

New UK Advertising Codes

The Broadcast Committee of Advertising Practice (“**BCAP**”) and the Committee of Advertising Practice (“**CAP**”) have launched new UK Advertising Codes, which will take effect on 1 September 2010. As well as being easier to use, the key changes relate to:

- marketing to children;
- sales promotion, including clarification on the use of “free” in marketing communications;
- social and environmental responsibility in TV and radio advertising; and
- health and nutrition.

Background to the changes

The BCAP Advertising Standards Codes (“**BCAP Codes**”) regulate television and radio advertising in the UK and the British Code of Advertising, Sales Promotion and Direct Marketing (“**CAP Code**”) regulates non-broadcast marketing communications in the UK. The Codes are enforced by the Advertising Standards Authority (“**ASA**”).

BCAP and CAP, the Code owning bodies, launched a 12-week public consultation in March 2009 on a comprehensive review and update of the Codes in light of recent changes in the law and to ensure that they remain relevant and fit for purpose. It was the first ever concurrent review of the Codes in nearly 50 years of their history.

The new Codes

The new Codes were launched on 16 March and will replace the existing Codes on 1 September 2010. The main changes are in the following areas:

EASE OF USE

- A new single broadcast Code for television and radio advertising instead of the current four.

- Greater consistency between the broadcast and non-broadcast Codes, which now share many of the same rules in areas such as misleading advertising, harm and offence.
- An altered format which aims to be clearer to use, containing an overarching principle and a set of rules.

MARKETING TO CHILDREN

- Marketers will not be allowed to collect personal information from children under 12 without obtaining the consent of their parents or guardian.
- Marketers will be restricted from collecting information from under 16’s about other people.
- Marketing communications must not include a direct exhortation (e.g. “buy now”) to children to buy an advertised product or persuade their parents or other adults to do so for them.
- Marketing communications that contain a direct exhortation to buy a product via a direct response mechanism (e.g. a “buy now” button in an email) must not be directly targeted at children.

SALES PROMOTION

- Clarification on the use of the word “free” in marketing communications under the general principle that marketing communications must not describe a product as “free” or similar if the consumer has to pay anything other than the unavoidable cost of responding and collecting or paying for delivery of the item. For example, the Code now says explicitly that an offer cannot be described as “free” if the consumer has to pay administrative costs.
- New rules to oblige marketers of prize promotions to be clear about the number and nature of prizes, including distinguishing between those that are available to win and those that are guaranteed to be won.
- Winners of “instant wins” are to be able to collect their prizes quickly and easily.

SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

- All broadcast advertisements must be prepared with a sense of responsibility to the audience and to society.
- An explicit rule prevents marketers from exaggerating the environmental benefits of their products.
- The National Lottery, and other lotteries licensed under the Gambling Act, will be subject to the same social responsibility rules as other advertising.

HEALTH AND NUTRITION

- New rules on nutrition and health claims made for food or soft drinks, in line with a European Regulation which prevents misleading claims about food products.
- New rules on traditional herbal medicines which reflects their new regulatory status in the EU.
- New rules on protecting people with photo-sensitive epilepsy who may be harmed by flashing images.

OTHER CHANGES

- Charities will be able to air adverts that compare one charity with another on TV and radio, subject to complying with the existing comparative advertising rules.
- Betting tipsters will be allowed to advertise on TV and radio.

Comment

Note that the new Codes still do not cover marketers' own marketing communications on their own websites (as opposed to paid-for space on others' websites, such as banners and pop-ups which are covered). In response to considerations of the wider advertising industry, CAP is now considering extending the online remit to cover these marketing communications, with a view to bringing the new remit into effect later in 2010.

See: ASA press release <http://bcap.org.uk/Media-Centre/2010/Advertising-Codes-Launch.aspx>

New BCAP Code and CAP Codes <http://www.cap.org.uk/The-Codes/New-Advertising-Codes.aspx>

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