

The BCAP Code Review

E.ON UK is one of the UK's largest retailers of electricity and gas. We are also one of the UK's largest electricity generators by output and operate Central Networks, the distribution business covering the East and West Midlands. In addition, our E.ON Climate and Renewables business is a leading developer of renewable plant in the UK.

We have considerable experience in broadcast advertising. Our responses are focused solely on those areas which affect the products we sell or audiences we target. For simplicity we have excluded questions where we have no comments.

Section 1: Compliance

Social responsibility

Question 1

Given BCAP's policy consideration, do you agree that rule 1.2 should be included in the proposed BCAP Code? If your answer is no, please explain why.

Yes, as an overarching principle

Other Questions

Question 2

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Compliance Section are necessary and easily understandable? If your answer is no, please explain why.

Yes

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Compliance 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?

No

iii) Do you have other comments on this section?

No

Section 2: Recognition of Advertising

TV advertisement content prohibitions

Question 3

i) Given BCAP's policy consideration, do you agree that rule 2.1 should replace present TV rules 2.1.2 (b) and 2.2.2 (c), be applied to TV and radio and be included in the proposed BCAP Code?

If your answer is no, please explain why.

Yes

ii) Given BCAP's policy consideration, do you agree that rule 2.3 should replace present TV rule 2.2.2 (d), be applied to TV and radio and be included in the proposed BCAP Code? If your answer is no, please explain why.

Yes

Extra consideration of rule 2.1.2(a)

Question 4

Given BCAP's policy consideration, do you agree that rule 2.2 should replace present TV rule 2.1.2 (a), be applied to TV and radio and be included in the proposed BCAP Code? If your answer is no, please explain why.

Yes

Editorial independence: television

Question 5

i) Given BCAP's policy consideration, do you agree that present TV rule 2.2.1 should not be included in the proposed BCAP Code? If your answer is no, please explain why.

Yes

ii) Given BCAP's policy consideration, do you agree that present TV rule 2.2.2 (a) should not be included in the proposed BCAP Code? If your answer is no, please explain why.

Yes

Impartiality of station presenters and newsreaders

Question 6

i) Given BCAP's policy consideration, do you agree that radio rule 18, section 2, should not be included in the proposed Code? If your answer is no, please explain why.

Yes

ii) Given BCAP's policy consideration, do you agree that radio station presenters who do not currently and regularly read the news should be exempted from the rule that restricts presenters from featuring in radio advertisements that promote a product or service that could be seen to compromise the impartiality of their programming role? If your answer is no, please explain why.

Yes

Other questions

Question 7

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules on the Recognition of Advertising are necessary and easily understandable? If your answer is no, please explain why.

Yes

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Recognition of Advertising rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here or in Section 32 on Scheduling and that should be retained or otherwise be given dedicated consideration?

No

iii) Do you have other comments on this section?

No

Section 3: Misleading

Puffery and subjective claims

Question 8

Given BCAP's policy consideration, do you agree that rules 3.4 and 3.5 should be included in the Code? If your answer is no, please explain why.

Yes

Significant division of informed opinion

Question 9

Given BCAP's policy consideration, do you agree that rule 3.13 should be included in the Code? If your answer is no, please explain why.

Yes

Prices claims "from" or "up to"

Question 10

Given BCAP's policy consideration, do you agree that rule 3.23 should be included in the Code? If your answer is no, please explain why.

Yes

Estimates of demand

Question 11

i) Given BCAP's policy consideration, do you agree that rule 3.27 should be included in the Code? If your answer is no, please explain why.

No. This is very much a judgement where the advertiser rather than the broadcaster is best placed to determine the potential level of demand for their product. Advertisers who do not make reasonable estimates of demand are at risk of being in breach of the Consumer Protection Regulations.

ii) Given BCAP's policy consideration, do you agree that rule 3.28.2 should be included in the Code? If your answer is no, please explain why.

Yes.

Recommended Retail Prices (RRPs)

Question 12

Given BCAP's policy consideration, do you agree that rule 3.39 should be included in the Code? If your answer is no, please explain why.

Yes

Subliminal techniques

Question 13

Given BCAP's policy consideration, do you agree that the rule on subliminal advertising is relevant to radio and should, therefore, be apply to radio as well as TV advertisements? If your answer is no, please explain why.

Yes, it is relevant to radio but the wording needs to adapted to that medium.

VAT-exclusive prices

Question 14

Given BCAP's policy consideration, do you agree that rule 3.18 should be included? If your answer is no, please explain why.

Yes

Tax-exclusive prices

Question 15

Given BCAP's policy consideration, do you agree that rule 3.19 should be included in the Code? If your answer is no, please explain why.

Yes

Price offers that depend on other commitments

Question 16

Given BCAP's policy consideration, do you agree that rule 3.22 should be included in the Code? If your answer is no, please explain why.

Yes

Use of the word "free"

Question 17

i) Given BCAP's policy consideration, do you agree that rule 3.25 should be included in the Code? If your answer is no, please explain why.

Yes

ii) Given BCAP's policy consideration, do you agree that rule 3.26 should be included in the Code? If your answer is no, please explain why.

Yes

Geographical restrictions

Question 18

Given BCAP's policy consideration, do you agree that rule 3.28.3 should apply to TV and radio advertisements? If your answer is no, please explain why.

Yes

Imitation or replica of competitor's trade mark

Question 19

Given BCAP's policy consideration, do you agree that the proposed amendment in 3.43 correctly reflects the BPRs 4(i) requirement? If your answer is no, please explain why.

Yes

Question 23

i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules in the Misleading Section are necessary and easily understandable? If your answer is no, please explain why?

Yes, subject to the changes in wording we have suggested in our responses to questions 11 and 13.

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Misleading 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?

No

iii) Do you have other comments on this section?

No

Section 8: Distance Selling

Substitute products

Question 38

Given BCAP's policy consideration, do you agree that rule 8.3.4 should be included in the Code? If your answer is no, please explain why.

Yes

Cancellation within seven days

Question 39

Given BCAP's policy consideration, do you agree that rule 8.3.6a should be included in the Code? If your answer is no, please explain why.

Yes

Prompt delivery

Question 40

Given BCAP's policy consideration, do you agree it is reasonable to extend the period within which orders must be fulfilled from 28 to 30 days? If your answer is no, please explain why.

Yes

Protection of consumers' money

Question 41

Given BCAP's policy consideration, do you agree that present rule 21.1 f) of section 2 is unnecessarily prescriptive in the light of BCAP's proposed rule 8.3.1? If your answer is no, please explain why.

Yes

Personal calls from sales representatives

Question 42

Given BCAP's policy consideration, do you agree that present TV rule 11.2.3 (a) and (b) and present Radio rule 21.1 j) (i)-(ii) of section 2 should not be included in the Code? If your answer is no, please explain why.

Yes

Sending goods without the authority of the recipient

Question 43

i) Given BCAP's policy consideration, do you agree that present TV rule 11.2.2(g) should not be included in the Code? If your answer is no, please explain why.

Yes

ii) Given BCAP's policy consideration, do you agree that 8.3.7 should be included in the Code? If your answer is no, please explain why.

Yes

Other questions

Question 44

i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on Distance Selling are necessary and easily understandable?

Yes

If your answer is no, please explain why.

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?

No

iii) Do you have other comments on this section?

No

Section 9: Environmental Claims

New rules for television

Question 45

i) Given BCAP's policy consideration, do you agree that it is justifiable to take the approach of the present Radio Code and provide detailed rules on environmental claims in a dedicated section of the BCAP Code? If your answer is no, please explain why.

Yes

ii) Taking into account BCAP's general policy consideration, do you agree that BCAP's rules on Environmental Claims are necessary and easily understandable? If your answer is no, please explain why?

No. *We believe that further guidance is required as follows;*

9.3 We propose that the interpretation of the test should be against an audience that is reasonably informed. This will mean that very basic terms such as carbon, carbon dioxide, CO2 will not need to be explained.

Life cycle of the product

Question 46

Do you agree that, provided the claim is thoroughly explained and does not mislead consumers about the product's total environmental impact, it is reasonable to allow a claim about part of an advertised product's life cycle? If your answer is no, please explain why?

Yes, however we believe further guidance is required. If an advertiser is focusing on the improved environmental performance of part of the life cycle

of product they should not be required to declare the lifecycle impact of the product unless that has not improved. The rules should be designed to facilitate advertising claims about environmental improvements as any genuine environmental improvement should be welcomed.

Other Questions

Question 47

i) 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?

No

ii) Do you have other comments on this section?

No

Section 28: Competitions

Competitions

Question 141

i) Given BCAP's policy consideration, do you agree that rule 28.1 should be included in BCAP's new Code? If your answer is no, please explain why?

Yes

ii) Do you have other comments on this section?

No

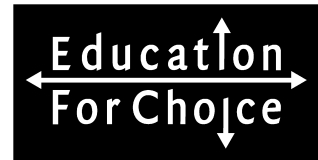
11 | 11 12 | 12

Section 33: Other comments

Question 157

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

No



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Education for Choice is a national educational charity that works with young people and professionals to ensure that all young people are equipped to prevent pregnancy and to make and act on informed choices about pregnancy. Its work has been praised by the Government Independent Advisory Group on Sexual Health and HIV as providing an excellent model of health education for young people. Working with 1500 young people and 500 health and educational professionals a year, Education For Choice is acutely conscious of the need to make services accessible and available to young people that will help them to prevent unintended pregnancy and, in the event of unintended pregnancy to get impartial, professional help quickly. Young pregnant women are disproportionately likely to presenting late for abortion care and for ante-natal care. The rules regulating advertising of products and services should take account of the need to facilitate speedy access to appropriate services and to reduce unnecessary obstacles and delays to getting professional support for this particularly vulnerable group.

We are responding to this consultation because we are aware that some of the messages young people get about accessibility of medical products and services will be via advertising.

Family planning centres

Question 62

- i) Given BCAP's policy consideration, do you agree that it is necessary to maintain a rule specific to post-conception advice services and to regulate advertisements for pre-conception advice services through the general rules only?

YES

We agree that advertisements for pre-conception advice services should be regulated through the general rules. However, advertising for pre-conception advice on emergency contraception requires special regulation because women who may respond to such advertising are in an extremely time-sensitive position.

Some agencies offering pre-conception services or advice on pregnancy may dissuade women from using Emergency Hormonal Contraception (EC) because they have a philosophical objection to this safe and legal medication. It is essential that a woman seeking to avoid pregnancy by accessing EC is not obstructed from doing so as quickly as possible by being attracted to a service which will not provide it.

There are many reasons women may choose to access emergency hormonal contraception: they may have experienced condom slippage or splitting, they may have failed to use contraception or they may have been forced to have sex without contraception. EC (the

'morning-after' pill) is effective only within 72 hours of unprotected sex. EC is more likely to prevent pregnancy the sooner it is taken. Taken within 24 hours after unprotected sex, EC will prevent up to 95% of pregnancies expected to have occurred if it had not been used. If EC is taken between 49 to 72 hours afterwards, it will only prevent up to 58% of pregnancies that would have been expected to occur. An emergency IUD ('coil') fitted within five days of unprotected sex can also prevent pregnancy.

Some of the anti-abortion agencies argue that EC causes abortion, but there is no legal or medical basis for this. EC involves the same medication as the regular contraceptive pill given at a higher dose, which is different to the medical or the surgical process of an abortion. EC has no effect if the woman is pregnant. It works by stopping a woman's egg being released, or by preventing the implantation of an already fertilised egg into her womb lining, thus preventing a pregnancy from beginning.

Some of these groups offer advice about EC as part of their counselling services. We believe it is not ethical for adverts to request that women should contact them to discuss emergency contraception, without at the same time making clear that they will not provide EC. This may delay women from accessing EC in the short timeframe within which it is effective.

We suggest that similarly to the proposed requirement in **question 62/11.11**, there should be a requirement for clarity on the part of advertisers promoting advice services in connection with emergency contraception. This may need enhancement from a simple statement about non-referral. Required wording might state, for example:

'We do not prescribe emergency contraception. This is available free of charge from the NHS. It is most effective at preventing pregnancy the sooner it is taken after unprotected sex, but can be taken within 72 hours. Call NHS Direct on 0845 4647.'

Such a requirement would reflect the clarity required given the urgently time-limited nature of the treatment. We also feel it is necessary to point out in advertising that EC is available for free. Possible users of EC include those with limited financial resources, particularly, but not exclusively young people. The cost of this medication from a pharmacist is around £30 which for some can be prohibitive. It is important that people who see advertisements for EC do not gain the impression that this is a product that is solely commercially available.

Such a requirement would reflect the clarity required given the urgently time-limited nature of the treatment. We also feel it is necessary to point out in advertising that EC is available for free. Possible users of EC include those with limited financial resources, particularly, but not exclusively young people. The cost of this medication from a pharmacist is around £30 which for some can be prohibitive. It is important that people who see advertisements for EC do not gain the impression that this is a product that is solely commercially available.

- ii) Given BCAP's policy consideration, do you agree that rule 11.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

YES

Yes. We agree that it is necessary to maintain a rule specific to post-conception advice services. We agree that 11.11 should be included in the proposed BCAP code.

It is essential that women do not attend pregnancy advice services in the belief that they will be given support to access abortion or will be given a referral to an abortion service if that is not actually available. Once a woman has decided to have an abortion it is essential that she is given access to the service as soon as possible. Abortion is associated with fewer risks the earlier in pregnancy it is undertaken. This is recognised by the Royal College of Obstetricians and Gynaecologists (RCOG) and the Department of Health based on research literature from the UK and around the world. Anything that obstructs or delays women from accessing earlier abortion effectively imposes unnecessary risks to their health.

