

1 ADVERTISING FRAMEWORK

1.1 How is advertising regulated in the United Kingdom?

There are four principal areas of law and regulation that regulate advertising in the UK:

- (a) Consumer protection laws, particularly the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs'), Consumer Rights Act 2015 and other legislation, such as the Data Protection Act 2018.
- (b) Intellectual property laws, particularly copyright and trademark law, which impact upon creative treatments and the use of third party trademarks in comparative advertising.
- (c) Sector specific laws that impinge upon advertising for particular goods or services, such as financial services, gambling, tobacco and alcohol.
- (d) Finally, there is a particularly significant role in the UK system for self-regulation. The main regulator is the Advertising Standards Authority ('ASA'); but there are also other bodies, such as the Portman Group, which governs naming, packaging and promotion of products, event sponsorship and point of sale materials in the alcohol sector; and the Phone-paid Services Authority, which governs premium rate telephony services.

1.2 What types of communications are considered to be 'advertising'? How is this determined?

There are few definitions of 'advertising', but the Business Protection from Misleading Marketing Regulations 2008 define an advertisement as 'the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations'. When the ASA extended its remit to cover claims on brands' own websites, it distinguished between 'editorial' and 'advertising', as 'editorial' is specifically excluded from the ASA's remit.

1.3 What is the basic regulatory framework for advertising regulation?

There are two main advertising codes:

- (a) The Broadcast Committee of Advertising Practice ('BCAP'), writes the BCAP Code for television and radio advertising.
- (b) The Committee of Advertising Practice ('CAP') writes the CAP Code for other forms of advertising, including:
 - press;
 - posters or Out-of-Home;
 - online advertising and social media;
 - cinema advertising;
 - brand owners' websites; and
 - sales promotions, including competitions and free prize draws.

The Committees are comprised of organizations representing advertisers, agencies, media owners and the clearance bodies. The Codes are enforced by the ASA.

1.4 Are there certain types of advertising practices that are specifically regulated (eg, text message advertising)?

Yes, premium rate services ('PRS'). PRS are goods and services that consumers can buy by charging the cost to their phone bill or pre-pay contract (eg, via telephone or text messages). The Phone-paid Services Authority ('PSA') regulates PRS according to its Code of Practice, which is approved by Ofcom (the statutory regulator). The ASA also requires broadcast advertisers to comply with the PSA Code.

Code 15 is the PSA Code of Practice which sets out Standards and Requirements with which providers of phone-paid services must comply. The PRS has also provided various guidance notes on issues such as vulnerable customers, customer care and transparency. Marketers must register with the PRS if they wish to provide phone-paid services.

During any written, spoken or other form of promotion of a PRS, the cost of the service must be provided before any purchase is made. The cost of the PRS must be prominent, clear, legible, visible and proximate to the phone number, shortcode, button or other means by which a charge may be triggered.

The BCAP Code also requires advertisements for PRS to alert their audience when a call of at least five minutes is normally involved, and provides that advertisements for live PRS must not appeal to people under 18, unless the PSA has given express consent to do so.

The BCAP Code also includes specific rules governing advertisements that include a PRS. These principally mirror the rules set out in the PSA Code, but they specifically state that if a PRS service costs 50p or more per call, it is important that clear pricing information is given to consumers. The BCAP Code also requires the identity of the service provider to be included in the advertisement.

1.5 Are there certain industries whose advertising practices are specifically regulated (eg, drug advertising)?

Several industries are subject to specific laws governing their advertising, and/or have specific provisions in the CAP and BCAP Codes. These are the main ones, but the list is not exhaustive:

- (a) **Alcohol:** Both the CAP and BCAP Codes contain detailed provisions, including:
 - requirements as to the age of people appearing in alcohol adverts;
 - prohibiting a link between alcohol and sexual or social success or the success of a social event; or
 - linking alcohol with particular activities such as the work place, operating machinery, driving or water sports.
- (b) **Tobacco:** All forms of tobacco advertising are prohibited. E-cigarettes can be advertised, but there are restrictions.
- (c) **Medicines:** Prescription Only Medicines are heavily regulated, and can only be advertised directly to medical professionals. Over-the-Counter medicines can be advertised to consumers, subject to certain controls. Advertising for cosmetics, food supplements and medical devices that allege to prevent, treat or diagnose a disease, illness or adverse condition risk being caught by the definition of a medicine because of their claims, rather than their ingredients.
- (d) **Food and Drink:** Concern about obesity, particularly in children, has driven scheduling restrictions in the BCAP Code for foods which are high in Fat, Sugar and Salt ('HFSS'). The CAP Code, which regulates non-broadcast advertising, also contains media placement

restrictions for HFSS product advertisements. The retained European Regulation concerning Nutrition and Health Claims Made on Foods prohibits nutrition and health claims in foods unless these appear on a list approved by the Food Safety Authority. From January 2025, there will be further restrictions on advertising HFSS foods on TV and online.

- (e) **Automotive:** As well as the specific provisions of the CAP and BCAP Codes, car manufacturers need to be mindful of the provisions concerning environmental claims.
- (f) **Gambling:** As well as complying with specific provisions of the CAP and BCAP Codes, such as ads not having strong appeal to children, gambling operators must be mindful of their license obligations, failing which their operating licenses could be revoked by the Gambling Commission and they would have to cease operating, or face criminal sanctions.

1.6 Are any government pre-approvals required?

There are no government pre-approvals required for individual advertisements, but there are legal requirements laid down in various statutes and regulations that specific types of advertising must contain certain pre-approved warnings or disclaimers to be lawful, particularly in the financial services sector. Advertisements for consumer credit and for mortgages, for example, must contain specified warnings and information. These deal with issues such as typical interest rates; warnings that investments can go down as well as up; and that consumers may be at risk of losing their homes if mortgage repayments are not maintained. In addition, there are provisions in the CAP and BCAP Codes that must be observed.

Following the introduction of new rules by the Financial Conduct Authority ('FCA'), the ASA will no longer regulate technical claims in ads for cryptoassets in non-broadcast media (although it will still look at complaints about issues such as offence). As of 8 October 2023, the FCA has taken over the regulation of ads for 'qualifying cryptoassets'—ie, cryptoassets that are transferable and fungible, including cryptocurrencies and utility (fan) tokens—and is introducing new rules.

