

Help Note

Committee of Advertising Practice (CAP)
Broadcast Committee of Advertising Practice
(BCAP)

Use of “unlimited” claims in telecommunications advertising

1. Background

Introduction

This Help Note is intended to help the industry interpret the Misleading Advertising sections of the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code) and the UK Code of Broadcast Advertising (the BCAP Code). It relates to “unlimited” claims as they appear in both business-to-consumer and business-to-business telecommunications advertising (the CAP Code and BCAP Code are together referred to as “the Codes”).

CAP and BCAP guidance is intended to help advertisers, agencies and media owners interpret the Codes but it is not a substitute for them. This Help Note reflects CAP and BCAP’s intended effect of the Codes but neither constitutes new rules nor binds the Advertising Standards Authority (ASA) Council in the event of a complaint about a marketing communication that follows it.

Application of the Help Note

The Help Note covers marketing communications for fixed line and mobile telephony and data services, as well as similar services provided on other platforms, such as VoIP.

Telecommunications services are subject to various limitations on usage. Some are inherent to the nature of different services whereas others are imposed by providers for different reasons, including the need to protect networks from excessive or unacceptable use.

The focus of the Help Note is on limitations imposed by providers on their service. Commonly, such limitations are part of fair usage policies (FUP), traffic management and network management policies, and acceptable use policies.

The Help Note and the legislative framework

The ASA Council has agreed to have regard to this Help Note when considering whether “unlimited” claims in telecommunications advertising comply with the relevant Advertising Code. The guidance may be revised as a result of ASA Council rulings and changes in the industry.

The ASA’s interpretation of the Misleading Advertising sections of the Codes takes into account factors identified by the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and The Business Protection from Misleading Marketing Regulations 2008 (BPRs).

- The CPRs require that advertising must not contain misleading claims, or omit material information, to the extent that the advertisements are likely to affect adversely consumers’ transactional decisions about products. The effect on consumers is considered from the point of view of the average consumer. The average consumer is assumed to be reasonably well-informed, reasonably observant and circumspect. If an

advertisement is targeted at a particular group of people, it is considered from the point of view of the average member of that group.

- The BPRs protect businesses targeted by business-to-business advertising. The BPRs state that an advertisement is misleading if it deceives the traders to whom it is addressed and is therefore likely to affect their economic behaviour.

The Help Note recommends an approach that CAP and BCAP consider is likely to be acceptable within the legal framework. For the avoidance of doubt, it does not proscribe other approaches, nor is it intended to stifle innovation in telecommunications advertising. If complaints are received about a marketing communication in which a marketer has chosen to depart from the approach recommended by the Help Note, the ASA will simply expect the marketer to be able to justify why they did so and why the marketing communication does not mislead as a result.

Advice on marketing communications

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 you can log a specific written enquiry via our online request form <http://www.copyadvice.org.uk/Ad-Advice/Bespoke-Copy-Advice.aspx>.

The Copy Advice website at www.copyadvice.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

For advice on specific radio advertisements, contact the Radio Advertising Clearance Centre (RACC), www.racc.co.uk or, for TV advertisements, Clearcast, www.clearcast.co.uk.

2. The Guidance

Marketing communications must not mislead the average consumer about the benefits or results that might be expected from an “unlimited” product, or about the existence or impact of any factors under the provider’s control that are likely to affect its usage.

“Unlimited” claims are likely to be acceptable for telecommunications services that are subject to provider-imposed limitations if they do not restrict or limit a service in a manner contrary to the average consumer’s expectations of an “unlimited” service.

Criteria for the use of an “unlimited” claim

“Unlimited” claims are likely to be acceptable provided that:

- The legitimate user incurs no additional charge or suspension of service as a consequence of exceeding any usage threshold associated with an FUP, traffic management policy or the like; and
- Provider-imposed limitations that affect the speed or usage of the service are moderate only and are clearly explained in the marketing communication.¹

Provided that they meet these criteria, limitations such as those that fall into the following categories are likely to be acceptable for services advertised as “unlimited”: subscriber-based and application-based traffic management policies, network-wide traffic management policies, and traffic management mechanisms that are under the auspices of an FUP.

Types of “unlimited” claim

The ASA will assess “unlimited” claims in the context in which they appear.

The element of the service to which the “unlimited” claim relates is a key consideration in this assessment.

- A general claim, “Unlimited Broadband”, for instance, will require a provider to demonstrate that their whole broadband service meets the criteria above.
- A claim related to a specific element (i.e. a defined activity or protocol) of a service, for instance, “unlimited web browsing”, would only require the provider to show that that element of service meets the criteria listed above. Broadband consumers are likely to assume that a claim related to “unlimited web browsing” will allow them unlimited use of services such as You Tube, BBC iPlayer or another browser based streaming service. If

¹ The concepts of a ‘legitimate user’ and ‘moderate’ limitation are defined in detail in Section 3 below.

an online activity like streaming is excluded from the “unlimited” aspect of the service, this should be stated prominently.

- A claim related to a specific period, for instance, “unlimited off-peak calls” would only require the provider to demonstrate that the service complies with the criteria above during off-peak periods. Marketers should also have regard to CAP's Help Note on Price Claims in Telecommunications Marketing, for example in relation to “unlimited UK calls” claims.
- Claims that have the same or similar meaning, for instance, “Limitless” or “All you can use”, will be assessed by the ASA on a case-by-case basis. Where it is appropriate the ASA will apply the criteria laid down in the Help Note.

3. Definitions

The following definitions apply to key terms used in Section 2.

Legitimate user

A legitimate user is a customer who uses the service in accordance with its general terms and conditions. Providers should not use the terms and conditions as another means of imposing usage restrictions similar to those found under FUPs or traffic management policies. Providers should be able to justify a provision in the terms and conditions for reasons other than the limitation of usage.

If a user breaches those terms of use, for instance, using a consumer service for business purposes or downloading copyrighted content illegally, the user will be considered 'illegitimate'. However, for the avoidance of doubt, merely exceeding a particular level of usage or using the service for a lawful activity (e.g. lawful peer-to-peer file sharing) will not render a user illegitimate for the purposes of this guidance.

The criteria laid out in the Help Note are not intended to cover providers' practices for dealing with illegitimate usage.

Moderate restrictions

As stated above, providers of "unlimited" telecommunications services must be able to demonstrate that a provider-imposed limitation is not contrary to the average consumer's expectation of a service advertised as "unlimited".

Providers should be able to demonstrate that limitations imposed on the speed or usage of a service do not prevent or hinder users from carrying out lawful online activities, such as streaming content, at or close to the consumer's normal connection speed.

Where they affect download speeds, for the downloading of large files on peer-to-peer protocols, for instance, providers should be able to demonstrate that the effect of a traffic management policy or mechanism is not beyond what consumers would reasonably expect.

At the same time, consumers generally understand that the speed of the internet varies during the day and that speeds are naturally slower during periods of the day that attract the greatest number of online users. If the provider can demonstrate that the effect of traffic management is not dissimilar to the 'slow down' generally experienced, the restriction is likely to be considered moderate.

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