Some pregnancy advice centres target vulnerable and young women using advertising which, through its words and/or images is aimed clearly at women who are ambivalent about their pregnancy or do not want to be pregnant. They may give the impression that a woman coming to them for help will be supported to have an abortion if that is what she chooses. In many cases not only is the centre unable to refer for abortion, but will often expose the woman to several minutes – in some cases hours – of ‘counselling’ aimed at dissuading her from abortion. Women attending these centres are routinely given misinformation about the physical and psychological risks of abortion including the scientifically and incorrect assertions that abortion causes breast cancer and infertility and that abortion frequently leads to serious mental illness. (literature reviews of research seeking a causal relationship between abortion and breast cancer have not found such a link and such a link is rejected by Cancer Research UK and Breakthrough Breast Cancer; An RCOG review of literature finds there is no link between abortion and infertility – there is growing evidence that this myth is a leading contributory factor to young women becoming pregnant again with unwanted pregnancies, rapidly, following abortion; a recent comprehensive review of research evidence found that there is no good quality research evidence to support the belief that there is a causal link between abortion and mental illness).

Some women going to these centres will be dissuaded from having an abortion because of the misinformation they are given and/or the images they are shown. Many women will, nevertheless, go on to have an abortion, but will have to go to a different agency and begin the process of requesting referral from scratch, a delay that might have been prevented.

Asking pregnancy advice centres to be explicit about the fact that they do not refer for abortion **will afford some women some protection and may persuade them to seek help elsewhere in the first instance** thus hastening their access to appropriate medical services.

However, **we would seek further protection for women** by requesting that adverts for pregnancy advice centres make explicit their philosophical position on abortion so that no woman who is considering abortion is exposed unnecessarily to misinformation, directive counseling or dissuasion at a point when they may be particularly vulnerable and have a medical need for timely professional help. Adverts for such centres should also include a short statement such as: ‘this centre is run by xx organisation which does not support women to access abortion services, but can provide support for women who want to continue with their pregnancy.’

We will be responding highlight this need.

Condoms

Question 147

Do you agree that television advertisements for condoms should be relaxed from its present restriction and not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children below the age of 10? If your answer is no, please explain why.

YES

Condoms are the only contraceptive method known to be extremely effective against transmission of Sexually Transmitted Infections (STIs). Some STIs such as Chlamydia are now prevalent amongst sexually active teenagers and adults and it is important that everyone is aware of where you can get condoms.

We accept that there is no particular need to target condom advertising at those under 10 years old.

Question 157

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

YES

We are concerned that advertising of healthcare products and services might erroneously imply that these products and services are not available free of charge.

We are concerned that some adverts for healthcare products and services may unintentionally give the impression that they are not freely available on the National Health Service.

We would like some wording to be applied to adverts for healthcare products and services to indicate that some products and services which are available for purchase **may also be available at no charge on the NHS** through a GP, family planning clinic etc...

As an organisation that provides information for young people on pregnancy and pregnancy prevention we are particularly concerned that they and other people with low incomes might see adverts for products and services that they could access free of charge and, fearing the high cost, be put off accessing them. We are particularly concerned that young people may be put off accessing the following products because of fear of cost:

Condoms

Emergency Hormonal Contraception (the 'morning after pill')

Pregnancy tests

Pregnancy and abortion counselling

Possible wording to put on adverts for medical products and services:

'Some advertised health products and services may be available free of charge on the NHS, through your GP or family planning service. Please contact your GP or NHS direct for further information'



19 June 2009

Code Policy Team
Broadcast Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

To whom it may concern

ERA UK (Electronic retailing Association) has discussed the the BCAP Code Review (Consultation on the Proposed BCAP Broadcast Advertising Standards Code) and collectively feel that the changes outlined in this Consultation are by and large a significant improvement on the present BCAP Advertising Standards Code for which the Code Policy Team are to be congratulated.

We have very few comments on the proposed amendments, however below we comment on two issues of considerable concern to our membership.

We particularly support the proposal that health professionals can be used, in limited circumstances, to provide testimonials in advertising for health products and services. The present restrictions reflect a different age of advertising when it was felt that using health professionals to provide testimonials could, through providing a professional endorsement, unfairly bias viewers in favour of a product. Television viewers are more sophisticated these days and the limited circumstances these health professionals can be used and other rules such as those covering misleadingness should ensure proper consumer protection.

However, there is one area in the new proposed rules which our members feel do not reflect where society is today. There is virtually no change in the rule that prohibits the use of people in adverts, which make weight loss claims, who look obese, and furthermore advertisers cannot promote weight loss products to obese individuals. The figure of obese people in the population is about 1 in 5 and growing. It is our members' views that it is exactly this group of individuals who could benefit from some of the products, such as fitness equipment, that they advertise. As long as the advertising is not misleading and makes it clear that medical advice should be obtained before starting, for example, an exercise regime, then we think the advertising of such products which include obese individuals within the advertising would be a positive move. Our members completely accept that no advertising should be directed at the super morbidly obese.

Otherwise the ERA UK is impressed at the professional way this new proposed Code has been drafted and sent out for consultation. We see most of the changes as being beneficial to advertisers and consumers.



Entertainment and Leisure Software Publishers Association Ltd (ELSPA) Comments on the BCAP and CAP Code Review Consultation

ELSPA (the Entertainment and Leisure Software Publishers Association) is the trade association for video games publishers in the UK. ELSPA was formed in 1989 to establish a specific and collective identity for the country's video games industry and has grown to its current membership to almost 40 companies.

ELSPA works to protect, promote and provide for its members' interests via a number of activities including IP crime enforcement, research, sales charts and reports and political lobbying. It also ensures its members publish games which are responsibly age-rated with the pan-European PEGI ratings system to ensure parents can make informed choices when purchasing games for their children. ELSPA also helps organise a number of key gaming events in the UK including the annual London Games Festival, staged every October. For more information, visit www.elspa.com.

ELSPA welcomes the opportunity to input into these reviews, and has consulted with its membership on the proposed changes particularly in relation to those directly impacting upon the advertising of video games in both broadcast and non-broadcast media. ELSPA's members broadly support the proposals and will of course endeavour diligently to comply with future codes as they already do with the current codes.

One proposal that caused some debate is the BCAP Code Review Consultation proposed rule 5.14 Television Only, concerning the advertising of expensive products and services. It is suggested by some that the notes for this Rule should make it clear that when a publisher, manufacturer or distributor advertises a product or service, they may refer to an RRP or similar price, since of course, they are not allowed to dictate retail prices. Retailers are of course in a better position to refer to actual selling prices.

Additional concerns were raised by Sony Computer Entertainment Europe (SCEE), and are summarised below.

CAP Proposal 5.5

This seems very wide. Under the proposed new rule, it would seem that an advertiser would be prevented from sending an email to anyone under 16 years (the definition of a child under the CAP Code) which contained products and prices. However, the scope seems even wider than that. The rule might also catch a poster for a 3+ game containing a statement: "available via the PlayStation Store". Would that poster be deemed to be "directly targeted at children"?

Further, the existing rules in relation to "marketing communications" seem to be limited to the food and soft drink product advertisements section only (existing rules [47.12](#)). There is a similar existing rule in [47.7\(a\)](#) which states that although children might be expected to exercise some preference over the food they eat or drink, marketing communications should be prepared with a due sense of responsibility and should not directly advise or ask children

to buy or to ask their parents or other adults to make enquiries or other purchases for them. Under the existing rules, CAP does not currently have the wide power which is proposed under rule 5.5 as is claimed in the consultation documentation.

The existing rules do not seem to contain any provisions involving a “direct exhortation”, but instead refer to marketing communications generally which directly advise, appeal to or ask children to buy products.

The meaning of “direct exhortation” is unclear. However, 5.5 would seem very wide and it is possible that most advertisements would be considered a direct exhortation to buy.

CAP Proposal 5.7

The wording in paragraph 5.11 of the consultation proposals is more limited than the actual proposed rule in that 5.11 requires “a purchase to participate”. There is an inconsistency here since the wording in proposed rule 5.7 only addresses a promotion and does not state that a purchase is required to participate. The meaning of promotion is also ambiguous although it would suggest a special offer is required. Is this clearly defined elsewhere in the Code?

Given that the promotion can be “addressed” to (as well as “targeted” at) a child, query whether a promotional banner with a price would be within the proposed rule.

BCAP Proposal 5.14

This is wider than the existing rule which was limited to toys and games and could now extend to consoles and online services. SCEE would not necessarily put prices in all advertisements for products or services which may be of “interest to children”.

BCAP Proposal 8.3

There are exceptions to the DSR (http://www.ofcom.gov.uk/advice_and_resources/resource_base/legal/distance-selling-regulations/regulation-exceptions). Presumably the proposals do not apply to these exceptions. However, this point is not dealt with in the Code review.

There is a concern that the proposed Rule 8.3.6 over-simplifies the law with the result that the protection for consumers is extended beyond what was legislated for by the EU and Parliament. In doing so, it seems that the ASA step outside their remit.

It is also questionable whether this proposal is practicable. How can a broadcaster police whether or not their advertisers give consumers the appropriate cancellation periods. Should the broadcaster also be policing every other aspect of the advertiser's business?

This rule may be appropriate if television broadcast is actually the medium for the distance selling contract (eg. home shopping channels), but not for other distance selling contracts (eg. purchase of download from PlayStation Store) which may be advertised on television.

The exceptions to the Distance Selling Regulations which are not accommodated by Rule 8.3.6. In particular (and of relevance to SCEE), there is an exception in the case of services, where the services begin with the agreement of the consumer before the end of the cancellation period. Digital downloads are likely to be characterised as services. The download is normally delivered to the consumer instantaneously. Thus the service has begun and there is no 7-day cancellation period.

Dr John Etherton

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FAO BCAP

8 March, 2010

Dear Colleagues,

Re: Consultation title:

Whether to allow abortion adverts on TV for the first time, and

whether condom advertisements should be shown earlier than 21:00.

My background:

I write as a private individual who has an interest in promoting upright standards in public and private life. I am one of the 71% of the population who adhere to the Christian tradition as noted in the 2001 census, and I feel that we should respect and promote the Judeo-Christian ethos as providing the best lifestyle and outcome for young people as they grow up. This would lead to a better world.

My professional context:

I am an NHS GP who founded the biggest general practice in Peacehaven, East Sussex, and I am a Council Member of the Faculty of Sexual and Reproductive Healthcare of the Royal College of Obstetricians and Gynaecologists.

My views for your consideration:

With the above information in mind, I would like to present my view that matters concerning sexual and reproductive healthcare should remain within the context of families, the health services, and education. They are unsuitable for media presentation in the form of advertisements under any circumstances. Please note:

1. Abortion adverts will mean children will be presented with a contentious subject too soon, too often, and in an inappropriate context. This will invade the privacy of their innocence, and will begin to desensitise them to matters of life and death. It will make it harder for parents to manage how their children learn about this difficult matter.
2. Abortion is a controversial issue in society as a whole and is totally unsuitable for advertising. You may or may not be aware that it appears that Gordon Brown's party lost the Glasgow East bye-election over this issue, and that he altered the timing of the final debate on the Human Fertilisation and Embryology Bill so that no voting to alter the current abortion law could take place – otherwise he would have lost a disproportionate number of seats in the next general election.
3. Condoms are available everywhere, and young lads can see a dispensing machine in almost every public toilet: allowing further advertising isn't necessary. The current balance of this private and personal matter concerning sexual and reproductive healthcare is about right, and there it should stop.

4. The consultation makes clear that Government-appointed promoters of sexual health have demanded greater advertising freedom. It is my opinion that they have not followed an objective approach, and that evidence-based methods have not been adhered to. I am only too aware, being a Council Member of the FSRH as noted above, that the government's teenage pregnancy strategy has completely failed. Further advertising of the sort covered in this letter will deliver the message that young people are expected to be sexually active as part of their culture, and this will exacerbate not alleviate the problems we face.

Yours truly,

Dr John Etherton
General Practitioner

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Nick R Thomas
Director
Corporate Affairs



BCAP Code Review
Code Policy Team
Broadcast Committee of Advertising Practice
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22nd June 2009

Dear Sirs,

Comments on BCAP Code Review by ExxonMobil UK limited (ExxonMobil):

ExxonMobil wishes to submit the following comments on the BCAP Code review set out in BCAP Consultation Document issued on 26th of March 2009.

1. Introduction of separate rules applicable to environmental claims in television advertisements:

ExxonMobil welcomes the decision of BCAP to consolidate the existing four codes covering television and radio advertisements into a single code, as this will make for greater certainty and should make it easier for an advertiser and its advertising agency to understand the applicable rules and to prepare advertisements which comply with the Code.

We also welcome the proposal to judge environmental claims on the basis of the specific criteria set out in section 9, as opposed to simply testing whether or not claims of this nature are likely to mislead the public. In particular, we are pleased to see that, instead of having to demonstrate an environmental claim on a "cradle to grave" basis, it will in future be possible to refer to specific aspects of a product's life cycle as being environmentally friendly. However, we are concerned at the proposal to require a description of the "limits of the life cycle" aspect of a particular claim, as prescribed in rule 9.5, in a 30 second or even 60 second TV advertisement. It has to be questioned whether this is a practicable approach.

2. Comments on the proposed new rules and the allied Questions:

Rule 9.1

It is not clear what is meant by the requirement to have advertisements "centrally cleared". Is this a reference to obtaining clearance by a body such

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as Clearcast, which reviews ads for acceptability prior to transmission by a TV broadcaster?

We have no difficulty with this proposal provided there is certainty as to the process which has to be followed, and that such a process is undertaken objectively and in a reasonable manner.

Rules 9.2 and 9.3

Although it is our practice to ensure that all statements made in our advertisement are clear, it would be helpful if the proposed Guidelines discussed this clarity requirement in new Rule 9.2 in more detail so that advertisers are left in no doubt as to what is expected from them in drafting statements.

