



The BCAP Code Review  
Consultation on the proposed BCAP  
Broadcast Advertising Standards Code

19<sup>th</sup> June 2009



**DANONE POSITION – The BCAP Code Review**

19th June 2009

**Introduction**

Danone is one of the most successful healthy food companies in the world. We are a world leader in fresh dairy products, bottled water and baby foods & formulas, all of which advertise to consumers. Its dominant position worldwide is based on major international brands and on its solid presence in local markets (about 80% of global sales come from brands that are local market leaders). The

Groupe employs almost 90,000 people in more than 120 countries, with a mission to bring health through food and beverage products to as many people as possible.

The worldwide Groupe Danone has three businesses in the UK – Danone UK Ltd, Danone Waters UK & Ireland, and Nutricia Ltd. Danone UK Ltd is the dairy business responsible for Britain's best-selling probiotic drink, Actimel. Its portfolio also includes Activia and Shape yogurts. Danone Waters UK & Ireland is responsible for Evian – the world's best-selling mineral water brand. Its portfolio also includes Badoit and the Volvic range, which includes Touch of Fruit and Revive. Nutricia Ltd is responsible for the well known baby brands, Cow & Gate and Aptamil,

As an active and responsible user of a number of nutrition and health claims, we support the integration of the Regulation (EC) No 1924/2006 on nutrition and health claims made on foods (NHCR 1924/2006) into the BCAP Code. Furthermore, for 2008 Danone was within the top 50 biggest TV advertisers, making it a key stakeholder to this consultation. We welcome this opportunity to provide input into the BCAP Code Review – Consultation on the proposed BCAP Advertising Standards Code.

### **Summary of Danone Position on the BCAP Consultation Document**

Danone fully supports this review of the BCAP Codes and the compiling of the four Codes (the BCAP Television Advertising Standards Code, the BCAP Rules on the Scheduling of Television Advertisements, the BCAP Advertising Standards Code for Text Services and the BCAP Radio Advertising Standards Code) into one consolidated BCAP Code.

In summary, Danone would like to highlight the following key points -

- Throughout the following comments Danone has submitted on the need for alternative wording to the claims authorised under Article 13 and Article 14 of the NHCR 1924/2006 to be permitted. The alternative wording needs to be used with a degree of controlled flexibility to ensure that consumers are not misled.
- Danone submits that controlled flexibility should be based on the following principles:
  - advertisers should be responsible for carrying out consumer studies to demonstrate that the proposed alternative wording of the authorised claims are well understood by consumers within the local context of UK advertising and are not misleading; and
  - that these consumer studies are based on an acknowledged methodology at EU level.
- Danone agrees with the addition of Rule 1.2 that advertisements must be prepared with a sense of social responsibility. Danone develops its advertising giving consideration to social responsibility already; however having this stated explicitly within the Code reflects the standard that all advertising must give regard to. Furthermore, it allows for rules, such as proposed Rule 13.6.3 (health claims that refer to the recommendation of an individual health professional), to be added to the BCAP Code explicitly.
- Due to the substantial length of this document Danone has chosen to comment only on those questions to which we do not agree with, or offer comment where we believe further clarity or amendment is necessary. No comment has been made on amendments which we agree with.

The following pages address the questions raised in the BCAP Code Review – Consultation on the proposed BCAP Broadcast Advertising Standards Code.

### **Section 3: Misleading**

#### **Significant division of informed opinion**

##### **Question 9**

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

No. Danone does not agree that Rule 3.13 should be included in the Code (Advertisements must not suggest that their claims are universally accepted if a significant division of informed or scientific opinion exists) without clarity as to the definition of "significant division of informed or scientific opinion."

The process of authorising claims under the NHCR 1924/2006 should circumvent the need for this Rule. However, if this Rule is added to the BCAP Code, clarity on its application is required. For example, if a claim is authorised under the NHCR 1924/2006 and a complaint is laid under the proposed Rule 3.13, under what jurisdiction do ASA have to investigate the complaint? Also, to what degree would a division of opinion be considered 'significant,' for example, would a complaint from one or two experts in a particular field be considered sufficiently significant? Danone submits that Rule 3.13 is not necessary within the BCAP Code and if it is added, guidance and clarity is sought as to the practical application of this Rule.

#### **Other questions**

##### **Question 23**

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

No. As stated above, Danone does not believe that Rule 3.13 should be included in the Code as it is already covered through NHCR 1924/2006 and if it is added, Danone requests clarity and guidance as to its application.

Furthermore, Danone seeks clarity on proposed Rule 3.44 – *"Testimonials or endorsements used in advertising must be genuine, unless they are obviously fictitious, and be supported by documentary evidence. Testimonials and endorsements must relate to the advertised product or service. Claims that are likely to be interpreted as factual and appear in the advertisements must not mislead."* The final sentence of this Rule is true for all claims and of no particular relevance to testimonial statements only. Danone submits that the intention of the provision has been lost. It is the testimonials, as a form of communication, not just the claims themselves used within the communication, which must not mislead consumers.

Danone proposes that the testimonial Rule 5.4.9 from the current BCAP Code is retained so that the amendments to the proposed Rule 3.44 is the following - *Testimonials or endorsements used in advertising must be genuine, unless they are obviously fictitious, and be supported by documentary evidence. Testimonials and endorsements must relate to the advertised product or service. ~~Claims that are likely to be interpreted as factual and appear in the advertisements must not mislead.~~ Testimonials that are likely to be interpreted as factual claims must not mislead consumers.*

iii) Do you have other comments on this section?

Danone does not agree that the advertiser's intentions should not be considered by the ASA in making an adjudication under the Principle of Misleading

Advertising in proposed Code). Therefore, Danone propose the following amendment to the Principle – *“The ASA will take into account the impression created by advertisements as well as specific claims and will adjudicate on the basis of the likely effect on the consumers, ~~not the advertiser’s intentions.~~”*

Danone submits that advertisers should be permitted to use alternative wording to the claims which are authorised under Article 13 and Article 14 of the NHCR 1924/2006. The alternative wording should be understood by consumers and should not be misleading. Therefore, Danone submits that when an advertiser makes a claim which uses alternative wording to that authorised under Article 13 and Article 14 of the NHCR 1924/2006, the onus should be on the advertiser to prove that consumers understand the claims and are not misled. The advertiser, in considering consumer understanding, would need to carry out consumer studies on the communication and produce evidence of the impression and effect that the communication and/or claims had on consumers. Therefore, the advertiser’s intentions need to be considered when claims are made which use alternative wording and the amendment proposed above reflects this need.

Further to this, a consistent standard for measuring the impression and likely effect on consumers when using alternative wordings is necessary. Therefore, a robust methodology to measure consumer understanding is required. Such a methodology should be capable of application across a variety of products and types of communication and it should be acknowledged at the EU level.

The inclusion of these principles in the proposed BCAP Code aligns with the provisions of the NHCR 1924/2006 where claims on food must be well understood by consumers and consumers must be protected from misleading claims.

### **Section 13: Food, Dietary Supplements and Associated Health and Nutrition Claims**

#### **Permitted nutrition and health claims**

##### **Question 78**

Do you agree that BCAP has correctly reflected the requirements of Articles 8(1), 10(1) and 28 of the NHCR in BCAP’s proposed rules 13.4 and 13.4.1? If your answer is no, please explain why.

No. While Article 8.1 is reflected accurately with reference to the use of nutrition claims that would have the *same meaning* to consumers being permitted (Rule 13.4.1), Article 10 is not reflected with similar accuracy. Danone believes that alternative wordings to the claims authorised under Article 13 and Article 14 of the NHCR 1924/2006 should be permitted provided that consumers understand the claim and are not misled.

#### **Nutrition Claims**

Danone agrees with the inclusion of Rule 13.4.1 which applies to the use of nutrition claims in advertising. Permitted nutrition claims or claims which would have the same meaning for consumers as those authorised under the NHCR 1924/2006 must be used in compliance with those criteria outlined in the Annex to NHCR 1924/2006.

