The British Code of Advertising, Sales Promotion and Direct Marketing

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In the UK, the British Code of Advertising, Sales Promotion and Direct Marketing (the Code) is the rule book for non-broadcast advertisements, sales promotions and direct marketing communications (marketing communications). The Code is primarily concerned with the content of marketing communications and not with terms of business or products themselves. 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 Code, though it might be a factor in determining the context in which marketing communications are judged.

The Committee of Advertising Practice (CAP) is the self-regulatory body that creates, revises and enforces the Code. CAP's members include organisations that represent the advertising, sales promotion, direct marketing and media businesses. Through their membership of CAP member organisations, or through contractual agreements with media publishers and carriers, those businesses agree to comply with the Code so that marketing communications are legal, decent, honest and truthful and consumer confidence is maintained.

Some CAP member organisations, for example the Direct Marketing Association and the Proprietary Association of Great Britain, also require their members to observe their own codes of practice. Those codes may cover some practices that are not covered in this Code.

The Code supplements the law, fills gaps where the law does not reach and often provides an easier way of resolving disputes than by civil litigation or criminal prosecution. In many cases, self-regulation ensures that legislation is not necessary. Although advertisers, promoters and direct marketers (marketers), agencies and media may still wish to consult lawyers, compliance with the Code should go a long way to ensuring compliance with the law in areas covered by both the Code and the law.

By creating and following self-imposed rules, the marketing community produces marketing communications that are welcomed and trusted. By practising self-regulation, it ensures the integrity of advertising, promotions and direct marketing.

The value of self-regulation as an alternative to statutory control is recognised in EC Directives, including those on misleading and comparative advertising (Directives 2005/29/EC and 2006/114/EC), and self-regulation is accepted by the BERR and the Office of Fair Trading as a first line of control in protecting consumers.

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the Code, ensuring that the self-regulatory system works in the public interest. The ASA's activities include investigating and adjudicating on complaints and conducting research. A leaflet describing the ASA's complaints procedure is available on request and full information is available on www.asa.org.uk.

The vast majority of advertisers, promoters and direct marketers comply with the Code. Those that do not may be subject to sanctions. Adverse publicity may result from the rulings published by the ASA weekly on its website. The media, contractors and service providers may withhold their services or deny access to space. Trading privileges (including direct mail discounts) and recognition may be revoked, withdrawn or temporarily withheld. Pre-vetting may be imposed and, in some cases, non-complying parties can be referred to the Office of Fair Trading for action, where appropriate, under the Consumer Protection from Unfair Trading Regulations 2008 or the Business Protection from Misleading Marketing Regulations 2008.

The system is structured so that it does not operate in an unfair or anti-competitive manner or restrict free speech unjustifiably. ASA decisions are subject to independent review, including in exceptional cases by the Administrative Division of the High Court.

The full text of the Code is available on www.cap.org.uk.

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MEMBERS OF THE COMMITTEE OF ADVERTISING PRACTICE

Advertising Association
Cinema Advertising Association
Clearcast
Direct Marketing Association
Direct Selling Association
Incorporated Society of British Advertisers
Institute of Practitioners in Advertising
Institute of Sales Promotion
Internet Advertising Bureau
Mail Order Traders Association
Newspaper Publishers Association
Newspaper Society
Outdoor Advertising Association
Periodical Publishers Association
Proprietary Association of Great Britain
Radio Advertising Clearance Centre
Royal Mail
Scottish Daily Newspaper Society
Scottish Newspaper Publishers Association

INTRODUCTION

This eleventh edition of the Code comes into force on 4 March 2003. It replaces all previous editions.

1.1 The Code applies to:

- *a advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, e-mails, text transmissions, fax transmissions, catalogues, follow-up literature and other electronic and printed material*
- *b posters and other promotional media in public places, including moving images*
- *c cinema and video commercials*
- *d advertisements in non-broadcast electronic media, including online advertisements in paid-for space (eg banner and pop-up advertisements)*
- *e viewdata services*
- *f marketing databases containing consumers' personal information*
- *g sales promotions*
- *h advertisement promotions*

1.2 The Code does not apply to:

- *a broadcast commercials. (The BCAP Advertising Standards Codes set out the rules that govern broadcast advertisements on any television channel and radio station licensed by Ofcom.)*
- *b the contents of premium rate services, which are the responsibility of PhonepayPlus; marketing communications that promote these services are subject to PhonepayPlus regulation and to the Code*
- *c marketing communications in foreign media. Direct marketing that originates outside the UK but is targeted at UK consumers will be subject to the jurisdiction of the relevant authority in the country where it originates so long as that authority operates a suitable cross-border complaint system. If it does not, the ASA will take what action it can. All members of the European Union, and many non-European countries, have self-regulatory organisations that are members of the European Advertising Standards Alliance (EASA). EASA co-ordinates the cross-border complaints system for its members (which include the ASA).*
- *d Health-related claims in marketing communications addressed only to the medical, dental, veterinary and allied professions*
- *e classified private advertisements, including those appearing online*
- *f statutory, public, police and other official notices/information, as opposed to marketing communications, produced by public authorities and the like*
- *g works of art exhibited in public or private*
- *h private correspondence, including correspondence between companies and their customers about existing relationships or past purchases*
- *i live oral communications, including telephone calls*
- *j press releases and other public relations material, so long as they do not fall under 1.1 above*
- *k editorial content, for example of the media and of books*
- *l regular competitions such as crosswords*
- *m flyposting (most of which is illegal)*
- *n packages, wrappers, labels, tickets, timetables and price lists unless they advertise another product, a sales promotion or are visible in a marketing communication*
- *o point of sale displays, except those covered by the sales promotion rules and the rolling paper and filter rules*
- *p election advertisements as defined in clause 12.1*
- *q website content, except sales promotions and advertisements in paid-for space*
- *r sponsorship; marketing communications that refer to sponsorship are covered*

by the Code

s customer charters and codes of practice.

1.3 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 rules cover the Isle of Man and the Channel Islands

d a claim can be implied or direct, written, spoken or visual

e the Code is divided into numbered clauses

f a marketing communication includes all forms of communication listed in 1.1

g a marketer includes an advertiser, promoter or direct marketer

h a supplier is anyone who supplies products that are sold by distance selling marketing communications (and may also 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 N. 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 N. Ireland. See clause 43.4

1.4 These criteria apply to the Code:

a the ASA Council's interpretation of the Code is final

b conformity with the Code is assessed according to the marketing communication's probable impact when taken as a whole and in context. This will depend on the medium in which the marketing communication appeared, the audience and its likely response, the nature of the product and any additional material distributed to consumers

c the Code is indivisible; marketers must conform with all appropriate rules

d 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 also make rulings on matters covered by the Code

e an indication of the statutory rules governing marketing is given on www.cap.org.uk; professional advice should be taken if there is any doubt about their application

f no spoken or written communications with the ASA or CAP should be understood as containing legal advice

g the Code is primarily concerned with the content of advertisements, promotions and direct marketing communications and not with terms of business or products themselves. Some rules, however, go beyond the 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 1.2k), although it might be a factor in determining the context in which marketing communications are judged (see 1.4b)

h the rules make due allowance for public sensitivities but will not be used by the ASA to diminish freedom of speech unjustifiably

i the ASA does not arbitrate between conflicting ideologies.

j In assessing conformity 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.

GENERAL RULES

Principles

2.1 *All marketing communications should be legal, decent, honest and truthful.*

2.2 *All marketing communications should be prepared with a sense of responsibility to consumers and to society.*

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

2.4 *No marketing communication should bring advertising into disrepute.*

2.5 *Marketing communications must conform with the Code. Primary responsibility for observing the Code falls on marketers. Others involved in preparing and publishing marketing communications such as agencies, publishers and other service suppliers also accept an obligation to abide by the Code.*

2.6 *Any unreasonable delay in responding to the ASA's enquiries may be considered a breach of the Code.*

2.7 *The ASA and CAP will on request treat in confidence any genuinely private or secret material supplied unless the Courts or officials acting within their statutory powers compel its disclosure.*

2.8 *The Code is applied in the spirit as well as in the letter.*

2.9 *Marketers should deal fairly with consumers.*

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.

3.2 *If there is a significant division of informed opinion about any claims made in a marketing communication they should not be portrayed as generally agreed.*

3.3 *Claims for the content of non-fiction books, tapes, videos and the like that have not been independently substantiated should not exaggerate the value, accuracy, scientific validity or practical usefulness of the product.*

3.4 *Obvious untruths or exaggerations that are unlikely to mislead and incidental minor errors and unorthodox spellings are all allowed provided they do not affect the accuracy or perception of the marketing communication in any material way.*

Legality

4.1 *Marketers have primary responsibility for ensuring that their marketing communications are legal. Marketing communications should comply with the law and should not incite anyone to break it.*

4.2 *Marketers should not state or imply that a product can legally be sold if it cannot.*

4.3 *Marketers should not present rights given to consumers in law as a distinctive feature of their offer.*

Decency (ie avoiding serious or widespread offence)

5.1 *Marketing communications should contain nothing that is likely to cause serious or widespread offence. Particular care should be taken to avoid causing offence on the grounds of race, religion, sex, sexual orientation or disability. Compliance with the Code will be judged on the context, medium, audience, product and prevailing standards of decency.*

5.2 *Marketing communications may be distasteful without necessarily conflicting with 5.1 above. Marketers are urged to consider public sensitivities before using potentially offensive material.*

5.3 *The fact that a particular product is offensive to some people is not sufficient grounds for objecting to a marketing communication for it.*

Honesty

6.1 *Marketers should not exploit the credulity, lack of knowledge or inexperience of consumers.*

Truthfulness

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

7.2 *Marketing communications must not omit, hide or provide in an unclear, unintelligible, ambiguous or untimely manner material information if that omission or presentation is likely to affect consumers' decisions about whether and how to buy the advertised product, unless the information is obvious from the context. If the advertisement is limited by time or space, the ASA will take into account steps that the advertiser has taken to make that information available to consumers by other means.*

For marketing communications that quote prices for advertised products, material information includes:

a. the main characteristics of the product

b. the identity (eg trading name) and geographical address of the marketer and any other trader on whose behalf the advertiser is acting

c. the price of the advertised product, including taxes; or where the nature of the product is such that the price cannot be calculated in advance, the manner in which the price is calculated

d. delivery charges

e. the arrangement for payment, delivery, performance or complaint handling, if those differ from the arrangements that consumers are likely to reasonably expect

f. that consumers have the right to withdraw or cancel, if they have that right (see 42.2(f)).

Matters of opinion

8.1 *Marketers may give a view about any matter, including the qualities or desirability of their products, provided it is clear that they are expressing their own opinion rather than stating a fact. Assertions that go beyond subjective opinions are subject to 3.1 above (also see 12.1 below).*

Fear and distress

9.1 *No marketing communication should cause fear or distress without good reason. Marketers should not use shocking claims or images merely to attract attention.*

9.2 *Marketers may use an appeal to fear to encourage prudent behaviour or to discourage dangerous or ill-advised actions; the fear likely to be aroused should not be disproportionate to the risk.*

9.3 *Marketers should not mislead about the nature or extent of the risk to the personal security of consumers or their families if consumers do not buy the advertised product.*

9.4 *Marketers should not explicitly inform consumers that, if they do not buy the product or service, the marketer's job or livelihood will be jeopardised.*

Safety

10.1 *Marketing communications should not condone or encourage unsafe practices. Particular care should be taken with marketing communications addressed to or depicting children (see section 47).*

10.2 *Consumers should not be encouraged to drink and drive. Marketing communications should, where appropriate, include a prominent warning on the dangers of drinking and driving and should not suggest that the effects of drinking alcohol can be masked.*

Violence and anti-social behaviour

11.1 *Marketing communications should contain nothing that condones or is likely to provoke violence or anti-social behaviour.*

Political advertising

12.1 *Any advertisement or direct marketing communication, whenever published or distributed, whose principal function is to influence voters in local, regional, national or international elections or referendums is exempt from the Code.*

12.2 *There is a formal distinction between Government policy and that of political parties. Marketing communications (see clauses 1.1 and 1.2) by central or local government, as distinct from those concerning party policy, are subject to the Code.*

Protection of privacy

13.1 *Marketers should not unfairly portray or refer to people in an adverse or offensive way. Marketers are urged to obtain written permission before:*

a referring to or portraying members of the public or their identifiable possessions; the use of crowd scenes or general public locations may be acceptable without permission

b referring to people with a public profile; references that accurately reflect the contents of books, articles or films may be acceptable without permission

c implying any personal approval of the advertised product; marketers should recognise that those who do not wish to be associated with the product may have a legal claim.