1.7 Does the media pre-clear advertising?

All television commercials are pre-cleared by a central body called 'Clearcast', which is owned and funded by the television stations. The broadcasters have an obligation under their government-granted broadcasting licenses to ensure that all advertising is compliant with the BCAP Code and the applicable legislation. The television stations will therefore not accept a commercial for broadcast without Clearcast's approval. This approval will normally be obtained at script stage, and then again once the final cut is ready for broadcast. Clearcast approval does not affect the ability of the ASA to uphold any subsequent complaint, but the ASA will consult Clearcast to obtain their explanation for approving the commercial.

The Radio Advertising Clearance Centre ('RACC') operates a similar system for radio commercials.

1.8 How does the government enforce advertising laws? What are the potential remedies?

Generally speaking, government agencies will only enforce advertising laws if the self-regulatory system has failed to work, if there is a gap in the self-regulatory system, or if there is a serious issue of consumer detriment. Agencies which may intervene are as follows:

- (a) The Office of Communications ('Ofcom') will intervene if a broadcaster is in breach of the sponsorship or programming codes, eg, by allowing an HFSS food advertiser to sponsor a program of appeal to the under 16s. Ofcom has imposed large fines for breaches of the codes around premium-rate phonenumber competitions.

- (b) The Medicines Healthcare Regulatory Agency ('MHRA') can intervene if medicinal claims are made for products which are not licensed medicines.
- (c) The Competition and Markets Authority ('CMA') may intervene when advertisers make unsubstantiated claims despite adverse adjudications by the ASA, or make misleading price or savings claims to consumers. It will also conduct investigations and enforcement activity on its own initiative, including against marketing that is misleading or aggressive under the CPRs. The CMA will usually seek to negotiate undertakings from advertisers in the first instance, so that court action is not required. If, however, no such undertakings can be obtained, the CMA may bring criminal proceedings and, if successful, these will result in fines and occasionally even imprisonment for the individuals responsible. At the time of writing, the Digital Markets, Competition and Consumers Bill ('DMCC Bill') is passing through parliament, which will provide the CMA with greater enforcement powers and the ability to levy GDPR-style fines without having to get a court order first.
- (d) Local government Trading Standards Departments also play an important role in the enforcement of advertising laws, particularly in relation to price advertising to consumers. They will bring criminal proceedings in the Magistrates Courts, which have the power to impose prison sentences of up to six months (or 12 months if convicted of more than one offence), and/or an unlimited fine.
- (e) The Information Commissioner's Office ('ICO') will take action against organizations who do not comply with data protection requirements. It regularly fines organizations who breach the Privacy and Electronic Communications Regulations 2003 when sending marketing emails or carrying out telephone marketing.

1.9 When does a competitor have a right of action? What are the potential remedies?

Generally speaking, competitors in the UK have tended to rely on complaints to the ASA as their main means of redress. When the Unfair Commercial Practices Directive was implemented in the UK as the Consumer Protection Regulations 2008 ('CPRs'), this was done without a specific right of action for competitors. The CPRs are restated in the DMCC Bill, but there is still no right of action for competitors.

If the competitor is named in an advertisement, it may be able to bring proceedings for trademark infringement. In addition, or sometimes as an alternative, a competitor may be able to bring an action under the tort of 'malicious falsehood'. The claimant will need to be able to show that it was identified by the relevant statement or claim; that the claim was not merely misleading, but actually false; and that the respondent knew the claim was false or was reckless about its falsity. The claimant will also need to show that this has caused them damage.

If a claim succeeds in trademark infringement or malicious falsehood, the claimant may be entitled to damages (or an account of profits) and an order for the respondent to cease and desist from the relevant advertising. Orders for corrective advertising are also now becoming a more common feature of the English legal system, although still relatively unusual.

A competitor may also bring a 'private prosecution' if it believes that its competitor is in breach of the criminal law. If successful, the defendant will face a fine and a costs award. Again, these are relatively unusual, but such cases may become more common as companies try to achieve a level playing field at a time when the regulatory bodies and the ASA are relatively short of funds, and have to prioritize what they see as the most important cases.

1.10 When do consumers have a right of action? What are the potential remedies?

In addition to the right to complain to the various regulators and ombudsmen, consumers may have direct rights of action against traders.

Since 2014, the Consumer Protection (Amendment) Regulations 2014 ('2014 Regulations') have provided consumers with a direct right of redress against traders who have engaged in misleading or aggressive practices, contrary to the CPRs. Remedies include the right to unwind the contract; the right to a discount; and the right to damages. Consumers need to show that the trader engaged in a prohibited practice which caused the consumer to take a decision they would not have otherwise taken, eg, to buy a product or pay a certain amount.

Consumers can also enforce rights under the Data Protection Act 2018 ('DPA 2018'). The DPA 2018 provides for fines of up to €20 million or 4% of the organization's total annual worldwide turnover. However, fines of this level are likely only to be issued where an organization has committed a serious breach of its data protection obligations.

Consumers can also make 'subject access requests', requiring data controllers to provide information about the data held about them. Consumers can also complain to the regulator, the Information Commissioner, who can then bring enforcement action against a data controller.

In certain regulated industries, such as the legal and financial industries, consumers have a right to complain to various ombudsmen, eg, the Financial Ombudsman Service. This includes cases where insufficient or misleading information is given in advertising materials. Many of these ombudsmen have powers to award compensation to consumers.

2 SELF-REGULATORY FRAMEWORK

2.1 Does the United Kingdom have a primary advertising self-regulation system?

The ASA is the UK's independent self-regulatory body. It was set up by the advertising industry in 1962 to police the rules set out in the CAP Code. Compliance with the CAP (non-broadcast) and BCAP (broadcast) Codes is binding on all advertisers, agencies and media owners pursuant to the membership obligations of their respective trade associations, but also applies to any organization that is not a member of one of those bodies.

The ASA is responsible for handling complaints about broadcast and non-broadcast advertising. These complaints may come from any source, including consumers, competitors, charities, trading standards officers or non-governmental organizations. The ASA also monitors compliance based on its own activity and research. The ASA has no legal statutory powers, but does have a legal backstop provided by trading standards bodies, and by Ofcom for broadcast advertising, if an advertiser repeatedly disregards its rulings.

Ofcom is the regulator for all UK broadcast media. Although it has delegated a large proportion of its responsibilities for broadcast advertising regulation to the ASA, Ofcom retains statutory authority and operates in a co-regulatory relationship with the ASA.