The proposed Rule 13.4.1 clearly states that not only those claims which are outlined in the Annex, but also those which may be shown to have the *same meaning* to consumers, may be used in advertising. This allows for some flexibility in the way nutrition claims are presented provided that consumers interpret the claims to mean the same thing as the authorised claim. For

example, it is envisaged under Rule 13.4.1 that “Rich in Calcium” may be claimed on a product despite its exclusion from the Annex, as it has the same meaning for a consumer as “High in Calcium” (provided it fulfils the requirements of the Annex for a “high in” claim).

#### Health Claims

Danone believes that a similar level of flexibility in the wording of nutrition claims as expressed in Rule 13.4.1 should be applied to health claims authorised under Article 13 and Article 14 of the NHCR 1924/2006. This should be reflected within Rule 13.4 Nutrition and Health Claims and the following amendments to the Rule are proposed:

*“Authorised health claims in the Community Register or claims that would have the same meaning for the audience may be used in advertisements.”*

#### **Comparative nutrition claims**

##### **Question 80**

Do you agree that BCAP has correctly reflected the requirements of Article 9 of the NHCR in BCAP’s proposed rules 13.5.1 and 13.5.3? If your answer is no, please explain why.

No. Danone does not agree with Rule 13.5.1 which reads *“Comparative nutrition claims must show any differences between a product bearing a Permitted Nutrition Claim and food of the same category.”* It is not a requirement of Article 9 of the NHCR 1924/2006 to *show any differences* between the comparable products. This Rule goes beyond the requirements of Article 9 by seemingly requesting the advertiser to declare any other compositional differences between the products in question. Article 9 only requests that the advertiser when making a comparative claim:

- Considers a range of foods within the category for comparing the particular nutrient and/or energy value to, i.e. the advertiser could take the average amount of a nutrient and/or energy value from the foods within the same category to compare their products nutrient and/or energy value to;
- The advertiser must state this difference in their advertising;
- The comparison must be between the same quantity of product; and
- The comparison cannot be made to other products which also have the capacity to bear that claim.

Danone suggests the following amendment to Rule 13.5.1 in order to reflect Article 9 of the NHCR 1924/2006 –

*“Comparative nutrition claims must ~~show any differences between a product bearing a Permitted Nutrition Claim and food of the same category~~ compare the composition of the food bearing the claim to a range of foods that have a composition which does not enable them to bear the same claim.”*

If this does not reflect the intention of the proposed Rule 13.5.1 then greater clarification is sought on how Rule 13.5.1 should be interpreted.

#### **Food Labelling Regulations (1996) (FLRs)**

##### **Question 84**

i) Do you agree that BCAP has correctly reflected the requirements of Article 14 of the NHCR and Schedule 6 Part 1(2) of the FLRs in BCAP’s proposed rules 13.6 and 13.6.2? If your answer is no, please explain why.

No. Danone submits the need for alternative wording of claims authorised under Article 14 and of the NHCR 1924/2006 provided that consumers are not misled by such claims. Danone proposes the following amendments to Rule 13.6 and Rule 13.6.2 in order to encompass these principles:

*"Claims that state or imply that prevents, treats or cures human disease. ~~With the exception of reduction of disease risk claims are acceptable if authorised by the European Commission~~ authorised under Article 14 of the NHCR 1924.2006 and any claim likely to have the same meaning for the audience."*

ii) Do you agree that BCAP has correctly reflected the relevant provisions of Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods in the proposed BCAP Code? If your answer is no, please explain why.

No. A key principle of the NHCR 1924/2006 is that *"claims on food should be well understood by consumers and it is appropriate to protect all consumers from misleading claims... where a claim is specifically aimed at a particular group of consumers ... it is desirable that the impact of the claim be assessed from the perspective of the average member of that group ... National courts and authorities will have to exercise their own faculty of judgment ...to determine the typical reaction of the average consumer in the given case."* Furthermore, Article 13.1 (c)(ii) provides that *"all health claims ... are well understood by the average consumer."* Therefore, this overarching principle in NHCR 1924/2006 of consumer understanding and ensuring that consumers are not misled by health claims needs to be encompassed further within the BCAP Code so as to reflect its practical application.

In accordance with this key principle Danone submits that advertisers should be permitted to use alternative wording to the claims which are authorised under Article 13 and Article 14 of the NHCR 1924/2006. The need for alternative wording can be highlighted by the recent positive opinion given by EFSA on the relationship between tomato concentrate and blood platelet aggregation. Although the European Commission are yet to make a decision on this opinion and Danone has not done any consumer studies on this health relationship, a communication on blood platelet aggregation may not be well understood by consumers. Therefore a claim using alternative wording which is shown to be well understood and not misleading should be permitted.

The onus should be on the advertiser to use the alternative wording responsibly within their local context and to conduct consumer studies on the communication to ensure it meets the principles of the NHCR 1924/2006.

The consumer studies should be based on a robust methodology which is capable of application across a variety of products and types of communication. The methodology should be acknowledged at the EU level.

## **Conclusion**

In conclusion, Danone fully supports this review of the BCAP Codes and the compiling of the four Codes into one consolidated BCAP Code. We believe there is a need for alternative wording to be permitted to those claims authorised under the NHCR 1924/2006 Article 13 and Article 14 provided there is controlled flexibility in how these claims are made. It should be the responsibility of the advertiser to ensure that consumer understanding of the alternative wording and such consumer understanding should be measured via an EU acknowledged methodology.

If there are any further questions or concerns regarding this submission, please contact Jane Hartstone, Regulatory Manager for Danone UK and Danone DWUK at [jane.hartstone@danone.com](mailto:jane.hartstone@danone.com) or +44 (0) 7920072648.

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## **Response from the Department for Children, Schools and Families (DCSF) on the CAP/BCAP consultation Addendum**

This document forms the response from the Department for Children, Schools and Families to the consultation Addendum on proposed BCAP and CAP Codes of Advertising Practice. We have consulted the Department of Health who are responding separately.

Our comments are as follows.

The consultation suggests that the Sheffield University (ScHARR) review “does not offer persuasive evidence to support a proposal to further strengthen the alcohol advertising rules”.

The conclusion reached in the addenda does not appear to reflect the weight of the evidence statements contained within the ScHARR review and particularly the evidence of the connection between advertising and consumption. This is set out most clearly in evidence statements 6 and 10, which state:

“There is conclusive evidence of a small but consistent association of advertising with consumption at a population level. There is also evidence of small but consistent effects of advertising on consumption of alcohol by young people at an individual level”

“There is consistent evidence from longitudinal studies that exposure to TV and other broadcast media is associated with inception of and levels of drinking [by young people]”

It is also disappointing that the Addenda have not reviewed other recent developments in the evidence-base. We would like to bring to your attention the review by the European Alcohol & Health Forum’s Science Group whose findings were consistent with Sheffield’s conclusions. The Group also identified a *dose response relationship* between alcohol advertising and consumption by young people, finding that changes in exposure lead to proportionate changes in consumption. This appears to further undermine the conclusion set out in the current addenda.

As Department of Health colleagues have set out in their response, these findings, combined with the high levels of public concern about the impact of alcohol advertising on young people would lead us to expect the CAP/BCAP consultation to include:

- some discussion of research gaps and how they might potentially be filled
- whether the absence of a strong evidence base for particular interventions, particularly where little research has taken place, necessarily means that no impact should be expected from such interventions
- Further discussion of whether the evidence of a link between alcohol advertising and drinking of alcohol by young people requires an approach that looks to reduce the exposure of young people to alcohol advertising. Currently, the framework seeks to prevent targeting of young people. Even if such a change was thought



premature, some discussion to indicate what nature and level of evidence might justify a different approach should, surely, be expected

This would seem a more appropriate than the conclusion that no further action should be taken

DCSF would like the issues set out here to be considered as part of the consultation process.

DCSF  
June 2009

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Date: 19 June 2009

### **Response from the Department for Children, Schools and Families on the CAP/BCAP consultations on proposed Advertising Standards Codes**

This letter constitutes the response from the Department for Children, Schools and Families (DCSF) to the consultation on proposed BCAP and CAP Codes of Advertising Practice.

