

Introduction

This twelfth edition of the Code comes into force on 1 September 2010. It replaces all previous editions.

As well as this Code, non-broadcast marketing communications are subject to legislation. See www.cap.org.uk for a non-exhaustive list. The advertising rules that apply to video-on-demand services which are subject to statutory regulation are reflected in the rules set out in Appendix 2.

I The Code applies to:

- a. advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions (including SMS and MMS), fax transmissions, catalogues, follow-up literature and other electronic or printed material
- b. posters and other promotional media in public places, including moving images
- c. cinema, video, DVD and Blu-ray advertisements
- d. advertisements in non-broadcast electronic media, including but not limited to: online advertisements in paid-for space (including banner or pop-up advertisements and online video advertisements); paid-for search listings; preferential listings on price comparison sites; viral advertisements (see III l); in-game advertisements; commercial classified advertisements; advergames that feature in display advertisements; advertisements transmitted by Bluetooth; advertisements distributed through web widgets and online sales promotions and prize promotions
- e. marketing databases containing consumers' personal information
- f. sales promotions in non-broadcast media
- g. advertorials (see III k).
- h. Advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites, or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities.

II The Code does not apply to:

- a. broadcast advertisements (The BCAP Code sets out the rules that govern broadcast advertisements on any television channel or radio station licensed by Ofcom)
- b. the contents of premium-rate services, which are the responsibility of PhonepayPlus; marketing communications that promote those services are subject to PhonepayPlus regulation and to the CAP Code
- c. marketing communications in foreign media. Direct marketing communications that originate outside the United Kingdom and sales promotions and marketing communications on non-UK websites, if targeted at UK consumers, are subject to the jurisdiction of the relevant authority

- in the country from which they originate if that authority operates a suitable cross-border complaint system. If it does not, the Advertising Standards Authority (ASA) will take what action it can. Most members of the European Union, and many non-European countries, have a self-regulatory organisation that is a member of the European Advertising Standards Alliance (EASA). EASA co-ordinates the cross-border complaints system for its members (which include the ASA)
- d. claims, in marketing communications in media addressed only to medical, dental, veterinary or allied practitioners, that relate to those practitioners' expertise
 - e. classified private advertisements, including those appearing online
 - f. statutory, public, police and other official notices or information, but not marketing communications, produced by public authorities and the like
 - g. works of art exhibited in public or private
 - h. private correspondence, including correspondence between organisations and their customers about existing relationships or past purchases
 - i. live oral communications, including telephone calls and announcements or direct approaches from street marketers
 - j. press releases and other public relations material not covered by part I above
 - k. editorial content; for example, of the media or of books and regular competitions such as crosswords
 - l. flyposting (most of which is illegal)
 - m. packages, wrappers, labels, tickets, timetables and price lists unless they advertise another product or a sales promotion or are visible in a marketing communication
 - n. point-of-sale displays, except those covered by the sales promotion rules or the rolling paper and filter rules
 - o. political advertisements as defined in Section 7
 - p. website content not covered by I d and I h, including (but not limited to) editorial content, news or public relations material, corporate reports and natural listings on a search engine or a price comparison site
 - q. sponsorship; marketing communications that refer to sponsorship are covered by the Code
 - r. customer charters and codes of practice.
 - s. investor relations (see III m)
 - t. 'heritage advertising' by or from companies, organisations or sole traders on their own websites, or in other non-paid for space online under their control, where that advertising

is not part of their current promotional strategy and is placed in an appropriate context. In cases where advertisements or other marketing communications recently adjudicated against by the ASA are featured, rule 1.2 (the spirit of the Code) may be invoked to bring those advertisements or other marketing communications within remit.

III These definitions apply to the Code:

- a. a product encompasses goods, services, ideas, causes, opportunities, prizes or gifts
- b. a consumer is anyone who is likely to see a given marketing communication, whether in the course of business or not
- c. the United Kingdom covers the Isle of Man and the Channel Islands
- d. a claim can be implied or direct, written, spoken or visual; the name of a product can constitute a claim
- e. the Code is divided into numbered rules
- f. a marketing communication includes all forms of communication listed in part I
- g. a marketer includes an advertiser, promoter or direct marketer
- h. a supplier is anyone who supplies a product that is sold by a distance-selling marketing communication (and can be the marketer)
- i. a child is anyone under 16
- j. a corporate subscriber includes corporate bodies such as limited companies in the UK, limited liability partnerships in England, Wales and Northern Ireland or any partnerships in Scotland. It also includes schools, hospitals, Government departments or agencies and other public bodies. It does not include sole traders or non-limited liability partnerships in England, Wales and Northern Ireland. See rule 10.14
- k. An advertorial is an advertisement feature, announcement or promotion, the content of which is controlled by the marketer, not the publisher, that is disseminated in exchange for a payment or other reciprocal arrangement
- l. A viral advertisement is an e-mail, text or other non-broadcast marketing communication designed to stimulate significant circulation by recipients to generate commercial or reputational benefit to the marketer. Viral advertisements are usually put into circulation (“seeded”) by the marketer with a request, either explicit or implicit, for the message to be forwarded to others. Sometimes they include a video clip or a link to website material or are part of a sales promotion campaign.
- m. Investor relations material is information about an organisation (including its goods or services) addressed to the financial community, including shareholders and investors, as well as others who might be interested in the company’s stock or financial stability.

IV These criteria apply to the Code:

- a. the ASA Council's interpretation of the Code is final
- b. if it is not clear whether a communication falls within the remit of the Code, the ASA will be more likely to apply the Code if the material complained about is in paid-for space
- c. compliance with the Code is assessed according to the marketing communication's probable impact when taken as a whole and in context. That will depend on the medium in which the marketing communication appeared, the audience and its likely response, the nature of the product and any material distributed to consumers
- d. the Non-broadcast ASA Council may have regard to decisions made by the Broadcast ASA Council under the BCAP Code and, similarly, the Broadcast ASA Council may have regard to decisions made by the Non-broadcast ASA Council under the CAP Code. Factors that help to determine whether an ASA adjudication is likely to apply across media include, but are not limited to, the characteristics of the medium, how the advertisement is targeted, the context in which a claim is made and the extent to which the relevant CAP Code provisions correspond to those in the BCAP Code
- e. the Code does not have the force of law and its interpretation will reflect its flexibility. The Code operates alongside the law; the Courts may make rulings on matters covered by the Code
- f. an indication of the statutory rules governing marketing communications is given on www.cap.org.uk; professional advice should be taken about their application
- g. no spoken or written communication from the ASA or CAP should be understood as containing legal advice
- h. the Code is primarily concerned with the content of advertisements, promotions and direct marketing communications and not with terms of business or products. Some rules, however, go beyond content; for example, those that cover the administration of sales promotions, the suitability of promotional items, the delivery of products ordered through an advertisement and the use of personal information in direct marketing. Editorial content is specifically excluded from the remit of the Code (see II k) although it might be a factor in determining the context in which a marketing communication is judged (see IV c)
- i. the Code makes due allowance for public sensitivities but will not be used by the ASA to diminish freedom of speech unjustifiably
- j. the ASA does not arbitrate between conflicting ideologies
- k. in assessing compliance with the Code, the ASA may take account of honest market practices and the general principle of good faith in the traders' field of activity.
- l. in relevant cases the ASA will have regard to existing statutory enforcement bodies. The ASA reserves the right to refer complainants to the relevant statutory regulator in cases where a complaint about a marketing communication relates to a Code rule that reflects a legal provision for a regulated product.