13.2 *Prior permission may not be needed when the marketing communication contains nothing that is inconsistent with the position or views of the person featured.*

13.3 *References to anyone who is deceased should be handled with particular care to avoid causing offence or distress.*

13.4 *Members of the Royal Family should not normally be shown or mentioned in marketing communications without their prior permission. Incidental references unconnected with the advertised product, or references to material such as books, articles or films about members of the Royal Family, may be acceptable.*

13.5 *The Royal Arms and Emblems should be used only with the prior permission of the Lord Chamberlain's office. References to Royal Warrants should be checked with the Royal Warrant Holders' Association.*

Testimonials and endorsements

14.1 *Marketers should hold signed and dated proof, including a contact address, for any testimonial they use. Unless they are genuine opinions taken from a published source, testimonials should be used only with the written permission of those giving them.*

14.2 *Testimonials should relate to the product being advertised.*

14.3 *Testimonials alone do not constitute substantiation and the opinions expressed in them must be supported, where necessary, with independent evidence of their accuracy. Any claims based on a testimonial must conform with the Code.*

14.4 *Fictitious testimonials should not be presented as though they are genuine.*

14.5 *Unless they are genuine statements taken from a published source, references to tests, trials, professional endorsements, research facilities and professional journals should be used only with the permission of those concerned.*

14.6 *Marketers should not refer in marketing communications to advice received from CAP or imply any endorsement by the ASA or CAP.*

14.7 *Marketers should not display a trust mark, quality mark or equivalent without having obtained the necessary authorisation. Marketers must not claim that they, or any other entity that features in their marketing communications, or their products have been approved, endorsed or authorised by a public or private body if it has not or without complying with the terms of the approval.*

14.8 *Marketers should not claim to be a signatory to a code of conduct if they are not. They should not falsely claim that a code of conduct has an endorsement from a public or other body.*

Prices

(see CAP Help Notes on Lowest Price Claims and Price Promises and on Retailers' Price Comparisons)

15.1 *Any stated price should be clear and should relate to the product advertised. Marketers should ensure that prices match the products illustrated (see 48.7).*

15.2 *Prices quoted in marketing communications addressed to the public should include VAT and other non-optional taxes and duties imposed on all buyers. In some circumstances, for example where marketing communications are likely to be read mainly by businesses able to recover VAT, prices may be quoted exclusive of VAT or other taxes and duties, provided prominence is given to the amount or rate of any additional costs.*

15.3 *If the price of one product is dependent on the purchase of another, the extent of any commitment by consumers must be made clear.*

15.4 *Price claims such as 'up to' and 'from' should not exaggerate the availability of benefits likely to be obtained by consumers.*

15.5 *A recommended retail price (RRP), or similar, used as a basis of comparison should be genuine; it should not differ significantly from the price at which the product is generally sold.*

Availability of products

16.1 *Deleted: 24 June 2008*

16.2 *Products which cannot be supplied should not normally be advertised as a way of assessing potential demand unless it is clear that this is the purpose of the marketing communication.*

16.3 *Deleted: 24 June 2008*

16.4 *Products must not be advertised as ready for purchase (ie with an indication of product characteristics and specified price) unless marketers can demonstrate that they have reasonable grounds for believing they can satisfy demand, or have stated any reasonable grounds they might have to believing that they might not be able to supply that or an equivalent product at that price within a reasonable period. If a product becomes unavailable, marketers will be required to show evidence of stock monitoring, communications with outlets and swift withdrawal of marketing communications whenever possible.*

16.5 *Marketers should not use the technique of switch selling, where their sales staff refuse to show the advertised product, refuse to take orders for it or to deliver it within a reasonable time, or demonstrate a defective sample of it, in order to promote a different product.*

16.6 *Marketers should not falsely state that a product, or the terms on which it is*

offered, will be available only for a very limited time in order to deprive consumers of the time or opportunity to make an informed choice.

16.7 *Marketers should not mislead consumers about market conditions or the possibility of finding the product elsewhere in order to induce consumers to buy the product at conditions less favourable than normal market conditions.*

16.8 *Marketers should not falsely claim that they are about to cease trading or move premises.*

Guarantees

(see CAP Help Note on Lowest Price Claims and Price Promises)

17.1 *Guarantees may be legally binding on those offering them. The word 'guarantee' should not be used in a way that could cause confusion about consumers' legal rights. Substantial limitations on the guarantee should be spelled out in the marketing communication. Before commitment, consumers should be able to obtain the full terms of the guarantee from marketers.*

17.2 *Marketers should inform consumers about the nature and extent of any additional rights provided by the guarantee, over and above those given to them by law, and should make clear how to obtain redress.*

17.3 *Marketers should provide a cash refund, postal order or personal cheque promptly to those claiming redress under a money-back guarantee.*

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 *Deleted: 24 June 2008*

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.*

18.6 *Comparisons should not mislead consumers by creating confusion between marketers and competitors or between marketers' products, trademarks, trade names or other distinguishing marks and those of competitors.*

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.*

19.2 *Comparisons should not mislead consumers by creating confusion with any products, trade marks, trade names or other distinguishing marks of the marketer's competitors.*

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.*

Imitation

21.1 *No marketing communication should so closely resemble any other that it misleads, is likely to mislead or causes confusion.*

21.2 *Marketers making comparisons with identifiable competitors and/or their products should not present products as imitations or replicas of products bearing a protected trade mark or trade name.*

21.3 *Marketing communications should not mislead consumers about who manufactures the product.*

Recognising marketing communications and identifying marketers

22.1 *Marketers, publishers and owners of other media should ensure that marketing communications are designed and presented in such a way that it is clear that they are marketing communications. Unsolicited e-mail marketing communications should be clearly identifiable as marketing communications without the need to open them (see also clause 43.4c).*

22.2 *Distance-selling marketing communications should contain the full name of the marketers (and the suppliers if different).*

Distance-selling marketing communications that require payment before products are received and have written response mechanisms should also contain the geographical address of the marketers (and the suppliers if different). Those that contain a telephone response mechanism only may contain the marketers' telephone number instead (though see clause 42.2a).

E-mail and mobile marketing communications should contain the full name and a valid address (e.g. an e-mail address) of the marketers to which recipients can send opt-out requests.

Fax and non-live-sound automated-call marketing communications should contain the full name and a valid address or freephone number of the marketers to which recipients can send opt-out requests.

Sales promotions and marketing communications for one-day sales, homework schemes, business opportunities and the like should contain the full name and geographical address of the marketers (see clause 34.1h and section 52).

Marketing communications for employment agencies should contain the full name and contact details of the marketers.

The law requires marketers to identify themselves in some other marketing communications. Marketers should take legal advice.

22.3 *Marketers should not falsely claim or imply that they are acting as consumers or for purposes outside their trade, business, craft or profession.*

Advertisement features

(see CAP Help Note on Advertisement Features)

23.1 *Advertisement features, announcements or promotions, sometimes referred to as "advertorials", that are disseminated in exchange for a payment or other reciprocal arrangement should comply with the Code if their content is controlled by the marketers rather than the publishers.*

23.2 *Marketers and publishers should make clear that advertisement features are advertisements, for example by heading them "advertisement feature".*

Free offers

24.1 *See clauses 32.1 to 32.3.*

After sales services

25.1 *If a marketing communication in a language other than English offers after-sales service, the marketer should tell consumers, before a contract is concluded, if the after-sales service is not available in the language of the marketing communication.*

25.2 *Marketing communications must not falsely claim or imply that after-sales service is available in a state that forms part of the European Economic Area other than the state where the advertised product is sold.*

SALES PROMOTION RULES

Introduction

27.1 *The sales promotion rules must be read in conjunction with the general rules, direct marketing rules and other specific rules, if relevant.*

27.2 *The sales promotion rules are designed primarily to protect the public but they also apply to trade promotions and incentive schemes and to the promotional elements of sponsorships. They regulate the nature and administration of promotional marketing techniques. Those techniques generally involve providing a range of direct or indirect additional benefits, usually on a temporary basis, designed to make goods or services more attractive to purchasers. The rules do not apply to the routine, non-promotional, distribution of products or to product extensions, for example the suitability of one-off editorial supplements (be they in printed or electronic form) to newspapers and magazines.*

27.3 *Promoters are responsible for all aspects and all stages of promotions.*

27.4 *Promotions should be conducted equitably, promptly and efficiently and should be seen to deal fairly and honourably with consumers. Promoters should avoid causing unnecessary disappointment.*

Protection of consumers, safety and suitability

28.1 *Promoters should make all reasonable efforts to ensure that their promotions, including product samples, are safe and cause no harm to consumers or their property. Literature accompanying promotional items should give any necessary warnings and any appropriate safety advice.*

28.2 *Promoters should make every effort to ensure that unsuitable or inappropriate material does not reach consumers. Promotions should not be socially undesirable to the audience addressed by encouraging excessive consumption or inappropriate use and should be designed and conducted in a way that respects the right of consumers to a reasonable degree of privacy and freedom from annoyance.*

28.3 *No promotion or promotional item should cause serious or widespread offence to the audience addressed.*

Children

29.1 *Special care should be taken when promotions are addressed to children (people under 16) or when products intended for adults may fall into the hands of children.*

29.2 *Alcoholic drinks should not feature in promotions directed at people under 18.*

Availability

30.1 *Promoters should be able to demonstrate that they have made a reasonable estimate of likely response and that they were capable of meeting that response.*

30.2 *Phrases such as "subject to availability" do not relieve promoters of the obligation to take all reasonable steps to avoid disappointing participants.*

30.3 *Promoters should not encourage consumers to make a purchase or series of purchases as a precondition to applying for promotional items if the number of*

those items is limited.

30.4 *If promoters are unable to supply demand for a promotional offer because of an unexpectedly high response or some other unanticipated factor outside their control, they should offer refunds or substitute products in accordance with clause 42.5a.*

30.5 *When prize promotions are widely advertised, promoters should ensure that entry forms and any goods needed to establish proof of purchase are widely available.*

Administration

31.1 *Promotions should be conducted under proper supervision and adequate resources should be made available to administer them. Promoters and intermediaries should not give consumers justifiable grounds for complaint.*

31.2 *Promoters should allow adequate time for each phase of the promotion: notifying the trade, distributing the goods, issuing rules if relevant, collecting wrappers and the like, judging and announcing results.*

31.3 *Promoters should normally fulfil applications within 30 days in accordance with 42.4 and refund money in accordance with 42.5a.*

Free offers and free trials

32.1 *Deleted: 24 June 2008*

32.2 *Promoters must not try to recover their costs by reducing the quality or composition or by inflating the price of any product that must be bought as a pre-condition of obtaining the free item.*

32.3 *Promoters should not describe an individual element of a package as "free" if the cost of that element is included in the package price.*

32.4 *Promoters should not use the term "free trial" to describe "satisfaction or your money back" offers, "buy one get one free" offers or other offers where a non-refundable purchase is required. If appropriate, promoters should provide a cash refund, postal order or personal cheque promptly to free trial participants.*

32.5 *Consumers' liability for costs should be made clear in all material featuring "free" offers. An offer should be described as free only if consumers pay no more than:*

a the minimum, unavoidable cost of responding to the promotion, eg the current public rates of postage, the cost of telephoning up to and including the national rate or the minimum, unavoidable cost of sending an e-mail or SMS text message

b the true cost of freight or delivery

c the cost, including incidental expenses, of any travel involved if consumers collect the offer.

Promoters should not charge for packing, handling or administration.

