

# The Regulation of Unfair Practices in TV and Radio Advertisements

## Attachment D

Marked-up version of the BCAP Radio Advertising Standards Code

Proposed deletions are ~~struck through~~  
Proposed insertions are underlined

Text from the CPRs appears in blue boxes.

**The Broadcast Committee of Advertising Practice**

# Radio Advertising Standards Code



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## Foreword

The BCAP Radio Advertising Standards Code sets out the rules that govern advertisements on any radio station licensed by Ofcom. The rules are framed to ensure that advertisements are 'legal, decent, honest and truthful' and do not mislead or cause harm or serious or widespread offence.

Since 1 November 2004, the Code has been the responsibility of the Broadcast Committee of Advertising Practice (BCAP) under contract from the broadcasting and telecommunications regulator Ofcom.

Information about BCAP is available on the BCAP section of the CAP website, [www.cap.org.uk](http://www.cap.org.uk).

Ofcom took over the responsibilities of the former Radio Authority in December 2003. Under the Communications Act 2003, Ofcom was encouraged towards contracting-out functions to a co-regulatory partnership with effective self-regulation.

After public consultation and parliamentary approval, Ofcom has authorised BCAP to take responsibility for maintaining, reviewing and updating the Code.

Complaints about apparent breaches of the Code are considered by the Advertising Standards Authority (ASA), through its broadcasting arm ASA(B), and references to the ASA in this Code should be read as references to the broadcasting arm. Complaints to the ASA can be made via [www.asa.org.uk](http://www.asa.org.uk).

The Code is an updated edition of the former Radio Authority's Advertising and Sponsorship Code. Provisions relating to product placement (paragraph 2 of Section One), sponsorship (paragraph 3 of Section One) and unreasonable discrimination in favour of or against an advertiser (paragraph 2 of Section Two) have been omitted: product placement, sponsorship and unreasonable discrimination remain the direct responsibility of Ofcom. Please see Section Nine of the Ofcom Broadcasting Code and Section One, Rule 3 of this Code. The changes reflect the new co-regulatory partnership between Ofcom, the ASA and BCAP. Reference in the previous Code to the Radio Authority have been reviewed and, where necessary, changed to BCAP, Ofcom or the ASA. A new provision for Independent Review of ASA adjudications is also included. The Code has also been amended to incorporate the requirements of the Consumer Protection from Unfair Trading Regulations (see Appendix 4 for a summary of the effect of the Regulations). Otherwise, this is the same Code as the former Radio Authority Code.

Advertisers and broadcasters should also be aware of BCAP's Broadcast Advertising Guidance Note No 3: ASA Complaints procedures.

## About the Code and how to use it

### Status of the Code

The Code applies to all advertisements on all services licensed by Ofcom. All Licensees should be familiar with the contents of this Code. Licensees should bring this Code to the attention of all their relevant employees when they are first employed and at least once a year thereafter. Relevant employees must be given permanent access to refer to the Codes, which can now easily be accessed via the ASA or CAP website at [www.asa.org.uk](http://www.asa.org.uk) or [www.cap.org.uk](http://www.cap.org.uk). They should also be familiar with relevant consumer protection legislation, most of which is listed in Appendix 1.

**Code Rules are shown in bold.** The explanations and ancillary information that accompany them are in ordinary type.

The ASA may require advertising that does not comply with the Code to be withdrawn or suspended. If a Code Rule is breached, Ofcom may impose sanctions, ranging from a warning to a correction or a statement of findings, a fine or the shortening or revoking of a licence.

### Additional guidance

Licensees seeking additional guidance about the interpretation of the Code Rules should speak to BCAP staff. However, advertisers, advertising agencies or independent producers should seek further clarification on scripted advertisements from the Radio Advertising Clearance Centre (see Section One, Rule 4) or from the radio station on which they wish to advertise.

## **Section One – Advertisements**

### **1 Advertisements**

**‘Advertising’ in this Code refers to any items, including spot advertisements and promotions with advertisers, which are broadcast in return for payment or other valuable consideration to a licensee or which seek to sell to listeners any products or services. It does not cover product placement or sponsorship. For rules on these areas, please see the Ofcom Broadcasting Code. Ofcom requires adherence to this Code for the content of sponsorship credits. ‘Special Category’ sponsorship credits are cleared for broadcast by the Radio Advertising Clearance Centre (RACC). See Rule 3 below.**

This Rule excludes promotion of radio stations’ own-branded activities, goods and events (such as websites, T-shirts and concerts) which enhance listener involvement and are not designed to make a profit or promote commercial partnerships.

**Radio advertising should be legal, decent, honest and truthful, and these Rules should be applied in spirit as well as in the letter.**

**Licensees must make it a condition of acceptance that advertising complies fully with all legal requirements. Advertising for an acceptable product or service may have to be withdrawn if the ASA considers that a significant effect is indirectly to publicise an unacceptable product or service.**

### **2 Product Placement and Undue Prominence**

The setting of standards and the investigation of complaints in relation to product placement and undue prominence have not been contracted out to BCAP and the ASA and remain matters for Ofcom. The ASA refers complaints about product placement and undue prominence to Ofcom.

### **3 Sponsorship**

The setting of standards and the investigation of complaints in relation to programme sponsorship (including promotions funded by advertisers) have not been contracted out to BCAP and the ASA and remain matters for Ofcom. The ASA refers complaints about programme sponsorship to Ofcom.

Ofcom’s sponsorship rules are published in the Ofcom Broadcasting Code, which is available at [www.ofcom.org.uk](http://www.ofcom.org.uk). All sponsorships which involve special category



sponsors must be scripted and submitted to the RACC for central copy clearance. All the claims which need substantiation must be cleared locally or by the RACC (for special categories). All sponsorships must comply fully with the requirements of this Code.

## **4 Compliance and Advance Clearance of Advertisements**

### **4.1 Compliance**

**All compliance matters (copy clearance, content, scheduling etc) are the ultimate responsibility of each Licensee. This is the case whether or not advertising also requires central clearance.**

### **4.2 General Clearance**

**Stations must ensure that all advertisements are cleared in advance of broadcast, either by the Radio Advertising Clearance Centre (RACC) or by stations themselves, as outlined below.**

### **4.3 Scheduling**

**Scheduling of all advertising is the ultimate responsibility of each Licensee. Advertising must be scheduled appropriately, and in accordance with the Rules in this Code. The ASA and BCAP also expect stations to follow RACC scheduling warnings, where appropriate.**

### **4.4 Repeat campaigns**

**Stations should ensure that previously approved copy is not re-run for subsequent campaigns without checks to ensure that all claims are still accurate. Copy which was originally RACC-cleared and is six months old or more needs to be re-submitted to the RACC for consideration (and new clearance numbers).**

### **4.5 Station Copy Clearance**

**Advertisements which do not fall into the special categories listed below (and which are only broadcast by one station or in one particular locality) must be cleared for broadcast by the relevant staff at the station concerned. Advertisers should contact the relevant station for further details or guidance. Substantiation of factual claims made by advertisers and other**

supporting evidence must be held on file by the station(s) concerned.

#### 4.6 Central Copy Clearance

**‘Special categories’ of advertisement (whether for broadcast locally, regionally or nationally) need particular care. They must be sent to the RACC for central clearance.**

To provide both consistent standards and ease of use of the medium, the RACC has also assumed responsibility for the clearance of ‘national’ advertisements (those sold/broadcast nationally across the network).

#### 4.7 The Special Categories are:

**Advertising aimed specifically at children** (those aged below 16 years) (and see Section 2, Rule 11);

**Child voiceovers** (and see Section 2, Rule 11.11);

**Testimonials** (and see Section 2, Rule 18);

**Environmental claims** (and see Section 2, Rule 5);

**Consumer credit, investment and complex financial advertising**

**Political, industrial and public controversy matters (including COI/Government and Council campaigns), Political Advertisers, Humanitarian Advertisers, Trade Unions and similar bodies; all advertisers/advertisements falling under Section 2, Rule 15;**

**Alcoholic drink**

**Medical products (including medicines), treatments, services and establishments Health products and services (including pharmaceutical products and services offering advice on personal medical problems, eg. private clinics offering cosmetic surgery, therapists) ;**

**Health and/or beauty treatments and claims**

**Food and nutrition claims**

**Dietary supplements; slimming products, treatments and establishments**

**Contraception, condoms and family planning products and services; pregnancy-testing products and services**

**Sanitary protection products**

**Anti-AIDS, anti-drugs and solvent abuse messages**

**Sex shops, Stripograms etc**

**Consumer advice services**

**Competitions, Lotteries, Betting and Gaming** (and see Section 2, Rule 23);

**Dating, Introduction or Marriage Agencies or Services**

**18-certificate films and videos;**

**UK-wide media;**

**Websites featuring products and services which fall under ‘special categories’ within this Code;**

**Religious advertising**

## **Divination and the Supernatural Charities**

### **4.8 Requirements for Central Clearance**

**One copy of the draft, pre-production advertisement must be faxed, emailed or sent by post to the RACC at:**

fax 020 7306 2645 e-mail [adclear@racc.co.uk](mailto:adclear@racc.co.uk)  
Radio Advertising Clearance Centre, The Radiocentre, 77 Shaftesbury Avenue,  
London W1D 5DU  
telephone 020 7306 2620 further details on the RACC website [www.racc.co.uk](http://www.racc.co.uk)

### **4.9 Requirements for Scripts**

**Scripts must be accompanied by the name of the script submitter; his/her telephone and fax numbers; the full name of the advertiser; the brand name of the advertised product or service; the title of the advertisement; the length of the advertisement; the name(s) of the relevant station(s) if known.**

**Time will be saved if scripts are also accompanied by full details of the product or service being advertised; satisfactory substantiation for all factual claims made and clear return contact details.**

**Centrally cleared scripts will be checked against the requirements of this Code and, when approved, will be given an RACC clearance number and further advice issued, which may be mandatory.**

**Stations or their sales houses must hold a record of centrally cleared scripts and clearance numbers. This is their only means of knowing or confirming that their scripts have been centrally cleared. Final output need not normally be sent to the RACC but stations must take responsibility to ensure that only RACC-approved output, where applicable, is broadcast.**

## **5 Sanctions and Upheld Complaints**

**When the ASA feels a complaint is justified, it can take action with the Licence Holder concerned. BCAP can raise and investigate a challenge with the Licence Holder if it finds a potential breach when monitoring. The ASA can require that the commercial be withdrawn immediately or amended; it can also ask that advertising is suspended while investigations are carried out. Additionally, in more serious cases, Ofcom can apply sanctions to licensees who break the rules. Ofcom can issue a formal warning and can request a broadcast correction or statement of findings or impose a penalty**

**which may include a fine or the shortening, suspending or taking away of a station's licence to broadcast.**

**Complaints are also held on record, and may attract adverse publicity for the station. The ASA publishes adjudications weekly on its website, [www.asa.org.uk](http://www.asa.org.uk).**

## **Section Two – General Rules**

### **1 Transparency and Clear Separation of Advertising**

**Advertising must be clearly distinguishable from programming.**

Annex practice 11: Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial). This is without prejudice to Council Directive 89/552/EEC (1).

**Licensees must ensure that the distinction between advertising and programming is not blurred and that listeners are not confused between the two.**

Advertisements which have a similar style and format to programme editorial must be separated from programming by other material such as a jingle/station ident or by scheduling in the middle of a break.

Advertisers may make references to the programming they sponsor within advertisements for their products. Specific advertisements/trails for particular television or radio sponsorships are also acceptable.

Advertising messages for a station's own commercial activities, or those on which it works with a commercial partner, may be broadcast but must be clearly distinguishable as advertising and should not be presented in such a way as to suggest to listeners that the information is impartial editorial.

Expressions and sound effects associated with news bulletins need particular care. Listeners must quickly recognise the message as an advertisement.

### **2 Unreasonable discrimination**

The setting of standards and the investigation of complaints in relation to unreasonable discrimination by a radio station licensed by Ofcom, either against or in favour of any particular advertiser, have not been contracted out to BCAP and the ASA and remain matters for Ofcom. The ASA refers complaints about unreasonable discrimination, either against or in favour of any particular advertiser, to Ofcom.

### **~~3 Misleadingness~~**

**~~All advertisements must comply with the requirements of the Control of Misleading Advertisements Regulations 1998 (as amended). The ASA is~~**

~~empowered to regard a factual claim as inaccurate unless adequate evidence of accuracy is provided within a short period of time when requested. The ASA will require advertisements that are found to be misleading to be withdrawn and not played again.~~

~~The Control of Misleading Advertisements Regulations define an advertisement as misleading if "...in any way, including its presentation, it deceives or is likely to deceive the persons to whom it is addressed ... and if, by reason of its deceptive nature, it is likely to affect their economic behaviour or ... injures or is likely to injure a competitor of the person whose interests the advertisement seeks to promote." In exercise of powers contracted out to it by Ofcom, the ASA has a specific duty under the Regulations to investigate complaints (other than frivolous or vexatious ones) about alleged misleading advertisements.~~

~~In particular:~~

~~a) Advertisements must not contain any descriptions, claims or other material which might, directly or by implication, mislead about the product or service advertised or about its suitability for the purpose recommended.~~

~~b) Advertisements must clarify any important limitations or qualifications, without which a misleading impression of a product or service might be given.~~

~~Advertisements must not misleadingly claim or imply that the product advertised, or an ingredient, has some special property or quality which cannot be established.~~

~~Scripts must not contain complicated technical jargon. Relevant scientific terminology may only be used in a way that can be readily understood by listeners without specialist knowledge.~~

~~Scientific terms, statistics, quotations from technical literature, etc. should be used with a proper sense of clarity to the unsophisticated listener. Irrelevant data and scientific jargon should not be used to make claims appear to have a scientific basis they do not possess. Statistics of limited validity should not be presented in such a way as to make it appear that they are universally true. This paragraph is especially relevant to environment-related claims (see Section 2, Rule 5).~~

~~c) Before accepting advertisements, Licensees must be satisfied that all descriptions and claims have been adequately substantiated by the advertiser. A half-truth, or a statement which inflates the truth, or which is literally true but deceptive when taken out of context, may be misleading for these purposes. Ambiguity in the precise wording of advertisements and in the use of sound effects must be avoided.~~

~~All factual claims need substantiation and advertisers must provide supporting written evidence if claims are likely to be challenged. 'Puffery' is only acceptable in~~

~~descriptions of products and services where listeners can very easily recognise and accept it as such. Claims in sung jingles should be substantiated in the same way as those using the spoken word.~~

~~**Advertisements must not falsely suggest or imply official approval for a product.**~~

### **3.1 Misleadingness**

~~All advertisements must comply with the requirements of the Control of Misleading Advertisements Regulations 1998 (as amended), Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008. The ASA is empowered to regard a factual claim as inaccurate unless adequate evidence of accuracy is provided within a short period of time when requested. The ASA will require advertisements that are found to be misleading to be withdrawn and not played again.~~

~~The Control of Misleading Advertisements Regulations define an advertisement as misleading if "...in any way, including its presentation, it deceives or is likely to deceive the persons to whom it is addressed ... and if, by reason of its deceptive nature, it is likely to affect their economic behaviour or ... injures or is likely to injure a competitor of the person whose interests the advertisement seeks to promote." In exercise of powers contracted out to it by Ofcom, the ASA has a specific duty under the Regulations to investigate complaints (other than frivolous or vexatious ones) about alleged misleading advertisements.~~

**In particular:**

- a) Advertisements must not contain any descriptions, claims or other material which might, directly or by implication, mislead about the advertiser, the product or service advertised or about its suitability for the purpose recommended.**

#### Article 6

##### Misleading actions

1. A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

...(f) the nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of

industrial, commercial or intellectual property rights or his awards and distinctions;

- b) **Advertisements must not mislead by omission. They must clarify any important limitations or qualifications, without which a misleading impression of a product or service or advertiser might be given.**

**Advertisements must not omit material information if that omission is likely to affect consumers' decisions about whether and how to buy the advertised product, unless the information is obvious from the context or the advertisement is limited by time or space and the advertiser takes steps to make that information available to consumers by other means.**

**For advertisements that quote prices for advertised products, material information includes:**

- a. **the main characteristics of the product**
- b. **the identity of the marketer and any other trader on whose behalf the advertiser is acting**
- c. **the geographic address of the advertiser**
- d. **the price of the advertised product, including taxes**
- e. **delivery charges**
- f. **the arrangement for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely to reasonably expect**
- g. **that consumers have the right to withdraw or cancel, if they have that right.**

## **CPRs section 6**

### **Misleading omissions**

**6.—(1)** A commercial practice is a misleading omission if, in its factual context, taking account of the matters in paragraph (2)—

- (a) the commercial practice omits material information,
- (b) the commercial practice hides material information,
- (c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or
- (d) the commercial practice fails to identify its commercial intent, unless this is already apparent from the context,

and as a result it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

[...]