This is an overarching response on behalf of DCSF and does not respond to all the individual questions. Detailed points relating to food will be addressed in a response from the Department of Health (Cross Government Obesity Team) and the Food Standards Agency. Issues relating to alcohol will be included in a response to the SchARR assessment review due 10 July 2009.

The range of organisations consulted on these codes is varied and aimed at advertisers and their agencies. *It is not clear what attempts have been made to involve children and their parents.* Experience has indicated that the involvement of children and parents can provide beneficial insight into how these kinds of issues are viewed and interpreted. DCSF would be willing to help in engaging children and parents.

Given that both the CAP and BCAP consultations ask if the information is easily understandable, DCSF would like to see more user-friendly information made available to families, explaining the advertising codes and what that means for them. Such information should also provide details of how, if there is a concern over advertising, a complaint can be made to the ASA.

#### **CAP Consultation**

It would be helpful if the principles set out the position with relation to children and include a principle of the order of: Special care must be taken with marketing communications aimed at children and not exploit their inexperience, credulity or sense of loyalty.

We are pleased that the CAP code will maintain a separate section relating specifically to children.

The rules relating to marketing communications that contain promotions of appeal to children should stipulate the need for the promotion to be age appropriate.

We would like to see present rule 4.7 remain. It is not clear that children will necessarily understand the ability to refuse visits and DMA guidelines. This rule provides them with some redress.

We are not convinced that owning Bluetooth technology automatically implies consent, as children may have access to such technology without understanding the implications.

The rules relating to database practice will need to be constantly updated to reflect new and emerging technologies and consideration should be given to any special issues that emerge relating specifically to children.

### **BCAP Consultation**

There needs to be some clarity over whether the notes that support the rules will still apply following the proposed revisions.

We are pleased that the code will maintain a separate section relating specifically to children.

Children do not always have the ability to distinguish between editorial and advertising content. Therefore we would want rule 2.1 to read:

Advertisements must be obviously distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement. This is important for advertisements in and around children's programming.

In terms of expensive products of interest to children, family income is varied and wide ranging. DCSF's work with parents would indicate that £20 or more is expensive, not the £30 specified in the consultation. This is a specific area on which BCAP may want to consult families.

DCSF is supportive of the introduction of a rule that prohibits advertisements for a promotion directly targeted at children if they include a direct exhortation to buy a product.

DCSF is supportive of the rule changes relating to computer and console games.

DCSF  
June 2009

Department for Culture, Media and Sport  
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Mr Andrew Brown  
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9 April 2009

Dear Mr Brown

Thank you for your letter of March 26<sup>th</sup> 2009 addressed to the Secretary of State for Culture, Media and Sport, the Rt Hon Andy Burnham MP, about the 12-week public consultation on the content of the United Kingdom Advertising Codes. Your letter has been transferred to me for response as this issue forms part of my Ministerial responsibilities.

The Government recognises the importance of the work being done by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) to review the United Kingdom's advertising standards.

As you rightly say, it is essential that our advertising codes are fit for the 21<sup>st</sup> century and that they continue to provide the highest levels of consumer protection, particularly in the light of the rapid changes to the digital media environment we are experiencing.

We welcome the public consultation you have recently launched and we look forward to the outcome. In the meantime, my officials will continue to keep in close contact with CAP and BCAP as this work progresses.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Barbara Follett', with a stylized, cursive script.

**BARBARA FOLLETT**  
Parliamentary Under Secretary



## **Section 1: Compliance**

### **Social responsibility**

#### **Question 1**

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

### **Other Questions**

#### **Question 2**

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

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

iii) Do you have other comments on this section?

## **Section 2: Recognition of Advertising**

### **TV advertisement content prohibitions**

#### **Question 3**

i) Given BCAP's policy consideration, do you agree that rule 2.1 should replace present TV rules 2.1.2 (b) and 2.2.2 (c), be applied to TV and radio and be included in the proposed BCAP Code? If your answer is no, please explain why.

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

### **Extra consideration of rule 2.1.2(a)**

#### **Question 4**

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

### **Editorial independence: television**

### **Question 5**

- i) Given BCAP's policy consideration, do you agree that present TV rule 2.2.1 should not be included in the proposed BCAP Code? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that present TV rule 2.2.2 (a) should not be included in the proposed BCAP Code? If your answer is no, please explain why.

### **Impartiality of station presenters and newsreaders**

### **Question 6**

- i) Given BCAP's policy consideration, do you agree that radio rule 18, section 2, should not be included in the proposed Code? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that radio station presenters who do not currently and regularly read the news should be exempted from the rule that restricts presenters from featuring in radio advertisements that promote a product or service that could be seen to compromise the impartiality of their programming role? If your answer is no, please explain why.

### **Other questions**

### **Question 7**

- i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules on the Recognition of Advertising are necessary and easily understandable? If your answer is no, please explain why.
- ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Recognition of Advertising rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here or in Section 32 on Scheduling and that should be retained or otherwise be given dedicated consideration?
- iii) Do you have other comments on this section?

## **Section 3: Misleading**

### **Puffery and subjective claims**

### **Question 8**

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



### Significant division of informed opinion

#### Question 9

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

### Prices claims "from" or "up to"

#### Question 10

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

### Estimates of demand

#### Question 11

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

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

### Recommended Retail Prices (RRPs)

#### Question 12

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

### Subliminal techniques

#### Question 13

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

### VAT-exclusive prices

#### Question 14

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

### **Tax-exclusive prices**

#### **Question 15**

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

### **Price offers that depend on other commitments**

#### **Question 16**

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

### **Use of the word "free"**

#### **Question 17**

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

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

### **Geographical restrictions**

#### **Question 18**

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

### **Imitation or replica of competitor's trade mark**

#### **Question 19**

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

### **Animal testing**

#### **Question 20**

Given BCAP's Policy consideration, do you agree that rule 5.2.7 should not be included in the Code? If your answer is no, please explain why.

**Advertisements for solicitors and advertisements for conditional fee arrangements which claim, 'no win no fee'.**

**Radio advertisements by or on behalf of solicitors**

**Question 21**

Given BCAP's policy consideration, do you agree that it is not necessary to include in the BCAP Code the requirement for advertisements by or on behalf of solicitors to comply with the Solicitors Code of Conduct? If your answer is no, please explain why?

**Radio advertisements for conditional fee arrangements which claim 'no win, no fee'**

**Question 22**

Given BCAP's policy consideration, do you agree that it is not necessary to maintain, in BCAP's proposed Code, a rule that requires advertisements for conditional fee arrangements which claim 'no win, no fee' to suitably qualify 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? If your answer is no, please explain why.

**Other questions**

**Question 23**

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

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

iii) Do you have other comments on this section?

**Section 4: Harm and Offence**

**Crime and anti-social behaviour**

**Question 24**

Do you agree that rule 4.7 should be included in the proposed BCAP Code? If your answer is no, please explain why.

**Protection of the environment – radio**

**Question 25**

Do you agree that proposed rule 4.10 should be included in the proposed BCAP Code? If your answer is no, please explain why.

## Harm

### Question 26

Taking into account its policy consideration, do you agree with BCAP's proposal not to include in the proposed Code the present radio Harm rule (rule 10, section 2 of the present Radio Code)? If your answer is no, please explain why.

## Other questions

### Question 27

i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Harm and Offence 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 Harm and Offence rules that are likely to amount to a significant change in advertising policy and practice, which 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?

## Section 5: Children

### Exploitation of trust

### Question 28

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

### Expensive products of interest to children

### Question 29

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

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

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

## Competitions

### Question 30

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

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

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

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

## Children as presenters in advertisements

### Question 31

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

i) TV rule 7.3.4

ii) Radio rule 11.11 a), section 2

iii) Radio rule 11.11 b), section 2

iv) Radio rule 11.12, section 2

## Children's health and hygiene

### Question 32

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

### Question 33

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

## Other questions

### Question 34

- i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Children section, are necessary and easily understandable? If your answer is no, please explain why.
- ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Children rules that are likely to amount to a significant change in advertising policy and practice, which 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?