Prize promotions and the law

(see CAP Help Note on Promotions with Prizes)

33.1 *Promoters should take legal advice before embarking on promotions with prizes, including competitions, prize draws, instant win offers and premium-payment promotions, to ensure that the mechanisms involved do not make them unlawful lotteries (see the Gambling Act 2005 in Great Britain or the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 in Northern Ireland).*

Significant conditions for promotions

(see CAP Help Note on Promotions with Prizes)

34.1 *Promotions should specify clearly before any purchase (or before or at the time of entry/application, if no purchase is required):*

a ***How to participate***

how to participate, including significant conditions and costs, and any

other major factors reasonably likely to influence consumers' decisions or understanding about the promotion. If a promotion has a free entry route, for example if one is required by law, that route should be explained clearly.

b ***Start date***
the start date, in any comparison referring to a special offer if the special offer has not yet begun

c ***Closing date***
a prominent closing date, if applicable, for purchases and submissions of entries/claims. Prize promotions and promotions addressed to or targeted at children always need a closing date. Some others do not, for example: comparisons that refer to a special offer (whether the promoter's previous offer or a competitor's offer), so long as they are and are stated to be "subject to availability"; promotions limited only by the availability of promotional packs (eg gifts with purchase, extra volume packs and reduced price packs); and loyalty schemes run on an open-ended basis. Promoters must be able to demonstrate that the absence of a closing date will not disadvantage consumers. Promoters should state if the deadline for responding to undated promotional material will be calculated from the date the material was received by consumers. Closing dates should not be changed unless circumstances outside the reasonable control of the promoter make it unavoidable. If they are changed, promoters should take all reasonable steps to ensure that consumers who participated within the original terms are not disadvantaged.

d ***Proof of purchase***
any proof of purchase requirements.

e ***Prizes***
the minimum number and nature of any prizes, if applicable. Promoters should state if prizes are to be awarded in instalments or are to be shared among recipients

f ***Restrictions***
geographical, personal or technological restrictions such as location, age or the need to have access to the Internet. Promoters should state any need to obtain permission to enter from an adult or employer

g ***Availability of promotional packs***
where it is not obvious, if there is likely to be a limitation on the availability of promotional packs in relation to a stated closing date of the offer

h ***Promoter's name and address***
the promoter's full name and business address, unless this is obvious from the context. Promotions by newspapers and magazines in their publications need not state the name and address if those can easily be found elsewhere in the publication

Participants should be able to retain the above conditions or have easy access to them throughout the promotion. Advertisements for promotions should specify all of the significant conditions above that are applicable.

Other rules for prize promotions

(see CAP Help Note on Promotions with Prizes)

35.1 *Promoters should not claim that consumers have won a prize if they have not. The distinction between prizes and gifts should always be clear. Gifts offered to all or most consumers in a promotion should not be described as prizes. If promoters offer gifts to all or most consumers in addition to giving prizes to those who win, particular care is needed to avoid confusing the two. In such cases, it should be clear that consumers "qualify" for the gifts but have merely an opportunity to win the prizes. If promoters include a gift that consumers have qualified for in a list of other prizes, they should distinguish clearly between the two.*

35.2 *Promoters should not overstate consumers' chances of winning prizes. If promoters include consumers who have not won prizes in lists of those who have won prizes, they should distinguish clearly between the two.*

35.3 *Promoters should not claim that consumers are luckier than they are. They should not use terms such as "finalist" or "final stage" in a way that implies that*

consumers have progressed, by chance or skill, to an advanced stage of promotions if they have not.

35.4 *Promoters should not claim that consumers must respond by a specified date or within a specified time if they need not.*

35.5 *Complex rules should be avoided and only very exceptionally will it be considered acceptable to supplement conditions of entry with additional rules. If extra rules cannot be avoided, participants should be informed how to obtain them; the rules should contain nothing that could reasonably have influenced consumers against making a purchase or participating.*

35.6 *Deleted: 24 June 2008*

35.7 *Promoters of prize draws should ensure that prizes are awarded in accordance with the laws of chance and under the supervision of an independent observer.*

35.8 *Participants in instant win promotions should get their winnings at once or should know immediately what they have won and how to claim without delay, unreasonable costs or administrative barriers. Instant win tickets, tokens or numbers should be awarded on a fair and random basis and verification should take the form of an independently audited statement that all prizes have been distributed, or made available for distribution, in that manner.*

35.9 *Prize promotions should specify before or at the time of entry:*

- *a any restriction on the number of entries*
- *b whether or not a cash alternative can be substituted for any prize*
- *c when prizewinners will receive their prizes if later than six weeks after the closing date*
- *d how and when winners will be notified of results*
- *e how and when winners and results will be announced. Promoters should either publish or make available on request the name and county of major prizewinners and, if applicable, their winning entries. Prizewinners should not be compromised by the publication of excessively detailed personal information*
- *f in a competition, ie a game of skill or judgement, the criteria for judging entries (eg the most apt and original tiebreaker). If the selection of winning entries is open to subjective interpretation, an independent judge, or a panel including one member who is independent of the competition's promoters and intermediaries, should be appointed. Those appointed to act as judges should be competent to judge the subject matter of the competition. The full names of judges should be made available on request*
- *g if relevant, who owns any copyright in the entries*
- *h if applicable, how entries will be returned by promoters*
- *i any intention to use winners in post-event publicity*

Participants should be able to retain the above conditions or have easy access to them throughout the promotion.

35.10 *Marketers should award the prizes as described in their marketing communications or reasonable equivalents.*

35.11 *Marketers should not falsely claim or imply that the consumer has already won, will win, or will on doing a particular act win a prize (or other equivalent benefit) if the consumer must incur a cost to claim the prize (or other equivalent benefit) or if the prize (or other equivalent benefit) does not exist.*

Front page flashes

(see CAP Help Note on Front Page Flashes)

36.1 *Publishers announcing reader promotions on the front page or cover should ensure that consumers know whether they will be expected to buy subsequent editions of the publication. Major conditions that might reasonably influence consumers significantly in their decision to buy the publication should appear on the front page or cover.*

Charity-linked promotions

(see CAP Help Note for Voluntary Sector Advertisers)

37.1 *Promotions run by third parties (eg commercial companies) claiming that participation will benefit registered charities or causes should:*

a name each charity or cause that will benefit and be able to show the ASA or CAP the formal agreement with those benefiting from the promotion
b if it is not a registered charity, define its nature and objectives
c specify exactly what will be gained by the named charity or cause and state the basis on which the contribution will be calculated
d state if the promoter has imposed a limit on its contributions
e not limit consumers' contributions. If an amount is stated for each purchase, there should be no cut-off point for contributions. If a target total is stated, extra money collected should be given to the named charity or cause on the same basis as contributions below that level
f be able to show that targets set are realistic
g not exaggerate the benefit to the charity or cause derived from individual purchases of the promoted product
h if asked, make available to consumers a current or final total of contributions made
i take particular care when appealing to children (see clause 47.4e).

Trade incentives

38.1 Incentive schemes should be designed and implemented to take account of the interests of everyone involved and should not compromise the obligations of employees to give honest advice to consumers.

38.2 If promoters intend to ask for help from, or offer incentives to, another company's employees, they should require those employees to obtain their employer's permission before participating. Promoters should observe any procedures established by companies for their employees, including any rules for participating in promotions.

38.3 Incentive schemes should make clear to those benefiting that they may be responsible for paying tax.

Notes: 39-40

39.1 Marketers should not claim that products are able to facilitate winning games of chance.

DIRECT MARKETING RULES

41.1 The direct marketing rules must be read in conjunction with the general rules, sales promotion rules and other specific rules, if relevant. Moreover, the Direct Marketing Association also requires its members to observe the DMA Code of Practice. That code covers some practices (eg telemarketing) that are not covered in this Code.

DISTANCE SELLING

42.1 For the purposes of the Code, distance selling marketing communications are the final written advertised stage in the process that allows consumers to buy products without the buyer and seller meeting face-to-face. Marketers should comply with the Consumer Protection (Distance Selling) Regulations 2000. Guidance on the legislation is available from www.dti.gov.uk. These clauses should be observed in conjunction with the legislation; they do not replace it.

42.2 Distance selling marketing communications should include:

a for those communications that require payment before products are received and have written response mechanisms (eg postal, fax or e-mail), the full name and geographical address of the marketers (and suppliers if different) outside the coupon or other response mechanism so that it can be retained by consumers. A separate address for orders may also be given; this need not be a full address but could, for example, be a Freepost address or a PO Box number. Communications containing a telephone response mechanism only need merely state the full name and telephone number but consumers

calling the number must be told the geographical address (and see 42.3d). Communications that do not require payment before products are received should state the full name of the marketers (and the suppliers if different)

- *b the main characteristics of the products*
- *c the price, including any VAT or other taxes payable (see 15.2), and payment arrangements*
- *d the amount and number of any delivery charges*
- *e the estimated delivery/performance time (see 42.4) and arrangements*
- *f a statement that, unless inapplicable (see 42.6), consumers have the right to cancel orders for products. Marketers of services must state that the right to cancel will be lost once services have begun with the consumer's agreement, if they wish to limit consumers' cancellation rights in this way. They should, however, make it clear when the services will begin*
- *g any telephone, postal or other communication charges calculated at higher than the basic rate (eg where a premium rate call is required)*
- *h any other limitation on the offer (eg period of availability) and any other conditions that affect its validity*
- *i a statement as to whether marketers intend to provide substitute products (of equivalent quality and price) if those ordered are unavailable, and that they will meet the cost of returning substitute products on cancellation*
- *j the minimum duration of open-ended contracts; ie where goods are supplied or services performed permanently or recurrently.*

42.3 At the latest by the time that goods are delivered or services begin, marketers should give consumers written information on:

- *a unless inapplicable (see 42.6 below), how to exercise their right to cancel. Marketers should allow at least 7 clear working days after delivery (or after the conclusion of service contracts) for consumers to cancel*
- *b in the case of goods, whether the consumer has to return the goods to the suppliers on cancellation and, if so, who is to bear the cost of return or recovery of the goods (though see 42.2i for substitute goods)*
- *c any other after-sales services and guarantees*
- *d the full geographical address of the suppliers for any consumer complaints*
- *e the conditions that apply to the cancellation of open-ended contracts.*

42.4 Marketers should fulfil orders within 30 clear days from the day consumers send their orders unless they meet one of the following criteria and state the longer delivery time in the marketing communication: a longer delivery time might be given for products such as plants and made-to-measure products; marketers might make clear that they do not intend to begin production unless a sufficient response is received; or a series of products might be sent at regular intervals after the first 30 days.

42.5 Marketers must refund money promptly (and at the latest within 30 days of notice of cancellation being given) if:

- *a consumers have not received products. If consumers prefer to wait they should be given a firm dispatch date or fortnightly progress reports. Alternatively marketers may, if asked or if stated before purchase, provide a substitute of equivalent quality and price*
- *b products are returned because they are damaged when received, are faulty or are not as described, in which case the marketers must bear the cost of transit in both directions*
- *c consumers cancel within seven clear working days after delivery (see 42.3a above). Consumers should assume they can try out products but should take reasonable care of them before they are returned (though see 42.6d). Consumers must return the products and pay the costs of doing so providing the marketers made this clear at the latest at the time the products were delivered (though see 42.2i for substitute goods)*
- *d an unconditional money-back guarantee is given and the products are returned within a reasonable period*

e products that have been returned are not received back, provided consumers can produce proof of posting.

42.6 So long as all contractual obligations to consumers are met, marketers do not have to provide a refund on:

a services that have already begun, where 42.2f has been complied with

b products the price of which is dependent on fluctuations in the financial market that are outside the control of the suppliers

c perishable, personalised or made-to-measure products

d audio or video recordings or computer software if unsealed by the consumer

e newspapers, periodicals or magazines

f betting, gaming or lottery services.

42.7 If marketers intend to call on respondents personally, this should be made clear in the marketing communication or in a follow-up mailing. To allow consumers an adequate opportunity to refuse a personal visit, marketers should provide a reply-paid postcard or Freephone telephone contact instructions.

42.8 Marketers should take particular care when packaging products that might fall into the hands of children.

42.9 Marketers must not falsely imply that consumers have already ordered the marketed product by including in marketing material an invoice or similar document that seeks payment.

42.10 Marketers should not ask consumers to pay for or return unsolicited products, except for substitute products supplied in conformity with clauses 30.4 and 42.5a.

DATABASE PRACTICE

43.1 Marketers should comply with all relevant data protection legislation. Guidance on this legislation is available from the Office of the Information Commissioner. Although data protection legislation has a wide application, these clauses relate only to databases used for direct marketing purposes. The clauses should be observed in conjunction with the legislation; they do not replace it.

43.2 Deleted: 24 June 2008

43.3 Except if it is obvious from the context, or if they already know, consumers should be informed at the time when personal information is collected:

a who is collecting it (and the representative for data protection queries, if different)

b why it is being collected

c if it is intended to disclose the information to third parties, including associated but legally separate companies, or put the information to a use significantly different from that for which it is being provided, in which case an opportunity to prevent this should be given.

43.4 The explicit consent of consumers is required before:

a processing sensitive personal data, including information on racial or ethnic origin, political opinion or religious or other similar beliefs, trade union membership, physical or mental health, sex life or any criminal record or allegation of criminal activity

b sending marketing communications by fax. Explicit consent is not required when marketing by fax to corporate subscribers (see 1.3j), though marketers must comply with 43.2d in particular and, if necessary, run their databases against the fax data file

c sending marketing communications by e-mail or to mobile devices, save that marketers may send unsolicited marketing about their similar products to those whose details they have obtained in the course of, or in negotiations for, a sale. They should, however, tell them they may opt-out of future marketing both when they collect the data and on each occasion they send out marketing communications and should give them a simple means to do so. Explicit consent is not required when marketing business products to corporate subscribers (see 1.3j), including to their named employees

d sending non-live-sound marketing communications by automated calling systems.

