

Help Note

Marketing of publications



Regular CAP Help Notes offer guidance for non-broadcast marketing communications under the UK Code of Non-broadcast Advertising, Sales Promotions and Direct Marketing (the CAP Code). For advice on the rules for television or radio commercials, contact Clearcast www.clearcast.co.uk for television ads or the RACC www.racc.co.uk for radio ads.

1. Background

These guidelines, drawn up by the Copy Advice team, are intended to help marketers, agencies and media owners interpret the rules in the CAP Code. The Help Note is largely based on past ASA decisions. It neither constitutes new rules nor binds the ASA Council in the event of a complaint about a marketing communication that follows it.

2. The CAP Code

Marketers should comply with the CAP Code and, especially these clauses:

Rule 3.1

Marketing communications should not incite readers to break the law (Rule 1.10) and should not mislead.

Rule 3.2

Obvious exaggerations (“puffery”) and claims that the average consumer who sees the marketing communication is unlikely to take literally are allowed provided they do not materially mislead.

Rule 3.7

Marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.

Rule 3.8

Claims for the content of non-fiction publications should not exaggerate the value, accuracy, scientific validity or practical usefulness of the product. Marketers must ensure that claims that have not been independently substantiated but are based merely on the content of a publication do not mislead consumers.

Rule 3.47

Claims that are likely to be interpreted as factual and appear in a testimonial must not mislead or be likely to mislead the consumer.

Rule 4.2

Marketers should not cause fear or distress without justifiable reason.

Rule 12.1

Objective [medical and scientific] claims must be backed by evidence, if relevant consisting of trials conducted on people.

Rule 12.2

Marketers must not discourage essential treatment for conditions for which medical supervision should be sought. For example, they must not offer specific advice on, diagnosis of or treatment for such conditions unless that advice, diagnosis or treatment is conducted under the supervision of a suitably qualified health professional. Accurate and responsible general information about such conditions may, however, be offered.

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1. Factual claims, whether direct or implied, must be substantiated.
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2. Marketers may present the content of publications without necessarily being required to hold evidence for them as long as claims are presented in discursive terms that are unlikely to mislead readers of the ad or affect their subsequent behaviour. For example, the claim “The author explains why alternative therapies are more effective than conventional medicine” is unlikely to be acceptable without substantiation. The claim “The author discusses alternative therapies and compares them with conventional medicine” is likely to be acceptable.
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3. Obvious exaggerations or untruths that are unlikely to mislead, harm or offend readers are likely to be acceptable, especially if they are presented as opinion.
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4. Terms likely to be acceptable as indicating opinion are claims such as “The author believes/ argues/ debates/ questions/ ponders/ speculates/ hypothesizes/ theorizes/ thinks/ postulates/ considers/ discusses/ disputes ...”
Less obviously speculative terms such as “investigates / analyses / examines” and the like may be used as long as the claims being made are obviously speculative in content and context.
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5. Unproven claims that are capable of objective substantiation must not be featured even when expressed as an opinion or in the form of a direct quote. The advertisement may describe the content of the publication in discursive terms but marketers may not simply preface unproven claims with “we believe” or similar. Such statements are considered to go beyond the scope of subjective opinion and are subject to the Code clauses on substantiation (**Rule 3.7**)
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6. If it forms the title of the publication, an unproven claim may be featured in the advertisement provided it is put in inverted commas and has a by-line. The first reference to the title should be followed immediately by the author's name and the rest of the ad should make clear that the title is not an objective claim.
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7. If the business name of the marketer advertising a publication implies efficacy (for example “The Natural Arthritis Cure Company”) and the business name is not a registered trademark, the marketer must change it. If it is trademarked, the name must be linked clearly to a footnote stating that the efficacy of the services provided by the marketer has not been proven.
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8. Marketers must not use headlines or claims that are likely to exploit or frighten vulnerable people, cause undue distress or disparage conventional medical treatments unless the claims are justifiable and the evidence conclusive.

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- 9.** Marketers must not misleadingly describe pamphlets and the like as “books”. Books have an International Book Standard number (ISBN) and are registered with the British Library.
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- 10.** Marketers must not imply that the content of a publication is editorial if it largely or totally comprises paid-for marketing material (for example directories).
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- 11.** Marketers inviting contributions to future publications must not misleadingly imply that they will make selections for inclusion on merit if they will not. If they want to make such a claim they should be able to support it with evidence. (See CAP Help Note on Vanity Publishing)
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- 12.** Marketers offering publications that are claimed to offer profitable business opportunities or “Get rich quick” schemes must not state or imply that their techniques are “guaranteed” to work unless they can substantiate that they are. They should state if financial outlay is required beyond the purchase of the publication.

4. Serious medical conditions

(See CAP Help Note on Health, Beauty and Slimming Marketing that Refers to Medical Conditions)

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- 13.** Advertisements must not offer specific advice on, diagnosis of or treatment for conditions for which medical attention should be sought, even if they include a disclaimer referring readers to suitably qualified health professionals. Disclaimers such as “The material in this publication is provided for your information only and should not be construed as medical advice” are unlikely to render advertisements acceptable.
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- 14.** Advertisements that refer to conditions for which medical attention should be sought should do so only in general discursive terms and subject to Section 3.
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- 15.** Marketers must not offer an opinion on the efficacy or potential negative effects of conventional surgery or medicines if that opinion could discourage people from seeking treatment by conventional methods.
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- 16.** Anecdotes and testimonials that refer to serious medical conditions are permitted provided they are verifiable and do not imply that an unsubstantiated method or treatment provides a way of successfully treating an ailment.

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404, or you can log a specific written enquiry via our online request form <http://www.copyadvice.org.uk/Ad-Advice/Bespoke-Copy-Advice.aspx>. The Copy Advice website at www.copyadvice.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

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