The same comment applies to Rule 9.3 when it refers to the requirement that the "meaning" of all terms used in advertisements must be clear to consumers.

One of the underlying objectives of our corporate advertising has been to highlight and explain the importance of developing energy resources for the benefit of all in an environmentally responsible manner. We believe that it is vital that the public acquires an appreciation of the complexity involved in finding, producing and delivering oil and gas products to world markets. Of necessity, this will involve terminology with which the public may not always be familiar. Nevertheless, using appropriate terminology should help to improve that understanding. A requirement that each and every term be explained in detail would undermine that objective.

Rule 9.5

We view BCAP's proposal to allow claims on a particular part of a product's life cycle as a positive development. Advertisements related to energy will invariably deal with the subject in the round, i.e. from production, through transportation, distribution and eventual use by the consumer. We believe that an advertiser should be able to highlight the positive aspects of certain elements of a product's life cycle, as opposed to always having to justify any claims made on a complete life cycle or "cradle to grave" basis.

In making a claim based on an individual element or elements of a product's life cycle we would rely on scientific data to justify any such claim.

Rule 9.6

We agree that broad claims should be avoided and that particular claims should be capable of justification and supported by published data. We also agree that any particular data set should not be claimed to be universally accepted without adequate proof that that is the case.

Question 45 (i) and (ii)

We endorse the proposed approach of BCAP to provide more detailed rules relating to environmental claims. However, as noted above the brevity of

some of the rules makes it difficult to understand exactly what BCAP means by making claims and terminology "clear" to the viewer. As we have noted, conveying technical and often unfamiliar concepts to the public in a short TV commercial can be challenging.

Question 46:

As explained in our comments on Rule 9.5 above we welcome the ability to make quantified claims and claims which relate to a particular aspect of a products life cycle. However, BCAP should provide more detailed guidance on what it means when it states that a claim must be "thoroughly explained".

(See also our comments on the whole pre-transmission clearance process set out below)

3. The need for greater certainty in the clearance process and the manner in which appeals arising out of complaints from viewers are adjudicated.

We remain very concerned at the way in which the certainty provided by the current pre-broadcast clearance procedure, can be undermined by the current complaints and appeals procedure; particularly in the light of the high cost of preparing advertisements for television.

We have had experience, as recently as August 2008 (Case A08-61101), of the arbitrary upholding of a complaint - from as few as four viewers - to one of a series of corporate advertisements designed to illustrate to the public the importance of developing sufficient resources to meet the world's energy in a responsible manner.

The advertisement in question was submitted to Clearcast for approval prior to transmission. Our understanding is that Clearcast, which is staffed by experienced advertising industry personnel, was set up to advise the broadcast TV industry on the accuracy and suitability of TV advertisements and the claims made therein.

Despite having received a green light from Clearcast, we were subsequently asked to suspend transmission of this advertisement by the ASA because four members of the public complained to the ASA that ExxonMobil had made unfounded environmental claims in relation to liquefied natural gas. Their complaints were based on what we believe was an unfounded misreading of the words used.

Following receipt of the complaint, the advertisement's wording was again reviewed by Clearcast and by the ASA's own Executive. Clearcast maintained its original view that the advertisement was not misleading and the ASA executive agreed with Clearcast. The latter recommended to the ASA Council that the complaint not be upheld. However, the Council which does not include any technical expertise, decided that it agreed with the four complainant's and upheld the complaint on the not very convincing grounds that the ordinary viewer would interpret the advertisement in the same way that four people, out of the millions of potential viewers of the advertisement, would have done.

We exercised our right to request the Independent Reviewer to consider whether he thought that the ASA Council should reconsider its decision. Our request was rejected even though the Independent Reviewer acknowledged that this was not a clear cut case.

The important point, however, is that, even if the Independent Reviewer had agreed with our contention that the Council had erroneously decided against us, the Council was not required to accept to his views. It was thus able to maintain its original decision without hearing any further submissions or evidence from us, as would normally be the case in a conventional appeal process.

As a last resort we could have launched judicial review proceedings on the grounds that there had been a substantial flaw in the ASA Council's adjudication or the process by which that adjudication had taken place. We decided not to do so because, even if our application had been successful, the matter would have been remitted to the ASA Council by the Court for reconsideration and the Council could have reached the same decision based on different reasoning!

We think it is wrong that an advertiser should be required to submit to such a labyrinthine process (with the associated expense) with no certainty as to an equitable outcome.

4. Recommendations for improving the pre-transmission clearance and appeals process:

We believe that the interests of the public and advertisers would best be served by a fresh approach to the clearance process and the way in which any post transmission complaints are investigated and resolved.

It seems to us that advertisers should be entitled to rely to a much greater degree on the pre-clearance process. If, after a detailed review by Clearcast, which is after all independent of the advertiser and the advertising agency concerned, an advertiser is told that its advertisement is suitable for transmission, serious weight should be placed on that pre-clearance process, particularly when backed up by the ASA's own Executive in any subsequent complaint investigation. If the ASA Council has unfettered freedom, even if exercised in good faith, to disregard the expert advice from its own Executive and the expert trade reviewer, it negates the point of having a pre-clearance process.

We urge both BCAP and the ASA to seriously reconsider how complaints are dealt with. The present regime allows far too much latitude to individual complainants, who are neither identified nor required to disclose their motive for complaining in any detail, as well as activist groups pursuing specific agendas. Complainants such as these, as opposed to a large scale complaint by a cross section of the public that they have been misled or harmed by an advertiser's claim, are thus empowered to eliminate advertisements on a whim, with no burden placed upon them to prove the basis for their complaint.

In summary, we would like to see:

A. Greater weight placed on:

- i.) the pre-clearance of an advertisement's content by Clearcast;
- ii.) a refusal by the ASA's own Executive to endorse a complaint from a member of the public or minority interest group; and
- iii.) the number of complaints received, i.e. less weight should be attached to an individual or small number of individual's interpretation of claims made, as opposed to wide spread complaints from the public at large.

B. An obligation on the ASA Council to use appropriate and identified experts to advise it on complaints against a particular advertisement;

C. The opportunity for the advertiser and its agency to make an oral representation to the ASA Council before any Council decision is taken to ban an advertisement;

D. The substitution of a second appeal stage, with appropriate powers, rather than leaving the advertiser to appeal to the Independent Reviewer, whose views can be ignored by the ASA Council at will.

E. The introduction of a requirement for a minimum number of complaints to have been made about an advertisement of a general nature (as opposed to one that makes claims relating to the medical or health benefits of a particular product, for example) before the complaints review procedure is triggered; and

F. The initial decision by the ASA Council to ban an advertisement should not be publicised – with the negative impact on an advertiser's reputation which this could imply – until after the appeals process has been argued. Obviously, there could be exceptions if appropriate in relation to medical or health claims but again, even these would have been subject to prior clearance by Clearcast.

ExxonMobil is very willing to work with BCAP, the ASA and bodies such as Clearcast to develop responsible and informative advertising which benefits both us and the general public.

Thank you for allowing us to comment on the proposed changes. Please contact us should you wish to discuss the above thoughts and proposals in more detail.

Yours faithfully,

N R Thomas
Director Corporate Affairs

The Family and Parenting Institute (FPI) is the UK's leading centre of expertise in families and the upbringing of children. We advocate for improved family and parenting services and we press for policy change to help address the challenges that families are facing.

We welcome this opportunity to comment on the BCAP Code Review consultation. Since our inception, the Family and Parenting Institute have been concerned about the growing commercial pressure on parents and children. Commercial pressures are ever-present in our lives and have only become more ubiquitous with the explosion of the internet. The average child in the UK sees between 20,000 and 40,000 TV ads a year. While TV advertising is heavily regulated, particularly with regard to foods high in sugar, salt and fat, far less regulation is applied to the internet and the regulation that does exist is less stringently enforced than on broadcast media.

While codes are in place that regulate discrete marketing communications to techniques and specific trading practices, these regulations are complex and not readily accessible to the general public. Families are unlikely to be aware of these rules or of the rights to protection that they can expect for their children.

It is important that self-regulatory codes are continually updated and policed. As technology moves on and new forms of marketing are developed in a competitive marketplace, the codes must be actively and constantly rethought and refined. Therefore FPI is pleased that CAP is currently undertaking this review and offers the following comments.

1. Overview

FPI has heard from many parents about the positive impact of pro-social messages, for example those encouraging recycling or driving at slower speeds. However, not all advertising messages are so healthy and 84 per cent of parents involved in a MORI poll commissioned by FPI told us that they felt companies targeted their children too much.

Of course neither parents nor children can 'escape' the commercial world, which offers benefits and opportunities as well as downsides. But parents have frequently told us about their despair as the weekly trip to the supermarket descends into tears and tantrums, and leaves them feeling like villains. Pester power is only too real for them and they wish the dice was a little less loaded.

Simultaneously, children's buying power is at an all time high. Under-18's in the UK spend £12 billion of their own money every year, in addition to which they are increasingly recruited by corporate companies to 'pester' their peers through online wish-lists and more insidiously recruitment as 'brand ambassadors' testing and promoting items amongst their friends. Recently, this method was reportedly used for an MP3 player. The increasing sexualisation of childhood is also a growing concern of parents, and FPI was pleased to see WH Smith withdraw their range of Playboy school stationary in early 2009.

The effects of commercialisation on young people have been paid more attention in recent years. The National Consumer Council, in their publication 'Watching, wanting and wellbeing: exploring the links' showed that those children who spend a lot of time watching TV, playing on the computer and engaging with adverts were more materialistic than children who engage in other activities. This was particularly striking in areas of relative deprivation compared to children growing up in more

affluent areas. It was also suggested that materialistic children tend to do less well at school and are less likely to help around the house.

However, the debate around marketing and children has yet to engage with the cumulative effect of commercialism on families as opposed to the isolated effect of one single advertising campaign on one individual child (Nairn, 2008). Commercialism affects a wide range of facets of a child's life, from relationships with parents and peers, to self-esteem and life satisfaction (ibid). Cumulative commercialism is a complex issue and the different aspects of it are interactive, with blurred boundaries between cause and effect.

In light of the proliferation of commercial pressures, FPI is also working with the business community to encourage more responsible practice and has published 'Business thinks Family', written for FPI by Dr Agnes Nairn, which asks business to work with families to ensure their online marketing is fair, transparent and plays by the rules.

2. Section 5: Children

Exploitation of trust

Question 28: Given BCAP's policy consideration, do you agree that rule 5.7 should be included in the Code? If your answer is no, please explain why.

FPI believes that it is essential that rule 5.7 *Advertisements must not exploit the special trust children place in parents, guardians, teachers* should be included in the Code. It would be unethical for a marketer to undermine children's trust in those who offer them care and protection, in order to advertise a product or brand.

Expensive products of interest to children

Question 29:

i) Given BCAP's policy consideration, do you agree rule 5.14 should be applied to advertisements broadcast on all Ofcom-licensed television channels and not only those broadcast to a UK audience? If your answer is no, please explain why.

FPI agrees that rule 5.14 should be applied to advertisements broadcast on all Ofcom-licensed television channels and not just those broadcast to a UK audience.

ii) Given BCAP's policy consideration, do you agree rule 5.14 should define an 'expensive' product of interest to children to be £30 or more? If your answer is no, please explain why.

FPI agrees that rule 5.14 should define the price that an 'expensive' product of interest to children should be. However, given the current economic climate, FPI believes that the rule should remain unchanged at £25. This is already a substantial amount of money and for families on benefits or low income would be a considerable outlay.

iii) Given BCAP's policy consideration, do you agree rule 5.14 should be included in the Code? If your answer is no, please explain why.

Subject to not increasing the value of an expensive product, FPI agrees that rule 5.14 should be included in the Code.

Competitions

Question 30:

i) Given BCAP's policy consideration, do you agree that rules 5.15 adequately replaces rule 11.8, section 2, of the Radio Code? If your answer is no, please explain why.

FPI agrees that rule 5.15 adequately replaces rule 11.8, section 2 of the Radio Code. However, it no longer includes: *The published rules must be submitted in advance to the Licensee and the principal conditions of the competition must be included in the advertisement* and FPI feels that this should remain.

ii) Given its policy consideration, do you agree with BCAP's proposal to introduce a rule that prohibits advertisements for a promotion directly targeted at children if they include a direct exhortation to buy a product? If your answer is no, please explain why.

FPI agrees with this proposal.

iii) Given BCAP's policy consideration, do you agree that rule 5.15 should apply to television and radio advertisements? If your answer is no, please explain why.

FPI agrees that the rule 5.15 should be applicable to both radio and television.

iv) Given BCAP's policy consideration, do you agree that rule 5.15 should be included in the Code? If your answer is no, please explain why.

FPI agrees that the rule 5.15 should be included in the Code.

Children as presenters in advertisements

Question 31: Given BCAP's policy consideration, do you agree that these present rules should not be included in the Code? If your answer is no, please explain why.

i) TV rule 7.3.4 ii) Radio rule 11.11 a), section 2 iii) Radio rule 11.11 b), section 2 iv) Radio rule 11.12, section 2

Although FPI agrees that the scope of the BCAP Code is intended to lay down standards for the content of advertisements, not their production and that advertisers and broadcasters are bound by legal requirements when featuring child actors in

advertisements to ensure that they are not harmed and that their working conditions are adequate, we feel that that these rules should remain.

The Code sets out self-regulatory guidance for advertisers and in this instance the focus is on the protection of child presenters in advertisements. We can see no harm in reinforcing to advertisers the responsibility that they have towards the protection of minors, notwithstanding that it is a duplication of requirements laid down in the legislature. BCAP states that if an audience is offended because it believes a child has been harmed or exploited as a result of being featured in an advertisement, the ASA may consider if that advertisement had caused serious or widespread offence under the rules in the proposed Harm and Offence section of the Code. FPI believes that it is far better to reiterate this message in the section that is dedicated to guidance on children and lessen the likelihood of a child being harmed, than to react after the fact.