43.5 *If after collection it is decided to use personal information for a purpose significantly different from that originally communicated, marketers should first get the explicit consent of consumers. Significantly different purposes include:*

- *a the disclosure of personal information to third parties for direct marketing purposes*
- *b the use or disclosure of personal information for any purpose substantially different from that which consumers could reasonably have foreseen and to which they might have objected.*

43.6 *The extent and detail of personal information held for any purpose should be adequate and relevant and should not be excessive for that purpose.*

43.7 *Personal information must always be held securely and should be safeguarded against unauthorised use, disclosure, alteration or destruction.*

43.8 *Personal information should not be kept for longer than is necessary for the purpose or purposes for which it was obtained.*

43.9 *Consumers are entitled to have their personal information suppressed. Enough information should be held by companies, though not for direct marketing purposes, to ensure that no further marketing communications are sent as a result of information about those consumers being re-obtained through a third party. If they want to reduce all unsolicited contact, consumers should register their names and contact details on all relevant suppression files.*

43.10 *Consumers who have asked for personal information about them to be suppressed may be contacted again if they ask to be reinstated.*

43.11 *Marketers are permitted to use published information that is generally available provided the consumer concerned is not listed on a relevant suppression file.*

43.12 *Any proposed transfer of a database to a country outside the European Economic Area should be made only if that country ensures an adequate level of protection for the rights and freedoms of consumers in relation to the processing of personal information or if contractual arrangements are in place to provide that protection.*

43.13 *Marketers should not make persistent and unwanted marketing solicitations by telephone, fax, e-mail or other remote media. To avoid making persistent and unwanted marketing solicitations, marketers should take all necessary steps to ensure that:*

- *a marketing communications are suitable for those targeted*
- *b marketing communications are not sent unsolicited to consumers if explicit consent is required (see 43.4)*
- *c marketing communications are not sent to consumers who have asked not to receive them (see 43.9) or who have not had the opportunity to object to receiving them, if appropriate (see 43.3c). Those consumers should be identifiable*
- *d databases are accurate and up-to-date and, if rented, bought, etc, have been run against the most relevant suppression file operated by the relevant Preference Service. Reasonable requests for corrections to personal information should be acted upon within 60 days*
- *e anyone who has been notified as dead is not mailed again and the notifier is referred to the relevant Preference Service*
- *f if asked in writing, consumers or the ASA (with consumers' consent) are given any information available on the nature and source of their personal details*

Responsibility for complying with the above sub-clauses may not rest directly with marketers but with other data controllers. Those responsible will be expected to comply.

OTHER SPECIFIC RULES

CHILDREN

47.1 *For the purposes of the Code, a child is someone under 16. The way in which children perceive and react to marketing communications is influenced by their age, experience and the context in which the message is delivered; marketing communications that are acceptable for young teenagers will not necessarily be acceptable for young children. The ASA will take these factors into account when assessing marketing communications.*

47.2 *Marketing communications addressed to, targeted at or featuring children should contain nothing that is likely to result in their physical, mental or moral harm:*

- *a they should not be encouraged to enter strange places or talk to strangers. Care is needed when they are asked to make collections, enter schemes or gather labels, wrappers, coupons and the like*
- *b they should not be shown in hazardous situations or behaving dangerously in the home or outside except to promote safety. Children should not be shown unattended in street scenes unless they are old enough to take responsibility for their own safety. Pedestrians and cyclists should be seen to observe the Highway Code*
- *c they should not be shown using or in close proximity to dangerous substances or equipment without direct adult supervision. Examples include matches, petrol, certain medicines and household substances as well as certain electrical appliances and machinery, including agricultural equipment*
- *d they should not be encouraged to copy any practice that might be unsafe for a child.*

47.3 *Marketing communications addressed to, targeted at or featuring children should not exploit their credulity, loyalty, vulnerability or lack of experience:*

- *a they should not be made to feel inferior or unpopular for not buying the advertised product*
- *b they should not be made to feel that they are lacking in courage, duty or loyalty if they do not buy or do not encourage others to buy a particular product*
- *c it should be made easy for them to judge the size, characteristics and performance of any product advertised and to distinguish between real-life situations and fantasy*
- *d adult permission should be obtained before they are committed to purchasing complex and costly products.*

47.4 *Deleted: 24 June 2008*

47.5 *Deleted: 24 June 2008*

Food and soft drink product advertisements and children

On 1 July 2007, a new and important regulation governing nutrition and health claims for foods came into force. The regulation is complex and mandatory. CAP encourages advertising industry stakeholders to take advice on the effect of the regulation and to consult the Food Standards Agency's Guidance to Compliance with Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods, which is available at http://www.food.gov.uk

47.6 *Marketing communications should not condone or encourage poor nutritional habits or an unhealthy lifestyle in children.*

47.7

- *a Although children might be expected to exercise some preference over the food they eat or drink, marketing communications should be prepared with a due sense of responsibility and should not directly advise or ask children to buy or to ask their parents or other adults to make enquiries or purchases for them. (see 47.4a)*
- *b Marketing communications should neither try to sell to children by directly appealing to emotions such as pity, fear, or self-confidence nor suggest that having the advertised product somehow confers superiority, for example making a child more confident, clever, popular, or successful.*
- *c Marketing communications addressed to children should avoid "high pressure" and "hard sell" techniques; they should neither directly urge children*

to buy or persuade others to buy nor suggest that children could be bullied, cajoled or otherwise put under pressure to acquire the advertised item.

d Products and prices should not be presented in marketing communications in a way that suggests children or their families can easily afford them.

e Marketing communications addressed to or targeted directly at children should not actively encourage them to eat or drink at or near bedtime, to eat frequently throughout the day or to replace main meals with confectionery or snack foods.

47.8 Marketing communications featuring a promotional offer should be prepared with a due sense of responsibility. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include promotional offers.

a Marketing communications featuring a promotional offer linked to food products of interest to children should avoid creating a sense of urgency or encouraging the purchase of excessive quantities for irresponsible consumption.

b Marketing communications should not seem to encourage children to eat or drink a product only to take advantage of a promotional offer: the product should be offered on its merits, with the offer as an added incentive. Marketing communications featuring a promotional offer should ensure a significant presence for the product. Marketing communications for fresh fruit or fresh vegetable products are exempt from this restriction.

c Marketing communications for collection-based promotions should not seem to urge children or their parents to buy excessive quantities of food.

d Marketing communications should not encourage children to eat more than they otherwise would.

47.9 Licensed characters and celebrities popular with children should be used with a due sense of responsibility. Except those for fresh fruit or fresh vegetables, food or drink advertisements that are targeted directly at pre-school or primary school children through their content should not include licensed characters or celebrities popular with children.

47.10 Marketing communications should not give a misleading impression of the nutritional or health benefits of the product as a whole.

47.11 Marketing communications should not disparage good dietary practice or the selection of options, such as fresh fruit and vegetables that accepted dietary opinion recommends should form part of the average diet.

The following do not relate to food & drink advertising to children; they apply to all ads targeted at children

47.12 Marketing communications addressed to or targeted at children:

a should not actively encourage them to make a nuisance of themselves to parents or others and should not undermine parental authority

b should not make a direct appeal to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. Distance selling marketers should take care when using youth media not to promote products that are unsuitable for children

c should not exaggerate what is attainable by an ordinary child using the product being marketed

d relocated to 47.7(e) from 1 July 2007)

e should not exploit their susceptibility to charitable appeals and should explain the extent to which their participation will help in any charity-linked promotions.

47.13 Promotions addressed to or targeted at children:

a should make clear that adult permission is required if prizes and incentives might cause conflict. Examples include animals, bicycles, tickets for outings, concerts and holidays

b should contain a prominent closing date

c should not exaggerate the value of prizes or the chances of winning them.

MOTORING

48.1 *Marketing communications for motor vehicles, fuel or accessories should avoid portraying or referring to practices that encourage or condone anti-social behaviour.*

48.2 *Marketers should not make speed or acceleration claims the predominant message of their marketing communications. However it is legitimate to give general information about a vehicle's performance such as acceleration and mid-range statistics, braking power, road-holding and top speed.*

48.3 *Marketers should not portray speed in a way that might encourage motorists to drive irresponsibly or to break the law and should not condone irresponsible driving.*

48.4 *Vehicles should not be depicted in dangerous or unwise situations in a way that might encourage or condone irresponsible driving. Their capabilities may be demonstrated on a track or circuit provided it is clearly not in use as a public highway.*

48.5 *Care should be taken in cinema commercials and those in electronic media where the moving image may give the impression of excessive speed. In all cases where vehicles are shown in normal driving circumstances on public roads they should be seen not to exceed UK speed limits.*

48.6 *When making environmental claims for their products, marketers should conform with the rules on Environmental Claims.*

48.7 *Prices quoted should correspond to the vehicles illustrated. For example, it is not acceptable to feature only a top-of-the-range model alongside the starting price for that range.*

48.8 *Safety claims should not exaggerate the benefit to consumers. Marketers should not make absolute claims about safety unless they hold evidence to support them.*

ENVIRONMENTAL CLAIMS

(See CAP Help Note on Claims for Organic Food)

49.1 *The basis of any claim should be explained clearly and should be qualified where necessary. Unqualified claims can mislead if they omit significant information.*

49.2 *Claims such as 'environmentally friendly' or 'wholly biodegradable' should not be used without qualification unless marketers can provide convincing evidence that their product will cause no environmental damage when taking into account the full life cycle of the product. Qualified claims and comparisons such as 'greener' or 'friendlier' may be acceptable if marketers can substantiate that their product provides an overall improvement in environmental terms either against their competitors' or their own previous products.*

49.3 *Where there is a significant division of scientific opinion or where evidence is inconclusive this should be reflected in any statements made in the marketing communication. Marketers should not suggest that their claims command universal acceptance if that is not the case.*

49.4 *If a product has never had a demonstrably adverse effect on the environment, marketing communications should not imply that the formulation has changed to make it safe. It is legitimate, however, to make claims about a product whose composition has changed or has always been designed in a way that omits chemicals known to cause damage to the environment.*

49.5 *The use of extravagant language should be avoided, as should bogus and confusing scientific terms. If it is necessary to use a scientific expression, its meaning should be clear.*

HEALTH & BEAUTY PRODUCTS AND THERAPIES

(see CAP Help Notes, particularly those on: Substantiation for Health, Beauty and Slimming Claims; Health, Beauty and Slimming Advertisements that Refer to Ailments; and Use of Experts by the ASA and CAP)

General

On 1 July 2007, a new and important regulation governing nutrition and health claims for foods came into force. The regulation is complex and mandatory. CAP encourages advertising industry stakeholders to take advice on the effect of the regulation and to consult the Food Standards Agency's Guidance to Compliance with Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods, which is available at http://www.food.gov.uk

50.1 *Medical and scientific claims made about beauty and health-related products should be backed by evidence, where appropriate consisting of trials conducted on people. Where relevant, the rules will also relate to claims for products for animals. Substantiation will be assessed by the ASA on the basis of the available scientific knowledge.*

50.2 *Marketers inviting consumers to diagnose their own minor ailments should not make claims that might lead to a mistaken diagnosis.*

50.3 *Marketers should not discourage essential treatment. They should not offer specific advice on, diagnosis of or treatment for serious or prolonged conditions unless it is conducted under the supervision of a doctor or other suitably qualified health professional (eg one subject to regulation by a statutory or recognised medical or health professional body). Accurate and responsible general information about such conditions may, however, be offered.*

50.4 *Consumers should not be encouraged to use products to excess and marketers should hold proof before suggesting their products or therapies are guaranteed to work, absolutely safe or without side-effects.*

50.5 *Marketing communications should not suggest that any product is safe or effective merely because it is 'natural' or that it is generally safer because it omits an ingredient in common use.*

50.6 *Marketers offering individual treatments, particularly those that are physically invasive, may be asked by the media and the ASA to provide full details together with information about those who will supervise and administer them. Where appropriate, practitioners should have relevant and recognised qualifications. Marketers should encourage consumers to take independent medical advice before committing themselves to significant treatments, including those that are physically invasive.*

50.7 *References to the relief of symptoms or the superficial signs of ageing are acceptable if they can be substantiated. Unqualified claims such as 'cure' and 'rejuvenation' are not generally acceptable.*

50.8 *Marketers should hold proof before claiming or implying that minor addictions and bad habits can be treated without effort from those suffering.*

50.9 *Marketers should not use unfamiliar scientific words for common conditions.*

Medicines

50.10 *The Medicines Act 1968 and its regulations, as well as regulations implementing European Community Directive 92/28/EEC, govern the advertising and promotion of medicines and the conditions of ill health that they can be offered to treat. Guidance on the legislation is available from the Medicines and Healthcare Products Regulatory Agency (MHRA).*

50.11 *Medicines must have a marketing authorisation from the MHRA before they are marketed and any claims made for products must conform with the authorisation. Medicinal claims should not be made for unauthorised products. Marketing communications should refer to the MHRA, the authorisation or the EC only if required to do so by the MHRA.*

50.12 *Prescription-only medicines may not be advertised to the public. Health-related claims in marketing communications addressed only to the medical, dental, veterinary and allied professions are exempt from the Code.*

50.13 *Marketing communications should include the name of the product, an indication of what it is for, text such as 'Always read the label' and the common name of the active ingredient if there is only one. There should be no*

suggestion that any medicine is either a food or a cosmetic.