## Section 6: Privacy

### Generic advertising for news media

### Question 35

Given BCAP's policy consideration, do you agree that the proposed Code should not require 'generic advertising for news media' to be immediately withdrawn if a complaint is registered that a TV advertisement of that type has featured an individual without his or her prior permission? If your answer is no, please explain why.

## Other questions

### Question 36

- i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Privacy 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 Privacy rules that are likely to amount to a significant change in advertising policy and practice, which 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?

## Section 7: Political and Controversial Issues

### Reflecting the Act

### Question 37

i) Given Ofcom's practical application of the present rule, do you agree that it is appropriate to reflect 321(3) of the Communications Act 2003 in BCAP's proposed rule on Political and Controversial Issues? 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 Political and Controversial Issues rules that you consider are likely to amount to a significant change in advertising policy and practice, which 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?

## **Section 8: Distance Selling**

### **Substitute products**

#### **Question 38**

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

### **Cancellation within seven days**

#### **Question 39**

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

### **Prompt delivery**

#### **Question 40**

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

### **Protection of consumers' money**

#### **Question 41**

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

### **Personal calls from sales representatives**

#### **Question 42**

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

#### **Sending goods without the authority of the recipient**

##### **Question 43**

- i) Given BCAP's policy consideration, do you agree that present TV rule 11.2.2(g) should not be included in the Code? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that 8.3.7 should be included in the Code? If your answer is no, please explain why.

#### **Other questions**

##### **Question 44**

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

### **Section 9: Environmental Claims**

#### **New rules for television**

##### **Question 45**

- i) Given BCAP's policy consideration, do you agree that it is justifiable to take the approach of the present Radio Code and provide detailed rules on environmental claims in a dedicated section of the BCAP Code? If your answer is no, please explain why.
- ii) Taking into account BCAP's general policy consideration, do you agree that BCAP's rules on Environmental Claims are necessary and easily understandable? If your answer is no, please explain why?

#### **Life cycle of the product**

##### **Question 46**



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

### Other Questions

#### Question 47

- i) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?
- ii) Do you have other comments on this section?

### Section 10: Prohibited Categories

#### The acquisition or disposal of units in collective investment schemes not authorised or recognised by the Financial Services Authority

#### Question 48

- i) Given BCAP's policy consideration, do you agree that unregulated collective investment schemes should be a prohibited category of broadcast advertisement, with the caveat that, if a broadcaster can demonstrate compliance with COBS 4.12, BCAP may grant an exemption? If your answer is no, please explain why.
- ii) Do you agree that rule 10.1.9 should be included in the new BCAP Code? If your answer is no, please explain why.

### Betting tips

#### Question 49

- i) Given BCAP's policy consideration, do you agree that the ban on TV and radio advertisements for betting tips should be relaxed? If your answer is no, please explain why.
- ii) Given BCAP's specific policy objectives to protect under 18s and the vulnerable and to prevent misleading and irresponsible claims in betting tipster advertisements, do you agree that BCAP's proposed rules are necessary and easily understood? If your answer is no, please explain why.

### Private investigation agencies

#### Question 50

i) Given BCAP's policy consideration, do you agree that the ban on TV advertisements for private investigation agencies should be relaxed? If your answer is no, please explain why.

ii) Given its specific policy objective, do you agree that BCAP's proposed rule 29.2 is necessary and easily understood? If your answer is no, please explain why.

### **Question 51**

Given BCAP's policy consideration, do you agree that proposed rule 29.1 should be included in the proposed BCAP Code? If your answer is no, please explain why.

### **Commercial services offering individual advice on personal or consumer problems**

### **Question 52**

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

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

### **Question 53**

Given BCAP's policy consideration, do you agree that proposed rule 26.1 should be included in the proposed BCAP Code? If your answer is no, please explain why.

### **Pornography**

### **Question 54**

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

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

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

## Offensive weapons and replica guns

### Question 55

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

### Question 56

Given its policy consideration, do you agree with BCAP's proposal to extend the present radio exception to the rule for references to clay pigeon shoots in advertisements only if they are promoted as part of a wider range of outdoor pursuits? If your answer is no, please explain why.

## Breath-testing devices and products that purport to mask the effects of alcohol

### Question 57

Given its policy consideration, do you agree with BCAP's proposal to extend to radio the present TV ban on advertisements for breath-testing devices and products that purport to mask the effects of alcohol? If your answer is no, please explain why.

## Other Questions

### Question 58

i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Prohibited Categories 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 Prohibited Categories rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

ii) Do you have other comments on this section?

## Section 11: Medicines, Medical Devices, Treatments, and Health

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

### Question 59

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

## Medicinal claims

### Question 60

Given BCAP's policy consideration, do you agree that rule 11.4 should be included in the proposed BCAP Code? If your answer is no, please explain why.

## The use of health professionals in advertisements

### Question 61

- i) Given BCAP's policy consideration, do you agree that, unless prevented by law, it is not necessary to maintain the present prohibition on the use of health professionals in TV advertisements for products that have nutritional, therapeutic or prophylactic effects and in radio advertisements for treatments? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that rules 11.6, 11.7 and 11.8 should be included in the proposed BCAP Code? If your answer is no, please explain why.

## Family planning centres

### Question 62

- i) Given BCAP's policy consideration, do you agree that it is necessary to maintain a rule specific to post-conception advice services and to regulate advertisements for pre-conception advice services through the general rules only?
- ii) Given BCAP's policy consideration, do you agree that rule 11.11 should be included in the proposed BCAP Code? If your answer is no, please explain why.

## Hypnosis-based procedures (including techniques commonly referred to as hypnotherapy), psychiatry, psychology, psychoanalysis or psychotherapy

### Question 63

Given BCAP's policy consideration, do you agree that rule 11.10, supported by rule 11.9, should be included in the proposed BCAP Code? If your answer is no, please explain why.

## Remote personalised advice

### Question 64

- i) Do you think the additional requirement, that advice must be given in accordance with relevant professional codes of conduct should be extended to TV, in rule 11.13? If your answer is no, please explain why.
- ii) Do you think the additional requirement, that advice must be given in accordance with relevant professional codes of conduct should be extended to TV, in rule 12.3 in the Weight Control and Slimming Section? If your answer is no, please explain why.

## Radio: sales promotions in medicine advertisements

### Question 65

Given BCAP's policy consideration, do you agree with BCAP's proposal to delete radio rule 3.4.28? If your answer is no, please explain why.

### Anti-drugs and anti-AIDS messages

#### Question 66

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

### Other questions

#### Question 67

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Medicines, Medical Devices, Treatments and Health 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 Medicines, Medical Devices, Treatments and Health rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

## Section 12: Weight Control and Slimming

### Irresponsible use of a weight-control or slimming product or service

#### Question 68

Given BCAP's policy consideration, do you agree that 12.4, which presently applies to TV advertisements for weight control or slimming products or services, should equally apply to those advertisements on radio? If your answer is no, please explain why.

### Dietary control and weight-loss surgery

#### Question 69

Given BCAP's policy consideration, do you agree that broadcast advertisements for establishments offering weight control or slimming treatments are acceptable only if they make clear that dietary control is necessary to achieve weight loss? If your answer is no, please explain why?

#### Question 70

Given BCAP's policy consideration, do you agree that advertisements for establishments that provide immediate weight loss surgery are acceptable but those must not refer to the amount of weight that can be lost? If your answer is no, please explain why?

## Calorie-reduced or energy-reduced foods and drinks

### Question 71

Given BCAP's policy consideration, do you agree that a broadcast advertisement for a calorie-reduced or energy-reduced food or drink may be targeted at under 18s, provided the advertisement does not present the product as part of a slimming regime and does not use the theme of slimming or weight control? If your answer is no, please explain why.