Children's health and hygiene

Question 32: Given BCAP's policy consideration, do you agree that rule 11.10 b) of Section 2 of the present Radio Code should not be included in the proposed Code? If your answer is no, please explain why.

Again FPI believes that the rule should remain. Rule 11.10 b) is much more explicit in its guidance than the rules in the proposed Food and Soft Drink Product Advertising to Children part of the Food, Dietary Supplements and Associated Health and Nutrition Claims section, including rule 13.2. In addition, FPI believes that there is benefit in reiterating this in the section dedicated to guidance around directing advertisements at children.

Question 33: Given BCAP's policy consideration, do you agree that rule 5.4 should be included in the Code? If your answer is no, please explain why.

FPI agrees that rule 5.4 should be included in the Code.

Other questions

Question 34:

i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Children section, are necessary and easily understandable? If your answer is no, please explain why.

FPI agrees that CAP's rules are necessary and easily understandable. However, FPI would like to see these rules given a greater prominence. They should be made more easily available to parents, without the need to wade through, what is essentially, a large and unwieldy document.

Parents will only be able to judge whether advertisers are adequately self-regulating by having access to the rules by which advertisers are supposed to monitor their own activity.

Family planning centres

Question 62

i) Given BCAP's policy consideration, do you agree that it is necessary to maintain a rule specific to post-conception advice services and to regulate advertisements for pre-conception advice services through the general rules only?

ii) Given BCAP's policy consideration, do you agree that rule 11.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

FPI agrees with BCAP's two policy objectives: (1) to allow post-conception pregnancy advice services the freedom to advertise and (2) to ensure that advertisements for those services make clear whether the service refers women for abortion. Therefore FPI agrees that rule 11.11 should be included in the Code.

Allowing pregnancy advisory services to advertise on television is clearly controversial, but many of those same organisations already put up posters on school notice boards and on bus shelters, as well as advertising in magazines and newspapers. However, there should be restrictions on advertising in or adjacent to programmes aimed at children under the age of ten years.

3. Section 19: Alcohol

Sales promotions in alcohol advertisements

Question 111: Given BCAP's policy consideration, do you agree that rule 19.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

FPI agrees that rule 19.11 Advertisements may include alcohol sales promotions but must not imply, condone or encourage immoderate drinking should be included in the Code.

Irresponsible handling of alcohol

Question 112: Given BCAP's policy consideration, do you agree that rule 19.12 should be included in the proposed BCAP Code? If your answer is no, please explain why.

FPI agrees that rule 19.12 *Advertisements must not feature alcohol being handled or served irresponsibly* should be included in the Code.

Alcoholic strength

Question 113: Given BCAP's policy consideration, do you agree that rule 19.10 should be included in the proposed BCAP Code? If your answer is 'no', please explain why.

FPI agrees that rule 19.10 Advertisements may give factual information about the alcoholic strength of a drink or make a factual strength comparison with another product but, except for low-alcohol drinks, which may be presented as preferable because of their low alcoholic strength, must not otherwise imply that a drink may be preferred because of its alcohol content or intoxicating effect should be included in

the Code. In addition, FPI believes that information on the amount of the product advertised would constitute a unit should also be included.

Exception for children featuring incidentally in alcohol advertisements

Question 115: Given BCAP's policy consideration, do you agree that rule 19.17 should be included in the proposed BCAP Code? If your answer is no, please explain why.

FPI agrees that rule 19.17 *Alcohol advertisements must not feature in a significant role anyone who is, or seems to be, under 25 and must not feature children. An exception is made for advertisements that feature families socialising responsibly. Here, children may be included but they should have an incidental role only and anyone who seems to be under the age of 25 must be obviously not drinking alcohol* should be included in the Code. Being aware of adults drinking in a responsible manner is an important role model for children and adults alike. FPI is pleased to note the increased age limit in this rule.

4. Section 22 Premium-Rate Services

Television broadcasters' ability to restrict access to broadcast adult content

Question 124: Given BCAP's policy consideration, do you agree that TV advertisements for PRS of a sexual nature should be allowed on encrypted elements of adult entertainment channels only? If your answer is no, please explain why.

FPI agrees that TV advertisements for PRS of a sexual nature should be allowed on encrypted elements of adult entertainment channels only. Given that one in ten children aged 8-15, and one in five children aged 12-15, have no rules in place regarding their viewing; most watch without an adult present and do not have any access controls set on their television, this is an important rule.

Payment mechanisms for accessing telephone sexual entertainment services

Question 125:

i) Given BCAP's policy consideration, do you agree that the BCAP rule on PRS of a sexual nature should be clarified to make clear that it applies also to TV advertisements for telecommunications-based sexual entertainment services made available to consumers via a direct-response mechanism and delivered over electronic communication networks? If your answer is no, please explain why.

FPI agrees that this rule needs clarification. The underlying reason for the guidance is the protection of minors from viewing material of a sexual nature rather than the payment method.

Question 128: Given BCAP's policy consideration, do you agree that rule 11.1.2 in the present BCAP Television Code should be replaced by proposed rule 23.2? If your answer is no, please explain why.

FPI agrees that rule 11.1.2 in the present BCAP Television Code should be replaced by the proposed rule 23.2.

Question 129: i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Premium-Rate Services section, are necessary and easily understandable? If your answer is no, please explain why?

FPI agrees that BCAP's rules are necessary and easily understandable. FPI agrees that permitting advertisements for telecommunications-based sexual entertainment services subject to content rule and a scheduling restriction, such as after 9pm, 10pm, 11pm or 12am would not adequately protect children from potentially harmful material.

5. Section 32 Scheduling

Question 143: Given BCAP's policy consideration, do you agree that proposed rules 32.5.4 and 32.20.5 should be included in the proposed BCAP Code? If your answer is no, please explain why.

FPI agrees that rules 32.5.4 and 32.20.5 should be included in the Code. Harmonising the rules on the scheduling of 15+, 16+ and 18+ rated computer or console games and 15- and 18-certificate films is an important step forward. Ensuring that such products may not be advertised in or adjacent to TV programmes, text and interactive content commissioned for, principally directed at or likely to appeal particularly to audiences below the age of 16 is a crucial part of child protection and support for parents.

However, FPI would like to see these restrictions extended to radio broadcasts as well. Although we agree that the audio-visual impact of T.V. carries a greater risk, the risk remains to young listening of radio advertising.

Restrictions around children's programmes

Question 146: Given BCAP's policy consideration, do you agree with BCAP's proposal to extend the restriction on advertisements for low alcohol drinks, medicines, vitamins and other dietary supplements from around programmes made for children to programmes of particular appeal to audiences below the age of 16? If your answer is no, please explain why.

FPI agrees with the proposal to extent the restriction of advertisements for these products around programmes made for children to programmes of particular appeal to audiences below the age of 16.

Condoms

Question 147: Do you agree that television advertisements for condoms should be relaxed from its present restriction and not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children below the age of 10? If your answer is no, please explain why.

Given the restriction that advertisements must not be shown in or adjacent to programmes aimed at and likely to appeal to children under the age of ten years, allowing condoms to be advertised earlier in the evening is also very positive news. For young people to be able to make informed choices about engaging in sexual activities and keeping themselves safe, it is essential that they are able to access information about the importance of safer sex.

Television is an excellent medium for reaching the cohort which is most at risk of Sexually Transmitted Infections and unwanted pregnancies. Removing the current restrictions on advertising condoms will help to normalise condoms and their use and therefore could make a significant impact on sexual health in the UK.

Bringing adverts for condoms into the mainstream could combat some of the current reticence in young people around talking about and using condoms. The adverts could also provide opportunities for parents and carers, for example, to talk to their children about issues associated with sex and relationships.

References

Nairn, A. (2008) *Business thinks family*; London: Family and Parenting Institute

Family Education Trust submission to the

The BCAP Code Review

Consultation on the proposed BCAP

Broadcast Advertising Standards Code

For almost forty years, Family Education Trust has been conducting research into the causes and consequences of family breakdown. By means of its publications and conferences, and through its media profile, the Trust seeks to stimulate informed public debate on matters affecting the family and the welfare of children and young people, based on reputable research findings.

Family Education Trust is a registered charity and has no religious or political affiliations.

Question 54 Pornography

i) Given its policy consideration, do you agree with BCAP's proposal to relax the present prohibition on TV advertisements for pornography products and allow them to be broadcast on encrypted elements of adult entertainment channels only? If your answer is no, please explain why.

No.

The consultation document states:

BCAP's general policy objective is to create a Code based on the enduring principles that advertising should not mislead, offend or harm. A Code that adequately protects children and others whose circumstances seem to BCAP to put them in need of special protection.¹

Any relaxation of the present prohibition on TV advertising of pornography would cause considerable offence to a large proportion of the general public. Also, to relax advertising for pornography would put children and teenagers under the age of 18 at serious risk.

¹ Section 1.iv.

ii) Given its specific policy objective, do you agree that BCAP's proposed rules are necessary and easily understood? If your answer is no, please explain why.

No.

Given that the consultation document acknowledges that the advertising of pornography has the potential to be deeply offensive and harmful to children, it is difficult to understand why BCAP is proposing to relax the ban on the advertising of pornographic products.

The consultation document states:

Media-literacy research shows that some children are able to access and use their parents' or guardians' PINs (Personal Identification Numbers) without those adults' knowledge. Under BCAP's proposal, those children could see advertisements for pornography products.²

It is not uncommon for under-18s to access pornography through television, the internet or magazines without the knowledge of their parents. It is therefore difficult to understand why BCAP takes the view that current restrictions are 'disproportionate' and in need of relaxation? We would propose that the answer to this problem lies in strengthening the laws against obscenity rather than relaxing the existing regulations.

iii) Given BCAP's policy consideration, do you agree that advertisements for R18-rated material should be permitted to be advertised behind encrypted elements of adult entertainment channels only but that the content of those advertisements themselves must not include R18-rated material or its equivalent? If your answer is no, please explain why.

No.

We are opposed to any relaxation of restrictions on the advertising of R18-rated material because of the offence that such material causes to common decency and the risk of children and young people under the age of 18 being exposed to it.

It should be borne in mind that many young people and adults have become addicted to pornography and that, in some cases, such an addiction has become as serious as alcoholism or drug addiction. It has undoubtedly played a part in marital breakdown, in the exploitation and mistreatment of women, and in the rise in sexually-motivated crimes.

Many adult sexual predators who prey on children use pornography as a method of desensitising their victims.³ Many marriages have fallen apart because a husband's

² Section 10.61.

³ Kenneth V. Lanning, *Child Molesters: a Behavioural Analysis*, National Center for Missing and Exploited Children, www.missingkids.com/missingkids/servlet/ResourceServlet?LanguageCountry=en_US&PageId=469.

addiction to pornography has caused him to lose interest in his wife.⁴ Addiction to pornography often begins in teenage years and frequently starts with soft-core pornography before moving on to the harder, more explicit material.

Pornography encourages people to view and to treat others as though they were objects, and has a physically, spiritually and morally degrading effect. The psychologist Victor B Cline has noted that those addicted to pornography have:

an increasing tendency to act out sexually the behaviours viewed in the pornography, including compulsive promiscuity, exhibitionism, group sex, voyeurism, frequenting massage parlours, having sex with minor children, rape, and inflicting pain on themselves or a partner during sex.⁵

Advertising R18-rated material even behind encrypted elements does not provide a sufficient protection for children. Such material can easily be accessed by children via the internet. As children grow older they are able to access the internet outside the home (for example, in school, at local libraries, in the homes of friends and relatives, and in the workplace). Internet access is also increasingly available via mobile devices, and it only takes one child in a group of friends to have unrestricted access to the internet for all to have access. A recent study found that 'Ninety-three per cent of boys and 62 per cent of girls were exposed to online pornography during adolescence.'⁶

Among the numerous documented effects of pornography on children are:

- lasting negative or traumatic emotional responses,
- earlier incidence of first sexual intercourse,
- increased risk of sexually transmitted infections (STIs),
- the belief that being married or having a family are unattractive prospects, and
- increased risk of developing sexual compulsions and addictive behaviour.⁷

Question 62 Family Planning Centres

⁴ Robert W. Peters, *'Adult Industry' Is No Friend of Children or the Family, Despite ASACP Effort to Curb Child Abuse and Label Smut*, March 24 2009, www.obscenitycrimes.org/news/ASACP_article_Mar09.pdf; Testimony of J. Manning, *Hearing on Pornography's Impact on Marriage and the Family*, Subcommittee on the Constitution, Committee on Judiciary, U.S. Senate, 11/11/05, available at <http://www.heritage.org/research/family/tst111405a.cfm>.

⁵ Victor B. Cline, *Pornography's Effects on Adults and Children*, www.obscenitycrimes.org/cline_unabridged.pdf.

⁶ Chiara Sabina, Janis Wolak, David Finkelhor, *The Nature and Dynamics of Internet Pornography Exposure for Youth*, *Cyber Psychology & Behavior*, 11 Dec. 2008, www.liebertonline.com/doi/pdf/10.1089/cpb.2007.0179

⁷ Testimony of J. Manning, *Hearing on Pornography's Impact on Marriage and the Family*, Subcommittee on the Constitution, Committee on Judiciary, U.S. Senate, 11/11/05, available at <http://www.heritage.org/research/family/tst111405a.cfm>.

i) Given BCAP's policy consideration, do you agree that it is necessary to maintain a rule specific to post-conception advice services and to regulate advertisements for pre-conception advice services through the general rules only?

ii) Given BCAP's policy consideration, do you agree that rule 11.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

No.

The consultation document is right to recognise that the nature of centres providing post-conception (abortion) advice and pre-conception (contraceptive) advice 'cause serious offence to viewers and listeners, especially those with intimate moral or religious convictions'. For this reason we feel it is important that such services should not be advertised on television, radio or public billboards.