50.14 Marketers must not use fear or anxiety to promote medicines or recovery from illness and should not suggest that using or avoiding a product can affect normal good health.

50.15 Illustrations of the effect or action of any product should be accurate.

50.16 Marketing communications for medicines should not be addressed to children.

50.17 Marketers should not use health professionals or celebrities to endorse medicines. Health claims in marketing communications for food products must not refer to the recommendation of an individual health professional

50.18 Marketing communications for any medicine should not claim that its effects are as good as or better than those of another identifiable product.

50.19 Homeopathic medicinal products must be registered in the UK. Any product information given in the marketing communication should be confined to what appears on the label. Marketing communications should include a warning to consult a doctor if symptoms persist. Marketing communications for unauthorised products should not make any medicinal or therapeutic claims or refer to any ailment.

Vitamins, minerals and other food supplements

50.20 Marketers should hold scientific evidence for any claim that their vitamin or mineral product or other food supplement is beneficial to health. In assessing claims the ASA and CAP will bear in mind recommendations made by bodies such as the Department of Health and the Food Standards Agency.

50.21 A well-balanced diet should provide the vitamins and minerals needed each day by a normal, healthy individual. Marketers must not state or imply that a balanced or varied diet cannot provide enough nutrients in general and should not encourage anyone to swap a healthy diet for supplementation. Marketing communications must not imply vitamin or mineral supplements can be used to prevent or treat illness. Marketers may offer vitamin and mineral supplements to certain groups as a safeguard to help maintain good health but they must not, unless the claims are authorised by the European Commission, imply that they can be used to elevate mood or enhance normal performance. Claims about higher vitamin or mineral intake for a specific function are permitted if authorised by the European Commission. Without well-established proof, no marketing communication should suggest that there is a widespread vitamin or mineral deficiency.

50.22 People who are potentially at risk of deficiency may be safeguarded by vitamin and mineral supplementation. If the claim made for a vitamin or mineral supplement is relevant only to a group that is at risk of inadequate intake, marketing communications must state clearly the group likely to benefit from the supplement. Indicative groups include:

a people who eat nutritionally inadequate meals
b the elderly
c children and adolescents
d convalescents
e athletes in training or others who are physically very active
f women of child-bearing age
g lactating and pregnant women
h people on restricted food or energy diets
i people with Asian ancestry from the Indian sub-continent
j people who smoke.

50.23 Serious vitamin and mineral depletion caused by illness should be diagnosed and treated by a doctor. Self-medication should not be promoted on the basis that it will influence the speed or extent of recovery.

Cosmetics

50.24 Claims made about the action that a cosmetic has on or in the skin should distinguish between the composition of the product and any effects brought about by the way in which it is applied, such as massage. Scientific evidence should also make this distinction.

50.25 Some cosmetics have an effect on the kind of skin changes that are caused by environmental factors. Marketing communications for them can therefore refer

to temporarily preventing, delaying or masking premature ageing.

Hair and scalp

50.26 *Marketers should be able to provide scientific evidence, where appropriate in the form of trials conducted on people, for any claim that their product or therapy can prevent baldness or slow it down, arrest or reverse hair loss, stimulate or improve hair growth, nourish hair roots, strengthen the hair or improve its health as distinct from its appearance.*

General

50.27 *Marketers should not falsely claim that a product is able to cure illness, dysfunction or malformations*

WEIGHT CONTROL

(see CAP Slimming Guidelines for Press Advertisements)

On 1 July 2007, a new and important regulation governing nutrition and health claims for foods came into force. The regulation is complex and mandatory. CAP encourages advertising industry stakeholders to take advice on the effect of the regulation and to consult the Food Standards Agency's Guidance to Compliance with Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods, which is available at http://www.food.gov.uk

51.1 *A weight reduction regime in which the intake of energy is lower than its output is the most common self-treatment for achieving weight reduction. Any claims made for the effectiveness or action of a weight reduction method or product should be backed if appropriate by rigorous trials on people; testimonials that are not supported by trials do not constitute substantiation.*

51.2 *Obesity in adults is defined by a Body Mass Index (BMI) of more than 30 kg/m2. Obesity is frequently associated with medical conditions and treatments for it should not be advertised to the public unless they are to be used under suitably qualified supervision.*

51.3 *Marketing communications for any weight reduction regime or establishment should neither be directed at, nor contain anything that will appeal particularly to, people who are under 18 or those in whom weight reduction would produce a potentially harmful body weight (BMI of less than 18.5 kg/m2). Marketing communications should not suggest that it is desirable to be underweight.*

51.4 *Marketers must show that weight reduction is achieved by loss of body fat before claims are made for a weight reduction aid or regimen. Combining a diet with an unproven weight reduction method does not justify making weight reduction claims for that method.*

51.5 *Marketers should be able to show that their diet plans are nutritionally well-balanced (except for producing a deficit of energy) and this should be assessed in relation to the kind of person who would be using them.*

51.6 *Vitamins and minerals do not contribute to weight reduction but may be offered to slimmers as a safeguard against any shortfall when dieting.*

51.7 *Marketers promoting Very Low Calorie Diets and other diets that fall below 800 calories a day should do so only for short term use and should encourage users to take medical advice before embarking on them. Marketers should also have regard to the voluntary code of practice in the COMA report "The Use of Very Low Energy Diets" (1987).*

51.8 *Marketing communications for diet aids should make clear how they work. Prominence must be given to the role of the diet and marketing communications should not give the impression that dieters cannot fail or can eat as much as they like and still lose weight.*

51.9 *Marketing communications should not contain claims that people can lose precise amounts of weight within a stated period or that weight or fat can be lost from specific parts of the body.*

51.10 *Claims for food products that refer to a rate or amount of weight loss are not permitted. Claims made for other products that individuals have lost exact*

amounts of weight should be compatible with good medical and nutritional practice, should state the period involved and should not be based on unrepresentative experiences. For those who are normally overweight, a rate of weight loss greater than 2 lbs (just under 1 kg) per week is unlikely to be compatible with good medical and nutritional practice. For those who are obese, a rate of weight loss greater than 2 lbs per week in the early stages of dieting may be compatible with good medical and nutritional practice.

51.11 *Resistance and aerobic exercise can improve muscular condition and tone; this can improve body shape and posture. Marketers should be able to substantiate any claims that such methods used alone or in conjunction with a diet plan can lead to weight or inch reduction. Marketing communications for intensive exercise programmes should encourage users to check with a doctor before starting.*

51.12 *Short-term loss of girth may be achieved by wearing a tight-fitting garment. This should not be portrayed as permanent, nor should it be confused with weight or fat reduction.*

EMPLOYMENT AND BUSINESS OPPORTUNITIES

52.1 *Marketers should distinguish clearly between offers of employment and business opportunities. Before publication, media normally require full details of the marketers and any terms and conditions imposed on respondents.*

52.2 *Employment marketing communications must correspond to genuine vacancies and potential employees must not be asked to send money for further details. Living and working conditions should not be misrepresented. Quoted earnings should be precise; if a forecast has to be made this should not be unrepresentative. If income is earned from a basic salary and commission, commission only, or in some other way, this should be made clear.*

52.3 *An employment agency must make clear in marketing communications its full name and contact details and, if the name does not disclose that fact, that it is an employment agency.*

52.4 *Marketing communications for homework schemes requiring participants to make articles, perform services or offer facilities at or from home should contain:*

a the full name and geographical address of the marketers
b a clear description of the work; the support available to homeworkers should not be exaggerated
c an indication of whether participants are self-employed or employed by a business
d the likely level of earnings, but only if this can be supported with evidence of the experience of current homeworkers
e no forecast of earnings if the scheme is new
f a statement of any required investment or binding obligation
g a statement of any charges for raw materials, machines, components, administration and the like
h information on whether the marketers will buy back any products made
i any limitations or conditions that might influence consumers prior to their decision to participate.

Marketers may include that information in follow-up literature made available to all consumers before commitment but the initial marketing communication should state if a financial outlay is required.

52.5 *Marketing communications for business opportunities should contain:*

a the full name and geographical address of the marketers
b a clear description of the work involved and the extent of investors' commitments, including any financial investment; the support available should not be exaggerated
c no unrepresentative or exaggerated earnings figures.

Marketers may include that information in follow-up literature made available to all consumers before commitment but the initial marketing communication should normally state if an investment is required.

52.6 *Marketing communications for vocational training and other instruction courses should make no promises of employment unless it is guaranteed. The duration*

of the course and the level of attainment needed to embark on it should be made clear.

52.7 *Marketing communications for the sale of directories giving details of employment or business opportunities should indicate plainly the nature of what is being offered.*

52.8 *Marketing communications should not offer schemes under which consumers pay or give other consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme and not from the sale or consumption of products ("pyramid schemes").*

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 2005, 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 is responsible for the regulation of first charge mortgage lending and selling, as well as certain secured loans and the activities of insurance intermediaries. The FSA does not provide pre-publication advice on proposed financial marketing communications. Technical guidance is available on specific matters or rule interpretation only. For more information contact the FSA Financial Promotions Review and Remediation Team (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.*

TOBACCO, ROLLING PAPERS AND FILTERS

55.1 *The previous edition of this Code contained strict rules (The Cigarette Code) that applied to marketing communications for tobacco products (cigarettes and hand-rolling tobacco), rolling papers and filters. The Cigarette Code was exceptional in that it was the outcome of discussions between the Department of Health, the manufacturers and importers of cigarettes (represented by the Tobacco Manufacturers' Association and the Imported Tobacco Products*

Advisory Council respectively) and the ASA. It ran in parallel with, and its rules were applied in addition to, those imposed elsewhere in the Codes.

The Tobacco Advertising and Promotion Act 2002 now prohibits the advertising of tobacco products. It does not, however, cover advertisements for rolling papers or filters and does permit certain tobacco advertising at point of sale. Self-regulatory rules and procedures for these categories are under review and will be published on www.cap.org.uk when finalised.

Self-regulatory rules covering the marketing of rolling papers and filters were published on 30 October 2003 and appear below.

Rules Covering the Marketing of Rolling Papers and Filters

Introduction

1.1 *Past editions of the British Codes of Advertising and Sales Promotion contained strict rules (the Cigarette Code) that applied to marketing communications for tobacco products (cigarettes and hand-rolling tobacco), rolling papers and filters. The Cigarette Code was exceptional in that it was the outcome of discussions between the Department of Health, the manufacturers and importers of cigarettes (represented by the Tobacco Manufacturers' Association and the Imported Tobacco Products Advisory Council ITPAC respectively) and the ASA. It ran in parallel with, and its rules were applied in addition to, those imposed elsewhere in the Codes.*

1.2 *The Tobacco Advertising and Promotion Act 2002 prohibits the advertising of tobacco products. It does not, however, cover marketing communications for rolling papers or filters and permitted certain tobacco advertising at point of sale.*

1.3 *Edition 11 of the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code) states that self-regulatory rules and procedures for the categories in 1.2 above are under review and will be published on www.cap.org.uk when finalised.*

2. Scope

2.1 *This document contains the rules covering the non-broadcast marketing of rolling papers and filters. They have been drawn up by CAP, the ASA and the manufacturers and importers of rolling papers and filters. They run in parallel with, and are applied in addition to, the rules imposed elsewhere in the CAP Code*

2.2 *The rules govern the content of marketing communications (see clauses 1.1 and 1.2 of the CAP Code), including point of sale material, for:*

a rolling papers and filters

b any product, if the marketing communication concerned features rolling papers, filters or pack designs of a recognisable brand available in the UK

c products displaying the colours, livery, insignia or name of a rolling paper or brand of filter in a way that promotes smoking rather than these branded products.

2.3 *The rules do not apply to marketing communications:*

a addressed to the trade in its professional capacity in media not targeted at the public

b for schemes, events or activities sponsored or financially supported by manufacturers or importers, including sports sponsorship, so long as undue emphasis is not placed on the rolling papers or filters as opposed to the scheme, event or activity

c on manufacturers' or importers' own websites (subject to 1.2q of the CAP Code).