## Safety and efficacy of slimming or weight control products or services

### Question 72

Given BCAP's policy consideration, do you agree that, before it is advertised, the safety and efficacy of a slimming or weight control product must be assessed by a qualified independent medical professional or another health specialist professional? If your answer is no, please explain why.

## Establishments offering medically supervised treatment

### Question 73

Given BCAP's policy consideration, do you agree that advertisements for overseas clinics and other establishments offering medically supervised treatments are, in principle, acceptable if they are run in accordance with broadly equivalent requirements to those established by the Department of Health's National Minimum Standards Regulations? If your answer is no, please explain why?

## Targeting the obese

### Question 74

Given BCAP's policy consideration, do you agree it is justified to allow advertisements for non-prescription medicines that are indicated for the treatment of obesity and that require the involvement of a pharmacist in the sale or supply of the medicine to target people who are obese? If your answer is no, please explain why?

## Rate of weight loss

### Question 75

Given BCAP's policy consideration, do you agree that rule 12.9 should include a rate of weight loss that is compatible with generally accepted good medical and dietary practice? If your answer is no, please explain why.

## Very Low-Calorie Diets (VLCDs)

### Question 76

Given BCAP's policy consideration, do you agree that rule 12.14.4 should reference 'Obesity: the prevention, identification, assessment and management of overweight and obesity in adults and children' (2006) published by the National Institute for Health and Clinical Excellence' and not Government COMA Report No.31, The Use of Very Low Calorie Diets? If your answer is no, please explain why?

## Other questions

### Question 77

- i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Weight Control and Slimming 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 Weight Control and Slimming rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?
- iii) Do you have other comments on this section?

## Section 13: Food, Dietary Supplements and Associated Health and Nutrition Claims

### Permitted nutrition and health claims

#### Question 78

Do you agree that BCAP has correctly reflected the requirements of Articles 8(1), 10(1) and 28 of the NHCR in BCAP's proposed rules 13.4 and 13.4.1? If your answer is no, please explain why.

### Giving rise to doubt about the safety or nutritional adequacy of another product

#### Question 79

Do you agree that BCAP has correctly reflected the requirements of Article 3(b) of the NHCR in BCAP's proposed rule 13.4.4? If your answer is no, please explain why.

### Comparative nutrition claims

#### Question 80

Do you agree that BCAP has correctly reflected the requirements of Article 9 of the NHCR in BCAP's proposed rules 13.5.1 and 13.5.3? If your answer is no, please explain why.

### Comparison with one product

#### Question 81

Do you agree that BCAP has correctly reflected the requirements of Article 9 of the NHCR and the guidance from the European Commission in BCAP's proposed rule 13.5.2? If your answer is no, please explain why.

### Prohibitions

#### Question 82

Do you agree that BCAP has correctly reflected the requirements of Article 12(a) of the

NHCR in BCAP's proposed rules 13.6 and 13.6.1? If your answer is no, please explain why.

#### **Question 83**

Do you agree that BCAP has correctly reflected the requirements of Article 3(e) of the NHCR in BCAP's proposed rules 13.6 and 13.6.4? If your answer is no, please explain why.

### **Food Labelling Regulations (1996) (FLRs)**

#### **Question 84**

i) Do you agree that BCAP has correctly reflected the requirements of Article 14 of the NHCR and Schedule 6 Part 1(2) of the FLRs in BCAP's proposed rules 13.6 and 13.6.2? If your answer is no, please explain why.

ii) Do you agree that BCAP has correctly reflected the relevant provisions of Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods in the proposed BCAP Code? If your answer is no, please explain why.

### **Infant formula and follow-on formula**

#### **Question 85**

i) Do you agree that BCAP has correctly reflected the requirements of Regulation 21(a) of the Infant and Follow-on Formula Regulations (2007) (amended) in BCAP's proposed rule 13.8? If your answer is no, please explain why.

ii) Do you agree that BCAP has correctly reflected the requirements of Regulation 19 of the Infant Formula and Follow-on Formula Regulations 2007 (amended) in BCAP's proposed rule 13.8.1? If your answer is no, please explain why.

iii) Do you agree that BCAP has correctly reflected the relevant provisions of the Infant and Follow-on Formula Regulations (2007) (amended) in the proposed BCAP Code? If your answer is no, please explain why.

### **Health claims that refer to the recommendation of an individual health professional**

#### **Question 86**

i) Do you agree that BCAP has correctly reflected Article 12(c) of the NHCR in rule 13.6.3? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that the Code should allow broadcast food advertisements to include health claims that refer to a recommendation by an association if that association is a health-related charity or a national representative body of medicine, nutrition or dietetics? If your answer is no, please explain why.

### **Other questions**

#### **Question 87**

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules included in the proposed Food, Dietary supplements and Associated Health and Nutrition



claims 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 Food, Dietary supplements and Associated Health and Nutrition claims rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

## **Section 14: Financial products, services and investments**

### **Interest on savings**

#### **Question 88**

Do you agree that rule 14.7.5 makes clearer the requirement that the nature of the relation between interest rate and variable be stated? If your answer is no, please explain why.

### **Other questions**

#### **Question 89**

i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on financial products, services and investments 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 rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and that should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

## **Section 15: Faith, Religion and Equivalent Systems of Belief**

### **Spiritual benefit in return for donations to the advertised cause**

#### **Question 90**

Given BCAP's policy consideration, do you agree that 15.11, which presently applies to radio advertisements by or that refer to charitable faith-based bodies and that appeal for funds, should also cover those TV advertisements? If your answer is no, please explain why.

### **Unreasonable pressure to join or participate or not opt-out**

#### **Question 91**

Given BCAP's policy consideration, do you agree that 15.2.3 should apply to radio as it presently does to TV? If your answer is no, please explain why.

### **Advertisements for charitable purposes that include recruitment or evangelism**

### **Question 92**

Given BCAP's policy consideration, do you agree that faith advertisements, which appeal for funds for charitable purposes that include or will be accompanied by recruitment or evangelism, are acceptable if that information is made clear in the advertisement? If your answer is no, please explain why.

## **Use in advertisements of sacred or religious music and acts of worship or prayer**

### **Question 93**

Given BCAP's policy consideration, do you agree that present radio rules 3.10 and 3.11, of section 3, need not be included in the proposed Code? If your answer is no, please explain why.

## **Involving viewers in services or ceremonies**

### **Question 94**

Given BCAP's policy consideration, do you agree that present TV rule 10.9 need not be included in the Code? If your answer is no, please explain why.

## **Individual experiences or personal benefits associated with a doctrine**

### **Question 95**

Given BCAP's policy consideration, do you agree that present TV rule 10.10 should not be included in the Code? If your answer is no, please explain why.

## **Counselling**

### **Question 96**

- i) Given BCAP's policy consideration, do you agree that present TV rule 10.11 should not be included in the Code? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that 15.13 should be included in the Code? If your answer is no, please explain why.

## **Advertisements for products related to psychic or occult phenomena**

### **Question 97**

Given BCAP's policy consideration, do you agree to maintain the existing TV and radio requirements on advertisements for products or services concerned with the occult or psychic practices? If your answer is no, please explain why.

## **Other questions**

### **Question 98**

- i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on Faith, Religion and Equivalent Systems of Belief 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 rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

## **Section 16: Charities**

### **Requirement to identify charities**

#### **Question 99**

Given BCAP's policy consideration, do you agree that it is proportionate to replace the requirement for advertisements that include reference to a charity to include, in that advertisement, a list of charities that may benefit from donations with proposed rule 16.5.2? If your answer is no, please explain why.

### **Medicine advertisements and donations to charities**

#### **Question 100**

i) Given BCAP's policy consideration, do you agree that the present TV and radio prohibitions on charity-based promotions in medicine advertisements should be deleted? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that 16.7 should be included in the new code? If your answer is no, please explain why.

### **Complying with Data Protection Legislation**

#### **Question 101**

Given BCAP's policy consideration, do you agree that it is not necessary to require a broadcaster to obtain an assurance that the advertiser will not disclose data to a third party without the client's consent, and the client's name will be promptly deleted on request? If your answer is no, please explain why.