(3) In paragraph (1) “material information” means—

- (a) the information which the average consumer needs, according to the context, to take an informed transactional decision; and



(b) any information requirement which applies in relation to a commercial communication as a result of a Community obligation.

(4) Where a commercial practice is an invitation to purchase, the following information will be material if not already apparent from the context in addition to any other information which is material information under paragraph (3)—

(a) the main characteristics of the product, to the extent appropriate to the medium by which the invitation to purchase is communicated and the product;

(b) the identity of the trader, such as his trading name, and the identity of any other trader on whose behalf the trader is acting;

(c) the geographical address of the trader and the geographical address of any other trader on whose behalf the trader is acting;

(d) either—

(i) the price, including any taxes; or

(ii) where the nature of the product is such that the price cannot reasonably be calculated in advance, the manner in which the price is calculated;

(e) where appropriate, either—

(i) all additional freight, delivery or postal charges; or

(ii) where such charges cannot reasonably be calculated in advance, the fact that such charges may be payable;

(f) the following matters where they depart from the requirements of professional diligence—

(i) arrangements for payment,

(ii) arrangements for delivery,

(iii) arrangements for performance,

(iv) complaint handling policy;

(g) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

Advertisements must not misleadingly claim or imply that the product advertised, or an ingredient, has some special property or quality which cannot be established.

**Scripts must not contain complicated technical jargon. Relevant scientific terminology may only be used in a way that can be readily understood by listeners without specialist knowledge.**

Scientific terms, statistics, quotations from technical literature, etc. should be used with a proper sense of clarity to the unsophisticated listener. Irrelevant data and scientific jargon should not be used to make claims appear to have a scientific

basis they do not possess. Statistics of limited validity should not be presented in such a way as to make it appear that they are universally true. This paragraph is especially relevant to environment-related claims (see Section 2, Rule 5).

**c) Before accepting advertisements, Licensees must be satisfied that all descriptions and claims have been adequately substantiated by the advertiser. A half-truth, or a statement which inflates the truth, or which is literally true but deceptive when taken out of context, may be misleading for these purposes. Ambiguity in the precise wording of advertisements and in the use of sound effects must be avoided.**

All factual claims need substantiation and advertisers must provide supporting written evidence if claims are likely to be challenged. 'Puffery' is only acceptable in descriptions of products and services where listeners can very easily recognise and accept it as such. Claims in sung jingles should be substantiated in the same way as those using the spoken word.

### **Pressure to purchase**

**Advertisements must not falsely state that a product, or the terms on which it is offered, will be available only for a very limited time in order to deprive consumers of the time or opportunity to make an informed choice. Advertisements must not mislead consumers about market conditions or the possibility of finding the product elsewhere in order to induce consumers to buy the product at conditions less favourable than normal market conditions.**

Annex practice 7: Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

Annex practice 18: Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.

**Advertisements must not falsely claim that the advertisers are about to cease trading or move premises.**

Annex practice 15: Claiming that the trader is about to cease trading or move premises when he is not.

**Advertisements must not mislead about the nature or extent of the risk to consumers' personal security if they do not buy the product.**

Annex practice 12: Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if

the consumer does not purchase the product.

**Advertisements must not explicitly claim that, if consumers do not buy the advertised product or service, the advertiser's job or livelihood will be jeopardised.**

Annex practice 30: Explicitly informing a consumer that if he does not buy the product or service, the trader's job or livelihood will be in jeopardy.

### **Identifying commercial messages**

**Advertisements must not create a false impression that the advertisers are acting as consumers or for purposes that do not relate to their trade, business, craft or profession.**

Annex practice 22: Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.

### **Legality**

**Advertisements must not state or otherwise create the impression that a product can legally be sold when it cannot.**

Annex practice 9: Stating or otherwise creating the impression that a product can legally be sold when it cannot.

**Advertisements must not present rights given to consumers in law as distinctive features of the advertisers' offer.**

Annex practice 10: Presenting rights given to consumers in law as a distinctive feature of the trader's offer.

### **Imitation**

**Advertisements must not mislead consumers about who manufactures the product.**

Annex practice 13: Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

## **4 ~~Superlative Claims~~**

~~Particular care is needed with superlative claims. Measurable criteria eg. 'the cheapest', must be confirmed. As particular factual claims, superlatives must be placed directly alongside the area where supremacy is claimed and proven. General superiority claims like 'the best' may only be used in clear~~

**~~puffery, and not on the basis of selective comparisons.~~**

~~The repeated insistence of superlatives within a script might in itself amount to a claim of supremacy which would need to be verified. Qualitative claims of superiority (eg. ‘the tastiest’) which are open to challenge and/or which are impossible to measure conclusively should be avoided, except for appropriate mentions in a way which allows that rival brands may also make the same claim.~~

#### **4.1 Superlative Claims**

**Particular care is needed with so that superlative claims do not mislead. Measurable criteria eg. ‘the cheapest’, must be confirmed. As particular factual claims, superlatives must be placed directly alongside the area where supremacy is claimed and proven. General superiority claims like ‘the best’ may only be used in clear puffery, and not on the basis of selective comparisons.**

The repeated insistence of superlatives within a script might in itself amount to a claim of supremacy which would need to be verified. Qualitative claims of superiority (eg. ‘the tastiest’) which are open to challenge and/or which are impossible to measure conclusively should be avoided, except for appropriate mentions in a way which allows that rival brands may also make the same claim.

#### **5 Environmental Claims**

**Central copy clearance is required. Sound factual evidence must support all claims.**

- a) Generalised claims for environmental benefit must be assessed on a ‘cradle to grave’ basis. The complete life-cycle of the product and its packaging, the environmental effects of its manufacture, use, disposal and all other relevant aspects must be taken into account;**
- b) Categorical statements such as ‘environment friendly’, ‘safe’ or ‘green’ are inappropriate;**
- c) Limited claims, relating to specific aspects of products or services, are acceptable in circumstances where more general ones cannot be justified;**
- d) Qualified claims (such as ‘friendlier’) are acceptable only where products/services can demonstrate significant advantages over competitors or improvements in, for example, the chemicals or packaging they use. In such cases the nature of the benefit must be explained, eg. “our unbleached nappies are kinder to the environment”;**

- e) **Claims based on the absence of a harmful chemical or damaging effect are unacceptable if the product category does not generally include the chemical or cause the effect. Claims for the absence of harmful constituents are also unacceptable if the product contains other, equally harmful elements. Spurious “free from X” claims are unacceptable.**

Advertising should also follow the Green Claims Code, published by the ~~DETR~~Defra and the ~~DTI~~DBERR.

## **6.1 Fair Comparisons**

**Advertisements containing comparisons with other advertisers, or other products, are permissible in the interest of vigorous competition and public information provided that:**

- a) **the principles of fair competition are respected and the comparisons used are not likely to mislead listeners about either product;**
- b) **points of comparison are based on fairly selected facts which can be substantiated;**
- c) **comparisons chosen do not give the advertiser an artificial advantage over his competitor;**
- d) **they comply with Section 2, Rule 7 Denigration.**

~~In order to implement the Comparative Advertising Directive (97/55/EC), which amended the Misleading Advertisements Directive (84/450/EEC), the UK has amended the Control of Misleading Advertisements Regulations 1988, by means of the Control of Misleading Advertisements (Amendment) Regulations 2000. In doing so the obligation in the Regulations on the broadcast regulators, now including the ASA, to control misleading advertisements was extended to the control of comparative advertisements, in accordance with the Directive. This has made it necessary to change the relevant parts of this Advertising Code to reflect the requirements of the Directive, as the Regulations do in respect of non-broadcast advertisements.~~

The Business Protection from Misleading Marketing Regulations 2008 (BPRs) set out requirements for comparative advertising (including comparative advertisements directed at consumers). The Regulations make it clear that comparative advertising is permissible, in the interests of competition and public information, but they require that comparative advertising (which is defined to mean any advertising which “explicitly or by implication” “identifies a competitor or goods or services offered by a competitor”) shall, as far as the comparison is concerned, be permitted only when the following conditions are met:

- a) it is not misleading;
- b) it compares goods or services meeting the same needs or intended for the same purpose;
- c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- d) it does not create confusion in the market place between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor;

## **BPRs:**

### **Comparative advertising**

#### **4.**

Comparative advertising shall, as far as the comparison is concerned, be permitted only when the following conditions are met—

(a)

it is not misleading under regulation 3;

(b)

it is not a misleading action under regulation 5 of the Consumer Protection from Unfair Trading Regulations 2008(a) or a misleading omission under regulation 6 of those Regulations;

(c)

it compares products meeting the same needs or intended for the same purpose;

(d)

it objectively compares one or more material, relevant, verifiable and representative features of those products, which may include price;

(e)

it does not create confusion among traders—

(i)

between the advertiser and a competitor, or

(ii)

between the trade marks, trade names, other distinguishing marks or products of the advertiser and those of a competitor;

(f)

it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, products, activities, or circumstances of a competitor;

(g)

for products with designation of origin, it relates in each case to products with the same designation;

(h)

it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;

(i)

it does not present products as imitations or replicas of products bearing a protected trade mark or trade name.

## CPRs

5. —(1.) A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3) [...]

(3) A commercial practice satisfies the conditions of this paragraph if— it concerns any marketing of a product (including comparative advertising) which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor [...]

and it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise, taking account of its factual context and of all its features and circumstances.

- e) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
- f) for products with designation of origin, it relates in each case to products with the same designation;
- g) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- h) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.
- i) it does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor.

2006/114/EC: article 4(h)

### *Article 4*

Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:

...

(h) it does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor.

~~The Regulations also state in paragraph 4A (2) that: "in the case of a comparative advertisement referring to a special offer, such an advertisement is not permitted unless it indicates in a clear and unequivocal way the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the goods or services and, where the special offer has not yet begun, the date of the start of the period during which the special price or other specific conditions shall apply."~~

## 7 Denigration

**Advertisements must not attack or discredit other products or services, people, advertisers or advertisements either directly or by implication.**

Advertisers must not discredit competitors or their products by describing them in a derogatory way or in a denigratory tone of voice. This is particularly important in comparative advertising. While it is acceptable for an advertiser whose product has a demonstrable advantage over a competitor to point this out, care must be taken to ensure that the competitor's product is not depicted as generally unsatisfactory or inferior.

## 8 Scheduling

**See also Section 1, Rule 4.3. Licensees must exercise responsible judgements when scheduling categories of advertisement which may be unsuitable for children and younger people, for those listening to religious programmes and around sensitive programming or news items.**

**The station's actual audience profile according to research, rather than its target audience profile, should be taken into account when deciding whether or not advertising is suitable for the station or time of day (and see Rule 9 Good Taste, Decency and Offence to Public Feeling, below).**

For the purpose of this Rule, the ASA and BCAP generally consider that children and younger people are those aged below 16 years. However, there may be exceptional circumstances when advertising messages may be targeted at those aged 12-15 (e.g. anti-AIDS information or sanitary protection).

Responsibility should be exercised where advertisements or their scheduling



could be perceived as insensitive because of a tragedy currently in news or current affairs programmes, for example, a commercial for an airline should be immediately withdrawn if a neighbouring news bulletin featured details of a plane crash.

**Advertisements for alcoholic drinks, sensational newspapers/magazines/websites (or their content) and violent or sexually explicit material must not be broadcast in or around programming/features aimed particularly at those aged below 18 years or around religious programming.**

**Particular care is required for the following categories: divination and the supernatural, sexual material, sanitary protection products, family planning products and services (including contraceptives, pregnancy-testing services/kits), anti-AIDS and anti-drugs messages, and solvent abuse advice.**

**Advertisements for gambling must not be broadcast in or around programming/features aimed particularly at those aged below 18 (or 16 years for lotteries, football pools, equal chance gaming (under a prize gaming permit or at a licensed family entertainment centre), prize gaming (at a non-licensed family entertainment centre or at a travelling fair) or Category D gaming machines).**

## **9 Good Taste, Decency and Offence To Public Feeling**

**The Communications Act 2003 sections 319(2) and 325 require ASA and BCAP (exercising powers contracted out by Ofcom) set and enforce standards to ensure that “*generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material*”.**

**Standards of taste are subjective and individual reactions can differ considerably. Each station is expected to exercise responsible judgements and to take account of the sensitivities of all sections of its audience when deciding on the acceptability or scheduling of advertisements (and see Rule 8 above). For example, advertisers may make a range of advertisements which are suitable for different listeners and moods. Where research on individual stations shows that a significant number of specific listeners, such as those aged below 16 years, are present at certain times, such as at breakfast or in daytime during school holidays, stations must schedule sensitive advertisements accordingly.**

**In particular:**

- a) **offensive and profane language must be avoided;**
- b) **salacious, violent or indecent themes, or sexual innuendo or stereotyping likely to cause serious or general offence, should be avoided;**
- c) **references to minority groups should not be stereotypical, malicious, unkind or hurtful;**
- d) **references to religious or political beliefs should not be offensive, deprecating or hurtful, and the use of religious themes and treatments by non-religious groups should be treated with extreme care;**
- e) **those who have physical, sensory, intellectual or mental health disabilities should not be demeaned or ridiculed;**
- f) **the handling of films, plays, music tracks or websites with salacious, violent or sexual themes and/or titles requires careful consideration. Audio clips should portray the product's true nature but clips containing bad language, sexual innuendo and/or gratuitous violence should normally be avoided;**
- g) **humour should not be used to circumvent the intention of Code Rules.**

## **10 Harm**

**Advertising must not harm listeners nor exploit, either personally or financially, their vulnerability. No advertising is acceptable from those who practise or advocate illegal or harmful, or potentially harmful behaviour.**

**No advertisement may encourage or condone behaviour which is harmful or prejudicial to health and safety. This does not preclude responsible advertisements for products and services which, used to excess or abused, could endanger health or safety.**

## **11 Children and Younger Listeners**

**Advertisements likely to be heard by a significant number of children (for the purpose of this Rule, those aged below 16 years, unless otherwise stated) must not include any material which might result in harm to them, whether physically, mentally or morally.**

**Each station's audience research information should be used to determine whether significant numbers of children are listening at any particular time.**

## **11.1 Misleadingness**

**Advertisements addressed to young listeners must not exaggerate or mislead about the size, qualities or capabilities of products.**

## **11.2 Prices**

**Prices of products advertised to younger listeners must not be minimised by words such as ‘only’ or ‘just’**

## **11.3 Immaturity and Credulity**

**Advertisements must not take advantage of the immaturity or natural credulity of children.**

## **11.4 Inferiority**

**Advertisements must not lead children to believe that unless they have or use the product advertised they will be inferior in some way to other children or liable to be held in contempt or ridicule.**

## **11.5 Direct Exhortation**

**Advertisements must neither encourage children to pester nor directly urge children to buy products or to ask adults to buy products for them. For example, children must not be directly invited to “ask Mum” or “ask Dad” to buy them an advertiser’s product.**

Annex practice 28: Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.