2.2 Is there a self-regulatory advertising code? What are the key principles?

The CAP and BCAP Codes stress that all marketing communications be legal, decent, honest and truthful. They should also be prepared with a sense of responsibility to consumers and society as a whole, respecting the principles of fair competition.

The Codes should be applied in spirit, as well as by the letter. Advertisers have a responsibility not bring advertising into disrepute. For example, the online gambling company, Paddy Power, was censured for an advertisement that coincided with both the Oscars' award ceremony and the start of the trial of Oscar Pistorius for the murder of his girlfriend, which featured his face superimposed on an Oscar statuette, and the headline 'It's Oscar time. Money back if he walks.' At the time, this ad attracted more complaints than any other in the history of the self-regulatory system.

The Codes require advertisers to deal fairly with consumers and not mislead them by exaggerating the performance, value and capability of a product, or by omitting material information.

The Codes urge advertisers to have the written permission of members of the public before they portray them in non-broadcast advertising, and require them to do so for broadcast advertising. According to the Codes, members of the Royal Family should not be shown or mentioned in marketing communications without express permission.

Advertisements must not cause harm or widespread offence against generally accepted social, moral or culture standards. They should not contain material that is likely to encourage behavior that prejudices health and safety or encourages violence, crime, anti-social behavior or disrespect to the environment. Advertisements must not cause the audience unjustifiable distress, especially with regard to those under the age of 18, and contain nothing that could cause them social, mental, physical or moral harm.

Both the CAP and BCAP Codes reflect the principle that advertising and editorial content must generally be kept separate and that advertising should be readily recognizable as such, whether by visual or aural representations, or through the use of the appropriate disclosures.

2.3 Does the system have an enforcement or dispute resolution mechanism? How does it work?

The ASA considers complaints from all sources. Just a single complaint can trigger an investigation. The ASA can also start an investigation itself, thanks to its monitoring and review system.

Some investigations are informally resolved if the advertiser immediately accepts the concern raised by the ASA and agrees to amend its advertising. Otherwise, the ASA Executive will conduct an investigation, sometimes with expert assistance, and produce a Draft Recommendation for complaints that are formally investigated, with a final adjudication being made by the ASA Council.

Advertisers can request an Independent Review of the adjudication if the adjudication itself was significantly flawed or if there was a substantial flaw in the process, but the decision whether to accept the recommendation of the Independent Reviewer ultimately remains with the Council.

The ASA's main sanction is negative publicity, which it achieves by publishing its adjudications on its website every Wednesday. It cannot impose fines, but its other sanctions include the imposition of pre-vetting requirements; referral to the Trading Standards authorities or Ofcom; and issuing 'ad alerts' to media owners warning them not publish certain advertisements in breach of the Code. In the context of online advertising, the ASA can remove a marketer's paid-for search advertisements when those advertisements directly link to a page on the marketer's own website that hosts marketing communications that are in breach of the CAP Code. The ASA can also conduct its own paid search campaign drawing attention to non-compliant advertisers. It also publishes its own list of non-compliant influencers.

Clearcast and the RACC will withdraw clearance for a broadcast advertisement if a complaint is upheld by the ASA. The ASA can also refer a broadcaster to Ofcom if there is a serious failure to comply with the BCAP Code, or if it persistently continues to do so. Ofcom can sanction, reprimand and ultimately revoke a broadcaster's license.

2.4 Is the self-regulation system effective? Is it widely used and followed?

Broadcasters' licenses hold the condition that they must comply with the BCAP Code. Therefore, the ASA and Ofcom between them have significant powers over broadcasting advertisements.

While the ASA does have legal backstop and can refer misleading non-broadcast advertisers to Trading Standards, in practice, based on the sanctions available, this is very rarely necessary.

In the overwhelming majority of cases, advertisers willingly comply with the self-regulatory system and remove offending advertisements.

Increasingly, the ASA will seek to engage positively with advertisers to resolve complaints informally where possible, to avoid a formal investigation.

2.5 Are the self-regulatory system's decisions reported?

The ASA publishes its adjudications on a weekly basis on its website. They remain online for five years, and may be searched easily by the public. The stories are often picked up and reported in the media, providing further adverse publicity for offending marketing communicators.

The ASA also maintains a list of advertisers who continue to make non-compliant claims online, usually on their own websites, despite repeated requests for changes to their communications, as well as a list of non-compliant influencers.

2.6 Are there any key areas of focus, or key principles, that companies should be aware of?

The key principle of advertising regulation across all media is that advertising must not be misleading. The burden of proof is on advertisers to be able to substantiate all claims at the moment of their broadcast or publication. The ability of consumers to identify advertising messages is also critical.

Since March 2011, the CAP Code has also applied to marketing communications by companies and organizations on their own websites and in other non-paid-for online space, such as Facebook and Twitter. To come within this remit, such marketing communications must be directly connected with the supply or transfer of goods, services, opportunities and gifts, or consist of direct solicitations of donations by charities etc as part of their own fund-raising activities.

Those parts of a company's own website or social media that are not marketing communications remain outside the ASA's remit, such as editorial content, news or public relations material, corporate reports, investor reports and heritage advertising.

2.7 Are there any other self-regulatory systems that govern advertising practices in the United Kingdom?

Certain industries/sectors have regulatory bodies and codes applying to advertising practices, including codes for the mobile phone industry (Mobile Marketing Association), premium rate telephone lines (Phone-paid Services Authority), alcohol (Portman Group) and direct marketing (Data & Marketing Association). Other organizations are also involved in the application of the CAP Code, such as the Cinema Advertising Association.

3 ADVERTISING LAW BASICS

3.1 What are the basic laws governing advertising claims in the United Kingdom (eg, consumer protection laws, IP laws, unfair competition laws)?

The primary piece of consumer protection legislation in the UK is the CPRs. At the time of writing, the plan is to repeal and restate the CPRs in the DMCC Bill, with a few minor changes.

From 1 October 2014, consumers have new private rights of direct redress against traders who commit aggressive or misleading practices pursuant to the Consumer Protection (Amendment) Regulations 2014 ('2014 Regulations'). Now, if a trader carries out a misleading (or aggressive) practice, consumers will be able to unwind the contract (as if it had never existed) and get their money back, or receive a discount on sums paid. The CAP and BCAP Codes, and the ASA in its adjudications, aim to enforce advertising practices that are consistent with the CPRs. In addition, the CMA and Trading Standards Authorities both have power to investigate and enforce against advertisers/traders in breach of the CPRs.

