

## SECTION 2: RECOGNITION OF MARKETING COMMUNICATIONS

### Question 2:

- i) Taking into account its general policy objectives, do you agree that CAP's rules, included in the proposed Recognition of Marketing Communications Section, are necessary and easily understandable? If your answer is no, please explain why.
- ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Recognition of Marketing Communications rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that you believe should be retained or otherwise given dedicated consideration?
- iii) Do you have other comments on this section?

<i>Responses received from:</i>	<i>Advertising Association</i>	<i>CAP's evaluation of those points and action points:</i>
Advertising Association; Alliance Boots; Asda; Association for Interactive Media and Entertainment (AIME); Charity Law Association; Department for Children, Schools & Families;	<p><i>AIME</i> <i>Asda</i> <i>E.ON</i> <i>Home Retail Group</i> <i>Institute of Practitioners in Advertising</i> <i>Proprietary Association of Great Britain</i> <i>Redcats</i> <i>RWE npower</i></p> <p><i>An individual</i> <i>An organisation</i></p> <p>These respondents agreed that the proposed rules are necessary and easily understandable, and did not identify any changes from the present to the</p>	

<p>E.ON; Home Retail Group; Institute of Practitioners in Advertising; Institute of Sales Promotion; Mobile Entertainment Forum; Proprietary Association of Great Britain; Redcats; RWE npower;</p> <p>An individual</p> <p>Two organisations</p>	<p>proposed rules that would amount to a significant change in advertising policy and practice, apart from those highlighted in the consultation document.</p> <p><b>Summaries of significant points:</b></p> <p>1. <i>Alliance Boots:</i> Are the rules are intended to be guidance to statutory provisions? CAP should be careful not to go beyond the law and not go into unnecessary detail.</p> <p>2. <i>An organisation:</i> Asked for clarification about which definitions of email would apply; the CAP Code differentiates between email and SMS messages while PECR defines electronic mail as including text messages. If the PECR definition were applied it would be impossible to comply with rule 2.2 for SMS messages as it is not possible to ascertain the nature of an SMS message until it is opened.</p>	<p>1. The CAP Code is not intended to be guidance to statutory provisions and CAP takes great care not to go beyond the law where maximum harmonisation measures are in place; however, CAP considers it necessary to provide detailed rules for marketers to ensure that consumers are not misled.</p> <p>2. The definitions in the introduction to the CAP Code clearly differentiate between email and SMS messaging and these are the definitions that would be applied in relation to CAP rules</p> <p>The introduction to the Code states:</p> <p><b>The Code applies to:</b> <i>a) advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions (including SMS and MMS), fax transmissions, catalogues, follow-up literature and other electronic or printed material</i></p>
---	--	--

	<p>3. <i>Charity Law Association said:</i> Propose alternative wording for rule 2.3: "...marketing communications must make clear that it is a commercial communication...". This would avoid confusion when trying to determine 'commercial intent' in the context of commercial activities.</p> <p>4. <i>DCSF said:</i> There should be specific provision to ensure separation of advertising within children's editorial content</p> <p>5. <i>Institute of Sales Promotions said:</i> Respondent favours the word 'Advertorial' instead</p>	<p>3. CAP considers that the respondent's proposed wording offers no further clarity.</p> <p>For clarity, CAP has added a 'Principle' paragraph at the top of this section referring to other relevant sections, including Charity-linked promotions and Children:</p> <p><i>"Other Sections of the Code contain product-specific or audience-specific rules that are intended to protect consumers from misleading marketing communications. For example, the Charity-linked promotions and Children Sections of the Code contain rules that apply, as well as the general rules, to marketing communications that fall under those Sections."</i></p> <p>4. CAP's Recognition of Advertising rules apply to all non-broadcast media, regardless of its content. The ASA would enforce those rules rigorously no matter the age profile of the target audience.</p> <p>The Code includes many rules that protect children who CAP acknowledges can be more credulous and therefore vulnerable to certain advertising techniques.</p> <p>5. Rule suggests 'advertisement feature' as an example – 'advertorial' would also be permitted.</p>
--	---	--

	<p>of ‘advertisement feature’ to differentiate editorial from advertising content in rule 2.4</p> <p>6.  <i>Mobile Entertainment Forum said:</i>          PhonepayPlus (PP+) is tasked with the regulation of premium rate services which includes both their content and promotion. There are provisions in the CAP (and BCAP) Codes that specifically cover promotions advertising premium rate services. We would like the ASA to refer all complaints about the advertising of premium rate services to PP+ in the first instance unless the issue is one purely of advertising.</p>	<p>6.          The introduction to the CAP Code clarifies its remit in relation to PP+:</p> <p><b><i>“The Code does not apply to:</i></b>  <i>b) the contents of premium-rate services, which are the responsibility of PhonepayPlus; marketing communications that promote those services are subject to PhonepayPlus regulation and to the CAP Code.”</i></p>
--	--	---