### **Comparisons with other charities**

#### **Question 102**

Given BCAP's policy consideration, do you agree that the present TV and radio prohibitions on comparisons in charity advertisements should be deleted? If your answer is no, please explain why.

### **The right of refund for credit or debit card donations of £50 or more**

#### **Question 103**

Given BCAP's policy consideration, do you agree that the present radio rule, 3.2.4, should be deleted? If your answer is no, please explain why.

## Other questions

### Question 104

- i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules included in the proposed Charities 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 Charities rules that are likely to amount to a significant change in advertising policy and practice, are not reflected here and should be retained or otherwise be given dedicated consideration?
- iii) Do you have other comments on this section?

## Section 17: Gambling

### Consistency; principle

#### Question 105

Given BCAP's policy consideration, do you agree in principle that National Lottery and SLA lottery broadcast advertisements should be regulated by the same rules? If your answer is no, please explain why.

### Consistency; age of appeal of content

#### Question 106

Given BCAP's policy consideration, especially the requirement for consistency in regulation, do you agree it is proportionate to increase the restriction on age of appeal for broadcast National Lottery advertisements from 16+ to 18+? If your answer is no, please explain why.

### Consistency; age at which a person may be featured gambling in a lottery advertisement

#### Question 107

Given BCAP's policy consideration, especially the requirement for consistency in regulation, do you agree it is proportionate to apply rules 18.6 and 18.7 to all broadcast lottery advertisements? If your answer is no, please explain why.

### Consistency; other lottery rules

#### Question 108

Given BCAP's policy consideration, do you agree that the rules included in the Lottery Section of the Code are in line with BCAP's general policy objectives (see Part 1 (4) of this consultation document) and should be applied to broadcast advertisements for the National Lottery as they presently are to broadcast advertisements for other lotteries? If your answer is no, please explain why and, if relevant, please identify those rules that should not be applied to advertisements for the National Lottery.

## Participating in a lottery in a working environment

### Question 109

Given BCAP's policy consideration, do you agree that lottery advertisements should be able to feature participation in a lottery in a working environment? If your answer is no, please explain why.

## Other questions

### Question 110

i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on Gambling and Lotteries 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 rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

## Section 19: Alcohol

### Sales promotions in alcohol advertisements

#### Question 111

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

### Irresponsible handling of alcohol

#### Question 112

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

### Alcoholic strength

#### Question 113

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

### Alcohol in a working environment

#### Question 114

Given BCAP's policy consideration, do you agree that rule 19.14 should be included in the proposed BCAP Code? If your answer is no, please explain why.

## Exception for children featuring incidentally in alcohol advertisements

### Question 115

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

## Low alcohol exceptions

### Question 116

i) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that requires anyone associated with drinking must be, and seem to be, at least 25 years old? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt television advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why.

### Question 117

i) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents implying or encouraging immoderate drinking, including an exemption on buying a round of drinks? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents encouraging excessive consumption via sales promotions? If your answer is no, please explain why.

iii) Given BCAP's policy consideration, do you agree that it is wrong to exempt radio advertisements for low alcohol drinks from the rule that prevents featuring a voiceover of anyone who is or appears to be 24 or under? If your answer is no, please explain why.

## Other questions

### Question 118

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Alcohol 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 Alcohol section that are likely to amount to a significant change in advertising policy and practice, are not reflected here and should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

## Section 20: Motoring

### References to speeds over 70mph

### **Question 119**

- i) Given BCAP's policy consideration, do you agree that it is not justified to maintain a rule that prohibits references to speeds of over 70mph in motoring advertisements? If your answer is no, please explain why.
- ii) Given BCAP's policy consideration, do you agree that rule 20.4 should be included in BCAP's new Code? If your answer is no, please explain why

### **The use of fog lights**

### **Question 120**

Given BCAP's policy consideration, do you agree that the Code should not grant an exemption from proposed rule 20.2 for advertisements that feature a driver on a non-UK public road or in a non-UK public place using his or her fog lights when visibility is good? If your answer is no, please explain why.

### **Other questions**

### **Question 121**

- i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Motoring 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 Motoring rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you consider should be retained or otherwise given dedicated consideration?
- iii) Do you have other comments on this section?

## **Section 22: Premium-Rate Services**

### **PhonepayPlus Code**

### **Question 122**

Given BCAP's policy consideration, do you agree that proposed rules 22.1 to 22.6 and 22.8 should be included in the proposed BCAP Code? If your answer is no, please explain why.

### **Radio advertisements for telecommunications-based sexual entertainment services**

### **Question 123**

Given BCAP's policy consideration, do you agree that proposed rule 23.1 should be included in the proposed BCAP Code? If your answer is no, please explain why.

### **Television advertisements for PRS of a sexual nature**

### **Question 124**

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

#### **Question 125**

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

ii) If your answer is no to question X(i), do you consider the rule should make clear that 'premium-rate call charge' is the only permissible form of payment? If your answer is no, please explain why.

#### **Question 126**

Given BCAP's policy consideration, do you agree that BCAP's rule should not define PRS of a sexual nature as those operating on number ranges designated by Ofcom for those services? If your answer is no, please explain why.

#### **Question 127**

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

#### **Question 128**

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

### **Other Questions**

#### **Question 129**

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

ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Premium-Rate Services rules that you consider are likely to amount to a significant change in advertising policy and practice, which 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?

## **Section 24: Homeworking Schemes**

### **New rules for radio**

#### **Question 130**



i) Given BCAP's policy consideration, do you agree that rules 24.1 and 24.2.1 should be applied to radio advertisements, as they presently are to TV advertisements? If your answer is no, please explain why.

ii) Given BCAP's policy consideration, do you agree that it is not necessary to extend to radio the TV ban on advertisements that involve a charge for raw materials or advertisements that include an offer from the advertiser to buy goods made by the homemaker? If your answer is no, please explain why.

## Other Questions

### Question 131

i) Taking into account its general policy objectives, do you agree that BCAP's rules, included in the proposed Homeworking Schemes 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 Homeworking Schemes rules that are likely to amount to a significant change in advertising policy and practice, which 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?

## Section 25: Instructional Courses

### New rules for radio

#### Question 132

i) Given BCAP's policy consideration, do you agree that rules 25.1 and 25.2 should be applied to radio advertisements, as they presently are to television advertisements? If your answer is no, please explain why.

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

## Unrecognised qualifications

### Question 133

Given BCAP's policy consideration, do you agree with BCAP's proposal not to include present TV rule 11.5b in the proposed BCAP Code? If your answer is no, please explain why.

## Other questions

### Question 134

i) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed Instructional Courses rules that are likely to amount to a significant change in advertising policy and practice, which are not reflected here and that you believe should be retained or otherwise given dedicated consideration?

ii) Do you have other comments on this section?

## **Section 27: Introduction and Dating Services**

### **Precautions when meeting people**

#### **Question 135**

Given BCAP's policy consideration, do you agree that rule 27.4 should be included in the proposed BCAP Code? If your answer is no, please explain why.

### **Data Protection**

#### **Question 136**

Given BCAP's policy consideration, do you agree that it is not necessary to require a broadcaster to obtain an assurance that the advertiser will not disclose data to a third party without the client's consent, and the client's name will be promptly deleted on request? If your answer is no, please explain why.

### **Promiscuity**

#### **Question 137**

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

### **Misleading**

#### **Question 138**

Given BCAP's policy consideration, do you agree it is not necessary to carry over radio rules 3.14 (a) and (d) into the proposed BCAP Code? If your answer is no, please explain why.

### **Location or telephone number**

#### **Question 139**

Given BCAP's policy consideration, do you agree it is not necessary to carry over radio rule 3.14 (b) into the proposed BCAP Code? If your answer is no, please explain why.

### **Other questions**

#### **Question 140**

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Introduction and Dating Services 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 Introduction and Dating Services rules that are likely to

amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

## **Section 28: Competitions**

### **Competitions**

#### **Question 141**

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

ii) Do you have other comments on this section?