## **11.6 Appeals to Loyalty**

**Advertisements must not take advantage of the sense of loyalty of children or suggest that, unless children buy or encourage others to buy a product or service, they will be failing in some duty or lacking in loyalty.**

## **11.7 Distance Selling to Children**

**Advertisements must not invite children to purchase products by mail or telephone, including fax, email and via the Internet.**

## **11.8 Competitions**

**a) References to competitions for children are acceptable provided that any skill required is appropriate to the age of likely participants, and the values of the prizes and the chances of winning are not exaggerated;**

**b) The published rules must be submitted in advance to the Licensee and the principal conditions of the competition must be included in the advertisement (see also Section 2, Rule 23 Competitions, Lotteries, Betting and Gaming).**

## **11.9 Free Gifts**

**References to ‘free’ gifts for children in advertisements must include all qualifying conditions, e.g. any time limit, how many products need to be bought, how many wrappers need to be collected, etc.**

## **11.10 Health and Hygiene**

**a) Advertising must not condone inappropriate health standards for children;**

**b) Advertising must not suggest that confectionery and snack food products may be substituted for balanced meals.**

## **11.11 Child Voiceovers and Presentation**

**a) Children may take part in radio commercials, subject to all relevant legal requirements. However, they must not feature in advertisements in ways which might cause them moral harm, give concern about their welfare or be regarded as commercial exploitation;**

**b) Children employed in commercials must not be used to present selling messages and calls to action about products or services which are likely to be beyond their understanding or which the law prevents them from buying themselves.**

The exception to this Rule may be where a child acts out a role, although particular care should be taken in these circumstances to ensure that the child actor is not exploited or morally harmed in any way (see also Section 2, Rule 9 Good Taste, Decency and Offence to Public Feeling).

### 11.12 Testimonials

Children must not personally testify about products and services. They may, however, give spontaneous comments on matters in which they would have an obvious natural interest.

### 11.13 Food and Soft Drink Advertisements and Children

**a) Promotional offers to children should be used with a due sense of responsibility. They may not be used in food or soft drink product advertisements targeted directly at pre-school or primary school children; that prohibition does not apply to advertisements for fresh fruit or fresh vegetables. Advertisements that contain promotional offers linked to food and drink products of interest to children must neither seem to encourage children to eat or drink a product only to take advantage of a promotional offer nor create a sense of urgency. If promotional offers can also be bought, that should be made clear. Closing dates for collection-based promotions should enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product in a short time.**

**b) Licensed characters and celebrities popular with children must be used with a due sense of responsibility. They may not be used in food or soft drink product advertisements targeted directly at pre-school or primary school children; that prohibition does not apply to advertisements for fresh fruit or fresh vegetables.**

This prohibition does not apply to advertiser-created equity brand characters (puppets, persons or characters), which may be used by advertisers to sell the products they were designed to sell.

Persons such as professional actors or announcers who are not identified with characters in programmes appealing to children may be used as presenters.

Licensed characters, equity brand characters or celebrities well-known to children may present factual and relevant generic statements about nutrition, safety, education and the like.

Licensed Characters are those characters that are borrowed equities and have no historical association with the product.

Equity Brand Characters are those characters that have been created by the advertiser and have no separate identity outside their associated product or brand.

## 12 Sexual Discrimination

**It is illegal (with a few exceptions) for an advertisement to discriminate**

**against women or men in opportunities for employment, education and training and the provision of accommodation, goods, facilities and services.**

The Sex Discrimination Act 1975 (as amended) makes it unlawful to discriminate solely on the grounds of sex. The Acts apply to employment, education and training opportunities; and accommodation, goods, facilities and services provided to the public. There are some exceptions, full details of which can be obtained from the Equal Opportunities Commission on 0845 601 5901; website: [www.eoc.org.uk](http://www.eoc.org.uk)

### **13 Racial Discrimination**

**a) It is illegal (with a few exceptions) for an advertisement to discriminate on grounds of race;**

**b) Advertisements must not include any material which might reasonably be construed by ethnic minorities to be hurtful or tasteless.**

The Race Relations Act 1976 (as amended) makes it unlawful to broadcast an advertisement which indicates or implies racial discrimination. There are a few exceptions, full details of which can be obtained from the Commission for Racial Equality on 020 7939 0000; website: [www.cre.gov.uk](http://www.cre.gov.uk)

### **14 Protection of Privacy and Exploitation of the Individual**

**Advertising must not claim or imply an endorsement where none exists.**

**Advertisers are urged to obtain written permission in advance if they portray, refer or allude to living individuals in any advertisement. Clearance given will be on the basis that it is recommended that such permission is sought.**

**Advertisers who have not obtained prior permission from those featured should ensure that they are not portrayed in an offensive, adverse or defamatory way. Additionally, portrayals and references should not interfere with those individuals' private or family lives: legal advice is strongly advisable. In cases of doubt, legal advice must be obtained prior to clearance being given that the person concerned is unlikely to have any successful legal claim.**

Even if the advertisement contains nothing that is inconsistent with the position or views of the person featured, Licensees and advertisers should be aware that those who do not wish to be associated with the advertised product may have a

legal claim.

**References to anyone who is deceased should be handled with particular care to avoid causing offence or distress.**

References to, and portrayals of, people active in politics should be carefully worded; they can easily fall foul of the requirements of the Communications Act 2003 that political matters must be treated impartially and that advertisements must not be directed towards any political end.

**Impersonations, soundalikes, parodies or similar take-offs of celebrities are only permissible where this device is instantly recognisable as such and where it could be reasonably expected that the persons concerned had no reason to object. Nevertheless, advertisers are urged to obtain advance permission and/or seek legal advice before clearance. Copyright permission should be sought for references to, or portrayals of, well-known characters or their names or persona.**

## **15 Political, Industrial and Public Controversy**

**The setting of standards and investigations of complaints in relation to political advertising have not been contracted out to BCAP and the ASA and remain matters for Ofcom. The ASA refers complaints about political advertising to Ofcom.**

**The effect of the Communications Act is to require Ofcom to ensure that:**

- a) No advertisement shows undue partiality in matters of political or industrial controversy or relating to current public policy; and**
- b) No advertisement is broadcast by, or on behalf of, any body whose objects are wholly or mainly of a political nature, and no advertisement is directed towards any political end.**

Ofcom will determine whether an ad or a proposed ad is 'political'. The term 'political' here is used in a wider sense than 'party political'. The prohibition includes, for example, issue campaigning for the purposes of influencing legislation or executive action by local, or national (including foreign) governments.

Particular care is required where advertising mentions any government, political party, political movement or state-specific abuse, so as not to break the spirit of these rules, which are intended to prohibit lobbying or electioneering on politically controversial or partisan issues.

- c) No advertisement has any relation to any industrial dispute (other than an advertisement of a public service nature inserted by, or on behalf of, a**

**government department).**

Ofcom will normally regard having 'any relation to any industrial dispute' to be in furtherance of, or expressing partiality in relation to, such a dispute. Announcements about resumption of normal working following agreement between management and unions, or concerned with public safety during a strike, are acceptable. 'Industrial dispute' includes strikes, walkouts and withdrawals of labour by workers; lock-outs by employers; disputes between managements and differences between rival trade unions.

**Trade Unions may advertise, provided the advertising is not politically or industrially contentious. They may recruit members and also promote the services they provide, such as legal advice, insurance and meetings. They may not advertise for support in a ballot, nor refer to particular employers.**

## **16 Superstition and Appeals to Fear**

**Advertisements must not exploit the superstitious and must not, without justifiable reason, play on fear.**

A 'justifiable reason', for example, would be where the aim of the advertisement was to influence listeners to take action to improve safety or welfare. An impression of a person under threat from fire or a car accident could be acceptable, for example, if their function was to persuade listeners respectively to fit smoke alarms in their homes or to wear seat belts.

## **~~17 Price Claims and VAT~~**

**~~Advertisements indicating price comparisons or reductions must comply with all relevant requirements of the Consumer Protection Act 1987 (Part III) and Regulations made under it, including the Code of Practice for Traders on Price Indications 2005, and the Price Marking Order 2004. In addition, all prices quoted in advertisements must include VAT, except for business-to-business advertisements, where it must be made clear that prices are exclusive of VAT.~~**

~~Actual and comparative prices quoted must be accurate at the time of broadcast and must not mislead. Claims of 'lowest prices' must be supported by evidence from the retailer that none of his competitors sells the advertised product or service at a lower price. Claims of 'unbeatable prices' or 'you cannot buy cheaper' must be supported by evidence from the retailer that his prices are as low as his competitors.~~



## 17 — Price Claims and VAT

### 17.1 Price Claims

Advertisements indicating price comparisons or reductions must comply with all relevant requirements of the ~~Consumer Protection Act 1987 (Part III) and Regulations made under it, including Consumer Protection from Unfair Trading Regulations 2008 and the DBERR's Pricing Practices Guide 2008 2005, and the Price Marking Order 2004.~~ In addition, all prices quoted in advertisements must include VAT, except for business-to-business advertisements, where it must be made clear that prices are exclusive of VAT.

Actual and comparative prices quoted must be accurate at the time of broadcast and must not mislead. Claims of 'lowest prices' must be supported by evidence from the retailer that none of his competitors sells the advertised product or service at a lower price. Claims of 'unbeatable prices' or 'you cannot buy cheaper' must be supported by evidence from the retailer that his prices are as low as his competitors.

### 17.2 Other rules for Advertisements that feature Prices

**a) licensees must be satisfied that the advertisers will not use the technique of switch selling, where their sales staff refuse to show the advertised product, refuse to take orders for it or to deliver it within a reasonable time, or demonstrate a defective sample of it, in order to promote a different product.**

Annex Practice 6: Making an invitation to purchase products at a specified price and then:

- (a) refusing to show the advertised item to consumers; or
  - (b) refusing to take orders for it or deliver it within a reasonable time; or
  - (c) demonstrating a defective sample of it,
- with the intention of promoting a different product (bait and switch)

**b) advertisements must state any reasonable grounds the advertisers might have for believing that they might not be able to supply the advertised or an equivalent product at the advertised price, within a reasonable period and in reasonable quantities.**

Annex Practice 5: Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).

## **18.1 Testimonials**

**A testimonial is defined as a real person's expression of view, or statement of experience. The following apply:**

- a) Testimonials must be genuine and must not be misleading;**
- b) Licensees must obtain satisfactory documentary evidence in support of any testimonial or claim before accepting it for inclusion in an advertisement;**
- c) Children must not testify about any product or service, subject to Section 2, Rule 11.12.**

**A person's professional status may be used to lend authority to his/her opinions, eg. "I am Mona Test, actor, and I use Fabulous soap because I think it's wonderful" (but for Medicines, Treatments and Health, see also Section 3, Rule 4).**

**Station presenters may not make personal testimonials within advertisements on stations on which they appear (see also Section 2, Rule 24 Presenters in Advertising).**

**Dramatised playlets in which characters express advertising claims are acceptable, provided it is clear that the situation and people depicted are not real.**

## **18.2 Endorsements**

**Advertisements must not display a trust mark, quality mark or equivalent without the necessary authorisation and must not claim or imply that the advertiser (or any other entity referred to in the advertisement) has been approved, endorsed or authorised by a public or private body if it has not or without complying with the terms of the approval, endorsement or authorisation.**

Annex practice 2: Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.

Annex practice 4: Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.

**Advertisements must not falsely claim that the advertiser, or other entity referred to in the advertisement, is a signatory to a code of conduct. They must not falsely claim that a code of conduct has an endorsement from a**

## **public or other body.**

Annex practice 1: Claiming to be a signatory to a code of conduct when the trader is not.

Annex practice 3: Claiming that a code of conduct has an endorsement from a public or other body which it does not have.

## **19 Guarantees and After-sales Service**

### **19.1 Guarantees**

**Advertisements must not contain the words ‘guarantee’, ‘guaranteed’, ‘warranty’ or ‘warranted’, or words with similar meaning, unless the licensee is satisfied that the terms of the guarantee are available for inspection if required and are outlined in the advertisement or are made available to the purchaser in writing at the point of sale or with the products.**

Under the Consumer Transactions (Restrictions on Statements) Order 1976, it is illegal for any guarantee to diminish the statutory or common law rights of the purchaser. Goods supplied to consumers in the course of business which bear a statement concerning the consumer’s rights or the obligations accepted by the supplier must be accompanied by a clear and conspicuous statement that the consumer’s statutory rights are not affected. (This Order also prohibits the advertisement of certain statements which purport to exclude or restrict consumers’ rights under the Unfair Contract Terms Act 1977.) A guarantee must include details of the remedial action open to the purchaser.

Use of the word ‘guarantee’ etc. is valid in advertisements when a material remedial action is offered to the purchaser in addition to legal requirements or accepted trade practice.

The colloquial use of the word ‘guarantee’ may be acceptable in contexts where its meaning cannot be construed as being part of an advertiser’s offer.

### **19.2 After-sales service**

**Advertisements must not falsely claim or imply that after-sales service is available in an EU member state other than the one where the advertised product is sold.**

Annex practice 23: Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.

**If an advertisement in a language other than English offers after-sales service, licensees must be satisfied that the advertiser will tell consumers,**

**before a contract is concluded, if the after-sales service is not available in the language of the advertisement.**

Annex practice 8: Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

## **20 — Use of the word ‘Free’**

~~Advertisements must not describe products or samples as ‘free’ unless they are supplied at no cost or no extra cost (other than postage or carriage) to the recipient.~~

### **20.1 Use of the word ‘Free’**

~~Advertisements must not describe products or samples as ‘free’, or similar, unless they are supplied at no cost or no extra cost (other than postage or carriage) to the recipient.~~

Annex practice 20: Describing a product as ‘gratis’, ‘free’, ‘without charge’ or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

A trial product may be described as “free” provided that any subsequent financial obligations from the customer are specified in the advertisement, eg. the cost of returning the product in the case of dissatisfaction or the cost of the product at the end of the trial period.