Consumers will have recourse under the 2014 Regulations against the trader with whom they contract, but not others such as manufacturers or advertisers. Nonetheless, if a producer engages in a misleading (or aggressive) commercial practice of which the trader could reasonably have been expected to be aware, a consumer may be able to take action against the trader. For example, if a clothing manufacturer undertakes a high-profile advertising campaign claiming its products are 'pure cashmere' and the retailer knows this to be untrue but continues to sell the clothing, the retailer may be liable to the consumer. The retailer may equally be subject to a consumer claim if it conducts its own campaign based on manufacturer claims that it knows or suspects may be false.

To bring an action against a trader, a consumer has to demonstrate that the misleading act or aggressive practice was a significant factor in their decision, as an 'average' consumer, to enter into the contract or to pay the trader.

As well as consumer protection laws, data protection laws are very important in relation to advertisers dealing with consumers. Trademark law and the law of 'passing off' (similar to continental unfair competition law) is very important in the context of comparative advertising; and it will often be important to consider copyright law during the creation of advertising, particularly for parodies.

3.2 Is substantiation required for advertising claims?

Advertisers must ensure that they hold documentary evidence to prove all claims that are capable of objective substantiation, whether direct or implied, before submitting marketing communications for publication.

In the absence of adequate substantiation, the ASA may regard a claim as being misleading and therefore in breach of the CAP/BCAP Code.

If a comparison or comparative claim is made (eg, 'best selling'), the advertiser must hold evidence that relates to both its own product and that of its competitor.

The ASA is not very clear about the general standard of proof required for substantiation. However, there are detailed rules for claims relating to health, beauty and slimming products. For example, the level of substantiation required for a 'break through' claim for a cosmetics product will be very high, requiring a body of evidence of specific types.

3.3 Are there certain types of advertising messages that do not require substantiation (ie, puffery)?

Both the CPRs and the CAP and BCAP Codes state that obvious exaggerations (ie, puffery) are allowed. These are claims that the average consumer who sees the claim is unlikely to take literally. These claims do not require substantiation, but must not materially mislead and must not make any implied claims that are capable of objective substantiation.

For example, in 2017, the ASA considered whether or not a claim that a consumer would receive ‘a few extra quid’ when selling a car privately rather than through a second-hand dealer was ‘puffery’, or whether it needed to be substantiated. The ASA held that this phrase would not be taken literally by the consumer as an expectation of the likely size of the price difference. Instead, it simply indicated that selling a car privately would generally result in a higher sale price, but that this was often more time consuming (*We Buy Any Car Ltd*, 14 June 2017).

However, in another adjudication in 2018, the ASA ruled that a company’s claim to be ‘The Leading Trademark Registration Service’ was misleading and was not mere puffery. The ASA held that customers would understand this to mean that the company had registered more trademarks than any other business, which was not the case (*Trade Mark Eagle Ltd*, 21 February 2018).

Then, in October 2018, the ASA rejected a complaint against a television commercial marking the 250th anniversary of Lloyds Bank, concluding that the phrases ‘Yesterday, today, and tomorrow we have been and always will be by your side’ and ‘by your side for over 250 years’ were mere advertising puffery, and not intended to be taken literally.

In 2021, the ASA ruled again that a claim—‘the perfect network’, featured in Sky UK’s poster ads—was misleading. The company argued that the claim was non comparative and based on their own opinion; it believed consumers would understand the claim to be mere puffery. However, the ASA held that the claim was misleading and said that objective comparative evidence to substantiate the claim was required.

3.4 What are the rules governing the use of disclosures in advertising?

Advertisements must state significant limitations and qualifications. The way this should be done will vary according to the context.

Any qualification, such as a disclaimer or ‘small print’, can clarify or expand upon the main claim, but must not contradict it.

Any disclaimer or other qualification or clarification must be expressed clearly and legibly. The exact requirements will depend on a number of factors, such as the medium in which the main claim appears. There are also timing requirements for on-screen disclaimers during television commercials (ie, minimum timeframes during which the text must be shown on screen).

Footnotes should be clearly visible to a normal-sighted person reading the advertisement once, from a reasonable distance and at reasonable speed.

Disclosures now play a key part of advertising on social media platforms, and this is discussed in more detail in question 8 below.

3.5 What are the rules governing the use of endorsements and testimonials in advertising?

Testimonials and endorsements must relate to the advertised product or service.

Advertisers must hold documentary evidence that a testimonial or endorsement is genuine (unless obviously fictitious), and hold contact details for the person who gave it. Factual claims within testimonials must not mislead. Advertisements generally should not feature a testimonial without permission, but exceptions may be made for accurate statements taken from published sources.

Marketing communications must not falsely claim that the advertiser, or other entity referred to in the marketing communication, is a signatory to a code of conduct, and must not claim (or imply) that they are endorsed by the ASA or CAP.

Advertisements must not use the Royal Arms, Emblems or Royal Warrants without prior permission from the Lord Chamberlain's office.

Testimonials and endorsements by celebrities using social media must make clear whether they are paid for or part of an overall commercial arrangement with an advertiser (see question 8 for further discussion on this subject).

3.6 What are the rules governing the use of product demonstrations in advertising?

The usual principles about misleading acts and omissions will apply to product demonstrations. Products must normally work as shown and as described.

Advertisements must not mislead consumers by exaggerating the capability or performance of a product; eg, by showing it doing things it cannot actually do.

If additional purchases or equipment will be required to make the product work, or to appear as they are shown in the demonstration, this must be made clear (eg, 'batteries not included').

During a demonstration, it is important to ensure that the advertisement does not present rights given to consumers in law as a distinctive feature of the marketer's offer. Also, advertisers must not suggest that their claims are universally accepted if a significant division of informed (or scientific opinion) exists.

3.7 Is comparative advertising permitted? If so, are there any special rules that apply?

Comparative advertising is permissible in the UK, subject to certain conditions:

- (a) in particular, comparisons must not mislead, and must compare products meeting the same need or which are intended for the same purpose, but they must not give the advertiser an artificial advantage;
- (b) the advertisement must objectively compare one or more material, relevant, verifiable and representative features of those goods and services, which may include the price; and
- (c) advertisements must not discredit or denigrate or take unfair advantage of the trademarks, goods, services, activities or circumstances etc of the competitor; and must not take unfair advantage of the designation of origin of competing product(s).