Other rules in the CAP Code, e.g. the sales promotion rules, may apply to 2.3 a and b above.

2.4 The rules are not intended to hamper fair competition. Marketers of rolling papers and filters are free to attract attention to their products, provided both the spirit and the letter of the rules are observed.

2.5 Claims encompass statements and visual presentations and can be direct or indirect. Claims which the ASA or CAP regard as eroding or diminishing the effectiveness of the rules will be judged contrary to the spirit of the rules. Humour is acceptable provided it is used with care and is not likely to have a particular appeal to the young.

2.6 The ASA is the final arbiter of the meaning of the rules. The CAP Copy Advice team provides advice on whether marketing is likely to break the rules. Marketers are urged to check their marketing communications with the CAP Copy Advice team before publishing them. Point of sale material featuring executions, themes or elements already checked for other marketing communications should normally need no additional checking by CAP.

2.7 When interpreting the rules, the Copy Advice team and the ASA will make due allowance for the medium in which the marketing communication is to appear, the audience and its likely response.

3. Rules

3.1 No marketing communications should depict anyone smoking.

3.2 Marketing communications should not encourage people to start smoking.

3.3 Marketing communications should not encourage smokers to increase their consumption or smoke to excess.

3.4 Marketing communications should not be targeted at, or be likely to appeal to, people under 18. Anyone depicted in marketing communications should always be, and clearly be seen to be, over 25. No medium should be used to market rolling papers or filters if more than 25% of its audience is under 18 or women under 24.

3.5 Marketing communications should not play on the susceptibilities of those who are physically or emotionally vulnerable, particularly the young or immature.

3.6 Marketing communications should not encourage or condone the use of illegal drugs. Save in exceptional circumstances, for example in the context of an anti-drug message, any reference to illegal drugs will be regarded as condoning their use.

3.7 Marketing communications should not be sexually titillating.

3.8 Marketing communications should not imply that smoking is glamorous or aspirational or that it enhances people's femininity, masculinity or appearance. Nor should they imply that smoking leads to social, sexual, romantic or business success. In particular, marketing communications should not link smoking with people who are evidently well-known, wealthy, fashionable,

sophisticated or successful or who possess other attributes or qualities that may reasonably be expected to command admiration or encourage emulation.

3.9 *Marketing communications should not appeal to the adventurous or rebellious, imply that it is daring to smoke or imply that smoking enhances people's independence.*

3.10 *Marketing communications should not imply that smoking is safe, healthy, natural, popular or appropriate in all circumstances. Marketing communications should not suggest that smoking promotes relaxation or concentration, through references to people smoking when they are relaxing or concentrating may be acceptable. Marketing communications should avoid any suggestion of a healthy or wholesome lifestyle and should not associate smoking with healthy eating and drinking, sport or active/outdoor games.*

ALCOHOLIC DRINKS

(See the CAP Help Note on Health, Diet and Nutritional Claims in Marketing Communications for Alcoholic Drinks)

On 1 July 2007, a new and important regulation governing nutrition and health claims for foods (including alcoholic drinks) came into force. The regulation is complex and mandatory. CAP encourages advertising industry stakeholders to take advice on the effect of the regulation and to consult the Food Standards Agency's Guidance to Compliance with Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods, which is available at http://www.food.gov.uk

56.1 *For the purposes of the Code, alcoholic drinks are those that exceed 1.2% alcohol by volume.*

56.2 *Marketing communications must contain nothing that is likely to lead people to adopt styles of drinking that are unwise. Alcohol must not be handled or served irresponsibly. The consumption of alcohol may be portrayed as sociable and thirst-quenching. Marketing communications may be humorous but must nevertheless conform with the intention of the rules.*

56.3

a As is implied by clause 2.8, the spirit as well as the letter of the rules in this section apply whether or not a product is shown or referred to or seen being consumed.

b The rules are not intended to inhibit advertising on alcohol-related health or safety themes that is responsible and is not likely to promote a brand of alcohol.

56.4 *Marketing communications should be socially responsible and should neither encourage excessive drinking nor suggest that drinking can overcome boredom, loneliness or other problems. They should not suggest that alcohol might be indispensable. Care should be taken not to exploit the young, the immature or those who are mentally or socially vulnerable.*

56.5 *Marketing communications should not be directed at people under 18 through the selection of media, style of presentation, content or context in which they appear. No medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age.*

56.6 *People shown drinking or playing a significant role should neither be nor look under 25 and should not be shown behaving in an adolescent or juvenile way. Younger people may be shown in marketing communications, for example in the context of family celebrations, but should be obviously not drinking.*

56.7 *Marketing communications should not be associated with people under 18 or reflect their culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18 in a way that might encourage them to drink.*

56.8 *Marketing communications should not suggest that any alcoholic drink has therapeutic qualities (for example, stimulant or sedative qualities) or can change moods or enhance confidence, mental or physical capabilities or performance, popularity or sporting achievements. They should not link alcoholic drinks to illicit drugs.*

56.9 *Marketing communications must neither link alcohol with seduction, sexual activity or sexual success nor imply that alcohol can enhance attractiveness, masculinity or femininity.*

56.10 *Marketing communications may give factual information about:*

a) product contents, including comparisons, but must not make any health claims, including fitness or weight control claims. The only permitted nutrition claims are "low alcohol", "reduced alcohol" and "reduced energy" and any claim likely to have the same meaning for the audience.

b) the alcoholic strength of a drink or make factual strength comparisons with other products but must not otherwise suggest that a drink may be preferred because of its high alcohol content or intoxicating effect. Drinks may be presented as preferable because of low or lower strength.

56.11 *Marketing communications should not suggest that drinking alcohol is a reason for the success of any personal relationship or social event. A brand preference may be promoted as a mark of, for example, the drinker's good taste and discernment.*

56.12 *Drinking alcohol should not be portrayed as a challenge, especially to the young. Marketing communications should neither show, imply or refer to aggression or unruly, irresponsible or anti-social behaviour nor link alcohol with brave, tough or daring people or behaviour.*

56.13 *Particular care should be taken to ensure that marketing communications for sales promotions requiring multiple purchases do not encourage excessive consumption.*

56.14 *Marketing communications should not depict activities or locations in which drinking alcohol would be unsafe or unwise. In particular, marketing communications should not associate the consumption of alcohol with an occupation that requires concentration to be done safely, for example, operating machinery, driving or activity relating to water or heights. Alcohol should not normally be shown in a work environment.*

Low alcohol drinks

56.15 *Low alcohol drinks are those that contain between 0.5% - 1.2% alcohol by volume. Marketers should ensure that low alcohol drinks are not promoted in a way that encourages their inappropriate consumption and should not depict activities that require complete sobriety.*

GAMBLING

57.1 *The term "gambling" means gaming, betting, and participating in a lottery, as defined in the Gambling Act 2005, and spread betting. This section does not apply to the UK National Lottery. The UK National Lottery is, however, subject to the rest of the Code.*

The Gambling Act does not apply outside Great Britain. Specialist legal advice should be sought when considering advertising any gambling products in Northern Ireland or the Channel Islands.

Spread Betting may be advertised as an investment under the Financial Services and Markets Act (FSMA) 2000, the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 and other FSA rules and guidance (see clause 53.1 above). A "Spread Bet" is a contract for differences that is a gaming contract, as defined in the glossary to the FSA Handbook.

The clauses in this section apply to marketing communications for "play for money" gambling products and marketing communications for "play for free" gambling products that offer the chance to win a prize or that explicitly or implicitly direct the consumer to a "play for money" gambling product, whether on-shore or off-shore.

For the purposes of this Section, "children" are people of 15 and under and "young persons" are people of 16 or 17.

57.2 *Marketing communications for gambling should be socially responsible, with particular regard to the need to protect children, young persons and other vulnerable persons from being harmed or exploited by advertising that features or promotes gambling.*

57.3 (a) *In line with clause 2.8, the spirit as well as the letter of the clauses in this section apply whether or not a gambling product is shown or referred to.*

57.3 (b) *These clauses are not intended to inhibit marketing communications to counter problem gambling that are responsible and unlikely to promote a brand or type of gambling.*

57.3 (c) *Unless they portray or refer to gambling, these clauses do not apply to marketing communications for non-gambling leisure events or facilities, for example hotels, cinemas, bowling alleys or ice rinks, that are in the same complex as, but separate from, gambling events or facilities.*

57.4 *Marketing communications:*

(a) *should not portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm*

(b) *should not exploit the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of children, young persons or other vulnerable persons*

(c) *should not suggest that gambling can provide an escape from personal, professional or educational problems such as loneliness or depression*

(d) *should not suggest that gambling can be a solution to financial concerns, an alternative to employment or a way to achieve financial security*

(e) *should not portray gambling as indispensable or as taking priority in life, for example over family, friends or professional or educational commitments*

(f) *should not suggest that gambling can enhance personal qualities, for example that it can improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration*

(g) *should neither suggest peer pressure to gamble nor disparage abstention*

(h) *should not link gambling to seduction, sexual success or enhanced attractiveness*

(i) *should not portray gambling in a context of toughness or link it to resilience or recklessness*

(j) *should not suggest gambling is a rite of passage*

(k) *should not suggest that solitary gambling is preferable to social gambling*

(l) *should not be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture*

(m) *should not be directed at those aged below 18 years (or 16 years for lotteries, football pools, equal chance gaming (under a prize gaming permit or at a licensed family entertainment centre), prize gaming (at a non-licensed family entertainment centre or at a travelling fair) or Category D gaming machines) through the selection of media or context in which they appear*

(n) *should not include a child or young person. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role. No-one may behave in an adolescent, juvenile or loutish way*

(o) *for family entertainment centres, travelling fairs, horse racecourses and dog race tracks, and for non-gambling leisure facilities that incidentally refer to separate gambling facilities e.g. as part of a list of facilities on a cruise ship, may include children or young persons provided they are accompanied by an adult and are socialising responsibly in areas that the Gambling Act 2005 does not restrict by age. Marketing communications for a lottery product may include children or young persons. No-one who is, or seems to be, under 25 years old may be featured gambling or playing a significant role*

(p) *that exclusively feature the good causes that benefit from a lottery and include no explicit encouragement to buy a lottery product may include children or young persons and they may be featured playing a significant role*

(q) *should not exploit cultural beliefs or traditions about gambling or luck*

(r) *for events or facilities that can be accessed only by entering gambling premises should make that condition clear*

(s) *should not condone or encourage criminal or anti-social behaviour*

(t) *should not condone or feature gambling in a working environment. An exception exists for licensed gambling premises.*

HOW THE SYSTEM WORKS

The self-regulatory system

60.1 *The self-regulatory system comprises three bodies: the Advertising Standards Authority (ASA), the Advertising Standards Board of Finance (ASBOF) and the Committee of Advertising Practice (CAP). Their work is described below.*

60.2 *The strength of the system depends on the long-term commitment of all those involved in advertising, sales promotions and direct marketing (marketing). Practitioners in every sphere share an interest in seeing that marketing communications are welcomed and trusted by their audience; unless they are accepted and believed they cannot succeed. If they are offensive or misleading they discredit everyone associated with them and the industry as a whole.*

60.3 *The Code and all ASA rulings together with ASA and CAP guidance on a wide range of topics are available on www.asa.org.uk and www.cap.org.uk. The ASA and CAP update their websites regularly.*

The Executive provides an information hotline between 9.00am and 5.30pm Mon - Fri on 020 7580 5555. For copy advice from CAP ring 020 7580 4100 / fax 020 7580 4072 / e-mail copyadvice@cap.org.uk / visit www.cap.org.uk.