## **21 — Direct Marketing / Distance Selling**

~~Advertisements for products and services offered by direct marketing methods (eg. mail order/website and direct response) are acceptable, subject to the following conditions:~~

- ~~a) licensees must be able to give enquirers the name and full address of the advertiser where this is not given in the advertisement. The address given must be in a form which enables enquirers to locate the premises without further enquiry;~~
- ~~b) licensees must be satisfied that adequate arrangements exist at that address for enquiries to be handled by a responsible person available on the premises during normal business hours;~~

- ~~c) samples of products advertised should be made available at that address for public inspection, if requested;~~
- ~~d) licensees must be satisfied that the advertiser can meet any reasonable demand created by the advertising (for example, with assurances of adequate stock);~~
- ~~e) advertisers must be able to fulfil orders within a certain delivery period which must be stated at the point of sale. This should normally be 28 days unless there are particular circumstances where it is reasonable for the advertiser to state a delivery period in excess of 28 days;~~
- ~~f) licensees must be satisfied that fulfilment arrangements are in operation whereby monies sent by consumers are only released to the advertiser on receipt of evidence of despatch (unless licensees are satisfied that adequate alternative safeguards exist);~~
- ~~g) an undertaking must be received from the advertiser that money will be refunded promptly and in full to consumers who can show justifiable cause for dissatisfaction with their purchase(s) or with delay in delivery;~~
- ~~h) advertisers who offer products and services by direct marketing methods must be prepared to demonstrate or supply samples of products to licensees in order that they may assess the validity of advertising claims;~~
- ~~j) advertisers who intend to send a sales representative to a respondent's home or place of work must ensure that this intention is made clear either in the advertisement or at the time of response and that the respondent is given an adequate opportunity of refusing such a call. In the case of such advertising:
 
  - ~~i) advertisers must give adequate assurances that sales representatives will demonstrate and make available for sale the articles advertised;~~
  - ~~ii) it will be taken as prima facie evidence of misleading and unacceptable 'bait' advertising for the purpose of 'switch selling' if an advertiser's sales representative disparages or belittles the article advertised, reports unreasonable delays in obtaining delivery or otherwise puts difficulties in the way of its purchase with a view to selling an alternative article.~~~~

~~Advertisers must comply with all relevant legislation including that relating to mail order transactions, distance selling (including in relation to disclosure of cancellation rights) and data protection.~~

~~Section 2, Rule 11.7 prohibits advertisements which invite children to buy products by direct response.~~

## **21.1 Direct Marketing / Distance Selling**

**Advertisements for products and services offered by direct marketing methods (eg. mail order/website and direct response) are acceptable, subject to the following conditions:**

- a) licensees must be able to give enquirers the name and full address of the advertiser where this is not given in the advertisement. The address given must be in a form which enables enquirers to locate the premises without further enquiry;**
- b) licensees must be satisfied that adequate arrangements exist at that address for enquiries to be handled by a responsible person available on the premises during normal business hours;**
- c) samples of products advertised should be made available at that address for public inspection, if requested;**
- d) licensees must be satisfied either that the advertisers ~~can meet any reasonable~~ reasonably foreseeable demand created by the advertising (for example, with assurances of adequate stock or that the advertisement makes clear that stock is limited;**

Annex practice 5: Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).

- e) advertisers must be able to fulfil orders within a certain delivery period which must be stated at the point of sale. This should normally be 28 days unless there are particular circumstances where it is reasonable for the advertiser to state a delivery period in excess of 28 days;**
- f) licensees must be satisfied that fulfilment arrangements are in operation whereby monies sent by consumers are only released to the advertiser on receipt of evidence of despatch (unless licensees are satisfied that adequate alternative safeguards exist);**

- g) an undertaking must be received from the advertiser that money will be refunded promptly and in full to consumers who can show justifiable cause for dissatisfaction with their purchase(s) or with delay in delivery;
- h) advertisers who offer products and services by direct marketing methods must be prepared to demonstrate or supply samples of products to licensees in order that they may assess the validity of advertising claims;
- j) advertisers who intend to send a sales representative to a respondent's home or place of work must ensure that this intention is made clear either in the advertisement or at the time of response and that the respondent is given an adequate opportunity of refusing such a call. In the case of such advertising:
  - i advertisers must give adequate assurances that sales representatives will demonstrate and make available for sale the articles advertised;
  - ii it will be taken as prima facie evidence of misleading and unacceptable 'bait' advertising for the purpose of 'switch selling' if an advertiser's sales representative disparages or belittles the article advertised, reports unreasonable delays in obtaining delivery or otherwise puts difficulties in the way of its purchase with a view to selling an alternative article.

**(h) If a product is advertised at a specific price, licensees must be satisfied that advertisers will not use the technique of switch selling, where their sales staff refuse to show the advertised product or demonstrate a defective sample of it in order to promote a different product. They should not place obstacles in the way of purchasing the advertised product or delivering it promptly.**

#### Annex practice 6:

Making an invitation to purchase products at a specified price and then:

- (a) refusing to show the advertised item to consumers; or
- (b) refusing to take orders for it or deliver it within a reasonable time; or
- (c) demonstrating a defective sample of it, with the intention of promoting a different product (bait and switch)

Advertisers must comply with all relevant legislation including that relating to mail order transactions, distance selling (including in relation to disclosure of cancellation rights) and data protection.

Section 2, Rule 11.7 prohibits advertisements which invite children to buy products by direct response.

## **22 Premium Rate Telephone Services**

**Advertisements which include reference to premium rate telephone services must comply with the PhonepayPlus Code of Practice. Guidance and copies of the Code may be obtained from PhonepayPlus on 020 7940 7474; website: [www.phonepayplus.org.uk](http://www.phonepayplus.org.uk)**

**In particular:**

- a) pricing information should be given as “Calls cost xp per minute at all times” or as the total maximum cost of the complete message or service to the consumer;**
- b) the identity of either the service provider or the information provider must be stated in the advertisement;**
- c) the address (or other contact details where PhonepayPlus permits) of either the service provider or the information provider must be stated in the advertising;**
- d) advertisements for non-live or message exchange services which normally last over five minutes must include a warning that use of the service(s) might involve a long call;**

## **24 Presenters In Advertising**

**Station presenters/newsreaders may voice advertising messages provided that a proper distinction is made between the programming material and the advertising material they deliver. However, they may not be used to advertise products which may be seen to compromise the impartiality of their programming role. They should not make references to any specific advertisement or product, except within the Rules of this Code, and may not personally endorse products or services (see Testimonials, Section 2, Rule 18).**

## **25 Sound Effects**

**Advertisements must not include sounds likely to create a safety hazard.**

Distracting or potentially alarming sound effects such as sirens, horns, screeching tyres, vehicle collisions and the like must be treated cautiously; they may be dangerous to those listening, especially whilst driving. In particular, they should avoid being featured at the start of advertisements, before listeners are clear about what they are listening to.



## 26 Competitions and the National Lottery

**The National Lottery may be advertised in the UK subject to compliance with the National Lottery Act 1993. Such advertisements must be centrally copy cleared and must not:**

- a) be directed at those aged below 16 years;**
- b) feature any personality aged below 16 years nor any content directed at or likely to be of particular appeal to anyone aged below 16 years;**
- c) be presented as a solution to financial difficulties.**

**Advertisements inviting listeners to take part in competitions are acceptable, subject to Section 14 and Schedule 2 of the Gambling Act 2005.**

Licenseses must be satisfied that prospective entrants can obtain printed details of a competition, including announcement of results and distribution of prizes.

There are no limitations on prize values.

Please see also Section 2 Rule 11.8 and Section 3 Rules 4.28 and 11.5

Advertisements for the National Lottery are also governed by the National Lottery Advertising and Sales Promotion Code of Practice (2004) approved by the Director General for the National Lottery.

## **Section Three – Rules for Specific Categories**

### **1 Financial Products and Services**

**Central copy clearance is required.**

**These Rules regulate financial advertisements and not financial products and services, which are regulated by the financial services regulators, including the Financial Services Authority (FSA) and the Office of Fair Trading (OFT). Financial advertisements must comply with all relevant legislation, in particular the Financial Services and Markets Act 2000 (FSMA) and the Consumer Credit (Advertisements) Regulations 2004.**

In this Rule, 'investment activity', 'regulated activity', 'financial promotion' and 'authorised person' have the same meanings as in the FSMA and the Financial Services and Markets Act (Financial Promotion) Order 2005 (FPO). Under the FSMA, a financial promotion is “an invitation or inducement to engage in investment activity.” This broad definition captures all promotional activity – including traditional advertising, telephone sales and face to face conversations – in relation to all products and services regulated by the FSA. It is important to remember that investment activity' under the FSMA does not cover only what are conventionally thought of as investments, but also includes deposits and all insurance, including some advertisements by insurance intermediaries – see the Insurance Conduct of Business (ICOB) Chapter 3.1.2G in the FSA Handbook.

The ASA and BCAP Executive may seek advice from other regulators when investigating possible breaches of this Rule following a complaint or monitoring.

#### **1.1 Legal Responsibility**

**Advertisers are responsible for ensuring that their advertisements comply with all the relevant legal and regulatory requirements.**

#### **1.2 Misleadingness**

**Advertisements must present the financial offer or service in terms that do not mislead, whether by exaggeration, omission or otherwise.**

#### **1.3 Financial Promotions in Advertising**

**These financial promotions, regulated by the FSA, may be broadcast in advertisements:**

- i those communicated by an authorised person, or those of which the contents have been approved by an authorised person;**

- ii those that by virtue of the FPO are not required to be approved by an authorised person (ie. exempt promotions).**

Licencees may need to seek legal advice if an advertiser claims an advertisement should be considered:

- i not to be a financial promotion or
- ii to be a financial promotion that is not required to be communicated by or approved by an authorised person (i.e. because it is subject to an exemption under the FPO).

#### **1.4 Approval of Financial Promotions in Advertising**

**Before accepting financial promotions to which Section 21 of the FSMA applies and that are not subject to an exemption under the FPO, licencees must be satisfied that:**

**i the authorised person issuing or approving the proposed advertisement, has confirmed that the final recorded version of the advertisement is in accordance with the Rules of the FSA;**

**ii a financial promotion or other advertisement in respect of regulated activity proposed by an appointed representative has been approved by the authorised person to whom that person is responsible.**

Legal advice, or general advice from the FSA, may be required concerning compliance with FSMA requirements. Please note that the FSA does not prevent or advise on the compliance of proposed financial promotions with the FSMA requirements. For more information visit the financial promotions pages of the FSA website ([www.fsa.gov.uk](http://www.fsa.gov.uk)) and see the FSA Handbook, in particular Conduct of Business Chapter 3 (COB3), Mortgage Conduct of Business Chapter 3 (MCOB3) and ICOB Chapter 3.

#### **1.5 Interest on Savings**

**References to interest payable on savings are acceptable, subject to the following:**

- a) they must be stated clearly and be factually correct at the time of broadcast;**
- b) all advertisements quoting a rate must use the Annual Equivalent Rate (AER) as set out in the British Bankers' Association Code of Advertising of Interest Bearing Accounts;**
- c) if conditions apply to calculations of interest and might affect the sum received, the advertisement must refer to the fact that conditions apply and how they can be accessed;**

- d) it must be made clear whether the interest is gross or net of tax;**
- e) interest rates relating to variables (e.g. a bank's base rate) must be so described.**

Attention is drawn to the code on the conduct of the advertising of interest-bearing accounts adopted and implemented by the British Bankers' Association and the Building Societies Association.

## **1.6 Insurance Premiums and Cover**

**Subject to any applicable legal requirement:**

- a) references to rates and conditions in connection with insurance must be accurate and must not mislead;**
- b) when specifying rates of premium cover, there must be no misleading omission of conditions;**
- c) in life insurance advertisements, reference to specific sums assured must be accompanied by all relevant qualifying conditions, eg. age and sex of the assured at the outset of the policy, period of policy and amount and number of premiums payable.**

## **1.8 Lending and Credit Advertisements**

### **a) Permitted Categories**

**The advertising of mortgage, other lending facilities and credit services is acceptable from:**

- i Government and local government agencies;**
- ii building societies authorised under the FSMA;**
- iii insurance companies authorised under the FSMA;**
- iv Friendly Societies authorised under the FSMA;**
- v persons authorised under the FSMA, with permission to accept deposits;**
- vi those persons and bodies granted a licence under the Consumer Credit Act 1974.**

Advertisements offering unsecured credit and some secured loans must comply with all relevant requirements of the Consumer Credit (Advertisements) Regulations 2004. If the applicability or interpretation of these Regulations is in doubt, advertisers must be encouraged to seek guidance from their Local Trading

Standards department. Similarly, qualifying credit promotions must comply with the requirements imposed under FSMA and MCOB.

## **b) Mortgages and Re-Mortgages**

- i Advertisements for mortgages and re-mortgages will normally be financial promotions under FSMA and will need to comply with the requirements imposed by FSMA and MCOB 3. Advertisements for most loans secured by a second charge will be credit advertisements and the requirements of the Consumer Credit (Advertisements) Regulations 2004 therefore apply. Particular note should be taken of the requirements in these Regulations for secured loans;**
- ii Advertisements for some mortgages might also have to comply with the provisions of the COB (e.g. if an investment product is being sold alongside a mortgage).**

## **1.9 Tax Benefits**

**References to income tax and other tax benefits must be properly qualified, clarifying what they mean in practice and making it clear, where appropriate, that the full advantage may only be received by those paying income tax at the standard rate.**

## **1.10 Direct Remittance**

**Advertisements are unacceptable if they directly or indirectly invite the remittance of money direct to the advertiser or any other person without offering an opportunity to receive further details.**

## **1.11 Debt Management Services**

**Except with specific approval of the ASA, advertising for debt management services is acceptable only from bodies that:**

- i are licensed under the Consumer Credit Act 1974; and**
- ii undertake to comply with the Guidance for Debt Management Companies published by the Office of Fair Trading.**

## **1.12 Financial Publications**

**Advertisements for paper or electronic publications (e.g. periodicals, books, text services etc) must make no recommendation on any specific**

investment offer.

### **1.13 Spread Betting Advertisements**

**Spread betting may be advertised as an investment activity under the Financial Services and Markets Act (FSMA) 2000, the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and other FSA rules and guidance. Spread betting may be advertised on specialised financial stations or in specialised financial programming only. Spread betting advertisements must comply with the gambling rules (see Section 3, Rule 21).**

A "Spread Bet" is a contract for differences that is a gaming contract, as defined in the glossary to the FSA Handbook.

For this purpose, a "specialised financial station" is an Ofcom licensed station whose programmes, with few exceptions, are likely to be of particular interest only to business people or finance professionals. "Specialised financial programming" is programming that is likely to be of particular interest only to business people or finance professionals.

## **2 Charity Advertising**

**Central copy clearance is required. These Rules regulate charity advertising and not the charities themselves, which are regulated by the Charity Commission (England and Wales); Inland Revenue (Scotland) or Department of Finance and Personnel (Northern Ireland). Advertisements must comply with the terms of the Charities Act 1992 (as amended).**

**Advertisements soliciting donations or promoting the needs and objects of UK bodies whose activities are financed wholly or mainly from donations may only be accepted from registered charities or those able to produce satisfactory evidence that their charitable status has been officially recognised. Charities based outside the UK may also be accepted for advertising if satisfactory bona fides can be established. Section 3, Rule 3 Religion, Faith and Related Systems of Belief may also apply to charities with religious affiliations.**

### **2.1 Qualifications**

- a) Licensees must satisfy themselves either that an organisation is registered as a charity with the Charity Commission (England and Wales), Inland Revenue (Scotland) or Department of Finance and Personnel (Northern Ireland) or that its charitable status has otherwise been**

officially recognised.