We are concerned that BCAP's proposal to take on board the recommendation of the House of Commons Science and Technology Committee on the Scientific Developments Relating to the Abortion Act 1967 will not serve the best interests of women. Faced with an unplanned pregnancy, many women experience complex emotions and need time to decide what course of action to take. A number of women who decide on an abortion change their minds, sometimes at the very last minute, and many women who go through with an abortion experience medical complications or psychological trauma as a result.

The introduction of a requirement for post-conception pregnancy advice services to make it clear in their advertising that they do not refer women directly for abortion could limit the valuable service provided by pro-life pregnancy counselling organisations which allow vulnerable women time to thoroughly think through all the issues in a non-pressurised environment. Many such services also provide post-abortion counselling for women who have been psychologically damaged by abortion.

Rather than require providers of post-conception pregnancy advice services to explicitly state if they do not refer women directly for abortion, we would suggest that there is a more pressing need for abortion providers to state the risk of post-abortion medical complications and psychological trauma when advertising their services.

One of the core principles in the regulation of advertising is to prevent that which misleads. We are persuaded that this principle should be applied to abortion providers who invariably mislead women into thinking that abortion is a quick-fix solution to a problem pregnancy with no harmful consequences.

In relation to the public advertising of contraceptive services we would regard this as a potential encouragement to promiscuous sex, especially among those under 16 and likely to undermine parental authority.

Question 124 Sexual Entertainment Services

Given BCAP's policy consideration, do you agree that TV advertisements for PRS of a sexual nature should be allowed on encrypted elements of adult entertainment channels only? If your answer is no, please explain why?

No.

While we commend BCAP's recognition of the offence caused to vast numbers of people by the availability of these services and the danger they pose to under 18s we believe that any advertising of such services even under the present safeguards provides a serious danger to children and young people and to society at large. We are not convinced that the current safeguards are sufficient to prevent under 18s from accessing PRS of a sexual nature.

Sexually based entertainment is encountered via the internet, even by those who have no wish to make use of it and find it deeply offensive. Sexual entertainment is often the subject of spam mail sent to email accounts. Links to pornographic websites often appear on computer screens automatically and pornographic sites have been known to steal the web addresses of ordinary sites. Sexual services can also be accessed on some cable televisions simply by 'channel flicking' which as the consultation document notes 'continues to be the primary way of locating channels'. With 79 per cent of 8-11 year olds and 93 per cent of 12-15 year olds possessing their own mobile phone, a high proportion of children now have potentially easy access to adult chat lines. Many also have TVs in their bedroom. Pressures placed on parents often make it difficult for them to sufficiently control the material their children are exposed to.

In view of these factors, we believe that sexually-based entertainment should be not advertised anywhere on television.

Question 127

Given BCAP's policy consideration, do you agree that BCAP's rule on TV advertisements for telecommunications-based sexual entertainment services should extend to 'voice, text, image or video services of a sexual nature'? If your answer is no, please explain why.

Yes, and we would once again call for greater restrictions on access to sexual entertainment services whether it be through TV, voice, text, image or video services.

Question 128

Given BCAP's policy consideration, do you agree that rule 11.1.2 in the present BCAP Television Code should be replaced by proposed rule 23.2? If your answer is no, please explain why.

No.

Proposed rule 23.2 would permit an expansion of what it is acceptable to advertise in terms of sexual entertainment services. For reasons stated above, we are not persuaded that this would be a positive outcome.

Question 129

Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Premium-Rate Services section, are necessary and easily understandable? If your answer is no, please explain why?

No.

While BCAP's attempts to protect under 18s from sexually explicit material are commendable, the proposal to liberalise the rules governing the advertising of sexual entertainment appears to conflict with its child protection objectives.

We do not agree that 'a rule that entirely prohibited the advertising of those (sexually-based) services would not proportionately protect the viewing audience from harmful or offensive material'. While there are still many avenues by which such services are available we believe that it is the advertising of such services that potentially causes the most offence as well as being the greatest risk to the well-being of under 18s.

Question 137 Promiscuity

Given BCAP's policy consideration, do you agree the proposed BCAP Code provides adequate protection from the potential for harm or offence from advertisements that encourage or condone promiscuity? If your answer is no, please explain why.

No.

To relax restrictions on advertisements that condone or promote promiscuity would be irresponsible given the high rates of teenage pregnancy and sexually transmitted infection. We reject the contention that 'such messages may not in themselves be offensive or harmful'. Many advertisements already have a high sexual content and cause widespread offence. It is inevitable that the normalisation and celebration of promiscuity and casual sexual behaviour in entertainment and advertising will have a considerable impact on the way many live their lives, and young people are particularly vulnerable.

Question 147 Condoms

Do you agree that television advertisements for condoms should be relaxed from its present restriction and not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children below the age of 10? If your answer is no, please explain why.

No.

Not only would the relaxation of restrictions on condom advertising cause widespread offence among the viewing public, but it would also fail to achieve the desired objective of contributing to a reduction in teenage conceptions and STIs.

Research evidence does not support the common claim that teenage pregnancy rates in the UK are high because young people lack reliable information about contraception and are unable to access it with sufficient ease. A study published in the *British Medical Journal* found that 93 per cent of teenagers who became pregnant had seen a health professional at least once during the previous year and 71 per cent had discussed contraception. The researchers concluded that,

Teenagers who become pregnant have higher consultation rates than their age matched peers, and most of the difference is owing to consultation for contraception.⁸

Alongside condom advocacy, recent years have seen the vigorous promotion of emergency hormonal birth control as a back-up for contraceptive failure or 'unprotected sex'. It was initially believed that the emergency pill would reduce teenage pregnancy and abortion rates. However, an editorial in the *British Medical Journal* cited ten studies worldwide showing that its widespread availability has made no appreciable difference to pregnancy or abortion rates.⁹

When used correctly, condoms are 85-95 per cent effective in preventing HIV transmission. However, they are much less effective in providing protection from other infections, such as herpes and HPV. These infections are spread by skin-to-skin contact with parts not covered by the condom. Condoms have little or no benefit in preventing HPV transmission, and condom use only reduces the risk of contracting chlamydia by 50 per cent. The World Health Organization has stated that the best way to avoid catching an STI is to stay faithful for life to one person whom you know is uninfected.

⁸ D Churchill, J Allen, M Pringle, J Hippisley Cox, D Ebdon, M Macpherson et al. 'Consultation patterns and provisions of contraception in general practice before teenage pregnancy', *BMJ*, 2000; 321: 486-489.

⁹ A Glasier, 'Emergency Contraception', *BMJ*, 333:560-561.

There is no evidence to suggest that advertising condoms at a time when more children are in the television audience will reduce rates of teenage conception or sexually transmitted infection. Rather, it runs the risk of encouraging yet more sexual experimentation among young people by giving them the false impression that they can engage in casual sexual relationships without consequences.

Question 148 Sensational newspapers/magazines/websites

Given BCAP's policy consideration, do you agree that it is proportionate to require that special care be taken when scheduling advertisements for sensational newspapers, magazines, websites (or their content)? If your answer is no, please explain why.

We agree that special care should always be taken when scheduling advertisements for this kind of media. However, we disagree that restrictions should be relaxed and 'brought into line with other sensitive products where special care is advised'. Sensationalist material, especially of a sexual or violent nature, has a great propensity to offend many members of the public and there is always the danger of children being exposed to such material. Many sensational publications and websites contain pornographic content or promote a view of sexual lifestyles which encourages promiscuity.

In particular, with regard to the protection of children, we urge BCAP to take into account the fact that many children today have televisions in their bedrooms or spend much time away from adult supervision. As a result, we do not think that the BCAP guidelines on the advertising of sensational publications and websites are a sufficient safeguard against children having access to such material and would urge a more stringent approach.



June 2009

fpa response to Broadcast Committee of Advertising Practice consultation on Broadcast Advertising Standards Codes

About fpa

fpa (Family Planning Association) is the UK's leading sexual health charity. Our mission is to help establish a society in which everyone has positive, informed and non-judgemental attitudes to sex and relationships; where everyone can make informed choices about sex, relationships and reproduction so that they can enjoy sexual health free from prejudice or harm.

fpa provides a comprehensive information service, including a national helpline which responds to over 50,000 enquiries a year on all aspects of sexual health. We produce a range of publications for professionals and the public on sexually transmitted infections, contraception and pregnancy choices, including abortion, and we distribute around 10 million pieces of literature a year. **fpa** provides a variety of resources, including training courses, to those involved in delivering sexual health services. We also run a series of community based sex and relationships education projects both for young people and for parents. **fpa** provides a national voice on sexual health, working with professionals and the public to ensure that high quality information and services are available to all who need them.

For more information, please contact:

Hayley Blackburn
Policy Manager
fpa
50 Featherstone Street
London EC1Y 8QU

Tel: 020 7608 5259
Email: hayleyb@fpa.org.uk

fpa welcomes the opportunity to comment on the proposals for changes to the Advertising Standards Codes. We have restricted the following comments to our areas of knowledge and expertise.

Commercial services offering individual advice on personal or consumer problems

Question 52

i) Given BCAP's policy consideration, do you agree that the ban on TV advertisements for commercial services offering individual advice on consumer or personal problems should be relaxed? If your answer is no, please explain why.

ii) Given BCAP's specific policy objectives, do you agree that BCAP's proposed rule 26.2 is necessary and easily understood? If your answer is no, please explain why.

fpa welcomes the proposal to include a specific rule requiring commercial services offering individual advice on personal or consumer problems to provide broadcasters with suitable and relevant credentials. We believe that this will be particularly important for services for people with emotional or relationship problems. People seeking such services can often be extremely vulnerable and therefore it is vital that people advertising these services are suitably qualified and have relevant credentials. Therefore, **fpa** recommends that professionals offering advice on emotional or relationships problems should have to demonstrate that they are registered with appropriate professional bodies such as the British Association for Counselling and Psychotherapy.

Pornography

Question 54

i) Given its policy consideration, do you agree with BCAP's proposal to relax the present prohibition on TV advertisements for pornography products and allow them to be broadcast on encrypted elements of adult entertainment channels only? If your answer is no, please explain why.

ii) Given its specific policy objective, do you agree that BCAP's proposed rules are necessary and easily understood? If your answer is no, please explain why.

iii) Given BCAP's policy consideration, do you agree that advertisements for R18-rated material should be permitted to be advertised behind encrypted elements of adult entertainment channels only but that the content of those advertisements themselves must not include R18- rated material or its equivalent? If your answer is no, please explain why.

fpa welcomes the proposals to restrict advertising of pornography products to encrypted elements of adult entertainment channels. **fpa** is aware that some young people, particularly young men, are accessing pornography as a source of information about sex and sexuality in the absence of comprehensive sex and relationships education. New technologies such as mobile phones, the internet and satellite television appear to have made access to pornography easier for young people. However, pornography gives young people a skewed and unrealistic view of human anatomy and sexuality.

Services including clinics, establishments and the like offering advice on, or treatment in, medical, personal or other health matters.

Question 59

Given BCAP's policy consideration, do you agree that rule 11.9 should be included in the proposed BCAP Code? If your answer is no, please explain why.

fpa welcomes the proposals that broadcast advertisements for services offering advice on or treatment in medical, personal or other health matters will only be acceptable if the advertiser can produce suitable credentials. This will be particularly important for services associated with sexual health. For example, where people think they may be at risk of an STI it is vital that they are able to access timely advice to protect their health and that of their partners. Similarly, it is important that people are able to access quickly and easily high quality, evidence-based information about how to protect their sexual health. This must include details of all of the contraceptive options available rather than a focus on messages around abstinence or delay of sexual activity.

Family Planning Centres

Question 62

i) Given BCAP's policy consideration, do you agree that it is necessary to maintain a rule specific to post-conception advice services and to regulate advertisements for pre-conception advice services through the general rules only?

ii) Given BCAP's policy consideration, do you agree that rule 11.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

fpa agrees that it is necessary to maintain a rule specific to post-conception advice services and welcomes the proposed rule 11.11 as an important way of ensuring that women with unintended and unwanted pregnancies can easily access information about all of the options open to them. We believe it is vital that women are aware of whether pregnancy advice services will provide them with objective, accurate and up to date information about all of the options, including abortion, and whether services will signpost them to abortion services. As the consultation document notes, it is vital that women who are considering abortion are not delayed in accessing services. The Royal College of Obstetricians and Gynaecologists states that the earlier an abortion takes place, the safer it is for the woman.

fpa is aware that some anti-choice organisations which are opposed to abortion deliberately seek to dissuade women from having an abortion, including by providing false information and will delay women's access to services. Research¹⁰ conducted by the University of Kent and the University of Southampton around women seeking second trimester abortion found that a significant minority of women had been delayed by people they approached about having an abortion. The research showed that seven per cent of women said the first person they approached had made it difficult for them to get an abortion, four per cent of women were told by the first person they approached that they could not have an abortion and four per cent were told that the person they approached was opposed to abortion. These women were delayed in accessing services by between 14 and 21 days. Although it is not clear that these women were delayed by anti-choice counselling organisation, the research shows the significant impact that any delays can have on women trying to access services and the gestation when the abortion takes place.

There are a couple of issues with the proposed rule which **fpa** believes that it would be helpful for the Broadcast Council on Advertising Practice to clarify. First, although we welcome the proposed rule we are concerned that anti-choice organisations

¹⁰ Ingham R et al, *Second Trimester Abortions in England and Wales* (Southampton; University of Southampton Centre for Sexual Health Research, 2007)

which claim to offer pregnancy counselling to women, may be able to continue to provide misleading information even with the new rule.

fpa is aware that some services which are opposed to abortion provide women with misleading or false information in an effort to deter them from having an abortion rather than just delay their access. This can include using graphic videos of abortion or use other visual materials which cause distress. Some of the false information they provide exaggerates the possible physical or psychological impact of abortion, for example claiming there is a link between abortion and breast cancer, which the available evidence does not support. These services often over-emphasise the use of later abortion procedures, which are rarely used.

