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New Advertising Codes Launched

Introduction

On 16 March 2010, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) launched new advertising Codes, a year after the draft codes were initially put out to consultation. Reed Smith's Marina Palomba (past Director of both CAP and BCAP) and Christopher Hackford were members of the working groups which drafted the codes, and on the two committees that finalised them. This is an insider view of what important changes have been made.

Why have the Codes been changed?

The self regulatory system in the advertising industry allows flexibility to ensure that the rules set out in the codes remain relevant and up to date, taking into account prevailing standards in society and reflecting changes in the law, in order to ensure that all advertising within the United Kingdom is legal, decent, honest and truthful.

What are the main changes?

In fact, much of both new Codes remain the same. The division between broadcast advertising and non-broadcast advertising also remains, but the radio Code is now included in the BCAP Code. There had been putative discussion about having one code to cover all advertising but the two Committees have decided that the distinction between the two areas should be retained in order to preserve pure self regulation in non-broadcast media as against co-regulation with Ofcom in broadcast media.

As a result of undertaking this review of both codes concurrently, there is however now greater consistency between the two Codes in some key areas, such as misleading advertising, harm and offence, and a new over-arching social responsibility rule (which already exists in the CAP Code) has been introduced into the BCAP Code.

However there are some important changes which advertisers and agencies need to be aware of.

1. Format of the Codes

There is now one single Broadcast Advertising Code, replacing the previous four. This new single, "user-friendly" Code now covers television standards, television scheduling, radio and text services.

The new Codes are also set out in a clearer fashion, with each section beginning with a general principle, and followed by definitions and the specific rules themselves.

2. Protection of Children

New rules have been introduced in relation to collecting data from children, preventing marketers from directly exhorting children to buy products or to persuade their parents to buy products for them, and preventing advertisements from exploiting the trust that children and young people place in adults who are in positions of trust, such as teachers.

Furthermore, new scheduling restrictions have been introduced to prevent ads for age restricted computer and video games from appearing in or around children's programmes.

There are also new specific rules in relation to the advertising of infant and follow-on formula.

3. Environmental Responsibility

A whole new section on environmental claims has been introduced into the BCAP Code, and, significantly, a new rule preventing advertisers from exaggerating the environmental benefits of their products (known as green-washing) has been introduced into both Codes. This has pleased many environmental campaigners.

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4. Lotteries and Promotions

A new dedicated section on "lottery advertising" has been included in order to cover the National Lottery and other licensed lotteries, and new sales promotion rules have been included to ensure advertisers are very clear about the nature and number of prizes available in any promotion.

5. Consumer Protection

There is purportedly clarification for that hardy old chestnut, using the word "free". There has been much debate about this over the last few years, and it is hoped that this new change will resolve this once and for all: whether it does so, remains to be seen.

There is also a new uncontroversial requirement that all debt advice ads comply with OFT guidance on the subject.

6. Health

The new Codes now reflect EU requirements preventing misleading claims about food products and regulating the advertising of traditional herbal medicines.

Are there are relaxations in the rules?

There have been a number of relaxations of rules in some specific areas:

- The restrictions preventing advertisers from advertising condoms before the 9pm watershed have been relaxed but advertisers and broadcasters must ensure that such ads are kept away from viewers who are under 10 years old.
- Charities are now entitled to make comparative claims on television and radio (provided they comply with the other strict rules on comparative claims).
- Betting tipsters are entitled to advertise for the first time (subject to a strict set of rules to ensure audiences are not misled).
- Advertisements for adult material may now be broadcast on adult entertainment channels only.
- Health professionals may now be used in television commercials (except to advertise medicinal products).

When do the new Codes come into force?

The new Codes will apply to all advertisements from 1 September 2010. Until that date, there is a grace period for advertisers and media owners to adjust to the new rules. Adjudications made prior to 1 September will be judged against the existing rules.

What has not been included?

1. There is no reference in these new Codes to the extension of the CAP Code into online promotional messages on company websites. On 8 March 2010, the advertising industry went public with its proposals to extend the CAP Code into this area of online marketing and promotion, together with their suggestions for new enforcement measures and funding proposals. This proposal has arisen as a result of political pressure on the advertising industry to take measures to regulate all online marketing, particularly to children.

CAP is assessing the practicalities of these proposals, and the hope is that this will come into force at the same time as the new codes. That may be a bit hopeful, but we shall see.

2. Also absent from the new Codes, for the time being, is any relaxation of the rules on post-conception advice services. There was a proposal in the consultation to allow advertising of these services on television, but BCAP have decided to discuss this matter further with Ofcom. The controversy surrounding this issue has detracted from the broader, more substantive changes that the new Codes will bring in.

Final Thoughts

The Codes regulate nearly all forms of advertising in the UK. A breach of the Codes can lead at the very least to an adverse adjudication and prejudicial publicity for your brand. The Reed Smith team will be running a seminar on the new Codes in May to bring advertisers and agencies up to speed on the details of these new changes.

Reed Smith's Marina Palomba was a member of the Advertising Association Task Force which has been considering extending the CAP Code to all online promotions for about two years. Our seminar in May will be able to give an inside perspective on the proposals and an explanation as to what it will mean for advertisers, creative and media agencies and search engine companies.

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