## **Section 31: Other Categories of Radio Advertisements that Require Central Copy Clearance**

### **18+ rated computer or console games**

#### **Question 142**

Given BCAP's policy consideration, do you agree that 31.1.4 should be included in the Code? If your answer is no, please explain why.

## **Section 32: Scheduling**

### **Computer and console games**

#### **Question 143**

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

### **Betting tipsters**

#### **Question 144**

Given BCAP's policy consideration, do you agree that proposed rules 32.2.3 and 32.20.4 should be included in the proposed BCAP Code? If your answer is no, please explain why.

### **Live premium-rate services**

#### **Question 145**

Given BCAP's policy consideration, do you agree that proposed rules 32.2.6 and 32.20.8 should be included in the proposed BCAP Code? If your answer is no, please explain why.

### **Restrictions around children's programmes**

#### **Question 146**

Given BCAP's policy consideration, do you agree with BCAP's proposal to extend the

restriction on advertisements for low alcohol drinks, medicines, vitamins and other dietary supplements from around programmes made for children to programmes of particular appeal to audiences below the age of 16? If your answer is no, please explain why.

## Condoms

### Question 147

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

## Sensational newspapers/magazines/websites

### Question 148

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

## TV Text and interactive advertisements

### Question 149

Given BCAP's policy consideration, do you agree that the same rules on placement of advertisements should apply to broadcast advertisements behind the red button as to TV Text advertisements?

## Liqueur chocolates

### Question 150

Given BCAP's policy consideration, do you agree that the restriction on advertisements for liqueur chocolates is no longer required, given the restriction on HFSS foods around programmes of particular appeal to under 16s? If your answer is no, please explain why.

## Charities

### Question 151

Given BCAP's policy consideration, do you agree that it is no longer necessary to restrict advertisements for charities from appearing adjacent to any appeal or community service announcement transmitted in programme time? If your answer is no, please explain why.

## Programmes featuring advertisements

### Question 152

Given BCAP's policy consideration, do you agree that it is proportionate to delete the requirement that advertisements for products and services that feature in advertisement compilation programmes should not appear in or adjacent to those programmes? If your answer is no, please explain why.

## Detailed advertisements for gambling; Code for Text Services

### Question 153

Given BCAP's policy consideration, do you agree that it is no longer necessary to restrict detailed TV text advertisements for gambling to full advertising pages devoted solely to such advertisements? If your answer is no, please explain why.

## Artist separation

### Question 154

Given BCAP's policy consideration, do you agree that it is no longer necessary to maintain 'the artist separation rule'? If your answer is no, please explain why.

## Exclusion of certain types of advertisement in or adjacent to broadcasts of Parliamentary proceedings

### Question 155

Given BCAP's policy consideration and the view of the Parliamentary authorities, do you agree that it is suitable to maintain rule 32.14 in the proposed BCAP Code? If your answer is no, please explain why.

## Other Questions

### Question 156

i) Taking into account BCAP's general policy objectives, do you agree that BCAP's rules, included in the proposed Scheduling 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 Scheduling rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration?

iii) Do you have other comments on this section?

## Section 33: Other comments

### Question 157

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

**The following question was issued as an addendum on 29 May 2009. The closing date for responses to this question is 10 July 2009. The full text of the addendum can be found [here](#).**

### Question 158

Given BCAP's policy consideration, do you agree that the evidence contained in the SchARR Review does not merit a change to BCAP's alcohol advertising content or

scheduling rules? If your answer is no, please explain why you consider the ScHARR Review does merit a change to BCAP's alcohol advertising content or scheduling rules.

This constitutes the response from the Department of Health to the consultation Addendum on proposed BCAP and CAP Codes of Advertising Practice. We have consulted the Department for Children, Schools & Families, who will also respond.

Our comments are as follows.

The consultation suggests that the Sheffield University review "does not offer persuasive evidence to support a proposal to further strengthen the alcohol advertising rules".

Although the analysis in the Addenda appears to acknowledge the evidence statements in the Sheffield review, the conclusion does not appear to reflect the weight of the evidence statements and it appears that these may have been misunderstood. This is particularly the case for evidence statement 10, which found that:

"There is consistent evidence from longitudinal studies that exposure to TV and other broadcast media is associated with inception of and levels of drinking [by young people]"

It is also disappointing that the Addenda have not reviewed other recent developments in the evidence-base. We would like to bring to your attention the review by the European Alcohol & Health Forum's Science Group whose findings were consistent with Sheffield's conclusions. The Group also identified a dose response relationship between alcohol advertising and consumption by young people, finding that changes in exposure lead to proportionate changes in consumption.

We are also aware of other studies, which have taken place in recent years.

In light of recent evidence and the wider evidence base available, as well as taking into consideration growing public concern on this issue, at the very least we might expect:

- some discussion of research gaps and how they might potentially be filled
- whether the absence of a strong evidence base for particular interventions, particularly where little research has taken place, necessarily means that no impact should be expected from such interventions
- Further discussion of whether the evidence of a link between alcohol advertising and drinking of alcohol by young people requires an approach that looks to reduce the exposure of young people to alcohol advertising. Currently, the framework seeks to prevent targeting of young people. Even if such a change was thought premature, some discussion to indicate what nature and level of evidence might justify a different approach should, surely, be expected

I would be very grateful if you could consider the issues raised in this letter as part of the consultation process.

DH

July 2009

FROM THE MINISTER FOR HEALTH,  
SOCIAL SERVICES AND PUBLIC SAFETY  
Michael McGimpsey MLA



Department of  
**Health, Social Services  
and Public Safety**

[www.dhsspsni.gov.uk](http://www.dhsspsni.gov.uk)

AN ROINN  
Sláinte, Seirbhísí Sóisialta  
agus Sábháilteachta Poiblí

MANVYSTRE O  
Poustie, Resydënter Heisin  
an Fowk Siccar

To whom it may concern  
CAP Code Review  
Code Policy Team  
Broadcast Committee of Advertising Practice  
Mid City Place  
71 High Holborn  
LONDON  
WC1V 6QT

*Ken Sir,*

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Our Ref: SUB/789/2009

*7th* July 2009

This letter constitutes the response from the Department of Health, Social Services, and Public Safety in Northern Ireland to the consultation Addenda on proposed BCAP and CAP Codes of Advertising Practice.

Firstly I would like to place on record my disappointment at the limited time to respond to these addenda, and also the fact that – while this did issue to the Northern Ireland Assembly for comment - it was not sent to me as responsible Minister in the Northern Ireland Executive. My Department leads on reducing the harm related to alcohol misuse in Northern Ireland.

While the Addenda do acknowledge the Sheffield Review, it is my view that the conclusions do not appear to reflect the weight of the evidence statements. This is particularly the case for evidence statement 10, which found that:

"There is consistent evidence from longitudinal studies that exposure to TV and other broadcast media is associated with inception of and levels of drinking [by young people]"

It is premature to conclude from this that no further consideration needs to be given to whether the current rules are optimal. The apparent strength of the evidence of a link between alcohol advertising and drinking of alcohol by young people surely merits further consideration and this is reflected in *Addressing Young People's Drinking in Northern Ireland*, an action plan recently published by my Department.

We have a duty to protect our children and young people from the harm related to alcohol misuse – **I therefore believe that serious consideration should be given to introducing a watershed for alcohol advertising.** I also believe that other ongoing work, such as the joint UK CMO's guidance on alcohol for young people and





the review by the European Alcohol & Health Forum's Science Group, supports the conclusion that we need to do more to protect our children and young people.

I would be very grateful if you could consider the issues raised in this letter as part of the consultation process.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Michael McGimpsey', written in a cursive style.

**Michael McGimpsey MLA**  
Minister for Health, Social Services and Public Safety

## Response from the Department of Health for England on the CAP/BCAP consultations on proposed Advertising Standards Codes

This letter constitutes the response from the Department of Health for England (DH) to the consultation on proposed BCAP and CAP Codes of Advertising Practice.