In addition, some of the misinformation provided by services which are opposed to abortion can have a long-term negative impact on women's health. For example, some anti-choice organisations claim that abortion can lead to infertility, although there is no evidence of a link between legal abortion and infertility. Consequently, some women who have received this information and do have an abortion believe wrongly that they are infertile and therefore do not use contraception, which puts them at risk of further unplanned pregnancies. The Independent Advisory Group on Teenage Pregnancy has identified concerns about myths around abortion and fertility as a possible factor in young women having repeat abortions¹¹.

It is also possible that this proposal may have an impact on some pro-choice organisations which do provide objective and non-directive counselling but which, because of the nature of the service, cannot actually refer women for abortion. The law currently states that two doctors have to agree that a woman has met the criteria to have an abortion, this means that services which are nurse-led or which are entirely staffed by counsellors could signpost women to abortion services but would not be able to refer them. Even though these services would discuss all of the possible options with women, the inclusion of text on their adverts to the effect that they do not refer women for abortion could deter some women from using them. It would be helpful if the impact of the implementation of this rule could be reviewed after a year to assess whether there are any unintended consequences of its application.

fpa very much welcomes efforts to ensure that women have timely access to high quality, objective and non-directive counselling. We believe that, for this to be achieved, anti-choice organisations must be required to be honest about their opposition to abortion and how this affects the information they give women. We support the proposed rule 11.11 as we believe it will go some way to achieving this and providing much needed clarity for women seeking support to make what for some is a difficult decision.

The proposed non-broadcast advertising code

fpa is concerned that the proposal for a specific rule on post-conception advice services is not replicated in the non-broadcast advertising code. We are aware that

¹¹ Independent Advisory Group on Teenage Pregnancy, *Annual Report 2005/2006* (London: Department for Education and Skills, 2006)

anti-choice organisations which claim to provide pregnancy counselling already advertise, for example on buses or telephone boxes, often in areas close to universities or where there are large numbers of, particularly young, women. We strongly recommend that the requirement to state whether organisations refer women for abortion is also applied to these non-broadcast advertisements to ensure that there is consistency across the codes and to ensure that the broadcast code requirements are not undermined.

Anti-drugs and Anti-AIDS messages

Question 66

Given BCAP's policy consideration, do you agree with BCAP's proposal to delete the radio rule on anti-AIDS and anti-drugs messages from BCAP's proposed Code? If your answer is no, please explain why.

fpa welcomes the proposed deletion of the radio rule on anti-AIDS messages as we believe that this will go some to normalising discussions around HIV and AIDS and tackle some of the stigma that people living with HIV continue to face. However, we are aware that some individuals and organisations continue to promote remedies or preventative measures which are not scientifically based and could in fact put people's health at greater risk. Therefore while we agree with the proposed relaxation of the restrictions we urge that there is continued vigilance to ensure that products and messages which are promoted are scientifically based.

Condoms

Question 147

Do you agree that television advertisements for condoms should be relaxed from its present restriction and not be advertised in or adjacent to programmes commissioned for, principally directed at or likely to appeal particularly to children below the age of 10? If your answer is no, please explain why.

fpa warmly welcomes the proposal to relax the current restrictions on the advertising of condoms. We believe that this relaxation will normalise condoms and their use. This could have a significant impact on the sexual health of people in the UK. Rates of sexually transmitted infections and unintended pregnancies are high in the UK. Yet many people are uncomfortable about talking about condoms, even with their partners.

For our national awareness campaign week Sexual Health Week in 2007, **fpa** commissioned YouGov to carry out an online poll of adults in the UK to find out about their attitudes to talking about condoms¹². This poll found that only just over a third of people found it easy to have a conversation about condoms with a new partner. Of those who did not find it easy, 70 per cent found it embarrassing and 36 per cent said it was such a difficult conversation it would put them off using a condom. This discomfort was not just confined to young people. Around 36 per cent of people aged 35-44 reported regret at not having used a condom with a new partner in the past. We live in an increasingly sexualised society but this has not extended to talking about condoms.

¹² **fpa**, 'Brits blush talking about condoms with their partner says **fpa**' <www.fpa.org.uk> accessed 9 June 2009

fpa believes that by relaxing the current rules on advertising condoms, this proposal will go some way to combating the current reticence around talking about condoms and will encourage people to take responsibility for their health and that of their partners. Carrying and using condoms is responsible.

We believe that the proposed rule on condom advertising could make it easier for parents and carers to raise and talk about issues around condoms with their children. Research shows that children and young people from families in which sex and relationships are openly discussed are more likely to delay the age at which they first have sex, to have fewer partners, and to use contraception when they do have sex¹³. We are aware that many parents would like to talk to their children about sex and relationships and vice versa but there is a great deal of embarrassment on both sides and in many cases parents do not feel that they have the knowledge or skills to start these discussions. **fpa**'s Speakeasy programme aims to enable parents and carers to develop the skills, knowledge and confidence they need to talk to their children about sex and relationships and part of this is identifying and using opportunities to start discussions. Condoms adverts on television and the radio could provide parents with such opportunities and improve sexual health in the UK.

¹³ Ingham R, *The development of an integrated model of sexual conduct amongst young people* (Southampton: University of Southampton, 1997)

Proposed changes to the Advertising Code in relation to Abortion

The Issue

It is proposed that adverts for abortion should be allowed on TV and radio, and that pregnancy advice services that don't provide abortion should have to state this explicitly in their adverts.

The Broadcast Committee of the Advertising Standards Authority is conducting a consultation on its proposals until **19 June 2009**. It will issue its conclusions in the Autumn.

As part of the consultation, the Broadcasting committee is seeking the views of the general public. This means, exceptionally, **YOUR VIEW COUNTS**.

After 19 June 2009, if you have not made your point, it will be assumed that you are either indifferent or that you approve.

Why has this Issue Arisen?

In 2007/8 the pro-abortion lobby and abortion providers like BPAS and Marie Stopes, promoted an effort in parliament to change the law to "protect" pregnant women from pregnancy advice services that do not provide abortion. The pro-abortion groups appear to be worried that they are "losing customers" to pro-life agencies. However, the law was not changed.

The pro-abortion lobby now wants the ASA's Broadcast Committee of Advertising Practice to change the code of practice both to allow abortion providers to advertise on TV and radio and to impose on anti-abortion groups a restriction similar to (but more dictatorial than) the unsuccessful parliamentary amendment.

What Can be Done?

Write to: The Code Policy Team
Broadcasting Committee of the Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

Or Email to: consult@cap.org.uk

Or Fax at: 020 7404 3404

Their website recommends that if you write to them, you should include a **response cover sheet**. (enclosed in this data pack) If you wish to email them, the link to this is on their website, http://www.cap.org.uk/cap/Consultations/response_sheet/

What points should I raise?

The best type of protest letter is where the writer has his or her own letter. Here are some sentences which might strike some chords with you and you might find useful to use:

- The idea of advertising abortion on TV and radio is deeply emotionally disturbing to me.
- I don't want my TV viewing polluted by people hawking their abortion services, no matter how 'tastefully' presented.
- I don't want my children or grandchildren growing up thinking that the serious issue of abortion is something akin to the latest cosmetic.
- Advertising abortion services on TV or Radio will give it a moral equivalence to shopping or buying any other service. Yet destroying a baby's life strikes at the deepest sense of moral values.
- Promoting abortion as a service indicates a further disintegration of social ethics in this country.
- Seeking to increase or maximise the practice of abortion is morally repugnant to me.
- Smoking adverts are not allowed on TV and Radio; so why adverts for Abortion?
- The ASA believes that advertisements should avoid giving offence. Abortion advertisements by their nature would be objectively offensive to moral and religious principles of many people including myself, Hindus, Muslims, Jews and Christians.
- Only Agencies with financial resources will be able to advertise. Abortion providers can generate financial resources by charging more for abortions and the NHS ultimately pays. Why should my taxes pay for Abortion Advertisements?
- European Parliament and the Council has directed that Audiovisual Commercial communications shall not cause physical or moral detriment to minors. Advertisements for abortion services, no matter at what time they are shown, are likely to be seen by some children and teenagers.

What else can I do?

1. Alert friends and relatives who share your views.
2. Copy your letter to your local MP, either Rt Hon Jim Knight, House of Commons, London SW1A 0AA or Rt Hon Oliver Letwin, House of Commons, London SW1A 0AA
3. Copy your letter to

Ofcom	Advertising Standards Association	The Prime Minister
M/s Colette Bowe Chairman, Ofcom Riverside House 2a Southwark Bridge Road London SE1 9HA	Lord Smith of Finsbury Chairman, ASA Mid City Place 71 High Holborn, London WC1V 6QT	Rt Hon Gordon Brown, Esq, MP, 10 Downing Street London SWA 2AA

"The sad truth is that most evil is done by people who never make up their minds to be good or evil" Hannah Arendt

16 JUN 2009



LIFE Pregnancy Care Centre
and Charity Shop,
8-8A Great George Street,
Weymouth,
Dorset,
DT4 8NN.
13/06/09.

Dear Lord Smith,

I enclose a copy of my letter to:

The Code Policy Team,
Broadcasting Committee of the Advertising Practice,
Mid City Place,
71 High Holborn,
London WC1V 6QT.

It is proposed to change the present code of practice to allow abortion providers to advertise on TV and radio, and that pregnancy "advice" services that do not provide abortion should state that they do not provide this.

Please note the points that I make in my letter. Thank you.

Yours faithfully,

Mrs H.J.Fannon MA, BA, PGCE (Weymouth LIFE Caring Officer)

Registered National Charity No. 274144

Trustees - Professor J J Scarisbrick (National Chairman) - Mrs Nuala Scarisbrick - Mr L A Parsons, QC - Dr Michael Jarmulowicz, FRCPATH, MB, BS, BSc
National Patrons - The Duke of Norfolk - Baroness Braye - Baroness Maitland of Ikon - Dame Janet Baker - Mrs V Riches - Rev Dr J Scott, QHC
Lord Alton of Liverpool - Miss Mary Kenny - Rt Rev Nigel McCulloch - Mr Kenneth Hargreaves - Rt Hon Ann Widdecombe MP
Jim Dobbin MP - John Kennedy, CBE - John Kelly, FRCOG - Don Maclean, MBE, KHS





LIFE Pregnancy Care Centre
and Charity Shop,
8-8A Great George Street,
Weymouth,
Dorset,
DT4 8NN.
13/06/09.

Dear Sirs,

As LIFE Caring Officer for the above local LIFE Pregnancy Care Centre, I would like to protest about the proposal that abortion advertising should be allowed on TV and radio. This is too serious a moral issue to be advertised in this commercial setting.

The second concern is that pregnancy "advice" service providers should have to state that they do not provide abortion in their adverts. Below are the pregnancy support services that we offer in Weymouth:

The LIFE Pregnancy Care Centre, 8 Great George Street, Weymouth.
(LIFE charity number. 274144)

Tel: 01305 761126 for our local Pregnancy Care Centre.

Caring Services:

- Free help, counselling and support for crisis pregnancy.
- Free pregnancy testing and free chlamydia test (optional but strongly recommended).
- Free help and counselling for pregnancy loss: stillbirth, ectopic pregnancy, miscarriage, after abortion and adoption.
- Referral to the Life Fertility Programme (www.lifefertilitycare.co.uk).
- Referral to free respite at Zoe's Place Baby Hospices (www.zoes-place.org).
- A help service for needy families.
- Referrals to LIFE Houses that provide supported accommodation for homeless pregnant women and mothers of small children (Tel 01926 743602).
- LIFE's National Help Hotline from 9am to 9pm daily: 0800-915 4600.
- Text to Talk Service (07786 200 300).

We advertise accurately our pregnancy support services. The only "advice" we are trained to give is referral to the client's GP over health concerns.

BPAS does not provide a general pregnancy support service, as we do; their stock in trade is abortion provision. Are they to advertise the pregnancy support services they do not provide as well? They claim to be in the business of "reproductive health".

LIFE Pregnancy Care Centre personnel have to raise every penny to support their local services. Much of BPAS' money comes from NHS referrals; up to 92%. Organisations, such as mine, would not have this monetary power to advertise on TV and Radio. Are the abortion-providers such as BPAS and Marie Stopes hoping for a "reproductive health" monopoly?

Yours faithfully,

Joyce Fannon MA, BA, PGCE. (Weymouth Life Caring Officer).

Registered National Charity No. 274144

Trustees - Professor J J Scarisbrick (National Chairman) - Mrs Nuala Scarisbrick - Mr L A Parsons, QC - Dr Michael Jarmulowicz, FRCPATH, MB, BS, BSc
National Patrons - The Duke of Norfolk - Baroness Braye - Baroness Masham of Iton - Dame Janet Baker - Mrs V Riches - Rev Dr J Scott, QHC
Lord Alton of Liverpool - Miss Mary Kenny - Rt Rev Nigel McCulloch - Mr Kenneth Hargreaves - Rt Hon Ann Widdecombe MP
Jim Dobbin MP - John Kennedy, CBE - John Kelly, FRCOG - Don Maclean, MBE, KHS



My name is Charlie Jacoby, I run FieldsportsChannel.tv, which launches weekly webtvbased half-hour magazine programmes at 7pm, 12 August 2009 and every Wednesday thereafter. Our aim is to bring viewers the best of British hunting, shooting and fishing. For the last 15 years, I have been a columnist and editor on shooting and fishing magazines, notably *Shooting Times*, *Sporting Shooter* and *Sporting Rifle*.