Unqualified superlative claims may be treated as comparative claims against all competing products.

3.8 Are there any special copyright or trademark rules that may impact comparative advertising (eg, whether a competitor’s trademark or products may be used)?

If an advertiser uses a third-party trademark in a comparative advertisement, other than as is permissible in order to fairly and legitimately compare two or more goods or services, the third party may have a claim for trademark infringement against the advertiser. Furthermore, depending on the circumstances, the third party may be able to bring a claim for defamation, trade libel, malicious falsehood, copyright infringement and/or passing off. If any of these claims are made out successfully, this could result in an injunction and/or claim for damages.

The requirements for the legitimate use of a third-party trademark in comparative advertising are derived from the Business Protection from Misleading Marketing Regulations and also reflected in the CAP and BCAP Codes. The key consideration is that the advertisement objectively compares one or more material, relevant, verifiable and representative features of the products. In practice, most disputes center on whether the advertiser can substantiate its claimed advantage.

3.9 Are there any special rules that govern claims relating to geographic origin (eg, that the product is ‘made in France’)?

Where a product has special protection in the form of a registered ‘designation of origin’ (eg, feta cheese), the CAP Code requires advertisers to compare such products only with other products with the same designation.

Otherwise, the usual rules regarding misleading advertising apply to such ‘made in’ claims. For example, in 2011, the ASA ruled that an advertisement which centered on the French heritage of a particular brand of beer created the misleading impression that it was produced in France (*Heineken UK Ltd*, 13 August 2011).

The ASA has also taken action in relation to advertisements which imply that the trader is based in the UK when in fact they are based elsewhere. For example, in 2017, the ASA held that the claim that certain services were ‘designed by a UK in-house team’ misleadingly implied that the trader was based in the UK, when in fact they were based in the US (*Logo Design Guarantee*, 20 September 2017).

An advert may be deemed misleading if other design elements imply that a product or service is UK-based. In 2022, the ASA ruled against *Buycarparts.co.uk*, which stated ‘all auto parts in one place’ on its website. Although there was not an explicit reference to the UK, the webpage—which had a ‘.co.uk’ domain—featured an image of the British flag, the letters ‘GB’, and pricing in pounds sterling. However, the goods were actually sent from Berlin. While the company’s privacy policy and legal notice listed a German address, the ASA considered that customers would not always access those pages, and held that the advertising was misleading.

3.10 Are there any special rules governing product packaging?

Generally speaking, misleading claims on packaging will be dealt with under CPRs. Special considerations apply in particular sectors, eg, alcohol. In the cosmetics sector, care must be taken to avoid claims on packaging that could amount to an unauthorized medicinal claim and therefore breach the criminal law.

Product packaging falls outside the scope of the CAP Code; however, if such packaging is visible in an advertisement, then the CAP Code will apply to the use of that packaging in the advertisement.

3.11 Are there any special rules or guidance on the use of ‘dark practices’?

The CAP Code has long applied to online advertising (including companies’ own websites), and many of the common ‘dark patterns’ align with issues that the ASA is well-versed in regulating. Examples include ‘drip pricing’, ad labeling (ie, the failure to label paid-for search results as such), and ‘disguising’ ads as something else to induce consumers to click on them.

The CAP Code requires that marketing communications must be obviously identifiable as such, and that marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession. That includes paid-for or sponsored listings on search engines, which are covered by the Code and should be clearly distinguishable from the natural listings.

Under the Code, ads for promotions must state all significant conditions likely to affect a consumer’s decision to participate in the promotion. Those are likely to include:

- whether a paid subscription starts automatically (after the trial) unless cancelled;
- the extent of the financial commitment if the subscription is not cancelled (during the trial); and
- any other significant conditions (eg, significant costs to participate).

However, the actual business practices used to make it difficult for a consumer to exit a subscription would fall outside the remit of the CAP Code. The CMA is currently investigating the use of ‘dark patterns’ and they may breach consumer protection laws.

Practices that enable the unintended disclosure of data could potentially be assessed under the CAP Code (Use of data for marketing), though others would likely lie within the remit of the Information Commissioner’s Office. The ICO and CMA have published a joint report on dark patterns and the use of personal data.

When it comes to practices involving direct financial detriment to the consumer, material that falls within the ASA’s remit is clearly covered by the Code. CAP and the ASA continue to monitor this, particularly with relation to how dark patterns can be tailored to groups or individuals, including those considered vulnerable.

The UK government recently consulted on further changes to consumer law, including the use of drip pricing. Therefore, more changes to consumer law may be on the horizon in relation to these and other ‘dark patterns’.

3.12 Are there any special rules or guidance on artificial intelligence as it relates to advertising?

The CAP Code is media neutral. Therefore, if an ad falls within its scope, its rules will apply, regardless of how the ad was created. The ASA regulates ads based on how the consumers will interpret them, which is not affected by the means used to generate that specific piece of content.

However, there are instances where how an ad was created might be relevant to whether it complies with the rules. In August 2023, the ASA stated that it had yet to rule, to its knowledge, on any ads using AI generated images. However, if these were used to make efficacy claims, there is the potential for them to mislead if they do not accurately reflect the efficacy of the product—much in the same way as images that are photoshopped or subjected to social media filters might. Advertisers should consider this if they are thinking about using AI generated images in their ads.

There is also a risk of some AI models amplifying biases already present in the data they are trained on, which could potentially lead to socially irresponsible ads. There have been a few documented examples of specific generative AI tools tending to portray those in higher-paying occupations as men or as individuals with lighter skin tones, or to portray idealized body standards that could be harmful or irresponsible. The ASA advises advertisers that want to use AI generated images in their advertising that they should be mindful of the potential risk of inherent bias and sense-check their ads to ensure that they are socially responsible and do not inadvertently portray harmful stereotypes.

Overall, advertisers should be aware that even if marketing campaigns are entirely generated or distributed using automated methods, they still have the primary responsibility to ensure that their ads are compliant. This is true for all stages of ad creation and distribution.

4 PRICE ADVERTISING

4.1 What are the United Kingdom's rules regarding price advertising?

The CPRs apply to all displays of pricing in communications giving pricing information. They prohibit traders from making misleading acts or omissions that cause or are likely to cause the average consumer to take a 'transactional decision' they would not otherwise have taken. For example, giving misleading information (or misleadingly omitting to give information) about the price or calculation of the price—even if this cannot be calculated in advance). See also the Guidance for Traders on Pricing Practices, issued by the Chartered Trading Standards Institute ('CTSi Guidance'), referenced in question 4.3 below.