The Advertising Standards Authority (ASA)

60.4 *The ASA was established in 1962 to provide independent scrutiny of the newly created self-regulatory system set up by the industry. Its chief tasks are to promote and enforce high standards in marketing communications, to investigate complaints, to identify and resolve problems through its own research, to ensure that the system operates in the public interest and to act as the channel for communications with those who have an interest in marketing communication standards.*

60.5 *The ASA is a limited company and is independent of both the Government and the marketing business. The Chairman of the ASA is appointed by ASBOF and is unconnected with the marketing business. A majority of the current 12 member Council appointed by the Chairman to govern the ASA is also unconnected with the marketing business. All Council members sit as individuals and are selected, as far as possible, to reflect a diversity of background and experience. Vacancies for independent members of Council are publicly advertised. Members serve for a maximum of two three year terms.*

60.6 *The ASA investigates complaints from any source against marketing communications in non-broadcast media. Marketers are told the outcome of the ASA Council's rulings and, where appropriate, are asked to withdraw or amend their marketing communications. The adjudications reached by the Council are published weekly on www.asa.org.uk.*

60.7 *The ASA gives equal emphasis to conducting a substantial research and monitoring programme by reviewing issues and marketing communications that fall within its scope. Particular media and product categories may be identified for scrutiny. In this way the ASA can identify trends and prevent future problems.*

60.8 *Publicising the ASA's policies and actions is essential to sustaining wide acceptance of the system's integrity. A comprehensive programme of seminars and speeches, advertising, leaflets, briefing notes on a wide range of topics, a video targeted at consumers and educational establishments, articles written for professional journals, newspaper, magazine, TV and radio coverage all augment the ASA's extensive media presence.*

The Advertising Standards Board of Finance (ASBOF)

60.9 *The Advertising Standards Board of Finance sets the framework for industry policy making and is responsible for the Committee of Advertising Practice and for funding the self-regulatory system.*

60.10 *The self-regulatory system is funded principally by a levy on advertising and direct marketing expenditure collected by ASBOF. This separation of operation*

and responsibilities helps to ensure that the independent judgement of the ASA is not compromised.

60.11 ASBOF's members are advertisers, promoters and direct marketers, their agencies, the media and the trade and professional organisations of the advertising, sales promotion and direct marketing businesses.

The Committee of Advertising Practice (CAP)

60.12 CAP's role is to ensure that marketing communications within the Code's remit that are commissioned, prepared, placed or published in the UK conform with the rules in the British Code of Advertising, Sales Promotion and Direct Marketing.

60.13 CAP co-ordinates the activities of its members to achieve the highest degree of compliance with the Code. It creates, reviews and amends the Code. From time to time, it produces for the industry Help Notes that give detailed guidance on specific sectors or subjects that are covered only generally in the Code. It oversees the sanctions operated by its members. It operates a website, www.cap.org.uk, to provide information and guidance to the industry, including access to all Help Notes and relevant Ad Alerts. It convenes ad hoc Working Groups for limited periods to address specific subjects arising out of the self-regulatory process.

60.14 The Code establishes a standard against which marketing communications are assessed. Additional codes exist in many other sectors; where appropriate these require practitioners to conform with the CAP Code.

60.15 The Chairman of CAP works on a part-time basis and is appointed for an agreed period and remunerated by ASBOF.

60.16 CAP actively encourages participation in the self-regulatory system. Suggestions for improving the Code's rules or modifying their application should be sent in writing to the Chairman. If changes are adopted by CAP their introduction is normally deferred for a short time to give marketers an adequate opportunity to amend their marketing communications.

The CAP Copy Advice team

60.17 The CAP Copy Advice team gives advice to marketers, their agencies, the media and others on the likely conformity with the Code of marketing communications before they are published or distributed. In addition, it checks marketing communications produced by marketers subject to mandatory pre-vetting (for example, those subject to the poster pre-vetting sanction).

Copy advice is free and confidential from competitors. The vast majority of written enquiries are dealt with within 24 hours although lengthy submissions may take longer, particularly those that include detailed evidence that needs to be reviewed by external expert consultants. Favourable pre-publication advice does not automatically protect marketers from complaints being investigated and upheld by the ASA. It is, however, a highly authoritative guide to what is likely to comply with the Code.

Advice on the most common issues is available by accessing the AdviceOnline database on www.cap.org.uk. AdviceOnline is updated regularly by the Copy Advice team.

The CAP Compliance team

60.18 The CAP Compliance team ensures that marketing communications conform with the Code to protect consumers and ensure a level playing-field. It enforces ASA decisions in individual cases and when a decision has ramifications for a whole sector. It takes action against marketers who persistently break the Code. In exceptional cases where a clear breach of the Code is evident, for example if a marketing communication contains claims that are blatantly misleading, the team takes immediate compliance action to stop the obviously problematic marketing communications from reappearing. On occasion, that compliance action is taken while an ASA investigation proceeds (see 60.35 and 61.3).

The team co-ordinates the sanctions operated by the Executive and by CAP members; in particular it issues Ad Alerts to CAP members, including the media, advising them to withhold their services from non-compliant marketers or deny those marketers access to advertising space.

Information on compliance is available on www.cap.org.uk. Companies that are members of a CAP trade association or professional body can access a database of relevant Ad Alerts on a secure section of the CAP website.

The CAP Panels

60.19 *Much of the detailed work of CAP is done by its two Panels. The Sales Promotion and Direct Response Panel concentrates on sales promotions and direct marketing. The General Media Panel concentrates on all other marketing, media and related issues. Each Panel is composed of industry experts together with one ASA Council member.*

The Panels guide the Executive and help the ASA and CAP to produce advice for the industry and to interpret the Code both in individual cases and on general issues.

The Panels also provide a forum to reassess recommendations and advice given by the Executive. The Panels can be asked to look at an issue by the parties to a complaint before the ASA Council has adjudicated; Council will take account of the Panels' opinions. Council's judgement on the interpretation of the Code is, however, final. Anyone directly affected by copy advice given by the Executive on behalf of CAP can ask for it to be considered by the relevant Panel. The Panel Chairmen can reject requests and will do so if it appears that the Panels are being used to hamper the effective running of the self-regulatory system.

The administration of the system

60.20 *The ASA and CAP share a joint Executive whose duties are organised to recognise the distinct functions of the two bodies. The Executive carries out the day-to-day work of the system and acts as a channel of communication, ensuring that industry expertise, specialist advice and the decisions of the ASA Council are co-ordinated and disseminated. The ASA Council and CAP form an independent judgement on any matter reported to them after they have considered the Executive's recommendations.*

60.21 *Marketers bear principal responsibility for the marketing communications they produce and must be able to prove the truth of their claims to the ASA; they have a duty to make their claims fair and honest and to avoid causing serious or widespread offence. Agencies have an obligation to create marketing communications that are accurate, ethical and neither mislead nor cause serious or widespread offence. Publishers and media owners recognise that they should disseminate only those marketing communications that conform with the Code. This responsibility extends to any other agent involved in producing, placing or publishing marketing communications. They accept the rulings of the ASA Council as binding.*

60.22 *The ASA Council judges whether marketing communications are contrary to the Code. Everyone responsible for commissioning, preparing, placing and publishing a marketing communication that breaches the Code will be asked to act promptly to amend or withdraw it.*

The law

60.23 *Marketers, agencies and publishers have primary responsibility for ensuring that everything they do is legal. Since the first Code was published the number of laws designed to protect consumers has greatly increased. There are directives emanating from the European Community as well as more than 200 UK statutes, orders and regulations affecting marketing (see www.asa.org.uk or www.cap.org.uk for a non-exhaustive list). The ASA maintains a rapport with those responsible for initiating or administering any laws that have a bearing on marketing communications. The system is reinforced by the legal backup*

provided for the work of the ASA by the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008 (see 61.10 below).

60.24 The Code, and the self-regulatory framework that exists to administer it, was designed and has been developed to work within and to complement these legal controls. It provides an alternative, and in some instances the only, means of resolving disputes about marketing communications. It also stimulates the adoption of high standards of practice in areas such as taste and decency that are extremely difficult to judge in law but that fundamentally affect consumer confidence in marketing communications.

60.25 There are also some important spheres that are governed by legislation enforced by local authority trading standards and environmental health officers. These include product packaging (except for on-pack promotions), weights and measures, statements on displays at point of sale and the safety of products.

60.26 Many Government agencies administer consumer protection legislation that ranges far wider and deeper than could be enforced through self-regulatory codes of practice. Marketers who break the law risk criminal prosecution or civil action. The Code requires marketers to ensure that all their marketing communications are legal, but the ASA is not a law enforcement body. Any matter that principally concerns a legal dispute will normally need to be resolved through law enforcement agencies or the Courts.

Media prerogative

60.27 The fact that a marketing communication conforms to the Code does not guarantee that every publisher will accept it. Media owners can refuse space to marketing communications that break the Code and they are also under no obligation to publish every marketing communication offered to them.

Investigations

(see ASA Complaints Procedure leaflet)

60.28 Complaints are investigated free of charge. They must be made in writing, within three months of the marketing communication's appearance (in exceptional circumstances, complaints about older marketing communications will be considered) and should be accompanied by a copy of the marketing communication or a note of where and when it appeared. The ASA may add challenges to those made by complainants and, as part of its routine research and monitoring, may also identify, investigate and publish results of its independent actions.

60.29 The identities of individual members of the public who complain are neither published nor revealed by the ASA to marketers without the complainants' express permission. Only the Courts or officials acting within their legal powers can compel the ASA to disclose to them information received in confidence. The identities of groups and of industry complainants such as competitors are disclosed and they must agree to the publication of their identities before their complaints can be pursued.

60.30 Equal weight is given to the investigation of all complaints irrespective of their source but the likely impact on, and consequent response of, those who may see the marketing communication will be taken into account. The Code requires industry complainants, wherever possible, to endeavour to resolve their differences between themselves or through their trade or professional organisations. To deter tit-for-tat disagreements, competitor complainants may be required to justify their complaints to the ASA.

60.31 Members of the public who complain may be asked by the ASA for a formal, written assurance that they have no commercial or other interest in registering a complaint. If they do have an interest, this will be disclosed to the marketer and will normally be included in the ASA's published ruling.

60.32 Complaints are not normally pursued if the point at issue is the subject of simultaneous legal action. In certain cases it may be more appropriate for an investigation to be undertaken by other consumer protection bodies. If so, the ASA will provide information or will try to redirect the complainant to the most appropriate qualified source of assistance.

60.33 Complaints generally fall into four broad categories: those that concern matters

outside the scope of the Code; those where the complainant's interpretation of either the marketing communication or the Code does not correspond with that of the ASA (in some cases, these decisions are taken by the ASA Council); those that indicate that the marketer needs to make some modification that can be dealt with informally; and those that make out a case for a formal investigation. If the Council has previously ruled on the same or a similar marketing communication the complainant is notified of its judgement. Typical deadlines for responding to ASA investigations are available on www.asa.org.uk.

60.34 *The Executive conducts an investigation into those complaints that are pursued; most are dealt with within six to 12 weeks (depending on the complexity of the matter), some are fast-tracked and completed within as little as 48 hours and others are given priority. Where necessary, the Executive takes advice from external expert consultants before producing a recommendation based on its findings for the ASA Council. Recommendations made by the Executive can, at its own request or the request of those affected, be considered by a CAP Panel. The Council will take into account the Panel's opinions. The final decision on complaints and on interpretation of the Code rests with the Council. Each week on www.asa.org.uk, the ASA publishes its adjudications on formally investigated complaints and a summary of complaints resolved informally and of those involving fulfilment, refund and database concerns.*

60.35 *The Executive is authorised by the Council and CAP to take interim action to ensure that marketing communications that break the Code are amended or withdrawn if it appears necessary to avoid further harm.*

60.36 *Members of the Executive are normally willing to discuss complaints with anyone directly involved subject to the obligations of confidentiality (see clause 2.7 above). The ASA may send confidential evidence to its external consultants, who are obliged not to disclose it to anyone else; the names of the ASA's consultants are available from the Executive to those directly involved. The ASA Council's adjudications on complaints may be circulated to interested parties, including the media.*

60.37 *The Code requires marketers to produce documentary evidence to substantiate their claims. All evidence submitted by marketers must be in English. No provision is made for oral hearings.*

The Independent Review procedure

60.38 *In exceptional circumstances, the ASA Council can be asked to reconsider its adjudication (including a Council decision not to investigate a complaint). Requests for a review should contain a full statement of the grounds, be in writing and be addressed to the Independent Reviewer of ASA Adjudications, 5th Floor, 21 Berners Street, London, W1T 3LP. They should be sent within 21 days of the date on the ASA's letter of notification of an adjudication. The Independent Reviewer may waive this 21 day time limit if he judges it fair and reasonable to do so.*

Requests should come only from the complainant(s) or marketer. Those from the marketer or from an industry complainant should be signed by the Chairman, Chief Executive or equivalent; requests made only by their solicitor or agency will not be accepted. All dealings with the Independent Reviewer must be in writing.

There are two grounds on which such a request can be made:

- *Where additional relevant evidence becomes available (an explanation of why it was not submitted previously, in accordance with clause 3.1, will be required).*

- *Where there is a substantial flaw in the Council's adjudication or in the process by which that adjudication was made.*

No review will proceed if the point at issue is the subject of simultaneous or

contemplated legal action between anyone directly involved. Requests for review should make plain that no such action is underway or is contemplated.

The ASA will not delay publication of the relevant adjudication pending the outcome of a review save in exceptional circumstances (on the authorisation of the ASA Director General).