- b) Advertisers' activities and status must not conflict with the requirements of Section 2, Rule 15 Political, Industrial and Public Controversy, Section 2, Rule 5 Environmental Claims and Section 3, Rule 3 Religion, Faith and Related Systems of Belief.**
- c) Advertisers must be prepared to submit full details of their constitution, aims and objects, membership of governing body, recent and current activities and any additional information that may be appropriate. This may include, for example, details of audited accounts in order to establish that a charity is not misrepresenting its activities in any way.**

## **2.2 Non-UK bodies**

Charity law differs considerably from country to country and there is no legal requirement for charities based outside the UK to register with the Charity Commission if they wish to promote their activities in the UK. Such organisations may not, therefore, be in a position to comply with the requirement in 2.1a) above. Before accepting advertising for such organisations, licensees must:

- a) obtain a written assurance that the organisation complies with all relevant legislation in the country in which it is based;**
- b) conduct a full investigation of the matters referred to in 2.1b) and seek the assurances listed in 2.3.**

## **2.3 Assurances**

Advertisers must be required to give the following assurances:

- a) that they do not involve themselves in transactions in which members of their governing body or staff have a financial interest;**
- b) that the response to their proposed advertising, whether in cash or kind or services, will be applied solely to the purposes specified or implied in the advertising;**
- c) that they will not publish or otherwise disclose the names of contributors without their prior permission and that they otherwise comply with the requirements of current Data Protection Legislation.**

Licensees may need to seek assurances on other matters where appropriate and should reserve the right to reconsider the acceptability of advertising where it

doubts the validity of any information provided.

## **2.4 References to Charities in Advertisements by Commercial Advertisers**

**Advertisements by commercial advertisers which promote, either as a main or incidental purpose, the needs and objects of organisations who would be acceptable in their own right under Section 2, Rule 15 Political, Section 3, Rule 4 Medical and Section 2, Rule 5 Environmental Claims are also acceptable, subject to the following conditions:**

- a) evidence must be provided that the organisation concerned has given its consent to the proposed advertising;**
- b) where advertisements include an offer to donate part of the proceeds of sales to charity:
  - i each advertisement must specify which individual charity or group of charities will benefit and clarify how the donations will be calculated;**
  - ii the advertisement must specify what proportion of the consideration paid for the goods or services will be received by the charity for each sale made (eg. '£1 per sale' or '10% of the purchase price') and must not simply refer to 'x% of the profits' or 'all profits to Charity X';**
  - iii such offers must not depend on sales reaching a given level, or be subject to any similar condition;**
  - iv offers of this kind in connection with advertisements for medicinal products are unacceptable;****
- c) if the advertisement states that payment may be made by credit or debit card, full details must be given of the donor's right to have any payment so made of £50 or more refunded.**

## **2.5 Tone and Style of Advertisements**

**Advertisements for charities must:**

- a) handle with care and discretion matters likely to arouse strong emotions in the audience;**
- b) not suggest that anyone will lack proper feeling or fail in any responsibility through not supporting a charity;**
- c) respect the dignity of those on whose behalf an appeal is being made;**
- d) not address any fundraising message specifically to children;**



- e) **not contain comparisons with other charities;**
- f) **avoid presenting an exaggerated impression of the scale or nature of the social problem to which the work of the charity is addressed, eg. by illustrating the message with non-typical extreme examples;**
- g) **not misrepresent or mislead in any way about the charity, its field of activity or the use to which donations will be put.**

### **3 Religion, Faith and Related Systems of Belief**

**Central copy clearance is required.**

These Rules apply to advertising submitted by, or on behalf of, any body with objects wholly or mainly of a religious nature or which is directed towards any religious end. They also apply to advertising which is related to systems of belief or philosophies of life which do not involve recognition of a deity but which can reasonably be regarded as equivalent or alternative to those which do. The term 'religious' should also be interpreted as referring to this wider category.

All advertising subject to this Rule must also comply with the general requirements of the Code, particularly Section 2, Rule 15 which prohibits advertising of a political character, and in the case of religious charities, Section 3, Rule 2 Charity Advertising.

#### **3.1 Refusal to Broadcast Religious Advertising**

**Licensees who do not wish to carry religious advertising at all are free not to do so, subject to the provisions of the Human Rights Act 1998, provided this does not involve unreasonable discrimination either against, or in favour of, any particular advertiser.**

#### **3.2 Unacceptable Advertisers**

**No advertising is acceptable from bodies:**

- i who practise or advocate illegal behaviour;**
- ii whose rites or other forms of collective observance are not normally directly accessible to the general public.**

**See also Section 2 Rule 10 Harm.**

### **3.3 Identification and Transparency**

**The name and group faith of the religious advertiser must be clearly identified in the advertisement concerned.**

**A generic identification can be used where a number of religious groups advertise within a single advertisement, provided that the faith/creed which they share in common is made clear.**

Where religious advertisers include several faiths, the name of the generic plus 'inter-denominational' or 'multi-faith' may be sufficient under the requirements of this Rule.

### **3.4 Denigration and the Use of Fear**

**Advertising must not denigrate religious faiths, beliefs or philosophies of life. Claims to the effect that a particular religion is the 'only' or 'true' faith are also unacceptable. Advertising must not play on fear; references, both explicit or implicit, to the alleged consequences of not being religious or not subscribing to a particular faith or belief are unacceptable.**

### **3.5 Harm and Exploitation**

**Advertising must not harm listeners nor exploit, either personally or financially, their vulnerability. See also Section 2 Rule 10 Harm.**

In particular, the elderly and the bereaved may be at risk from exploitation.

### **3.6 Doctrinal References and Exhortations**

**a) Matters of doctrine or belief should not be expressed as unqualified fact and can only be stated in ways which make it clear to listeners that they represent the views of the advertiser;**

**b) Listeners must not be exhorted to change their beliefs or religious behaviour.**

### **3.7 Benefit Claims, Faith Healing, Miracles and Counselling**

**a) Advertising must not make claims for the efficacy of faith healing, miracle working or counselling;**

**b) References (individual or otherwise) to the benefits of religion for**

**personal well-being should be restrained in manner, and capable of substantiation.**

### **3.8 Children and Young People**

- a) Only advertising for suitable public events, such as religious services or festivals, and responsible, commercially available merchandise based on religious themes and designed for children or young people may be directed at those aged below 18 years, provided the marketing of the events/products concerned is not ancillary to recruitment or fundraising;**
- b) Child voiceovers should usually not be used in religious advertisements, with the exception of those which only promote recognised seasonal events, such as carol services or Diwali, in which children are particularly likely to take part. They should not be used to promote doctrine or beliefs.**

### **3.9 Appeals for Donations**

**Religious organisations/charities may advertise for funds or the donation of products/services for charitable purposes provided that they comply with all relevant Rules in this Code on Charity advertising. Appeals for donations may not state or imply that such donations are in exchange for prayers or other spiritual benefits.**

In order that listeners may be fully informed and not misled, particular transparency is required in this area, and advertisers should give details of fund raising activities to the RACC prior to clearance.

### **3.10 Sacred or Religious Music**

**Caution should be exercised when religious music, such as hymns and including Christmas carols, is used in advertisements.**

Tasteful use may be acceptable if the subject matter is relevant, for example, in an advertisement for a concert performance. It would be inappropriate, however, for religious music to be re-worked to advertise an unrelated product.

### **3.11 Acts of Worship**

**Treatments which involve acts of worship or prayer must not denigrate and must be acceptable in context.**

### **3.12 Divination and the Supernatural**

**Astrological services, along with products and services of a psychic nature, such as clairvoyance, divination, mediumship and psychic exhibitions or fairs, may be advertised but no claims of efficacy can be made or implied. Advertising must conform to the Rules in this Code on Harm, and scheduling restrictions may apply.**

## **4 Medicines, Treatments and Health**

**Central copy clearance is required. These Rules regulate the advertising and not the medicines, treatments (including veterinary products and services), and health claims themselves, which are regulated by the health regulators, such as the Medicines and Healthcare products Regulatory Agency (MHRA), the Department of Health and Local Health Authorities.**

Because of the introduction of new or changed products, the diverse licensing requirements of the Medicines Act 1968 and changes in medical opinion on particular issues, this Rule cannot provide a complete conspectus of required standards in relation to health claims or the advertising of particular products or classes of medicines and treatments. The general principles governing the advertising of medicines, treatments and health claims (including veterinary products and services) are set out below.

### **4.1 Legal Responsibility**

**Advertisements for products subject to licensing under the Medicines Act 1968 must comply with the requirements of the Act, Regulations made under it and any conditions contained in the current marketing authorisation.**

### **4.2 Advertisers, Treatments, Products, Services and Claims**

**Advertisers in this category, and/or the treatments, products and services they offer and all claims made for them, require very close scrutiny. Whenever a proper assessment of such claims can only be made by an appropriate independent qualified expert, whether medical or other health specialist, such advice must be sought before seeking clearance.**

#### **4.3 EC Council Directive 92/28/EEC**

The Directive concerns 'The Advertising of Medicinal Products for Human Use' and has been implemented in the UK by The Medicines (Advertising) Regulations 1994 and The Medicines (Monitoring of Advertising) Regulations 1994. The ASA is obliged to consider complaints about alleged breaches of Regulation 9 of The Medicines (Advertising) Regulations 1994 and take appropriate action if necessary. The BCAP Executive may raise and investigate challenges regarding breaches identified through monitoring. The requirements of Regulation 9 are incorporated in this part of the Code. Directive 2001/82/EC as amended deals with veterinary medicinal products and its provisions have been implemented in the Veterinary Medicines Regulations 2005, which contain requirements for the advertising of such products.

#### **4.4 Prescription-Only Medicines (POMs)**

Advertisements for medicinal products or treatments available only on prescription are not acceptable.

#### **4.5 Products Without a Marketing Authorisation**

Advertisements for products which do not hold a marketing authorisation under the Medicines Act 1968 must not include medical claims.

(Registered homeopathic products are dealt with separately, at 4.13 below).

#### **4.6 Mandatory Information**

Advertisements for medicinal products must include the following information:

- a) the name of the product and an indication of what it is for;
- b) the name of the active ingredient, if it contains only one;
- c) where necessary, the information needed for the correct use of the product;
- d) wording such as 'always read the label' or 'always read the leaflet', as appropriate.

#### **4.7 Unacceptable References**

**Advertisements must not suggest that a product is special or different because it has been granted a marketing authorisation or contain any reference to the European Commission or the MHRA (unless the MHRA requires such a reference).**

**No advertisement for a medicinal product may suggest that health can be enhanced by taking the medicinal product, or suggest that health could be affected by not taking the medicinal product.**

#### **4.8 Medicines and Children**

**Advertisements for medicinal products and treatments must not be directed exclusively or principally at children (for this purpose, those aged below 16 years).**

#### **4.9 Conditions Requiring Medical Advice**

**Advertisements must not offer any product or service for conditions for which qualified medical advice should be sought, or give the impression that a medical consultation or surgical operation is unnecessary (this excludes advertisements for spectacles, contact lenses and hearing aids), in particular by offering a diagnosis or by suggesting treatment by post, fax, telephone or email.**

#### **4.10 Services or Clinics Offering Advice and/or Treatments in Medical or Personal Welfare or other Health Matters**

**Advertisers will only be acceptable if they can provide suitable bona fides, such as evidence of relevant professional expertise or qualifications, or accreditation to a recognised professional body. Advertising must also comply with the rules of relevant professional bodies. Advertisers may be asked to show that clinics are registered with the Local Health Authority, and/or may be referred to the RACC's medical consultant, or other advisors as required by the ASA or the BCAP Executive as a result of monitoring.**

Advertisers must show that they have meaningful bona fides, for example that they belong to a body which has systems for dealing with complaints and for taking disciplinary action; that registration is based on minimum standards for training and qualifications, that there are systems in place for regular review of members' skills and competencies, and that they have suitable professional indemnity insurance covering all services provided.

#### **4.11 Advice by Correspondence**

**Advertising for services offering one-to-one advice by correspondence (including telephone, post, email and fax) on medical/health matters will only be acceptable where:**

- i such advice is given by suitably qualified health professionals acting in accordance with their relevant professional Codes of conduct; and**
- ii those professional Codes are recognised by the ASA and BCAP.**

**No advertisement may contain any offer to prescribe or treat by correspondence.**

This Rule does not preclude advertising containing offers to distribute general information on health-related matters, such as leaflets or information packs.

#### **4.12 Unacceptable Impressions of Professional Support and Advice**

**The following are not acceptable:**

- a) presentations by doctors, nurses, midwives, dentists, pharmaceutical chemists, veterinary surgeons, etc. which give the impression of professional advice or recommendation;**
- b) statements which give the impression of professional advice or recommendation by people who feature in the advertisements and who are presented as being qualified to do so;**
- c) references to approval of, or preference for, a product or its ingredients or their use by the professions listed at (a).**

#### **4.13 Homeopathic Medicinal Products**

**Advertisements for homeopathic medicines are acceptable, subject to all relevant requirements of EC Council Directive 2001/83/EC (as amended by 2004/27/EC) on medicinal products for human use implemented in the UK by the Medicines (Advertising) Regulations 1994 (as amended).**

**In particular:**

- a) advertisements are only acceptable for products which have been registered in the UK;**
- b) product information must be confined to that which appears in Schedule 5 of the Medicines (Advertising) Regulations 1994. Advertisements may**

not, therefore, include medicinal or therapeutic claims or refer to a particular ailment;

- c) advertisements must include wording such as ‘always read the label’ or ‘always read the leaflet’ as appropriate.

#### 4.14 Celebrities

Advertisements for medicines and medical products which require legal marketing authorisation must not be presented by, or include testimonials from, persons well known in public life, sport, entertainment, etc. The Medicines (Advertising) Regulations 1994 prohibits “recommendations by persons who because of their celebrity, could encourage the consumption of medicinal products.” This includes persons corporate as well as singular, and would prohibit, for example, recommendations by medical charities, patient groups and health/sport organisations.

#### 4.15 Cure

Unless otherwise allowed by its marketing authorisation, words or phrases that claim or imply the cure of any ailment, illness, disease or addiction, as distinct from the relief of its symptoms, are unacceptable. (Words such as ‘help’ or ‘relieve’ should be used).

Annex practice 17: Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.

#### 4.16 Tonic

Unless otherwise allowed by its marketing authorisation, the word ‘tonic’ is not acceptable in advertisements for products making health claims.

#### 4.17 Unacceptable Descriptions

Advertisements must not suggest that any medicinal product is a foodstuff, cosmetic or other consumer product.

