



Advertising Standards Authority
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Department for Trade and Industry

Establishing a Transparent Market

A Consultation on proposals for regulations on: Early Settlement; Consumer Credit Advertising; Form and Content of Credit Agreements; On-line Agreements and Establishing a Transparent Market

Joint Response of the Advertising Standards Authority and the Committee of Advertising Practice

Introduction

The Advertising Standards Authority (ASA) and the Committee of Advertising Practice (CAP) are responsible for maintaining the highest standards in non-broadcast advertising in accordance with the British Code of Advertising, Sales Promotion and Direct Marketing. The CAP Code (the Code) applies to all non-broadcast marketing communications in the UK, covering such media as print, posters, sales promotions, direct mail, SMS and internet advertising.

The Code, adjudicated on by the ASA, requires all marketing communications to be 'legal, decent, honest and truthful'. They should be prepared with a sense of responsibility to consumers and to society, and should respect the principles of fair competition generally accepted in business. The Code, and the ASA's interpretation of it, is the standard to which all organisations involved in non-broadcast advertising in the UK defer. Although the system is non-statutory, participation in it is mandatory by virtue of the agreement of advertisers, agencies and media to maintain common standards.

More information about the ASA and CAP are available on their respective websites www.asa.org.uk and www.cap.org.uk.

We welcome the opportunity to contribute to the DTI consultation on Establishing a Transparent Market for consumer credit. This response is submitted jointly on behalf of the ASA and CAP and confines itself solely to those parts of the consultation which deal with consumer credit advertising

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Summary of Position

The ASA and CAP support the government's intention to review and update the regulation of the consumer credit market. We are aware that the existing regulation of consumer credit advertising attracts much criticism for being cumbersome and overly prescriptive and are, therefore, pleased to see that the consultation seeks views on whether it is viable to simplify these regulations whilst preserving the necessary level of consumer protection. We agree the revised rules must ensure consumer credit advertising is clear, fair and not misleading and look forward to continuing to work with Trading Standards departments to ensure high standard joined-up regulation of the sector continues.

Specific Remarks

The advertising of consumer credit products is predominantly regulated by statute, but the content of these advertisements must also comply with the general provisions of established advertising codes in the broadcast and non-broadcast sectors. At present these are operated by Ofcom and the ASA, respectively, although Ofcom is currently consulting on plans to 'contract out' responsibility for the future regulation of broadcast advertising to a new body, ASA(B), operated by the Advertising Standards Authority. A decision on whether to progress with this remains to be taken by Ofcom.

The CAP Code, administered by the ASA, applies to the non-broadcast advertising of consumer credit products. The Code notes that the majority of advertising of financial services is regulated by statute and therefore limits itself only to those matters not otherwise dealt with the Consumer Credit Advertising Regulations, for example misleadingness or offence. The ASA is also recognised as the primary established means for the Control of Misleading Advertisements Regulations 2000 (as amended), with the provisions of these being broadly reflected in the CAP Code. In addition, Section 53 of the Code deals specifically with the advertising of financial products. This is attached as Appendix 1.

In 2003 the ASA received 412 complaints – out of a total of some 14000 – about the advertising of financial products, upholding the complaint in 64 cases. The majority of these (48) concerned truthfulness, a general provision of the CAP Code.

As the ASA does not enforce the law we do not consider it appropriate to offer a view on the specific changes to the Regulations proposed in the consultation. Both CAP and the ASA, however, participated constructively in DTI working party discussions during the development of the proposal. During these meetings we strongly underlined our stance that the self-regulatory system for non-broadcast advertising should not be thought of as means of policing statutory regulation on the cheap. We said that the role of the ASA is solely that of administering the CAP Code. When a particular practice is illegal it is for the statutory authorities to enforce the law. It is simply not appropriate for a non-statutory self-regulatory body to intervene in matters where an offence may have been committed. We are pleased to see that the proposal does not envisage a greater role for the ASA in the maintenance of the revised Regulations.