There are also 'blacklisted practices' (ie, those which are automatically unfair, even without affecting a transactional decision), namely:

- (a) 'bait' or 'bait and switch' advertising;
- (b) falsely stating that a product will only be available for a very limited time; or
- (c) giving materially inaccurate information about market conditions.

There is also legislation in specific industry areas including: distance selling, consumer credit, estate agents, and package holidays and flights—and specialist advice should be taken on an individual basis. The Price Marking Order 2004 is also relevant and currently under review.

4.2 What are the United Kingdom's rules regarding advertising 'free' products?

It is a blacklisted practice under the CPRs to describe a product as 'free' if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

The CAP and BCAP Codes broadly mirror this rule, and also provide that, where receipt of the free product is conditional on purchasing another product, the price of that product may not be increased above its normal cost (and its quality must not be lower than normal).

If traders offer packages of products, they must not describe any elements of that package as 'free' if the consumer has no choice about the elements included in the package. In limited circumstances, if a feature has recently been added to a package and is not intrinsic to the package, it may be described as 'free'. In all cases, specific legal advice is recommended.

4.3 What are the United Kingdom's rules regarding sales and special offers?

Detailed guidance about the application of the CPRs' rules on price advertising is contained in the CTSi Guidance. This adopts the same principles-based approach that underpins the CPRs.

The CTSi Guidance revamped the rules on the use of 'reference prices' when making a savings claim. Traders must now ensure that the 'average consumer' would not consider the savings claim to be misleading or unfair. Despite this ambiguity, the Guidance provides a useful steer in the form of the following five questions:

- (a) How long was the product on sale at the higher price compared to the period for which the price comparison is made?
- (b) How many, where, and what type of outlets will the price comparison be used in compared to those at which the product was on sale at the higher price?
- (c) How recently was the higher price offered compared to when the price comparison is being made?
- (d) Where products are only in demand for short periods each year, are you making price comparisons with out-of-season reference prices?
- (e) Were significant sales made at the higher price prior to the price comparison being made, or was there any reasonable expectation that consumers would purchase the product at the higher price?

The CTSi Guidance also revisited the previous '10% rule' for general savings claims. Previously, the guidance stated that, if a trader wanted to make a general savings claim such as 'save up to 50%', then that saving needed to apply to at least 10% of the range of products on offer. Under the CTSi Guidance, the maximum saving must apply to a 'significant proportion' of the range of goods on offer and represent the true overall picture of the price promotion. It also states that 'up to' and 'from' claims must be shown clearly and prominently.

When using 'reference prices' to make savings claims, traders must ensure that the 'average consumer' would not consider the savings claim to be misleading or unfair. Traders should apply a 1:1 ratio at most, so if the higher price applied for one month, the comparison should be used for no more than one month.

4.4 What are the United Kingdom's rules regarding rebates?

In the UK, this is known as 'cashback'. There are no specific rules governing the promotion of products by offering cashback, but it will be considered to be a sales promotion and therefore all the usual rules regarding significant conditions being made known etc apply (see Section 8 of the CAP Code and related 'Help Notes'). For example, it should be clear what is needed to qualify to receive the cashback and also what form the cashback takes (eg, cash, or merely a voucher that can only be redeemed in particular stores). All the other usual rules contained in the CPRs and the CAP and BCAP Codes should be followed.

4.5 Are there other key restrictions which advertisers should be aware of regarding retail advertising practices?

The information set out above is a very brief summary of the CTSi Guidance, which should be referred to in full, as well as the relevant sections and the Help Notes of the CAP and BCAP Codes.

The UK government is currently considering the issue of 'drip pricing' as discussed in question 3.11 above, and the CMA has investigated unit pricing in the grocery market.

5 PROHIBITED PRACTICES

5.1 Are there any products or services that may not be advertised, or may not be advertised in certain media? (eg, guns, medicines etc)?

(a) **Broadcast advertisements** for the following goods/services are completely prohibited:

- breath-testing devices;
- guns/offensive weapons or gun clubs;
- prostitution and sexual massage services;
- obscene material (see question 5.3 below);
- products for the treatment of alcohol or illegal-substance dependence;
- some types of religious and faith-based advertising;
- some types of home working schemes;
- escort agencies (TV only);
- political advertising;
- teleshopping for certain medicinal or veterinary products or medical treatment for humans or animals;
- the acquisition or disposal of units in collective investment schemes not authorized or recognized by the FCA, without the prior approval of BCAP; and
- R18-rated materials (as classified by The British Board of Film Classification, which are works featuring consenting sex or strong fetish material involving adults) (radio only).

(b) **Broadcast and non-broadcast media:** all forms of advertising are prohibited for the following:

- betting systems and products that facilitate winning a game of chance;
- pyramid selling schemes;
- infant formula;
- prescription only medicines; and
- tobacco products (and some associated non-tobacco products eg, rolling papers and filters).

5.2 Are there any types of advertising practices that are specifically prohibited (eg, telemarketing to mobile phones)?

The following are specifically prohibited:

- (a) use of subliminal techniques in audiovisual commercial communications;
- (b) claiming that a product can facilitate winning in a game of chance;
- (c) claiming that the advertiser's job or livelihood is in jeopardy if the consumer does not buy the product;
- (d) presentations in advertisements for medical products by doctors, dentists, veterinary surgeons, pharmaceutical chemists, nurses, midwives and the like, if these imply professional advice or recommendation; and
- (e) there are many restrictions on advertising to children, eg, encouraging children to use pester power.

Other sectors also contain detailed rules that govern particular practices. For example:

- alcohol advertising must not link alcohol to sexual success or show actors who appear to be under 25 years old;
- gambling advertising must not suggest that gambling can be a solution for financial problems;
- automotive advertising must not show cars being driven recklessly or at excessive speed.

5.3 Are there any laws or regulations governing indecency or obscenity that apply?

The Obscene Publications Act 1959 makes it a criminal offence to publish, or possess with the view to publishing for gain, an article which, taken as a whole, has the effect of tending to deprave or corrupt persons who are likely to read, see or hear the matter contained within. Case law has shown that the article must have a morally corrupting effect rather than merely shock or disgust readers. There are two main defenses to the offence: innocent publication/possession; and public interest.