#### 4.18 Self-Diagnosis

Advertisements for medicinal products must not contain any material which could, by description or detailed representation of a case history, lead to



**erroneous self-diagnosis.**

#### **4.19 Guarantee of Efficacy**

**Advertisements for medicinal products must not claim or imply that the effects of taking the product are guaranteed.**

#### **4.20 Side Effects**

**Advertisements for medicinal products must not suggest that the effects of taking the product are unaccompanied by side effects. (It is acceptable to highlight the usual absence of a specific side effect, eg. 'no drowsiness').**

#### **4.21 'Natural' Products**

**Advertisements for medicinal products must not suggest that the safety or efficacy of the product is due to the fact that it is natural.**

#### **4.22 Claims of Recovery**

**Advertisements for medicinal products must not refer to claims of recovery in improper, alarming or misleading terms.**

#### **4.23 Appeals to Fear or Exploitation of Credulity**

**a) No advertisement may cause those who hear it unwarranted anxiety if they are suffering or may suffer (if they do not respond to the advertiser's offer) from any disease or condition of ill health.**

**b) Advertisements must not falsely suggest that any product is necessary for the maintenance of health or the retention of physical or mental capacities (whether by people in general or by particular groups) or that health could be affected by not taking the product.**

#### **4.24 Encouragement of Excess**

**Advertisements must not imply or encourage indiscriminate, unnecessary or excessive use of any medicinal product or treatment.**

#### **4.25 Exaggeration**

**Advertisements must not make any exaggerated claims, in particular through the selection of testimonials or other evidence unrepresentative of a product's effectiveness, or by claiming that it possesses some special property or quality which cannot be substantiated.**

#### **4.26 Comparisons**

**Advertisements for medicinal products or treatments must not suggest that the effects of taking the product are better than, or equivalent to, those of another identified or identifiable medicinal product or treatment.**

#### **4.27 Analgesics**

**A 'tension headache' is a recognised medical condition and analgesics may be advertised for the relief of pain associated with it. However, no simple or compound analgesic may be advertised for the direct relief of tension or stress. In such advertisements there must be no references to depression.**

#### **4.28 Sales Promotions**

**Advertising for medicinal products which need a marketing authorisation must not contain references to sales promotions (including competitions, premium offers and samples).**

#### **4.29 Jingles**

**Jingles may be used but must not incorporate any medical/health claim.**

### **5 Sanitary Protection Products**

**These include sanitary towels and tampons, and incontinence pads for both children and adults.**

- a) Central copy clearance is required;**
- b) Particular care must be taken over scheduling (see Section 2, Rule 8 Scheduling);**
- c) Detailed descriptions of the product or its use or application must avoid anything which might offend or embarrass listeners (see also Section 2,**

**Rule 9 Good Taste, Decency and Offence to Public Feeling);**

- d) Particular discretion is required when communicating a product's suitability to specific listeners. Advertising treatments, including voiceover gender, must take account of the age and gender of those to whom advertisements are addressed (see also Section 2, Rule 9 Good Taste, Decency and Offence to Public Feeling);**
- e) Copy must not contain anything likely to embarrass or undermine a person's confidence in her/his own personal hygiene standards.**
- f) No implication of, or appeal to, sexual or social insecurity is acceptable;**
- g) References to sexual relationships should be avoided.**

**6 Family Planning Services**

- a) Central copy clearance is required;**
- b) Particular care must be taken over scheduling (see Section 2, Rule 8 Scheduling);**
- c) Advertisements are acceptable only from family planning centres approved by a Local Health Authority, the Central Office of Information or other appropriate NHS body.**

**7 Pregnancy-Testing Kits and Services**

- a) Central copy clearance is required;**
- b) Particular care must be taken over scheduling (see Section 2, Rule 8 Scheduling).**

**8 Contraceptives**

- a) Central copy clearance is required;**
- b) Particular care must be taken over scheduling (see Section 2, Rule 8 Scheduling);**
- c) Treatments must not promote or condone promiscuity.**

## **9 Anti-AIDS and Anti-Drugs Messages**

- a) Central copy clearance is required;**
- b) Particular care must be taken over scheduling (see Section 2, Rule 8 Scheduling);**
- c) Advertisements are acceptable only from bodies approved by a Local Health Authority or the Central Office of Information.**

## **10 Tobacco Products**

**Advertisements for tobacco products (including cigarettes, cigarette tobacco and papers, cigars and pipe tobacco) are prohibited.**

**Advertisements must not advertise a brand name that is the same as, likely to be mistaken for, or connected with a tobacco product, if the purpose or effect is to promote a tobacco product.**

## **11 Alcoholic Drinks**

**Central copy clearance is required. Alcoholic drink advertisements must comply with the minimum standards set out here. These Rules also apply to low alcoholic drinks, except where otherwise stated.**

These Rules apply principally to advertisements for alcoholic drinks and low alcoholic drinks. However, incidental portrayals of alcohol consumption in advertisements for other products and services must always be carefully considered to ensure that they do not contradict the spirit of these Rules.

### **11.1 Scheduling of Advertisements for Alcohol**

**Advertisements for alcoholic drinks must not be broadcast in or around religious programming or programming aimed particularly at those aged below 18 years (see also Rule 11.2, below).**

### **11.2 Protection of Younger Listeners**

- a) Alcoholic drink advertising must not be aimed at those aged below 18**

**years or use treatments likely to be of particular appeal to them;**

- b) Advertisements for alcoholic drinks must not include any personality whose example is likely to be followed by those aged below 18 years, or who has a particular appeal to those aged below 18 years;**
- c) Advertisements for alcoholic drinks must only use voiceovers of those who are, and sound as if they are, at least 25 years of age;**
- d) Advertisements for drinks containing less than 1.2% alcohol by volume must only use voiceovers of those who are, and sound as if they are, at least 18 years of age;**
- e) Children's voices must not be heard in advertisements for alcoholic drinks.**

### **11.3 Unacceptable Treatments**

- a) Advertisements must not imply that drinking is essential to social success or acceptance, or that refusal is a sign of weakness. Nor must they imply that the successful outcome of a social occasion is dependent on the consumption of alcohol;**
- b) Advertisements must neither claim nor suggest that any drink can contribute towards sexual success or that drinking can enhance sexual attractiveness;**
- c) Advertisements must not suggest that regular solitary drinking is acceptable or that drinking is a means of resolving personal problems. Nor must they imply that drinking is an essential part of daily routine or can bring about a change in mood;**
- d) Advertisements must not suggest or imply that drinking is an essential attribute of gender. References to daring, toughness or bravado in association with drinking are not acceptable;**
- e) Alcoholic drinks must not be advertised in a context of aggressive, dangerous, anti-social or irresponsible behaviour;**
- f) Advertisements must not foster, depict or imply immoderate or irresponsible drinking or drinking at speed. References to buying rounds of drinks are unacceptable;**
- g) Advertisements must not offer alcohol as therapeutic, or as a stimulant, sedative, tranquilliser or source of nourishment/goodness, or link the product to illicit drugs. While advertisements may refer to refreshment**

after physical performance, they must not give any impression that performance can be improved by drink;

- h) Advertisements must not suggest that a drink is preferable because of its higher alcohol content or intoxicating effect and must not place undue emphasis on alcoholic strength.

#### **11.3.1 Health, Diet and Nutritional Claims**

(See the BCAP Help Note on Health, Diet and Nutritional Claims in Radio Alcohol Advertisements)

**Advertisements for alcoholic drinks may contain factual statements about product contents, including comparisons, but must not make any other type of health, fitness or weight control claim.**

#### **11.4 Safety**

- a) Nothing may link drinking with driving or with the use of potentially dangerous machinery, except in drunk driving messages (see also Section 3, Rule 18 Motor Vehicles);

- b) Nothing may link alcohol with a work or other unsuitable environment.

#### **11.5 Sales Promotions**

**Advertisements for alcoholic drinks must not publicise sales promotions (including competitions) that appear to encourage excessive consumption.**

#### **11.6 Cut-price Offers**

**References to 'cut-price/happy hour drinks', 'buy two and get one free', 'money-off coupons' and the like must be considered with caution. References which encourage excessive or immoderate consumption are unacceptable. However, off-licences and alcoholic drink retailers may advertise price reductions for their stock.**

#### **11.7 Low Alcohol Drinks**

**Provided they comply generally with the Code and reflect responsible consumption and behaviour, advertisements for drinks containing less than 1.2% alcohol by volume will not normally be subject to Rules 11.3f), 11.4b) and 11.5. However, if a significant purpose of an advertisement for a low alcoholic drink could be considered to promote a brand of stronger alcoholic**

**drink, or if the drink's low alcohol content is not stated in the advertisement, all the above Rules are applicable.**

## **12 Food and Beverages**

**Advertisers must ensure that their advertisements comply with all relevant legislation, in particular The Food Labelling Regulations 1996 and The Food Safety Act 1990. Advertisers should also meet the criteria of the Food Advisory Committee's guidelines.**

### **12.1 Diet and Lifestyle**

**Advertisements must not disparage good dietary practice and must avoid anything likely to encourage poor nutritional habits or an unhealthy lifestyle, especially in children. Advertisements must not discourage selection of foods, such as fresh fruit and vegetables, that generally accepted dietary opinion recommends should form a greater part of the average diet.**

This rule does not preclude responsible advertising for any products including those that should be eaten only in moderation. Claims of nutritional or health benefits should be considered in the context of a balanced diet or lifestyle or both.

**Nutrition or health claims must be supported by sound scientific evidence. No nutrition or health claim may be used in food or soft drink product advertisements targeted directly at pre-school or primary school children; that prohibition does not apply to advertisements for fresh fruit or fresh vegetables. Generalised claims such as 'goodness' or 'wholesome' must not exaggerate the nutritional or health benefit of a food product or an ingredient. Reference to the properties of an ingredient must not give a misleading impression of the properties of the whole product. The scientific meaning of the word "energy", calorific value, must not be confused with its colloquial meaning of physical vigour.**

**Advertisements must not encourage or condone excessive consumption of any food.**

Particular attention should be paid to the requirements of the Food Labelling Regulations 1996, especially the prohibited and restricted claims set out in Schedule 6. Guidelines that offer best-practice advice for nutritional claims and healthy eating are available. For example, The Food Standard Agency's Guidelines for the Use of Certain Nutrition Claims in Food Labelling and Advertising include a recommendation to avoid "% fat free" claims (issued November 1999).

## **12.2 Dietary Supplements**

- a) Advertisements must not state or imply that dietary supplements, including vitamins or minerals, are necessary to avoid dietary deficiency or can enhance normal good health;**
- b) Advertisements for dietary supplements must establish clearly those groups of people likely to benefit from the advertised supplement. Groups that might benefit include: people on a restricted dietary regimen; those eating unsupplemented, low food-energy diets; women who are planning to become pregnant or are pregnant or lactating; growing children and some people over 50.**

## **13 Slimming Products, Treatments and Establishments**

- a) Advertisements for slimming products, treatments and establishments must be submitted for central copy clearance. They must comply where applicable with Section 3, Rule 4 Medicines, Treatments and Health and Rule 12 Food and Beverages above, and with criteria set down by the Proprietary Association of Great Britain (PAGB) and the Association of British Pharmaceutical Industries (ABPI);**
- b) Advertisements for establishments offering slimming treatments are acceptable only if such treatments are based on dietary control. Licensees must have obtained acceptable independent medical advice that the treatments are likely to be effective and will not lead to harm and satisfied themselves that any claims can be substantiated. Any financial and other contractual conditions must be made available in writing to customers prior to commitment;**
- c) Licensees must obtain suitably qualified independent medical advice on the safety and efficacy of the slimming aid being offered. Specifically, licensees must be satisfied that:
  - i there is reputable scientific evidence for any claims;**
  - ii clinics and other establishments or services offering medically supervised treatment are run in accordance with the General Medical Council guidelines on Good Medical Practice;****
- d) Promises or predictions of specific weight loss are not acceptable for any slimming aid. Where specific amounts of weight are claimed to have been lost by individuals the period over which the loss was achieved must be stated. The amount of weight lost and the period over which it was lost should be compatible with generally accepted good medical and dietary practice and not unrepresentative of the capabilities of the**



product or service offered;

- e) **Advertisements for low-calorie foods and drinks, if presented as, or as part of, slimming regimes or if using a slimming or weight control theme, must make it clear that the product only assists weight loss as part of a calorie/energy controlled diet;**
- f) **Advertisements for specially formulated products intended for use in energy restricted diets which, when used as instructed by the manufacturer, replace the whole of the total daily diet or one or more meals of the daily diet, must comply with the 'Foods Intended for Use in Energy Restricted Diets For Weight Reduction Regulations 1997', specifically:**
  - i **such foods may not be offered under any name other than 'total diet replacement for weight control' or 'meal replacement for weight control';**
  - ii **advertisements for such foods may not refer to the rate or amount of weight loss that may result from use of the product, or to a reduction in the sense of hunger or an increase in the sense of satiety.**
- g) **For the purposes of this Rule, Very Low Calorie Diets (VLCDs) are those where daily kilo-calorie intake falls below 800. They must comply with existing provisions under the Food Safety Act 1990 and any relevant regulations made under it, including those on advertising. The following conditions apply to any advertisement for such products:**
  - i **the advertisement must include a clear injunction to consult your doctor before embarking on the diet;**
  - ii **the diet must be positioned as a short-term measure only;**
  - iii **testimonials or specific case histories may not be used;**
  - iv **independent medical advice must be sought on whether the proposed advertisement complies with the recommendations of the government COMA Report No. 31, The Use of Very Low Calorie Diets in Obesity.**
- h) **With the exception of clinics and other establishments/services offering treatment under medical supervision (see Section 3, Rule 4.10), advertisements for slimming aids must not be directed at the obese or use testimonials or case histories referring to subjects who were or appeared to be obese before using the product or service advertised.**

For the purpose of this Rule, 'obese' means a Body Mass Index of 30 or above. Body Mass Index is calculated by dividing weight in kilograms by the square of height in metres.

- j) **Advertisements for slimming aids of any kind must not suggest or imply that to be underweight is acceptable or desirable. Where testimonials or**

**case histories are used, they must not refer to subjects who are or appear to be underweight.**

For the purpose of this Rule, 'underweight' means with a Body Mass Index below 20.

- k) Advertisements for slimming aids of any kind must not be addressed to people under 18, use creative treatments likely to be of particular appeal to them or feature any personality whose example people under 18 are likely to follow or who has a particular appeal to people under 18. Such advertisements must not be broadcast in the breaks in or immediately adjacent to programming principally directed at, or likely to be of particular appeal to, listeners below the age of 18.**

This Rule does not apply to advertisements for calorie/energy-reduced foods and drinks, provided these are not presented as, or as part of, slimming regimes and provided the advertisements do not use the theme of slimming or weight control.

#### **14 Dating, Escort, Introduction or Marriage Agencies/Services**

**Central copy clearance is required. Advertisements are acceptable, subject to Rule 16 below and the following conditions:**

- a) before accepting advertisements, licensees must establish that those wishing to advertise conduct their business responsibly and can provide a level of service commensurate with the claims in their advertising;**
- b) where business is conducted from premises where clients, actual or potential, can visit, the full postal address, or telephone number as published elsewhere, for that location should be included. In the case of telephone dating services, the conditions of Section 2, Rule 22 Premium Rate Telephone Services apply;**
- c) licensees must obtain an assurance that the advertiser will not disclose data to a third party without the client's consent, and that the client's name will be promptly deleted on request;**
- d) any quoted price must be the price at which the full service described in the advertisement is actually available and any qualification or supplementary charge must be made clear;**
- e) advertisements must not:**
  - i exploit emotional vulnerability by dwelling excessively on loneliness, or suggest that those without a partner are in some way inadequate or**

- unfulfilled;
- ii contain material which could be taken to encourage or endorse promiscuity.

**Agencies with computerised records must provide an assurance that they comply with the requirements of current Data Protection legislation.**

## **15 Sex Shops, Stripograms etc**

**Central copy clearance is required. Sex shops, strippergrams and the like may be advertised, subject to Rule 16 below and the Rules in this Code on good taste, decency and offence, as well as appropriate scheduling restrictions, but scripts must be restrained and must not state or imply that prostitution or other sexual services are available.**

All licensed establishments should provide a copy of their licence to RACC or, if requested, to the ASA and BCAP.

## **16 Unacceptable categories**

### **16.1 Prostitution, Sexual Services and Obscene and Restricted Material: ~~Unacceptable Categories~~**

**Advertisers who offer sexual services, such as prostitution or sexual massage, are not acceptable. Advertising which includes the sale or distribution of obscene or restricted material is not acceptable.**

What is obscene or restricted will be determined by whether or not the material may be freely offered for sale or distribution to those over the age of 18 years without offending against the Obscene Publications Act 1959. Advertisements for material which is only permitted limited distribution by the relevant authorities (such as distribution only through licensed sex shops) will not be acceptable.

