibility of PhonepayPlus; marketing communications that promote those services are subject to PhonepayPlus regulation and to the CAP Code".</i></p>
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	<p>Ads for animals or pet sales</p> <p>The RSPCA set out its concern – supported by evidence - about ads for animals or pet sales. It recommended the CAP Code be updated to include: i) ads for animal or pet sales to include pet vending licence numbers, ii) In line with publications such as Exchange and Mart and Epupz, to require ads for animal or pet sales to indicate ‘T’ for commercial classified ads and ‘P’ for private classified ads. iii) to provide within the Codes or as an Advice Note, general information concerning the legal sale of animals or pets. The RSPCA considered that information would support, in relation to ads for animals and pets, compliance with CAP Code rules: 1.3.1, 3.1, 3.2, 3.3, 3.11, 10.2.</p>	<p>Ads for animals or pet sales</p> <p>CAP considers that where marketing communications for animals or pet sales fall within the scope of the CAP Code, they are adequately regulated by the rules therein, including the rules cited by the respondent.</p> <p>CAP understands that many ads for animals or pet sales appear in private classified ads. The CAP Code does not extend to “classified private ads, including those appearing on-line”. That is a fundamental point of principle. The ASA system was established to regulate commercial communications; business to consumer or business to business. The decision to exclude consumer to consumer communications was taken, in part, in recognition of the difficulty of regulating them. That difficulty is also recognized in the present legislation governing misleading ads, the CPRs, which specifically excludes ads that have been placed by a private individual not acting in a business capacity.</p> <p>CAP recognises that many sellers of dogs are, in fact, traders as opposed to private individuals. The Business Advertisements Disclosure Order requires traders to identify themselves as such. That Order and other legislation relevant to concerns expressed by the RSPCA, for example the Dangerous Dogs Act, is enforced by other agencies; not the ASA.</p>
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	<p>Pornography</p> <p>An individual said for the purposes of protecting children, CAP should include rules regarding the advertising of pornographic products. The rules could limit wording and types of images and make clear in which publications those ads could appear. This is a very worrying omission from the Code and should be addressed immediately.</p> <p>A compulsory Code</p> <p>Sainsbury's Supermarket Limited said it had concerns about the de facto compulsory nature of the Code; the de facto element is introduced because it is impossible to place an ad unless it meets the criteria of the Code.</p>	<p>Pornography</p> <p>The CAP Code states: "compliance with the Code is assessed according to the marketing communication's probable impact when taken as a whole and in context. That will depend on the medium in which the marketing communication appeared the audience and its likely response, the nature of the product and any material distributed to consumers. CAP believes that, in conjunction with rules included in the harm and offence, children section and the social responsibility rule, the ASA has sufficient flexibility to act against marketing communications for pornography that are placed inappropriately or are otherwise irresponsible.</p> <p>A compulsory Code</p> <p>The Committee of Advertising Practice (CAP) is the self-regulatory body that creates, revises and enforces the CAP Code: the British Code of Advertising, Sales Promotion and Direct Marketing.</p> <p>The CAP Code covers UK-originated, non-broadcast marketing communications, which include advertisements placed in traditional and new media, sales promotions and direct marketing communications. The CAP Code is primarily enforced against the advertiser.</p>
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	<p>How the system works</p> <p>Sainsbury's Supermarket Limited expressed concern around the lack of transparency, pointing</p>	<p>How the system works</p> <p>'How the system works' will remain, as proposed in the Consultation Document, within the Code.</p>

	to the fact that section 60 in the present Code, “How the system works” has not been replicated in the proposed Code.	
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