The Indecent Displays (Controls) Act 1981 makes it an offence to display or cause or permit to be displayed any indecent matter in, or so as to be visible from, any public place. The offence does not include matter included in a television program service, in films screened in licensed cinemas or in art galleries or museums visible only from within the gallery or museum.

6 SPONSOR/ADVERTISER IDENTIFICATION

6.1 Are there special rules requiring that advertising identify who the advertiser/sponsor of the advertising is?

Broadcasters must adhere to the Ofcom Broadcasting Code ('Ofcom Code') when entering sponsorship arrangements. Sponsorship of TV programs must be clearly identified by means of a sponsorship credit that makes clear the identity of the sponsor.

Broadcasters must also ensure that editorial content is distinct from advertising and surreptitious advertising is prohibited.

Advertisers must comply with the CAP Code, which states that marketing communications must be obviously identifiable as such. The BCAP Code goes further and states that advertisements must be obviously distinguishable from editorial content and that the audience should be able to quickly recognize the message as an advertisement.

The CPRs also require advertisers to disclose whether an advertiser is paying for editorial content or advertorials, and that advertisers must not mislead the public by any act of omission, so identification of the advertiser may be necessary, depending on the context.

7 BRANDED CONTENT

7.1 Are there any special rules governing the integration of advertising content and entertainment (or editorial) content?

The Ofcom Code covers 'linear' broadcast television, in addition to issues concerning sponsorship and product placement. Ofcom is also responsible for the regulation of on-demand program services ('ODPS'). However, it has designated the ASA as its co-regulator to take responsibility for advertising appearing in ODPS.

The Ofcom Code states that, in general, products, services and trademarks must not be promoted in programming and that no undue prominence may be given in programming to such things.

The Ofcom Code also deals with product placement and sponsorship, ensuring that editorial content remains distinct from advertising, preserving the broadcasters' editorial independence and control over programming.

Product placement (including a reference to a product, service or trademark in a program for a commercial purpose and in return for consideration) is prohibited in the UK, except in specific genres, such as films, sports programs and light entertainment programs. Product placement is prohibited in news, religious, current affairs and children's programs.

Product placement is prohibited for:

- cigarettes and other tobacco products;
- prescription only medicines;
- alcoholic drinks;
- HFSS food or drinks;
- gambling;
- infant formula;
- all medicinal products;
- electronic or smokeless cigarettes; and
- any product or service prohibited from television advertising.

Programs that contain product placement and which were produced or commissioned by the provider or the program services, must clearly signal such product placement by means of a universal neutral logo (the product placement 'P' in the UK).

To the extent that a 'blogger' or 'vlogger' is paid to produce content for an advertiser, and that advertiser has any form of editorial control over such content, then the Codes will apply to such content. The CAP Code may also apply if such video content is placed on a channel falling within the ASA's remit.

7.2 Are there any special disclosure or other obligations when integrating advertising content with other content?

- (a) Unsolicited email marketing communications must be obviously identifiable as such without the need to open them, eg, from the subject line.
- (b) Marketing communications must not falsely claim or imply that the marketer is acting as a consumer or for purposes outside its trade, business, craft or profession; marketing communications must make clear their commercial intent, if that is not obvious from the context. This is a requirement of the CAP Code, but is, in addition, also one of the practices banned under the CPRs as being always unfair.
- (c) Both advertisers and publishers must make clear that advertorials are marketing communications; eg, by heading them 'advertisement feature'. However, 'advertorial' is quite narrowly defined, with two additional elements: an advertorial is:
 - (i) an advertisement feature, announcement or promotion, the content of which is controlled by the marketer, not the publisher;
 - (ii) that is disseminated in exchange for a payment or other reciprocal arrangement.

8 SOCIAL MEDIA

8.1 Are there any special rules governing the use of social media for advertising purposes?

There are no special legal rules governing advertising via social media, but the CMA has been active in enforcing the CPRs in relation to social media. It is also important to note that the ASA has jurisdiction over marketing communications made in online non-paid-for space, including both advertisers' own websites and social media platforms, such as Twitter and Facebook etc. It will also cover situations where advertisers use consumers or celebrities to promote their products via those consumers'/celebrities' personal social media accounts. The ASA's remit applies if their 2-stage test is satisfied:

- (a) Has there been a payment of money or money's worth to the influencer; and
- (b) Has the advertiser exercised any kind of editorial control over the content or scheduling of a post?

In response to the growth of advertising content on such social media platforms, the ASA has published numerous guidance notes advising brands and celebrities how to comply with the CAP Code. The ASA has also been active in enforcing the CAP Code in relation to these advertisements.

The most pertinent of the 'usual' rules that have particular importance in the social media arena is the requirement that adverts must be clearly identifiable as such. For example, in 2018, the ASA ruled that an Instagram post by an influencer promoting a watch brand was not obviously identifiable as a marketing communication (*Daniel Wellington*, 25 July 2018). A further example was in 2022, when the ASA ruled that Instagram posts and stories by an influencer promoting wedding outfits were not obviously identifiable as a marketing communication (*Never Fully Dressed*, 30 November 2022).

Advertisers also need to ensure that they do not inadvertently breach the CPR blacklisted practice of 'falsely claiming or creating the impression that they are not acting for purposes related to their business' or 'falsely representing oneself as a consumer'. This applies both to the advertiser's own personnel (eg, their social media manager or copywriter) as well as where an advertiser has paid a celebrity, blogger or other person to promote their product via their own personal social media accounts. The ASA's approach to best practice in relation to such advertisements has evolved in recent years. Previously, the safest way to achieve such disclosure was through a hashtag, such as '#ad'. Now, the ASA's approach is to assess the marketing communication as whole. The ASA will consider whether the images and/or wording used in a social media post are in the same style as the celebrity's or influencer's usual posts. Marketing communications that are very similar to their usual posts in terms of tone will likely require a clearer disclaimer that they are marketing communications. In relation to vlogs, advertisers and vloggers should consider the timing of their disclosure. The ASA advises vloggers that they should ensure that consumers are aware they will be watching an advertisement before they watch it.