The Independent Reviewer will evaluate the substance of the request with advice from two Assessors (apart from requests about a Council decision not to investigate a complaint). The two Assessors are the Chairman of ASBOF (or nominee) and the Chairman of the ASA.

If the Independent Reviewer decides not to accept the request (in whole or in part) because he considers that it does not meet either of the two grounds set out above he will inform the person making the request accordingly.

If he decides to accept the request (in whole or in part) he will undertake, either by himself or with assistance from the ASA Executive or any other source of help or advice, such further investigation as he thinks appropriate. He will also inform the other parties to the case that a request for review has been accepted and will invite their comments on the submission made by the party requesting the review. At the conclusion of his investigation, he will make a recommendation to the ASA Council.

The Council's adjudication on reviewed cases is final.

The Independent Reviewer will inform all parties of the Council's decision. Adjudications that are revised following a review will be published on www.asa.org.uk.

Europe

60.39 *All member states of the European Union, and many non-EU European countries, have self-regulatory organisations (SROs) that are broadly similar to the system in the UK. Together with organisations representing the advertising industry in Europe, those SROs are members of the European Advertising Standards Alliance (EASA), the single voice of the advertising industry in Europe on advertising self-regulation. The ASA is a founder member of EASA. EASA is located in Brussels and meets regularly to co-ordinate the promotion and development of self-regulation at a European level.*

Among its wide range of operations, EASA acts as a focal point for cross-border complaints investigated by individual members; consumers need complain only to the SRO in their country, no matter where the marketing communication originated.

EASA has published a statement of common principles, the core values that underpin each of its constituent SROs, and recommended standards for operating best practice in self-regulation that all SROs should seek to achieve. Both are available on www.easa-alliance.org.

EASA is a source of information and research on self-regulation. It also helps in the development and establishment of SROs in Europe and corresponds internationally.

Additional information on the EASA's objectives, activities and publications, including the Alliance Update and order forms for The Blue Book containing an analysis of self-regulation in 22 European countries, is available from the EASA website on www.easa-alliance.org.

SANCTIONS

Introduction

61.1 *The compliance figures published from time to time by the ASA have demonstrated that the vast majority of marketing communications comply with the Code. By providing advice, guidance and, in some cases, pressure, media owners, agencies and other intermediaries play a crucial role in ensuring compliance. If marketing communications break the Code, the marketers responsible are told by the ASA to amend or withdraw them. Most willingly undertake to do so. If they do not, sanctions are applied.*

61.2 *The ASA and CAP do not adopt a legalistic attitude towards sanctions and they ensure that sanctions are proportionate to the nature of the breach. They are, however, effective in the vast majority of cases. They focus on ensuring that non-compliant marketing communications are amended, withdrawn or stopped as quickly as possible.*

61.3 *The ASA and CAP are not restricted to applying sanctions only against marketers who have been subject to a formal investigation. If marketing communications are obviously misleading or offensive, the ASA and CAP may take compliance action in the absence of complaints or while an investigation proceeds (see 60.18 and 60.35).*

Adverse publicity

61.4 *Publicising the ASA's rulings is essential to sustaining wide acceptance of the system's integrity and the principle sanction available to the ASA is the unwelcome publicity that may result from the rulings it publishes weekly on www.asa.org.uk. Adverse publicity is damaging to most marketers and serves to warn the public. Anyone who is interested can access ASA rulings quickly and easily on the website and can set up a profile-specific account so they are automatically notified by e-mail of relevant rulings as soon as they are published. ASA rulings receive a substantial amount of media coverage in international, national, regional and local newspapers, magazines and specialist journals, on national and regional TV and on national and local radio.*

61.5 *An adverse ASA ruling may have consequences for compliance with other codes or legal requirements. For example, personal data gathered as a result of a misleading marketing communication might not comply with the fair processing requirement in the first data protection principle of the Data Protection Act 1998.*

Ad Alerts

61.6 *CAP may issue Ad Alerts to its members, including the media, advising them to withhold their services from non-compliant marketers or deny the latter access to advertising space. Ad Alerts are issued at short notice, are carefully targeted for greatest impact, are sent electronically and, once issued, are available on a secure section of www.cap.org.uk to those who may need to consult them. They contain the name and contact details of the non-compliant marketer, a description of the compliance problem and, if possible, a scanned image of the marketing communication in question.*

Trading privileges and recognition

61.7 *Many CAP trade associations and professional bodies offer their members, and others, recognition and trading privileges. They may revoke, withdraw or temporarily withhold those. For example, agency recognition offered by the print media members of CAP may be withdrawn or the substantial direct mail discounts offered by the Royal Mail on bulk mailings withheld. In exceptional cases of non-compliance, CAP members may expel companies from membership.*

Pre-publication vetting

61.8 *The ASA and CAP may require persistent offenders to have some or all of their marketing communications vetted by the CAP Copy Advice team until the ASA and CAP are satisfied that future communications will comply with the Code.*

61.9 *The poster industry members of CAP operate a poster pre-vetting sanction to deter abuse of the medium. If the ASA rules against a poster on the grounds of serious or widespread offence or social irresponsibility, the poster advertiser becomes a candidate for mandatory pre-vetting. If the poster industry members of CAP and the CAP Executive believe that the advertiser either is incapable of complying with the Code or seems to have deliberately flouted the Code with the intention of generating complaints, PR and subsequent notoriety, they will compel the advertiser to check future posters with the CAP Copy Advice team for a fixed period (usually two years).*

Legal backstop

61.10 *The ASA/CAP system is recognised by the Government, the Office of Fair Trading (OFT) and the Courts as one of the "established means" of consumer protection in non-broadcast marketing communications. If certain types of marketing communication, including those that are misleading or contain an impermissible comparison, continue to appear after the ASA Council has ruled against them, the ASA can refer to the matter to THE OFT for action under the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008. The OFT can seek an undertaking that the marketing will be stopped from anyone responsible for commissioning, preparing or disseminating it. If that is not given or is not honoured, the OFT can seek an injunction from the Court to prevent its further appearance. Anyone not complying can be found to be in contempt of court and is liable to be penalised accordingly.*

61.11 *The ASA and CAP maintain a rapport with the OFT and with other bodies that have a responsibility for creating, administering or enforcing laws that have a bearing on marketing communications. If necessary, they may notify those bodies of non-compliant marketers and work with them to ensure that unacceptable marketing communications are amended, withdrawn or stopped.*

61.12 *The OFT and other "qualified entities", such as Trading Standards Authorities, can use the Enterprise Act 2002 Part 8 to enforce consumer protection laws, including the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008. These regulations provide that qualified entities should have regard to the desirability of encouraging control by the "established means" before taking action themselves.*

Cross-border marketing communications

61.13 *The Code does not apply to marketing communications in foreign media. If marketing communications appear in media based in countries that have self-regulatory organisations (SROs) that are members of EASA or if direct marketing originates from countries that have SROs that are members of EASA, EASA will co-ordinate cross-border complaints so the SRO in the country of origin of the marketing communication has jurisdiction; consumers need complain only to their SRO. If not, the ASA will take what action it can. The SROs with jurisdiction will be formally responsible for applying any sanctions, though the ASA and CAP will, whenever they can, adopt a pragmatic approach to ensure that consumers are protected.*

61.14 *The ASA and CAP work increasingly closely with CAP trade associations and professional bodies, Trading Standards officers, Government departments, the OFT and other UK regulators, EASA and overseas SROs and statutory authorities to stop unacceptable marketing communications, particularly misleading and offensive mailings sent direct to UK consumers from overseas. That work has achieved some success, but the ASA, CAP and other authorities, whether statutory or self-regulatory, experience particular difficulties in enforcing the Code and laws against companies based overseas. The Stop Now Orders referred to above, however, empower "qualified entities" to take action to ensure compliance with the Control of Misleading Advertisements Regulations 1988 (as amended) throughout the European Union.*

61.15 *To clarify what can and cannot be done, the ASA and CAP have produced a fact sheet, "Overseas Mailings", to explain how they tackle unacceptable mailings that originate outside the UK and to warn consumers to treat those*

mailings with the utmost caution. That fact sheet is available on www.cap.org.uk.

HISTORY OF SELF-REGULATION

Self-regulation is nothing new. Medieval guilds practiced self-regulation in that they inspected markets and measures, judged the quality of merchandise and laid down rules for their trade.

In advertising and marketing, self-regulation can be traced back to the poster industry in the 1880s. The first Code of advertising was launched in 1925 by the Association of Publicity Clubs. And systematic scrutiny of advertising claims operated from 1926, when the newly established Advertising Association set up an advertising investigation department to "investigate abuses in advertising and to take remedial action."

In 1937, the International Chamber of Commerce developed an international code of advertising practice, the first of several international marketing codes which have provided a benchmark for many national systems of self-regulation.

The Committee of Advertising Practice (or the Code of Advertising Practice Committee, as it then was) came into existence in 1961 and was responsible for the first British Code of Advertising Practice and all subsequent Codes including this one. The Code covered all non-broadcast advertising and in 1962 an independent body, the ASA, was established to administer it.

In 1974, a new improved funding mechanism for self-regulation was introduced in the form of the Advertising Standards Board of Finance. The new system brought an automatic levy of 0.1% on all display advertising to fund the system. With it came an increased emphasis on public awareness of self-regulation and increased staffing to facilitate pre-vetting and monitoring.

Also in 1974, the first Code of Sales Promotion Practice was agreed, a recognition of the need to expand the role of the system to encompass promotional marketing.

Since 1962, advertising self-regulation has grown in stature. It now has all-party support and enjoys a widespread acceptance of its role in the protection of consumers. This acceptance led to the 1984 European Directive on Misleading Advertising being implemented in such a way as to allow the ASA to remain the principal regulator for misleading advertising in non-broadcast media, but with statutory reinforcement through the OFT.

Today, the system covers non-broadcast advertising, sales promotion and many aspects of direct marketing. It is supported by a range of other self-regulatory initiatives, including the various preference services run by the Direct Marketing Association, The Quality Standard for Mail Production and its recognition system and admark, a safe harbour scheme covering advertising on the internet.

Yet the purpose of self-regulation remains as it was in the beginning: to maintain, in the best and most flexible way possible, the integrity of marketing communications in the interests of both the consumer and the trade.

Appendix 1

As well as this Code, non-broadcast marketing communications are subject to legislation. See www.asa.org.uk or www.cap.org.uk for a non-exhaustive list.

The Consumer Protection from Unfair Trading Regulations 2008 (the Regulations)

One important piece of legislation that affects marketing is the Consumer Protection from Unfair Trading Regulations 2008 (the Regulations). The Regulations prohibit unfair marketing to consumers, including misleading and aggressive marketing. Whenever it considers complaints that a marketing communication misleads consumers or is aggressive or unfair to consumers, the ASA will have regard to the Regulations. That means it will take factors identified in the Regulations into account when it considers whether marketing communications breach the British Code of Advertising, Sales Promotion and Direct Marketing. The notes below summarize those factors.

Code clauses that refer to misleading marketing should be read, in relation to business-to-consumer marketing, in conjunction with these notes.

Consumers

The likely effect of a marketing communication is generally considered from the point of view of the average consumer who it reaches or to whom it is addressed. The average consumer is assumed to be reasonably well-informed, observant and circumspect.

In some circumstances, a marketing communication may be considered from the point of view of the average member of a specific group:

- *If it is directed to a particular audience group, the marketing communication will be considered from the point of view of the average member of that group.*

- *If it is likely to affect the economic behaviour only of a clearly identifiable group of people who are particularly vulnerable, in a way that the advertiser could reasonably foresee, because of mental or physical infirmity, age or credulity, the marketing communication will be considered from the point of view of the average member of the affected group.*

Unfair marketing communications

Marketing communications are unfair if they

- *are contrary to the requirements of professional diligence and*
- *are likely to materially distort the economic behaviour of consumers in relation to the advertised goods or services.*

"Professional diligence" is the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity.

Misleading marketing communications

Marketing communications are misleading if they

- *are likely to deceive consumers and*
- *are likely to cause consumers to take transactional decisions that they would not otherwise have taken.*

A "transactional decision" is any decision taken by a consumer, whether it is to act or to refrain from acting, concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or whether, how and on what terms to exercise a contractual right in relation to a product.

Marketing communications can deceive consumers by ambiguity, through presentation or by omitting important information that consumers need to make an informed transactional decision, as well as by including false information.

Aggressive marketing communications

Marketing communications are aggressive if, taking all circumstances into account, they

- *are likely to significantly impair the average consumer's freedom of choice through harassment, coercion or undue influence and*
- *are therefore likely to cause consumers to take transactional decisions they would not otherwise have taken.*