### **16.2 Firearms and Weaponry: ~~Unacceptable Categories~~**

**No advertisement may promote the supply of firearms or other weaponry.**

This includes manufacturers, distributors, gun clubs, combat knives and replica guns. Businesses that supply such items amongst a wide range of other goods may be advertised, provided that there is no promotion of, or gratuitous indication that, the prohibited items are available. References to clay pigeon shoots are

permitted only as part of a wider range of outdoor pursuits.

### **16.3 pyramid schemes**

#### **Advertisements must not promote pyramid promotional schemes.**

Pyramid schemes are those under which consumers pay or give other consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme, not the sale or consumption of products.

Annex practice 14:

Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products

## **18 Motor Vehicles**

- a) Advertisements must not encourage or condone illegal, dangerous, inconsiderate or competitive driving practices or breaches of the Highway Code;**
- b) References to the power or acceleration of motor vehicles or automotive products must not imply that it is acceptable for speed limits to be exceeded, and there should be no accompanying suggestion of excitement or aggression.**

Treatments that are clearly fantasy (those which it would not be physically possible for drivers to emulate in real life), do not normally cause difficulties. Where, however, an advertisement features, however fancifully, driving behaviour which could be copied, or which might encourage other forms of illegal, unsafe or discourteous driving, the above Rules apply. Car chases etc. are not acceptable in automotive advertising.

- c) Safety claims should not exaggerate the benefit to consumers. Advertisers must not make claims about safety unless they hold evidence to support them.**

## **19 Advertising by Solicitors**

**Advertisements by or on behalf of solicitors should comply with the**

**Solicitors' Practice Rules and the Solicitors' Publicity Code where this applies.**

**Advertisements for conditional fee arrangements which claim 'no win, no fee' must not mislead listeners into believing that they will not incur any costs at all. Such claims should be suitably qualified if the client is (or may be) required to pay any costs or fees (including those of the other party), such as insurance premiums or disbursements.**

## **20 Services offering Advice on Consumer Problems**

**Central copy clearance is required. Services offering advice on consumer problems may only be advertised if those giving the advice can provide evidence of suitable and relevant bona fides.**

Advertisers must show that they have meaningful bona fides, for example that they belong to a body which has systems for dealing with complaints and for taking disciplinary action; that registration is based on minimum standards for training and qualifications, that there are systems in place for regular review of members' skills and competencies, and that they have suitable professional indemnity insurance covering services provided.

## **21 Gambling**

**Central copy clearance is required. Gambling advertisements must comply with the minimum standards set out here, as well as the appropriate scheduling restrictions (see Section 2, Rule 8).**

These Rules apply principally to advertisements for gambling products. However, incidental portrayals of gambling in advertisements for other products and services must always be carefully considered to ensure that they do not contradict the spirit of these Rules.

The term "gambling" means gaming, betting, and participating in a lottery, as defined in the Gambling Act 2005, and spread betting. This section does not apply to the UK National Lottery (see Section 2 Rule 26).

The Gambling Act does not apply outside Great Britain. Licensees should ensure that specialist legal advice is sought when considering advertising any gambling products in Northern Ireland or the Channel Islands.

Spread Betting may be advertised as an investment activity under the Financial Services and Markets Act (FSMA) 2000, the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and other FSA rules and guidance. Spread betting may be advertised on specialised financial stations

or in specialised financial programming only (see Section 1 Rule 1.3). A “Spread Bet” is a contract for differences that is a gaming contract, as defined in the glossary to the FSA Handbook.

These Rules apply to advertisements for “play for money” gambling products and advertisements for “play for free” gambling products that offer the chance to win a prize or that explicitly or implicitly direct the consumer to a “play for money” gambling product, whether on-shore or off-shore.

Unless they portray or refer to gambling, these Rules do not apply to advertisements for non-gambling leisure events or facilities, for example hotels, cinemas, bowling alleys or ice rinks, that are in the same complex as but separate from gambling events or facilities.

These Rules are not intended to inhibit advertisements to counter problem gambling that are responsible and unlikely to promote a brand or type of gambling.

For the purposes of these Rules, “children” are people of 15 and under and “young persons” are people of 16 or 17.

## **21.1 Protection of Children and Young Persons**

**a) Advertisements for gambling must not be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture.**

**b) No child or young person may be included in a gambling advertisement. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role. No-one may behave in an adolescent, juvenile or loutish way.**

**c) Advertisements for family entertainment centres, travelling fairs, horse racecourses and dog race tracks, and for non-gambling leisure facilities that incidentally refer to separate gambling facilities e.g. as part of a list of facilities on a cruise ship, may include children or young persons provided they are accompanied by an adult and are socialising responsibly in areas that the Gambling Act 2005 does not restrict by age. Advertisements for a lottery product may include children or young persons. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role.**

**d) Advertisements that exclusively feature the good causes that benefit from a lottery and include no explicit encouragement to buy a lottery product may include children or young persons and they may be featured playing a significant role.**

## **21.2 Unacceptable Treatments**

**a) Advertisements for gambling must not portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm.**

**b) Advertisements for gambling must not exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons.**

**c) Advertisements for gambling must not suggest that gambling can provide an escape from personal, professional or educational problems such as loneliness or depression.**

**d) Advertisements for gambling must not suggest that gambling can be a solution to financial concerns, an alternative to employment or a way to achieve financial security.**

**e) Advertisements for gambling must not portray gambling as indispensable or as taking priority in life, for example over family, friends or professional or educational commitments.**

**f) Advertisements for gambling must not suggest that gambling can enhance personal qualities, for example that it can improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration.**

**g) Advertisements for gambling must neither suggest peer pressure to gamble nor disparage abstention.**

**h) Advertisements for gambling must not link gambling to seduction, sexual success or enhanced attractiveness.**

**i) Advertisements for gambling must not portray gambling in a context of toughness or link it to resilience or recklessness.**

**j) Advertisements for gambling must not suggest gambling is a rite of passage.**

**k) Advertisements must not suggest that solitary gambling is preferable to social gambling.**

**l) Advertisements for gambling products must not exploit cultural beliefs or traditions about gambling or luck.**

**m) Advertisements for events or facilities that can be accessed only by entering gambling premises must make that condition clear.**

**n) Advertisements for gambling products must not condone or encourage criminal or anti-social behaviour.**

**o) Advertisements for gambling products must not condone or feature gambling in a working environment. An exception exists for licensed gambling premises.**

**p) Advertisements must not claim that products or services can facilitate winning in games of chance.**

Annex practice 16:

Claiming that products are able to facilitate winning in games of chance.



## Appendix 1 – Statutory Framework for the Regulation of Broadcast Advertising

### Advertising Standards

The Communications Act 2003 requires Ofcom to set, and from time to time review and revise, codes containing such standards for the content of television and radio services licensed under the Broadcasting Acts 1990 and 1996 as appear to Ofcom to be best calculated to secure the standards objectives.

Sections 319(1), 319(3).

Ofcom has contracted-out its advertising standards codes function to the Broadcast Committee of Advertising Practice Limited (BCAP) under the Contracting Out (Functions Relating to Broadcast Advertising) and Specification of Relevant

Functions Order 2004. Such function is to be exercised in consultation with and with the agreement of Ofcom.

These provisions imposed upon Ofcom by the Communications Act are therefore relevant to BCAP:

The standards objectives, insofar as they relate to advertising, include:

*"(a) that persons under the age of 18 are protected;*

*(b) that material likely to encourage or incite the commission of crime or lead to disorder is not included in television and radio services; ....*

*(e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;*

*(f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from inclusion in such services of offensive and harmful material; ....*

*(h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;*

*(i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with [in particular those obligations set out in Articles 10, 12-16 and 19-22a of Directive 39/552 EEC as amended by Directive 97/36/EC (the Television without Frontiers Directive)]; ....*

*(l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.*

Section 319(2)

In setting or revising any such standards, Ofcom must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of these matters:

*"(a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;*

*(b) the likely size and composition of a potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;*

*(c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of the programme's content can be brought to the attention of potential members of the audience;*

*(d) the likelihood of persons who are unaware of the nature of the programme's content being unintentionally exposed, by their own actions, to that content;*

*(e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section ...".*

Section 319(4).

Ofcom must ensure that the standards from time to time in force under this section include:

*"(a) minimum standards applicable to all programmes included in television and radio services; and*

*(b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appeared to them appropriate for securing the standards objectives."*

Section 319(6).

Standards set to secure the standards objectives [specified in para 3(e) above] shall in particular contain provision designed to secure that religious programmes do not involve:

*"(a) any improper exploitation of any susceptibilities of the audience for such a programme; or*

*(b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination."*

Section 319(7).

Standards set by Ofcom to secure the objectives [mentioned in para 3(a), (h) and (i) above]:

*"(a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes; and*

*(b) may include provision prohibiting advertisements and forms of methods of advertising or sponsorship (whether generally or in particular circumstances)."*

Section 321(1).

In addition, the Broadcasting Act 1996 section 24(2) contains provisions permitting advertising on analogue ancillary services on television channels 3, 4 and 5 only if directly related to advertising on the main service and digital ancillary services may carry no advertising of any kind.

BCAP has adopted the former ITC and Radio Authority Codes (together "the BCAP Codes" as follows:

(a) BCAP Television Advertising Standards Code (ex ITC, including teleshopping and other non-advertising content);

(b) BCAP Radio Advertising Standards Code (extracted from Radio Authority Advertising and Sponsorship Code);

(c) BCAP Rules on the Scheduling of Television Advertisements (section 4 of the former ITC Rules, relating to the scheduling of individual spot television advertisements);

(d) BCAP Code for Text Services (Part C of former ITC Code);

(e) BCAP Guidance to Broadcasters on the Regulation of Interactive Television Services (ex ITC);

(f) BCAP Advertising Guidance Notes 1, 2, 3 and 5 (ex ITC).

BCAP will work closely with the Committee of Advertising Practice to provide, insofar as is practicable, a co-ordinated and consistent approach to standards setting across broadcast and non-broadcast media. Media differences, will, however, be taken into account.

The procedures for revision of the BCAP Codes, including consultation, are, to the extent applicable to BCAP's exercise of statutory functions, set out at section 324 of the Communications Act 2003.

Ofcom retains standards setting functions in respect of:

(a) political advertising, the inclusion of which in television or radio services is prohibited by section 321(2) Communication Act, including decisions as to whether or not an

advertisement is "political advertising". But a summary of the rules on that remain in the BCAP Codes;

(b) unsuitable programme sponsorship;

(c) discrimination between advertisers who seek to have advertisements included in television and radio services. NB: Subject to this broadcasters, like publishers and other media, are generally entitled to refuse advertising they do not want to carry;

(d) the amount and scheduling of television advertising, save for the scheduling of individual spot television advertising.

### **Investigation and complaints**

The Communications Act 2003 requires Ofcom to establish procedures for the handling and resolution of complaints about the observance of standards (as set out in the BCAP Codes) and to include conditions in licences for programme services requiring licence holders to comply with Ofcom's directions in relation to advertising standards. Sections 325(2), (4) and (5).

The Control of Misleading Advertisements Regulations 1988 require Ofcom to consider complaints that any advertisement included or proposed to be included in any licensed programme service or S4C is misleading or an impermissible comparative advertisement, unless the complaint seems to Ofcom to be frivolous or vexatious.

The Medicines (Monitoring of Advertising) Regulations 1994 require Ofcom to consider complaints that any advertisement included or proposed to be included in a licensed service or S4C is an impermissible advertisement for a medicinal product, unless the complaint seems to Ofcom to be frivolous or vexatious.

Ofcom has contracted-out its powers of handling and resolving complaints about breaches of the BCAP Codes and the relevant provisions of The Control of Misleading Advertisements Regulations and Medicines (Monitoring of Advertising) Regulations to the Advertising Standards Authority (Broadcast) Limited (ASA(B)) under The Contracting Out (Functions Relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004.

ASAB will work closely with and under the umbrella of the Advertising Standards Authority to provide, insofar as is practicable, a coordinated and consistent approach to advertising standards regulation across broadcast and non-broadcast media.

Ofcom retains complaint investigation functions in respect of:

(a) political advertising;

(b) unsuitable sponsorship;

(c) discrimination between advertiser and

(d) scheduling of television advertisements.

### **Statutory sanctions for breaches of advertising standards**

Ofcom has similarly contracted-out its enforcement powers under the Communications Act, such that ASAB has these powers (including in relation to the Welsh Authority):

(a) to require a licence holder to exclude from its programme service a particular advertisement or to exclude it in particular circumstances (Section 325(5)(a));

(b) to require a licence holder to exclude from its service certain descriptions of advertisements and methods of advertising (whether generally or in particular circumstances) (Section 325(5)(b)), such power to be exercised by ASAB only for misleading advertisements or impermissible comparative advertisements or impermissible medical advertisements;

NB: Detailed reasons must be given for any of those actions in respect of a medicinal product advertisement under Regulation 9 of The Medicines (Advertising) Regulations 1994 and The Medicines (Monitoring of Advertising) Regulations 1994 (both as amended), and reference must be made to any remedy available in court and any time limit that must be met. (MMAR 1994 Regulation 9);

(c) to require, from any person who to ASA(B) seems to be responsible for an advertisement, provision of evidence relating to the factual accuracy of any claim and to deem a factual claim inaccurate if such evidence is not so provided.

Ofcom retains these powers conferred by the Broadcasting Acts 1990 and 1996 and the Communications Act 2003:

(a) to direct the broadcast of a correction or statement of findings;

(b) to impose a financial penalty or shorten a licence period and

(c) to revoke a licence.

### **Overseas television advertising**

Television licensees should seek BCAP's advice if they want to have any rules in the Code disappplied because the advertising is on a programme service addressed exclusively to audiences outside the UK.

A television advertisement that is aimed specifically and with some frequency at audiences in the territory of a single party to the 1989 Council of Europe Convention on Transfrontier Television must, with some exceptions, comply with the television advertising rules of that party. This does not apply:

(a) if the party is a Member State of the European Community or

(b) if its television advertising rules discriminate between advertising broadcast on

television services within its jurisdiction and that on services outside its jurisdiction or

(c) if the UK Government has concluded a relevant bilateral or multilateral agreement with the party concerned.

## **Appendix 2 – Legislation affecting broadcast advertising**

This list of statutes and regulations affecting advertising and promotions relates to England and Wales and is not exhaustive; a considerable amount of legislation is always in the pipeline and cannot therefore be included. Many of these statutes are also applicable to Scotland and Northern Ireland, which have their own additional legislation. Also, in some instances, EC Regulations and Directives are relevant. Businesses have primary responsibility for ensuring that everything they do is legal. The law on matters such as contract, negligence, libel and intellectual property should also be observed.

