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Committee of Advertising Practice (Non-broadcast)

Help Note on Retailers' Price Comparisons

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing (the CAP Code). For advice on the rules for TV or radio commercials, contact the BACC www.bacc.org.uk for TV ads or the RACC www.racc.co.uk for radio ads.

1. Background

These guidelines, drawn up by CAP, are intended to help marketers and their agencies interpret the rules in the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code). The “Key points” are intended to guide media ad departments. The Help Note is based on past ASA decisions. It neither constitutes new rules nor binds the ASA Council in the event of a complaint about a marketing communication that follows it.

2. Key points for media ad departments

- Marketers should hold documentary evidence to back up all comparative claims (Section 6.1).
- Marketers should ensure that the basis of any comparative claim is clear (Sections 6.2 and 6.3).
- Marketers should state where and when comparative surveys were carried out (Section 6.4).
- Price comparisons should be made only with retailers in the same locality, unless it makes no difference to compare prices with retailers in other localities (Section 6.5).
- Marketers should not exaggerate the length of time for which their prices have been lower (Section 6.6).

- Marketers in particularly price sensitive retail sectors should use media with a short “shelf-life”. They should avoid using media with long copy deadlines (Section 6.7).
- Marketers should compare products of the same or very similar quality (Section 6.8).
- Marketers should compare like sizes of products (Section 6.9).
- Marketers should state if prices featured in comparisons are promotional prices and should normally compare their promotional prices with their competitors’ promotional prices (Section 6.10).
- Marketers comparing typical weekly shops (or the like) should ensure that their ads give enough information about the products included in the comparison to allow the price difference to be verified. The advertisement should either state what goods are included in the comparison or direct readers to another source that lists those goods (Section 6.11).
- Marketers comparing typical weekly shops (or the like) should also ensure that the selection of goods does not skew the total saving unfairly (Section 6.12).
- Marketers should compare prices that apply to the same sales channel, and state any additional costs, unless they state clearly otherwise (Section 6.13).

3. Scope

- 3.1 The guidelines apply to marketing communications by retailers that include a price comparison with one or more competitor.
- 3.2 Clauses 1.1 and 1.2 of the Code list those marketing communications subject to the Code and, therefore, these guidelines.

4. The law

- 4.1 Marketers should seek legal advice or contact their Trading Standards home authority to ensure that their claims comply with the law. Individual circumstances will determine whether a marketing communication breaks the law but marketers should pay special attention to the Consumer Protection Act 1987 (and the Code of

Practice for Traders on Price Indications published by the DTI), and the Price Marking Order 2004 and the Control of Misleading Advertisements Regulations 1988 (as amended).

5. The CAP Code

Marketers should comply with the Code, especially these clauses:

5.1 General rules

“Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation” **(clause 3.1)**;

“No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise” **(clause 7.1)**.

5.2 Comparisons with identified competitors or their products

“Comparative claims are permitted in the interests of vigorous competition and public information. They should neither mislead nor be likely to mislead” **(clause 18.1)**;

“They should compare products meeting the same needs or intended for the same purpose” **(clause 18.2)**;

“They should objectively compare one or more material, relevant, verifiable and representative features of those products, which may include price” **(clause 18.3)**;

“They should not create confusion between marketers and competitors or between marketers’ products, trade marks, trade names or other distinguishing marks and those of competitors” **(clause 18.4)**.

5.3 Other comparisons

“Other comparisons, for example those with marketers’ own products, those with products of others who are not competitors or those that do not identify competitors or their products explicitly or by implication, should be clear and fair. They should neither mislead nor be likely to mislead. The elements of comparisons should not be selected in a way that gives the marketers an artificial advantage” **(clause 19.1)**.

5.4 Denigration and unfair advantage

“Although comparative claims are permitted, marketing communications that include comparisons with identifiable competitors and/or their products should not discredit or denigrate the products, trade marks, trade names, other distinguishing marks, activities or circumstances of competitors. Other marketing communications should not unfairly attack or discredit businesses or their products” **(clause 20.1)**;

“Marketers should not take unfair advantage of the reputation of trade marks, trade names or other distinguishing marks of organisations or of the designation of origin of competing products” **(clause 20.2)**.

6. Guidance

6.1 Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied.

6.2 Marketers should not claim that their prices are lower than those of their competitors for all products if they are lower only for selected products. If they claim are generally lower, they should explain the basis of that comparison (for example, by explaining that it is based on a typical weekly shop and stating where consumers can find information about the products compared) and be able to demonstrate that it is a fair and suitable basis for a general savings claim.

6.3 Marketers may advertise savings against their competitors’ total price

for a selection of goods, provided that consumers can easily obtain information about the products in the selection (see 6.11). Marketers must ensure they give a separate savings claim for each competitor named in the ad.

- 6.4 Marketers should state where and when any surveys featured in their marketing communications were carried out. If precise information about where and when independent surveys were carried out is not available, marketers should state in their marketing communications the geographical area to which the surveys apply (for example South-East England or nationwide). The results of surveys should not be contradicted by more recent surveys.
- 6.5 Marketers should make price comparisons only with retailers in the same locality unless they can show that it makes no difference to compare prices with retailers in other localities (for example because of due to a national pricing policy).
- 6.6 Marketers should not exaggerate the length of time for which their prices have been lower.
- 6.7 If competitors are likely to change their prices quickly in response to marketers' marketing communications, marketers should use media with a short "shelf-life" such as leaflets and daily newspapers. They should avoid marketing communications in media with long copy deadlines (for example, some magazines and directories), block bookings in media that do not allow for amendments to be made and media with a long "shelf-life" (for example, directories or brochures). If at all possible, marketers should amend their marketing communications if featured prices are inaccurate or out of date;
- 6.8 Marketers should, as far as is reasonably possible, compare products of the same, or very similar, quality (for example own-brand with own-brand, brand with brand and premium with premium).
- 6.9 Marketers should compare like sizes of products. Products that are sold in bulk are likely to be sold at a discount. If, for example, a 500ml bottle is compared with a 50ml bottle calculating the comparative price by dividing the cost of the larger product by 10 is

wrong. Similarly, marketers should not compare prices of multi-packs of their products with competitors' single-product prices multiplied by the relevant number.

- 6.10 Marketers should state clearly if prices featured in comparisons are promotional prices (for example, short-term special offer prices) and whether any relevant geographical restrictions apply. They should normally compare their promotional prices with their competitors' promotional prices. If they do not, it should be clear that they are comparing their promotional prices with their competitors' normal prices.
- 6.11 Marketers who compare typical weekly shops (or other comparisons of prices based on a sample of goods) must make the composition of the comparison available to consumers, either in the ad or in material that consumers can easily locate on the basis of information given in the ad.
- 6.12 Marketers comparing typical weekly shops (or other clearly defined comparisons) should ensure that they are comparing a fair and truly representative selection. They should take care not to skew the comparison by, for example, comparing an overly small number of products or an untypically high number of high-priced products that are substantially cheaper than their competitors' equivalents.
- 6.13 Unless they state clearly otherwise, and state any additional costs, marketers should compare prices that apply to the same sales channel (for example, in-store prices should be compared with in-store prices, online prices with online prices).

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or by e-mail on copyadvice@cap.org.uk. The CAP website at www.cap.org.uk contains a list of Help Notes and access to the AdviceOnline database, which has links to relevant Code clauses and ASA adjudications.

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