The ASA is, however, an indispensable part of the advertising regulation landscape. It will be important that we work closely with relevant statutory bodies to ensure effective joined-up regulation of consumer credit advertising. We note in this regard that p.101 of the consultation paper recognises the need for all key stakeholders to work together. We look forward to continuing constructive engagement with the DTI, OFT, LACORS and FSA in this regard.

Question Responses

Question 18: Are the controls on comparative advertising contained in ASA rules and The Control of Misleading Advertisements (amendment) Regulations 2000 sufficient to deal with comparative advertising in the consumer credit sector.

We believe that the controls on comparative advertising in the CAP Code are sufficiently robust to deal with comparative advertising in the consumer credit sector. The issues arising from this are treated principally in clauses 3.1 (substantiation), 7.1 (truthfulness) and 18-20 (comparisons and denigration) of the CAP Code. Clause 2.3 is also useful. The text of these clauses is attached as Appendix 2. We see no need to introduce further controls in regard to comparative advertising into the revised Consumer Credit Regulations.

Dr David Webster
Head of Policy

15 March 2004

Appendix 1: CAP Code rules specific to the advertising of financial products

53.1 Marketers must have regard to the Financial Services and Markets Act 2000 and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, both enforced by the Financial Services Authority (FSA), and also to other rules and relevant guidance issued by the FSA. The scope of that legislation and guidance extends to marketing communications for: investments and investment advice; deposit taking (e.g. banking); general insurance and pure protection policies (e.g. term assurance). The FSA will, probably in 2004, become responsible for the regulation of first charge mortgage lending and selling, as well as certain secured loans and general insurance intermediaries (e.g. motor, home and travel insurers). Pre-publication advice for authorised firms on proposed financial marketing communications is available from the FSA's Conduct of Business Standards Division (see www.fsa.gov.uk).

The OFT will continue to regulate other consumer loans under the Consumer Credit Act 1974 (as amended).

The rules that follow apply to financial marketing communications that are not regulated by the FSA or OFT. All financial marketing communications are, however, subject to Code clauses that cover "non-technical" elements of communications, e.g. serious or widespread offence, social responsibility and the truthfulness of claims that do not relate to specific characteristics of financial products.

- 53.2 Offers of financial products should be set out in a way that allows them to be understood easily by the audience being addressed. Marketers should ensure that they do not take advantage of people's inexperience or credulity.
- 53.3 Marketing communications should state the nature of the contract being offered, any limitations, expenses, penalties and charges and the terms of withdrawal. Alternatively, if a marketing communication is short or general in its content, free explanatory material giving full details of the offer should be readily available before a binding contract is entered into.
- 53.4 The basis used to calculate any rates of interest, forecasts or projections should be apparent immediately.
- 53.5 Marketing communications should make clear that the value of investments is variable and, unless guaranteed, can go down as well as up. If the value of the investment is guaranteed, details should be included in the marketing communication.
- 53.6 Marketing communications should make clear that past performance or experience does not necessarily give a guide for the future. Any examples used should not be unrepresentative.

Appendix 2: Key CAP Code Clauses relevant to the advertising of financial products

General Principles

- 2.3 All marketing communications should respect the principles of fair competition generally accepted in business.

Substantiation

- 3.1 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. Relevant evidence should be sent without delay if requested by the ASA or CAP. The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the marketing communication. The full name and geographical business address of marketers should be provided without delay if requested by the ASA or CAP.

Truthfulness

- 7.1 No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

Comparisons with identified competitors and/or their products

- 18.1 Comparative claims are permitted in the interests of vigorous competition and public information. They should neither mislead nor be likely to mislead.
- 18.2 They should compare products meeting the same needs or intended for the same purpose
- 18.3 They should objectively compare one or more material, relevant, verifiable and representative features of those products, which may include price.
- 18.4 They should not create confusion between marketers and competitors or between marketers' products, trademarks, trade names or other distinguishing marks and those of competitors.
- 18.5 Certain EU agricultural products and foods are, because of their unique geographical area and method of production, given special protection by being registered as having a 'designation of origin'. Products with a designation of origin should be compared only with other products with the same designation.

Other Comparisons

- 19.1 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.

Denigration and unfair advantage

- 20.1 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.
- 20.2 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.