Accommodation Agencies Act 1953 s.1

Administration of Justice Act 1985 s.9-10 and Solicitors Practice Rules 1990 and Publicity Code 1990

Adoption Act 1976 s.58

Agriculture and Horticulture Act 1964 s.14

Agriculture (Safety, Health and Welfare Provisions) Act 1956

Alcoholic Liquor Duties Act 1979 (as amended) s.71

Animals (Scientific Procedures) Act 1986 s.16

Anti-Social Behaviour Act 2003 s.43-53

Architects Act 1997 s.20

Banking Act 1987 (Advertisements) Regulations (1988) (as amended)

Betting and Gaming Duties Act 1981 (as amended)

Betting Gaming and Lotteries Act 1963 (as amended) s.10 & 22

Biocidal Product Regulations 2001 s.30-33

Bread and Flour Regulations 1998 (as amended)

Broadcasting Act 1990 s.8-9, 60 & 92-93

Broadcasting Act 1996 s.14, 31 & 56

Building Societies Act 1986 (as amended) s.35

Business Advertisements (Disclosure) Order 1977

Business Names Act 1985

Business Protection from Misleading Marketing Regulations 2008

Cancer Act 1939 s.4

Care Standards Act 2000 s.26

Charitable Institutions (Fund Raising) Regulations 1994

Charities Act 1992 Part II (as amended)

Charities Act 1993 s.5 and s.67-68  
Chemicals (Hazard Information and Packaging for Supply) Regulations 1994  
Children Act 1989  
Children and Young Persons (Harmful Publications) Act 1955 s.1  
Children and Young Persons Acts 1933 s.7 and 1963  
Children (Performances) Regulations 1968  
Civil Aviation Act 1982 s.82  
Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995 (as amended)  
Civil Aviation (Ariel Advertising) Regulations 1995  
Cocoa and Chocolate Products Regulations 1976 (as amended)  
Coffee Extracts and Chicory Extracts (England) Regulations 2000  
Communications Act 2003 s.1-6 & s.319-334  
Companies Act 1985 s.349 & 351  
Competition Act 1998  
Condensed Milk and Dried Milk Regulations 1977 (as amended)  
Conduct of Employment Agencies and Employment Businesses Regulations 2003  
Consumer Credit Act 1974 s.43-50 & s.151  
Consumer Credit (Advertisements) Regulations 2004  
Consumer Credit (Exempt Advertisements) Order 1985  
Consumer Protection Act 1987 s.10-12 and 20 and the Code of Practice for Traders on Price Indications  
Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987  
Consumer Protection (Distance Selling) Regulations 2000  
Consumer Protection from Unfair Trading Regulations 2008  
Consumer Transactions (Restrictions on Statements) Order 1976 (as amended)  
~~Control of Misleading Advertisements Regulations 1988 (as amended)~~  
Control of Pesticides Regulations 1986 (as amended)  
Copyright and Rights in Databases Regulations 1997  
Copyright Designs and Patents Act 1988 (as amended)  
Cosmetic Products (Safety) Regulations 1996 (as amended)  
Credit Institutions (Protection of Depositors) Regulations 1995



Credit Unions Act 1979 (as amended) s.3  
Crime and Disorder Act 1998 s.1  
Criminal Damage Act 1971 s.1  
Criminal Justice Act 1988 s.141A  
Criminal Justice and Police Act 2001 s.46  
Crossbows Act 1987  
Dangerous Dogs Act 1991 s.1  
Data Protection Act 1998  
Data Protection (Conditions under Paragraph 3 of Part II of Schedule I) Order 2000  
Defamation Act 1952  
Defamation Act 1996  
Dentists Act 1984 s.26 & 41-42  
Deregulation (Betting and Bingo Advertising etc.) Order 1997  
Deregulation (Casinos) Order 1999  
Disability Discrimination Act 1995 s.11 & 22  
Education Reform Act 1988 s.214  
Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (as amended)  
Electronic Commerce (EC Directive) Regulations 2002  
Employment Agencies Act 1973 s.5  
Employment Equality (Religion or Belief) Regulations 2003 (as amended)  
Employment Equality (Sexual Orientation) Regulations 2003 (as amended)  
Endangered Species (Import and Export) Act 1976 (as amended) s.4  
Energy Act 1976 s.15  
Enterprise Act 2002 Part 8  
Enterprise Act 2002 (Community Infringements specified UK Laws) Order 2003  
Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003  
Enterprise Act 2002 (Part 8 Designated Enforcers: Criteria for Designation ....) Order 2003  
Environmental Protection Act 1990 s.87  
Estate Agents Act 1979 s.10  
European Communities Act 1972

Fair Trading Act 1973 (as amended) Part XI  
Feeding Stuffs Regulations 2000  
Finance Act 1993 s.29 & 33  
Financial Services and Markets Act 2000 s. 21, 25, 145 & 238-240, 397  
Financial Services and Markets Act 2000 (Financial Promotion) Order 2005  
Financial Services (Distance Marketing) Regulations 2004  
Firearms Act 1968 (as amended) s.3  
Fireworks (Safety) Regulations 1997  
Flavourings in Food Regulations 1992  
Food Labelling Regulations 1996 (as amended)  
Food Safety Act 1990 (as amended) s.8, 15 & Schedule 1 and Regulations  
Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations  
1997  
Food Standards Act 1999  
Forgery and Counterfeiting Act 1981  
Fraudulent Mediums Act 1951  
Friendly Societies Acts 1974 and 1992  
Fruit Juices and Fruit Nectars Regulations 1977 (as amended)  
Gaming Act 1968 (as amended) s.42  
General Optical Council (Rules on Publicity) Order of Council 1985  
General Optical Council (Contact Lenses) (Qualifications etc) Rules Order of Council  
1988  
General Product Safety Regulations 1994  
Geneva Conventions Act 1957 (as amended) s.6  
Hallmarking Act 1973  
Health and Medicines Act 1988 s.23  
Hearing Aid Council Act 1968 (as amended)  
Highways Act 1980 s.132  
HIV Testing Kits and Services Regulations 1992  
Honey Regulations 1976  
Human Organ Transplant Act 1989  
Human Rights Act 1998

Immigration and Asylum Act 1999 s.92B  
Income and Corporation Taxes Act 1988 s.577  
Indecent Displays (Control) Act 1981 s.1  
Industrial and Provident Societies Act 1965  
Infant Formula and Follow-on Formula Regulations 1995 (as amended)  
Insolvency Act 1986 s.137, 216 & 296-297 and Insolvency Rules 4. 226-300  
Jam and Similar Products Regulations 1981  
Knives Act 1997  
Licensing Betting Offices Regulations 1986 (as amended)  
Licensing Act 1964 (as amended) s.168  
Local Government Act 1992 s.107  
Local Government (Miscellaneous Provisions) Act 1982  
London Cab Act 1968 s.4  
London County Council (General Powers) Act 1938  
London County Council (General Powers) Act 1954 s.20  
London Local Authorities Act 1994 s.4  
London Local Authorities Act 1995 Part III  
Lotteries and Amusements Act 1976 and amendments  
Malicious Communications Act 1988  
Marine etc. Broadcasting (Offences) Act 1967  
Meat Products and Spreadable Fish Products Regulations 1984 (as amended)  
Medical Act 1983 s.49  
Medicines Act 1968 s.85-97  
Medicines (Advertising) Regulations 1994 (as amended)  
Medicines for Human Use (Marketing Authorisations) Regulations 1994  
Medicines (Labelling and Advertising to the Public) Regulations 1978  
Medicines (Monitoring of Advertising) Regulations 1994 (as amended)  
Metropolitan Police Act 1839 s.54  
Metropolitan Streets Act 1867 s.9  
Milk and Milk Products (Protection of Designations) Regulations 1990  
Misrepresentation Act 1967  
~~Mock Auctions Act 1961 s.1~~

Motor Cars (Driving Instruction) Regulations 1989 (as amended)  
National Lottery etc Act 1993 (as amended)  
National Lottery Regulations 1994  
Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations 1999  
Newspapers, Printers and Reading Room Repeal Act 1869, Schedule 2  
Nightwear (Safety) Regulations 1985 (as amended)  
Noise and Statutory Nuisance Act 1993 s.2 & Schedule 2  
Nurses Agencies Act 1957  
Nurses Midwives and Health Visitors Act 1997  
Obscene Publications Act 1959 (as amended)  
Office of Communications Act 2002  
Olympic Symbol etc (Protection) Act 1995  
Opticians Act 1989 s.31 and Regulations  
Organic Products Regulations 2001  
Package Travel, Package Holidays and Package Tours Regulations 1992 (as amended)  
Passenger Car Fuel Consumption Order 1983 (as amended)  
Pensions Schemes Act 1993 s.117  
Personal Pension Schemes (Advertisements) Regulations 1990 (as amended)  
Plant Varieties Act 1997  
Political Parties, Elections and Referendums Act 2000  
Postal Services Act 2000 s.86  
Prevention of Corruption Acts 1889-1916  
Price Indications (Bureau de Change) (No 2) Regulations 1992  
Price Indications (Method of Payment) Regulations 1991  
Price Indications (Resale of Tickets) Regulations 1994  
~~Price Marking (Food and Drink on Premises) Order 2003~~  
Price Marking Order 2004  
Private Hire Vehicles (London) Act 1998  
Property Misdemeanors Act 1991  
Protection of Animals Act 1911 (as amended)  
Protection of Children Act 1978 s.1  
Protection of Children (Tobacco) Act 1986

Public Order Act 1986 s.5 and s.19  
Pyramid Selling Schemes Regulations 1989 (as amended)  
Race Relations Act 1976 s.29  
Registered Designs Act 1949 as amended s.7 & 26  
Registered Designs Regulations 2001  
Rent Act 1977 s.119-128  
Representation of the People Act 1983 s.75, 106, 109-110 & 115  
Representation of the People (England and Wales) (Amendment) Regulations 2002  
Representation of the People (Form of Canvass) (England and Wales) Regulations 2004  
Restriction of Offensive Weapons Act 1959 (as amended) s.1  
Restriction on Agreements (Estate Agents) Order 1970  
Road Traffic Act 1988 s.135  
Road Traffic Regulation Act 1984 s.35  
Sale and Supply of Goods to Consumers Regulations 2002  
Sale of Goods Act 1979 (as amended) s.14  
Seeds (National List of Varieties) Regulations 2001  
Sex Discrimination Act 1975 as amended s.38  
Solicitors Act 1974 s.21  
Specified Sugar Products Regulations 1976 (as amended)  
Spreadable Fats (Marketing Standards) (England) Regulations 1999  
Sunday Entertainments Act 1932  
Sunday Observance Act 1780  
Sunday Theatre Act 1972 s.1  
Sunday Trading Act 1994  
Supply of Extended Warranties on Domestic Electrical Goods Order 2005  
Supply of Goods and Services Act 1982 (as amended) s.4, 9 & 11  
Supply of New Cars Order 2002 s.3  
Surrogacy Arrangements Act 1985 s.3  
Tattooing of Minors Act 1969  
Telecommunications Act 1984 s. 86-87  
Telecommunication Apparatus (Advertisements) Order 1985 (as amended)

Telecommunications (Data Protection and Privacy) Regulations 1999  
Terrorism Act 2000 s.12 & 15  
Textile Products (Indications of Fibre Content) Regulations 1986  
Theft Acts 1968 and 1978  
Timeshare Act 1992  
Timeshare Regulations 1997  
Tobacco Advertising and Promotion Act 2002  
Tobacco Advertising and Promotion (Brandsharing) Regulations 2004  
Tobacco Advertising and Promotion (Point of Sale) Regulations 2004  
Tobacco Products Regulations 2001  
Town and Country Planning Act 1990 as amended s.220-224  
Town and Country Planning Act (Control of Advertisements) Regulations 1992 (as amended)  
Trade Descriptions Act 1968  
Trade Descriptions (Sealskin Goods) (Information) Order 1980  
Trade Marks Act 1994 s.9-11  
Trade Union and Labour Relations (Consolidation) Act 1992 s.137  
Trading Schemes Act 1996  
Trading Schemes Regulations 1997  
Trading Stamps Act 1964  
Unfair Contract Terms Act 1977  
Unfair Terms in Consumer Contracts Regulations 1994  
Unsolicited Goods and Services Act 1971 as amended s.4  
Unsolicited Goods and Services Act 1971 (Electronic Communications) Order 2001  
Veterinary Surgeons Act 1966 s.19-20  
Video Recording Act 1984  
Weights and Measures Act 1985  
Wildlife and Countryside Act 1981 s.6  
Wireless Telegraphy Act 1949

## **Appendix 3 – Prohibited Categories**

**Advertisements for products and services coming within the recognised character of, or specifically concerned with, the following are not acceptable:**

- a) Those who practise or advocate illegal or harmful, or potentially harmful, behaviour;**
- b) Betting tipsters;**
- c) Tobacco and tobacco products, including cigars and pipe tobacco (see Section 3, Rule 10);**
- d) Firearms and other weaponry (see Section 3, Rule 17);**
- e) Obscene and restricted material, prostitution and other sexual services (see Section 3, Rule 16);**
- f) Bodies whose rites and other forms of collective observance are not generally accessible to the public (see Section 3, Rule 3);**
- g) Advertisements of a political nature (see Section 2, Rule 15);**
- h) Prescription only Medicines (POMs).**

An advertisement for an acceptable product or service may be withdrawn if the ASA considers that a significant effect is to publicise indirectly an unacceptable product or service.

### **i) Pyramid schemes**

Pyramid schemes are those under which consumers pay or give other consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme, not the sale or consumption of products.

Annex practice 14: Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products

#### **Appendix 4: summary of the effect of the Consumer Protection from Unfair Trading Regulations 2008**

As well as this Code, radio advertising is subject to legislation. You can find a non-exhaustive list of legislation affecting broadcasting in Appendix 2.

One important piece of legislation that affects radio advertising is the Unfair Commercial Practices Regulations 2007 (the Regulations). The Regulations prohibit unfair advertising to consumers, including misleading and aggressive advertising. Whenever it considers complaints that an advertisement misleads consumers or is aggressive or unfair to consumers, the ASA will have regard to the Regulations. That means it will take factors identified in the Regulations into account when it considers whether advertisements breach the BCAP Radio Advertising Standards Code.

Many rules in this Code prohibit misleading advertising. All rules that refer to misleading advertising should be read, in relation to business-to-consumer advertising, in conjunction with the notes below.

#### Consumers

The likely effect of an advertisement is generally considered from the point of view of the average consumer who it reaches or to whom it is addressed. The average consumer is assumed to be reasonably well-informed, observant and circumspect.

In some circumstances, an advertisement may be considered from the point of view of the average member of a specific group:

- If the ad is directed to a particular audience group, the advertisement will be considered from the point of view of the average member of that group.
- If an advertisement is likely to affect the economic behaviour only of a clearly identifiable group of people who are particularly vulnerable to its contents, in a way that the advertiser could reasonably be expected to foresee, because of mental or physical infirmity, age or credulity, then the advertisement will be considered from the point of view of the average member of the affected group.



## Unfair advertising

Advertisements are unfair if they

- are contrary to the requirements of professional diligence and
- are likely to materially distort the economic behaviour of consumers in relation to the advertised goods or services.

“Professional diligence” is the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader’s field of activity.

## Misleading advertising

Advertisements are misleading if they

- are likely to deceive consumers and
- are likely to cause consumers to take transactional decisions that they would not otherwise have taken.

A “transactional decision” is any decision taken by a consumer, whether it is to act or to refrain from acting, concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or whether, how and on what terms to exercise a contractual right in relation to a product.

Advertisements can deceive consumers by ambiguity, through presentation or by omitting important information that consumers need to make an informed transactional decision, as well as by including false information

## Aggressive advertising

Advertisements are aggressive if, taking all circumstances into account, they

- are likely to significantly impair the average consumer’s freedom of choice through harassment, coercion or undue influence and
- are therefore likely to cause consumers to take transactional decisions they would not otherwise have taken.