The Department of Health has three main aims:

- **Better health and well-being for all:** helping you stay healthy and well, empowering you to live independently, and tackling health inequalities
- **Better care for all:** the best possible health and social care, offering safe and effective care, when and where you need help, and empowering you in your choices
- **Better value for all:** delivering affordable, efficient and sustainable services, contributing to the wider economy and the nation.

The Department of Health is committed to improving health and wellbeing for all by promoting healthy behaviours and preventing ill health, and creating a wider environment that makes it easier for people to make better, healthier choices.

The role of advertising is part of this public health agenda, helping to reinforce and support our general drive to improve the health and well being of the population, by both restricting the advertisement of dangerous products such as tobacco and encouraging the promotion of healthy products. This is particularly so in the areas of tobacco, alcohol and HFSS food advertising and the need to protect children. Although clearly not the sole factor, advertising can be used to help change behaviour, both positively and negatively, by influencing product choices.

Whilst we appreciate that this is essentially a technical consultation, we hope to work closely with you on this wider agenda over the coming months, particularly on the development of a voluntary set of principles to underpin all forms of marketing and promotion of food and drink to children and to consider the implications of both the Scharr reviews and Impact of the Commercial World on Childhood, commissioned by the DCSF and DCMS and due to be published shortly.

This response focuses on the areas of the Code of particular interest to DH in **Part 2** of the consultation document namely:

Section 5 - Children

Section 10 – Prohibited categories (tobacco)

Section 11 – Medicines, Medical devices, Treatments and Health

Section 12 - Weight control and slimming

Section 13 – Food, dietary supplements and associated health and nutrition claims

Section 19 - Alcohol

### Children

We have no specific comments on the proposed changes to the general rules about advertising to children.

### Prohibited categories (tobacco)

We are generally content with proposed changes, with one comment on a point of detail.

We would like an amendment to Rule 21.2 considered (page 174 of the consultation document). We suggest replacing the words:

*‘Marketing communications must neither encourage people to start smoking nor encourage smokers to increase their consumption or smoke to excess.’*

With the words:

*‘Marketing communications must neither encourage people to start smoking nor encourage people who smoke to increase their consumption.’*

The reasons for these suggested changes are:

- To refer to people who smoke as ‘smokers’ could be perceived as demeaning and does not acknowledge the broader context in which they are consumers of marketing information; and
- to refer to ‘smoke to excess’ suggests there is a level of smoking that is acceptable or safe. Any level of smoking is potentially dangerous to health and no level can be considered safe.

### Medicines

The Medicines and Healthcare Products Regulatory Authority (MHRA) has reviewed the sections on medicines and medicinal products and has no significant policy concerns with the proposals. Minor points of detail relating to interpretation of medicines advertising legislation will be dealt with in a direct response.

### Weight loss products

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

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

### Food, dietary supplements and associated nutrition and health claims

The Food Standards Agency will be commenting on compliance with EU regulations on dietary supplements and the use of nutrition and health claims.

In the overview document BCAP and CAP state that “*new strict rules governing food and soft drink advertising to children ..... came into force in 2007. BCAP and CAP propose to maintain those restrictions*”. The BCAP and CAP rules differ in that BCAP uses the nutrient profile model developed by the Food Standards Agency to identify healthier foods that can be advertised to children using certain techniques eg cartoons, celebrities, whereas the CAP rules for non-broadcast media apply to all food except fruit and vegetables. This has meant that many companies who have reformulated products to be able to advertise them on TV using techniques that appeal to children are unable to do so in other media.

DH has called for consistency between advertising rules for all media and for advertisers to be able to advertise healthier food to children in a way that will appeal to them. We are therefore disappointed that CAP has not reconsidered the use of a tool to differentiate between healthier and less health food at this stage and would like to suggest that this is reviewed in 2010, at the same time that Ofcom reviews the impact of TV advertising restrictions.

#### Infant formula and follow on formula

The FSA will respond on proposed rules on advertising on infant formula and follow on formula and compliance with relevant EU and domestic legislation. However, DH is of the view that any advertising rules must reflect both the spirit and the letter of any EU or domestic legislation in order to provide the strongest possible protection for infants and their mothers.

#### Alcohol

DH is content with the minor technical changes to the BCAP consultation on rules on alcohol advertising, which we believe will strengthen the guidance for the advertising of alcohol. DH will respond separately to the addenda on the assessment of the SchARR review.

DH  
June 2009

# The Deactivated Gun Collector's Association

1

## Submission to the Consultation on the proposed BCAP Broadcast Advertising Standards Code About the De-activated Gun Collector's Association

The DGCA was formed in 2000 to represent the interests of collectors of de-activated firearms. The Association is international in scope and in terms of its membership. Due to the fact that collectors of de-activated firearms are a diverse group with many varied interests, e. g. specific historical periods such as World War Two, the Association tends to focus on legal and political issues related to de-activated firearms, as collectors usually tend to be members of organisations in their specific field of interest that perform such functions as historical investigation, re-enactments, etc.

Although international in scope, most of the members of the DGCA are based in the UK, due to the restrictive nature of firearm legislation there that leads many collectors to collect de-activated, rather than working, firearms.

### Response to questions 55 and 56 of the consultation

Both of these questions deal with the advertising of firearms and other weapons on TV and radio and this is obviously where the interest of the DGCA lies in this consultation.

For many years there have been complaints about the broadcasting codes among shooters and gun collectors for two main reasons:

The first is that arms fairs are unable to advertise on the radio; the second is that gun clubs are also unable to advertise on the radio in an effort to get new members. Although the code mentions TV advertising, the reality is that TV is not a medium that shooting interests have much interest in due to the higher costs of advertising on it; however the same principles do apply.

The consultation talks about "serious or widespread offence", but in reality this is more about the reinforcement of a prejudice. Many countries outside the UK allow advertisements by gun clubs and arms fairs (or gun shows as they are sometimes called), it is very odd in fact that the UK doesn't.

There is no indication that such advertisements ever cause any offence and to suggest they do is merely a broad supposition unsupported by any facts or research.

In various places the consultation paper picks and chooses bits of legislation, such as the Violent Crime Reduction Act, but these laws have nothing at all to do with advertising. Article 10 of the European Convention on Human Rights is another law that BCAP should perhaps be more concerned about:

*1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

*2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

Where in any of that article is any mention of "offence" caused by a gun club advert mentioned? Does BCAP propose that this restriction is for the protection of health or morals perhaps? Or perhaps BCAP would argue they are not bound by the ECHR, but yet BCAP manages to read in to laws that have no mention of advertising at all that they should somehow respect the spirit of them?

Looking through the proposed code it appears that people engaged in the distribution of pornography actually have a greater ability to advertise on TV and radio than gun clubs.

Nothing in law proscribes gun clubs. Nothing in law proscribes arms fairs. They are entirely lawful organizations and events enjoyed in a lawful and peaceful manner. Moreover, gun clubs for example actually are involved in the practice of an Olympic sport that is widely supported by the Ministry of Sport and also lottery funds. The argument that advertisements by gun clubs cause "offence" holds about as much water as suggesting that the advertising of football games would cause offence.

What BCAP actually proposes here and has been a subject of debate for some time (given that the restrictions are already largely pre-existing) is that tickets for the Olympic shooting events at the 2012 Olympics may not be advertised on radio or television. This is completely absurd.

Gun clubs feel especially hard done by due to these restrictions, because it makes it very hard for them to advertise their existence in their own local communities. Arms fairs also find it hard to attract attendees due to these restrictions.

BCAP needs to revisit these parts of the code and shine the light of reality on them, because at the moment the best that could be said about them is that they are impractical and violate the principles of free speech. The worst that could be said about them is that they are intended to reinforce prejudice against a segment of society engaged in entirely lawful activities.

We are totally opposed to any TV advertising on Abortion day or night  
We are totally opposed to any TV advertising on Abortion day or night.  
This is an area of life as Christian believers where we believe in the sanctity of life.