Please find enclosed my answers to question 55 of the BCAP Code Review consultation on the proposed BCAP Broadcast Advertising Standards Code.

Question 55: Given its policy consideration, do you agree with BCAP's proposal to strengthen the present prohibition on TV advertisements for guns by prohibiting advertisements for offensive weapons and replica guns? If your answer is no, please explain why.

My answer is no.

On the face of it, I should answer yes. With guns and shooting advertisers driven from traditional terrestrial, cable and satellite television, broadband television of the kind FieldsportsChannel.tv offers is one of the few places they can air their commercials. So, BCAP's proposals make good financial sense for FieldsportsChannel.tv.

However, it is illogical to lump shooting and guns with betting tips and pornography. Whatever social woes those latter two pursuits may or may not cause, shooting sports in Britain promotes responsibility and self-reliance in children and adults.

Among our potential viewers are the UK's 480,000 gameshooters (source: PACEC report, 2007, www.shootingfacts.co.uk). In order to hold a Shot Gun Certificate or Fire Arm Certificate, they need to be model citizens.

As a sport, gameshooting from partridges to red deer has an excellent safety record.

One year since I started working as a write in shooting sports, anecdotal evidence suggested that we had a better safety record than the sport of ping pong. We pride ourselves on our safety record. The subject that readers complain about the most in magazines is when a magazine fails to show 'best practice' in gun safety. Among the most shocking story a shooting magazine can carry is the one about the latest injury statistics from shooting sports in the USA, where safety is not such a vital part of the sport's culture. In the sport of target shooting, including clay pigeon shooting, we have taken eight medals at Olympic Games since 1968, including four golds (source: www.britishshooting.org.uk/content/view/205/36/). According to the results from the sport and leisure module of the 2002 General Household Survey (source: www.statistics.gov.uk/downloads/theme_compendia/sport&leisure.pdf), 2.4% of Britons took part in shooting sports within the 12 months covered by the survey, the same as the number who played cricket, double the number of those who played rugby (1.2%) and more than double the number of those who took part in either athletics or windsurfing or hockey.

The problem in shooting is the idea of a US-style 'gun culture' sweeping the UK. It is my opinion that this gun culture is engendered by the entertainment and computer games industry, which glamorises gun misuse, and not by shooting sports. Who can forget the actor Clint Eastwood's character Dirty Harry saying: "...this is a .44 Magnum, the most powerful handgun in the world and would blow your head clean off..." or Christopher Lee as James Bond's arch enemy Scaramanga saying: "My golden gun against your Walther PPK - each of us with a 50/50 chance"? Those are the kinds of lines that glamorise guns.

Shooting sports in the UK teaches respect for and responsibility towards wildlife, guns, ammunition and citizenship. For BCAP to fail to recognise this makes the ASA a laughing stock among the UK's 1 million licensed shooters (source: BASC, 2009).

Still feel the need to ban something? How about commercials for the computer game *Grand Theft Auto*? Not an ad for a beautifully-made English side-by-side shotgun.

Charlie Jacoby

14.5.2: To be consistent with our requirements, this should say: "The advertised products or services should be available only to clients who have demonstrated through a pre-vetting procedure compliant with the FSA's appropriateness test that they have relevant financial trading knowledge/experience;"

But our rules don't say that clients must be pre-vetted before contact, so I assume the Code is being deliberately tougher?

14.5.3 (and 9.5): Same thing. It should also refer to "knowledge/experience" and I agree the wording could usefully be consistent with 14.5.2.

Tom Carter
Financial Services Authority

It is my understanding that there is currently a national consultation being held on whether to allow abortion adverts on TV for the first time and in relation to Ads for condoms (currently allowed after the 9pm watershed) but views are being sought on whether they should be shown earlier in the day.

I believe both proposals should be rejected.

Abortion is a highly controversial issue, as a Christian Church we are opposed to the way in which abortion is available and believe strongly that people need to at least receive balanced advice on such matters - television is not an appropriate medium for advertising such things.

- Abortion adverts would mean that our children would simply hear one story about abortion. It will be much harder for parents to properly manage how their children learn about this sensitive subject.
- Abortion is allowed up to birth in the case of handicap. Last year almost 2,000 such abortions were carried out on women resident England and Wales. How will disabled members of the public feel when they watch abortion services being advertised on TV?
- At the very least, abortion is an extremely serious medical procedure with grave potential side-effects, including death by infection. The Royal College of Psychiatrists has asked doctors to warn about the mental health risks, and the link with subsequent premature birth is not contested.

In light of this, any abortion advertisers would have to include such warnings in their ads: warnings about risk are routine with financial adverts, for example.

- The consultation is proposing that pro-life pregnancy advice centres should be forced to say in any adverts that they will not refer women for abortion. On the same basis, those advertising for abortions should be compelled to state that they do not offer counselling if a woman decides to keep the baby.

Advertising condoms before the 9pm watershed would risk exposing children to highly inappropriate material. Parents should feel safe to allow their children to watch TV before the watershed. I must confess that there is much on TV that is not wholesome and this would be a further step in the wrong direction

- Condoms are already available in a vast number of locations – it is hard to miss them in the toilets of most hotels: allowing further advertising simply isn't necessary.
- The consultation makes clear that Government-appointed promoters of sexual health have demanded greater advertising freedom. The approach of the teenage pregnancy strategy has totally failed and further advertising will send the message that young people are expected to be sexually active.
- Condom advertisers should have to warn that their products do not offer total protection against STIs.

These are some of the points which concern us in relation to this matter and we trust that you will give this your careful consideration.

Thank you for the opportunity to comment on the proposed Committee of Advertising Practice (CAP) UK code of Non-Broadcast Advertising, Sales, Promotion and Direct Marketing and on the Broadcast Committee of Advertising Practice (BCAP) Broadcast Advertising Standards Code.

The Agency welcomes the work done to take account of food law, especially Regulation (EC) 1924/2006 on nutrition and health claims made on foods and the Infant Formula and Follow-on Formula Regulations 2007. We see this as an important step towards ensuring that there is consistency in the application of food law.

We have made specific comments on certain aspects of the proposed codes in the appendix to this letter and would particularly like to draw your attention to the following points:

- We are not aware of any evidence to demonstrate whether the current CAP non-broadcast rules or the BCAP radio rules have resulted in a reduction in exposure of children to the advertising of 'non-healthy' foods. This is in contrast to the clear evidence of impact of TV advertising, and we therefore do not know whether these rules are sufficient to protect children.
- It would be helpful if the codes made it clear that health claims can only be used if they comply with Regulation (EC) 1924/2006 on nutrition and health claims made on foods. In addition, it would be useful if the codes provided advice on how to achieve this in advertising and made it clear that testimonials may fall within the legal definition of a health claim and if they do so they too must comply with Regulation (EC) 1924/2006.
- It is important that the codes refer especially to the additional controls on advertising of infant formula and follow-on formula put in place by the 2007 infant formula regulations.

We look forward to continuing to work with CAP and BCAP and the Advertising Standards Authority on the development and application of the advertising codes.

Yours,

Tim J. Smith
Chief Executive

APPENDIX

Food Standards Agency comments on proposed BCAP Broadcast Advertising Standards Code and proposed CAP code of non-broadcast advertising, sales promotion and direct marketing.

Comments in relation to food marketing communications and children; nutrition and health claims made on food; slimming products; infant formula and follow-on formula

We note that the rules on non-broadcast food marketing to children were introduced by CAP in July 2007 in response to the Government's concern about the marketing of food to children.

BCAP introduced new radio rules on food advertisements in general and food advertisements targeted directly at children in particular on 17 September 2007.

In October 2008, the Department of Health published a report on the changes in food and drink advertising to children¹⁴ which showed that TV is the only medium to have seen consistent annual reductions in child-themed ad-spend since 2003.

Healthy Weight, Healthy Lives includes a specific commitment to rebalance marketing, promotion, advertising and point of sale placement, by reducing the exposure of children to the promotion of foods that are high in fat, salt or sugar and increasing their exposure to the promotion of healthier options.

We are not aware of any evidence to demonstrate whether the current CAP non-broadcast rules have resulted in a reduction in exposure of children to the advertising of 'less healthy' foods. Similarly, we are not aware of any evidence to demonstrate whether the BCAP radio rules have resulted in a reduction in exposure of children to the advertising of 'less healthy' foods. The FSA considers that the impact of the codes mentioned above, specifically to assess the impact of the rules to protect children from the advertising of 'less healthy' foods, should be reviewed.

CAP Annex 1 – section 3.47 and BCAP Annex 1 – Section 3.44

The codes state that "claims that are likely to be interpreted as factual and appear in a testimonial must not mislead the consumer". The Agency's view is that testimonials should be treated in the same way as claims. Therefore, the codes should indicate that if consumers could understand a testimonial about a food to state, suggest or imply that it has a benefit to health, it may fall within the definition of a health claim and so needs to comply with Regulation (EC) 1924/2006 and be authorised and listed.

CAP Annex 1 - Section 13.9

¹⁴Changes in the nature and balance of food and drink advertising and promotion to children, from January 2003 to December 2007. *Department of Health, October 2008.* http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089129

The code states that “marketing communications must not contain claims that weight or fat can be lost from specific parts of the body”. If, in future, such a claim were authorised for use on food under Regulation (EC) 1924/2006, this rule would be incompatible with the Regulation.

BCAP Annex 1 - Section 12.13.2

In 2007 the Foods Intended for use in Energy Restricted Diets for Weight Reduction Regulations 1997 were amended to remove the prohibition on references to “a reduction in the sense of hunger or an increase in the sense of satiety”. This brought the 1997 Regulations into line with Regulation 1924/2006 on nutrition and health claims made on foods and should be reflected in the BCAP code. To ensure that the code is in line with the Regulations we would like to recommend that reference to “a reduction in the sense of hunger or an increase in the sense of satiety” be removed from section 12.13.2.

The code refers to The Foods Intended for use in Energy Restricted Diets for Weight Reduction Regulations 1997 as amended. As these Regulations only apply to England, Wales and Scotland, the Agency suggests that reference is also made to the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations (Northern Ireland) 1997, as amended.

CAP Annex 1 – Section 15.1.1 and BCAP Annex 1 - Section 13.4

The codes state that “marketing communications that feature health claims filed with the relevant Home Authority and awaiting authorisation may be used with particular care. They must comply with all relevant rules”. It is unclear what is meant by ‘claims filed with the Home Authority’ as there is no requirement for this under Regulation (EC) 1924/2006, although claim applications must be made via the relevant National Competent Authority. However, this rule doesn’t seem to capture all the different types of claims and associated transition periods. For example, claims referring to the role of a nutrient in growth, development and functions of the body can continue to be used during the transition period regardless of whether an application has been made, whereas disease risk reduction claims cannot be made until they have been authorised. Perhaps this paragraph is not necessary at all since the previous paragraph refers to transition periods?

CAP Annex 1 – Section 15.2 and BCAP Annex 1 - Section 13.4.3

The codes state that “if a food product is a good source of certain nutrients that does not justify a generalised claim of a wider nutritional benefit”. Whilst true that the presence of a particular nutrient does not necessarily justify a claim about the food’s nutritional benefit, if a health claim for that nutrient has been authorised it can be used on any food meeting the conditions of use (and the nutrient profile, once agreed). This could be reflected by amending the rule to say that a wider claim is not *necessarily* justified.

CAP Annex 1 – Section 15.3 and BCAP Annex 1 – Section 13.5.1

The codes state that “comparative nutrition claims must show any differences between a product bearing a permitted nutrition claim and foods of the same category”. This doesn’t quite reflect Article 9 of Regulation (EC) 1924/2006

accurately, which says that the comparison should relate to a range of foods of the same category. For example, if a particular product claims to be “reduced fat”, it should be reduced (i.e. 30% less) compared to a range of other products of the same category. It is not necessary for other differences between the products to be stated, only the difference in the claimed nutrient. In fact, it may be misleading to make certain comparisons and thus be prohibited under Regulation (EC) 1924/2006.

CAP Annex 1- Section 15.6.3 and BCAP Annex 1 – Section 13.6.3

The codes state that “health claims that refer to the recommendation of an association are acceptable only if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics”. This doesn’t seem entirely compatible with Regulation (EC) 1924/2006. The Regulation only controls recommendations by medical, nutrition or dietetic associations and health-related charities, but does not prohibit recommendations by any other associations. In fact, Article 11 of the Regulation doesn’t introduce any new controls on recommendations by health-related associations or charities but instead says that national rules apply. There are no specific national rules in place in the UK so we are looking at updating our guidance to the Regulation to include a section on this. It is likely to reflect the requirements of Regulation (EC) 1924/2006 and not put additional requirements in place (but we must await consultation before a final decision is taken).

CAP Annex 1 – Section 15.11 and BCAP Annex 1 – Section 13.8

The Agency supports the decision to reflect the infant formula and follow-on formula Regulations 2007 in the codes and in particular to explicitly mention that the advertising of infant formula is prohibited and that advertisements should not confuse between infant formula and follow-on formula. The rules governing the advertising of infant formula and follow-on formula are, however, more extensive than reflected in the amended codes. As currently drafted the text of the codes does not explicitly mention these or make reference to the fact that the Regulations put in place additional controls on the advertising of infant and follow-on formula. These are important controls that both broadcasters and advertisers should be aware of. We would like to see these controls reflected in the codes.

The codes refer to The Infant Formula and Follow-on Formula Regulations 2007. These Regulations have now been amended by The Infant Formula and Follow-on Formula (England) (amendment) Regulations 2008. Reference to these Regulations should therefore read “The Infant Formula and Follow-on Formula (England) Regulations 2007, as amended” with equivalent parallel Regulations in Scotland, Wales and Northern Ireland¹⁵

CAP Annex 1 – Section 15.16 and BCAP Annex 1 - Section 13.10 and 13.14

The codes state that “licensed characters and celebrities popular with children may present factual and relevant generic statements about nutrition, safety, education or

¹⁵ The Infant Formula and Follow-on Formula (Scotland) Regulations 2007 as amended by the Infant Formula and Follow-on Formula (Scotland) Amendment Regulations 2008 (SSI 2008/322).

The Infant Formula and Follow-on Formula (Wales) Regulations 2007 as amended by the Infant Formula and Follow-on Formula (Amendment) (Wales) Regulations 2008 (SI 2008/W.228).

The Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007 as amended by the Infant Formula and Follow-on Formula (Amendment) Regulations (Northern Ireland) 2008 (SR 2008/405).

similar”. If characters or celebrities present statements about the nutritional or health benefits of a food within its advertising, and these fall within the scope of Regulation (EC) 1924/2006, they will need to comply with the Regulation.

Additional comments

Those sections of the codes on Food, Dietary Supplements and Associated Health and Nutrition Claims state, in several places, that “references to food apply also to soft drinks”. Regulation (EC) 1924/2006 applies to all food and drink, including juice, tea, coffee, milk, water etc. Referring only to soft drinks may lead people to think that the rules do not apply to other drinks – if this is what was intended then the codes are not entirely consistent with the Regulation.

¹ The Infant Formula and Follow-on Formula (Scotland) Regulations 2007 as amended by the Infant Formula and Follow-on Formula (Scotland) Amendment Regulations 2008 (SSI 2008/322).

The Infant Formula and Follow-on Formula (Wales) Regulations 2007 as amended by the Infant Formula and Follow-on Formula (Amendment) (Wales) Regulations 2008 (SI 2008/W.228).

The Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007 as amended by the Infant Formula and Follow-on Formula (Amendment) Regulations (Northern Ireland) 2008 (SR 2008/405).

Code Policy Team
Broadcast Committee of Advertising Practice
Mid City Place
71 High Holborn
London WC1V 6QT

Our PW
Ref:

Your
Ref:

19 June, 2009

BCAPcodereview@cap.org.uk

Dear Sirs,

Subject: The BCAP Code Review - Consultation on the proposed BCAP Broadcast Advertising Standards Code

I refer to the above consultation and would ask that you treat this letter as a formal response by XXXX in respect to the same.

Question 54

i) Given its policy consideration, do you agree with BCAP's proposal to relax the present prohibition on TV advertisements for pornography products and allow them to be broadcast on encrypted elements of adult entertainment channels only?

The use of the word "pornography" is very emotive and without qualification is likely to create in the mind of consumers a connotation with something that is distasteful or negative. It cannot reasonably be said that much of what appears on Babe channels is "pornographic" in the modern day sense of that word. To that extent, the use of this word is misleading.

Question 97

i) Given BCAP's policy consideration, do you agree to maintain the existing TV and radio requirements on advertisements for products or services concerned with the occult or psychic practices?

Once again, the use of the word "occult" is very emotive. By combining the use of this word with the reference to psychic practices – as if to imply that they are one and the same thing – is misleading. Modern day psychic and tarot offerings on broadcast television are a highly popular programme genre. There can be no reasonable justification for a ban on advertising such services.

Question 122

Given BCAP's policy consideration, do you agree that proposed rules 22.1 to 22.6 and

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Registered Office: Dua & Co. Letchford House, Headstone Lane, Harrow, Middlesex, HA3 6PE

22.8 should be included in the proposed BCAP Code?

We cannot see why there is a need for BCAP to become involved in the regulation of premium-rate-services. These services are already subject to substantial regulation by PhonepayPlus.

Question 124

Given BCAP's policy consideration, do you agree that TV advertisements for PRS of a sexual nature should be allowed on encrypted elements of adult entertainment channels only?

We are concerned that information given to BCAP by Ofcom has either been inaccurate or that BCAP have failed to accurately present that information.


If members of the public and business community cannot rely on the accuracy and fairness of information used in the consultation document, it must be the case that the entire consultation process is fatally flawed.

We would submit that it is critically important that any consultation satisfies the five principles of good regulation identified by the UK Government's Department of Business Innovation as the "cornerstone" of better regulation, namely that any regulation should be:

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted – only at cases where action is needed.

We believe this consultation fails to satisfy these principles of good regulation.

Yours faithfully,





General Presbytery of the Free Presbyterian Church of Ulster

MODERATOR:
Rev. Ron Johnstone
1 Drummanmore Grange
Armagh
BT61 8RQ

CLERK:
Rev. Ian Brown
28 Lisdale Park
Londonderry
BT47 6HE

18 June 2009

RESPONSE TO CONSULTATION BY THE BROADCAST COMMITTEE OF ADVERTISING PRACTICE (BCAP)

Dear Sir/Madam,

Allow me to thank you for the opportunity to take part in your national consultation and so express the opposition of the religious denomination to which I belong, the Free Presbyterian Church of Ulster, to current proposals re advertisements about abortion and condoms.

We welcome the wisdom that has prevailed until this moment that has prevented adverts about abortion being aired on television. Undoubtedly this protocol has been followed in recognition of the fact that abortion is a highly emotive and controversial issue and is not appropriate subject matter for TV advertising. Consideration must also have been given to the fact that there has been very little appetite among society for these adverts.

As a denomination that subscribes to the authority of Scripture in every realm of faith and practice, we support the biblical teaching that forbids the killing of a baby within the womb as much as it condemns the murder of an adult or child through the command, "Thou shalt not kill" (Exodus 20:13). Every evangelical Christian is therefore opposed to this slaughter of the innocent and has no desire to view adverts promoting this evil to be beamed into their homes.

It is also undeniable that adverts of this nature would make it much more difficult for parents to manage how their children learn about abortion.

We note that your consultation is proposing that pro-life pregnancy advice centres should be compelled to state in any adverts that they will not refer women for abortion. By the same token, those who wish to advertise for abortions must be obliged to state that they do not offer counselling if a woman decides to keep her baby.

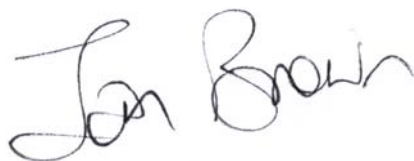
It also concerns us that, since abortion is an extremely serious medical procedure with grave potential side-effects, including death by infection, and severe mental problems, your proposals fail to state that any who wish to advertise abortion services should never be permitted to advertise without placing prominent warnings in their ads. Warnings about risk are routine in other fields.

The consultation also makes it clear that Government-appointed promoters of sexual health have demanded greater advertising freedom. This is both ironic and tragic in that their current policies of containment lie in tatters at their feet and our country is ravaged by epidemics of sexually transmitted diseases and teenage pregnancies. Their strategies in these vital areas have been fundamental failures, and further advertising will only reinforce the ruinous message that has been sent to young people that they are expected to be sexually active.

Further advertisements for condoms are completely unnecessary since condoms are already available in a vast number of locations. To learn that pressure is being applied to carry these adverts before the 9pm watershed is of particular concern, given the fact that this will place unwanted and unhelpful messages in the minds of the very young.

At this moment our country needs the promotion of a moral compass that is based on the teachings of Holy Scripture. Words written by the man to whom God granted the gift of special wisdom remain foundational to the well being of any society, both present and future – “Righteousness exalteth a nation: but sin is a reproach to any people” (Proverbs 14:34). For too long schemes such as those being proposed in this consultation have been promoted in our society that have resulted in sin cascading around us and the judgment of God falling upon us. It is high time that our nation was instructed in the paths of righteousness that it may recover its footing before God and enjoy walking in the ways of prosperity, health and peace.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Ian Brown'. The signature is fluid and cursive, with the first name 'Ian' and the last name 'Brown' clearly distinguishable.

Rev. Dr. Ian Brown
(Clerk of Presbytery)

BCAP Code Review
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Broadcast Committee of Advertising Practice
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19th June 2009
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BCAP Code Review
Consultation on the proposed BCAP
Broadcast Advertising Standards Code
RESPONSE BY FUSION TELECOM LTD TO CONSULTATION DOCUMENT

Fusion Telecom Ltd primarily provides IVR hosting for PTV in both the Babe (Glamour) Style and Psychic TV broadcast sector. We also provide 121 operator call services via our supply network of 121 operating companies. Therefore our responses and comments, relate mainly to these areas.

On the Telephony side (IVR) we provide access for International callers (via International numbers) and mobile callers (via VSC's), as well as other payment mechanisms.

Fusion Telecom Ltd is also a member of AIME and fully supports their response to this consultation.

As Fusion Telecom primarily deal with Hosting and 121 supply for PTV, closure of this avenue of business would indeed prove to be very severe indeed.

We currently have 18 different companies in our supply value chain, some of which also primarily deal with PTV services. This creates a fair turnover for Fusion Telecom Ltd, a large proportion of which feeds down the value chain, creating employment and business for those 18+ other companies.

It is crucial for a company such as ours to evolve with the new technology available, which involves integrating with many different parts of the whole industry. Last year saw the launch of a new software for PTV shows for us and this had very positive effects on our business. However since Ofcoms 'announcement' back in Oct last year, we have found it impossible to invest any further in this or indeed many other areas, as the danger of losing this revenue stream is too great at this time.

RESPONSE

Fusion Telecom Ltd fully supports the direction taken by AIME, of which we are a member. Whilst we have not answered the consultation questions directly ourselves, we were part of the working group for PTV within AIME, whereby our collective responses have been put to you and are attached also.

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

Classification of Babe (Adult) and Psychic TV Programming

Firstly, to clarify, the term 'Adult' was being used by the regulators to denote the type of service being referred to. We now note that the references used in this consultation have been termed as 'Pornography'! We are fairly confident that the general viewing public would actually use neither term to describe the type of PTV we offer. The actual visual content is NOT of an adult nature, it is only 'suggestive' of what viewers believe the term 'adult' to actually mean, or as this genre is

sometimes known, 'Babe' TV. It certainly bears no relation to 'pornography' which viewers generally believe, to be something which contains 'hard-core' material. Even the term 'adult' is suggestive of material much stronger than perhaps you may see on 'Babe/Glamour' TV.

The same can be said of 'Psychic/Tarot' for which the regulators have used the term 'The Occult'. In the main, the general public's view of the Occult, is that it is to do with devil worship or practices of that nature. They do not believe when they are viewing such programming as Psychic TV, that they are watching programming relating to the Occult.

Both the terms used by the regulators (Pornography and Occult) are emotive and misleading to the viewers, particularly when they themselves do not class this type of programme as being so.

Consumer Protection

The 9xx channels via SKY TV do allow viewers (or subscribers) to bar from their own TV, using their SKY handset but this is an 'opt in' mechanism, rather than 'opt out'. Despite viewers (and callers) repeated requests for a slightly harder content, it is accepted that current standards are within the bounds of decency allowed on channels of this type. In fact on TV programmes where there is no PRS, it is noted that far stronger material is allowed to be shown. This discrepancy applies to both Babe style shows and Psychic. For example, 'ghost hunting' type shows which feature all kinds of 'occult' related material, is an extremely popular genre of TV but it is a 'banned' subject altogether, as soon as you advertise a PRS service on TV, upon which people can discuss this subject, using PRS or indeed any other type of payment mechanism. At the same time, TV programmes such as 'Playboy Mansion' can be aired at any time of the day, with the relevant naughty bits turned into a few pixels (before 9pm)! In the evenings you have extremely gratuitous content with TV programmes like 'Sexcetera'.

There is no evidence of consumer harm in any of the programming from any of the regulators currently 'in charge' of PTV regulation. We cover many different PTV genres and take a responsible view on each, working with the Broadcaster, the Service Provider, Technology Providers, Networks and Phone Pay Plus to achieve a quality product that we believe gives value for money to the consumer. Complaints versus the number of satisfied callers and users of the services are absolutely negligible.

There is also no requirement for the viewer to call any of the premium rate numbers shown on the screen. There is editorial content, which includes entertainment of a visual nature, on all the shows and the viewers themselves decide whether or not they wish to call any of the numbers. It is clearly therefore already about viewer choice. All information relating to the service and how it works is clearly explained when the caller connects to the premium rate number. In addition the content of the service and a description of how it works, is also displayed periodically on the TV screen and explained by the presenters. Therefore, at no time is the viewer/caller in any doubt as to what to expect when they call the service.

The fundamental issue with PTV types of programming is, that it is in a genre of its own. One which is not yet 'classified' by the regulators as it doesn't currently fit into any of the categories which already exist. Despite this type of programming being in existence for several years, it seems that only PPP, who regulate the PRS side of PTV, have kept up with the emergence of many new and exciting technological advances within this genre. This is mainly due to the technology now available, offering the viewers 'experiences' via their television, land line phone, Clearly PTV is neither purely advertising nor purely editorial. BCAP, being the advertising regulator, now refer to it as being PTV programming but are of course forced to look at this from an advertising perspective, to see whether it could fit under its current Code. This is of course difficult, as there IS editorial content on both Psychic and Babe style TV that BCAP may feel is outside of its remit. In this consultation, BCAP try and categorize PTV as advertising to some extent and quote research related to both PTV from OFCOM and previous research such as Beyond Entertainment which covers

audience viewpoints on Psychic Subject matter, as well as giving a wide range of fairly muddled views on the adult marketplace in the PRS of a Sexual Nature section, but refuses to commit itself to whether a) it DOES regard PTV containing PRS to be under its jurisdiction and b) whether they feel it IS in fact advertising and therefore under its remit. PTV therefore remains up in the air at the end of the Consultation with no firm decision made as to who should regulate it. One thing is certain though; BCAP is reluctant to regulate it and defers to OFCOM.

We do not feel that BCAP has fairly assessed the risk in the Psychic or Babe TV marketplace. Neither has it considered these types of PR services as a low risk product. Phone Pay Plus could tell them it is.

M Marriott