Special care must also be taken in relation to advertisements targeting minors, especially those under 12. According to the ASA, when a marketing communication is directed at under-12s (through the selection of media and/or the content), highly immersive, or significantly integrated into the surrounding editorial content and unlikely to be identified clearly from the context in which it appears, it will require enhanced disclosure. This means disclosures should be prominent, interruptive, and adequately indicate the commercial intent. In 2022, the ASA ruled against an ad

which was formatted identically to the surrounding editorial content and was significantly visually integrated to the extent that the ASA considered that it would be unlikely that children would be able to identify the content as an ad from the context in which it appeared.

8.2 Is an advertiser responsible for advertising claims made in user generated content (eg, statements that a consumer makes on an advertiser’s Facebook page)?

If an advertiser ‘adopts and incorporates’ user generated content (‘UGC’) on its website or into its social media space, then the advertiser will become responsible for that UGC and all the usual advertising rules will apply. The key issues for advertisers to think about if they want to make use of UGC are therefore as follows:

- (a) Is the advertiser soliciting UGC? If so, is the advertiser encouraging promotional-type UGC to be made, such as unqualified praise of a product?
- (b) Is the advertiser moderating UGC? If posts are pre-moderated before being posted, then the UGC will certainly be the advertiser’s responsibility. Post-moderation is more of a grey area.
- (c) Is the advertiser editing or making UGC more prominent than it would otherwise be? If so, the UGC will more likely be the advertiser’s responsibility.

8.3 Are there any key court or self-regulatory decisions that advertisers should be aware of regarding the use of social media and user generated content?

Although there have not been any prosecutions concerning social media advertising, there has been enforcement activity of a legal nature:

- (a) In 2012, the OFT took action against Groupon, who were found to have run promotions on an unfair basis and to have engaged in ‘astroturfing’, allowing the posting of comments from an employee posing as a consumer.
- (b) In 2016, the CMA investigated Social Chain, a social media company which had used the social media accounts of high-profile individuals to promote films, games and mobile apps. The CMA concluded that consumers would have found it difficult to distinguish between the usual posts from such individuals and posts which contained marketing content.
- (c) In April 2017, the ASA upheld a complaint that an Instagram post by a beauty blogger was not obviously identifiable as an advertisement. The ASA found that, whilst the image and use of the brand’s Instagram handle differentiated the posts from the blogger’s usual content, it was not sufficiently clear that these were marketing communications (*Nomad Choice Pty Ltd t/a Flat Tummy Tea*, 5 April 2017).
- (d) In another ruling in October 2017, the ASA ruled against a reality TV star who had promoted on her Snapchat story. Although the individual had been the face of the brand for two years and regularly posted content referring to the brand, the ASA ruled that such posts would not be obviously identifiable as marketing communications to new Snapchat users (*Diamond Whites*, 25 October 2017).
- (e) The ASA has also ruled against a series of influencers who had not adequately disclosed the commercial nature of their posts, such as in a 2020 ruling that an Instagram Story containing the standalone label ‘*affiliate’ was not sufficient for the Story to be recognizable as an ad (*Asos.com Ltd*, 22 April 2020).

9 RIGHTS OF PRIVACY/PUBLICITY

9.1 What are the rules governing the use of an individual's name, picture, likeness, voice and identity in advertising?

In the UK, there is no absolute right to protect 'personality rights', ie, the right to commercially exploit an individual's name, picture, likeness or voice. Celebrities may be able to do so, if they can make out a case under the tort of 'passing off', but both celebrities and private individuals may also be able to make a complaint to the ASA by reference to the CAP or BCAP Code.

In non-broadcast advertising, the CAP Code urges advertisers not to refer to living individuals, whether famous or not, subject to the exceptions below. In broadcast advertising, unauthorized depictions of, or references to, living individuals are prohibited; again, subject to the narrow exceptions described below.

The law of passing off was updated in 2002 in a case brought by the racing driver, Eddie Irvine, against the talk radio station, TalkSport. He was able to establish the three elements of the tort.

- (a) First, he showed that he had 'goodwill', because he earned money from product endorsements and advertising.
- (b) Second, he proved that people who saw a piece of marketing that purported to show him listening to TalkSport radio would be understood to be an endorsement by him of that station.
- (c) Third, he has suffered damage by the lost license fees.

This is now the leading case in this area, and will be cited by celebrities who have been referred to in advertising without consent. By way of example, in 2015, pop star Rihanna successfully sued Topshop under the English tort of passing off for using her image on a t-shirt without her permission.

Finally, there is also a role for data protection law, even for the private citizen. In one case, the courts required a local authority to pay compensation to a disabled girl. The Council had permission to use a photograph of the girl to promote their services for the disabled in the borough. However, when the photograph was later used to promote services for people with HIV Aids, the processing of her personal data was then unfair.

9.2 Are there situations when permission is not required?

Use of members of the public in a crowd scene or in a public place may be acceptable without permission. For celebrities and members of the Royal Family, references that accurately reflect the contents of a book, an article or a film may be acceptable without permission; as may references containing nothing inconsistent with the celebrity's views, provided there is no implied endorsement.

10 SPECIAL CLEARANCE

10.1 Are there any specific rules governing the types of materials that must be cleared before they may be used in advertising (eg, historic places)?

There are a number of potential areas which may be governed by further rules or which may require third party permission. The following is a non-exhaustive list:

- identifiable possessions or private dwellings;
- uniforms (eg, police and army uniforms);

- coins, bank notes and postage stamps;
- the King's image generally, and images of other members of the Royal Family, and royal warrants, crests and emblems;
- identifiable third parties (including, but not only, celebrities);
- third party quotes;
- some vehicles or parts of vehicles can be protected as a trademark, such a radiator grilles, as well as the more obvious badges etc and therefore should be checked;
- the scouting logos and symbols; and
- the red cross/red crescent symbols.

However, it is generally low risk to use the Union Jack flag, provided such use does not mislead eg, about the origin of the product, and it is not used in a way which is offensive.

10.2 Is it permissible to use other companies' recognizable products in advertising (eg, an actor wearing branded training shoes)?

It is often permissible to use other companies' recognizable products in advertising, provided that the third-party product is mass produced (eg, not one-off couture clothing) and the third-party trademark is merely incidental or referential, used as an indication of origin, rather than implying an endorsement, or trying to leverage the reputation of the third-party mark.

The risk is likely to be significantly higher if the third party's product is shown in a way which could create the misleading impression that the third-party brand/trademark featured endorses, has authorized, or is officially associated with the advertiser, advertised product, advertising campaign, etc.

The risk is also likely to be high if the item is shown in a negative or denigratory way, eg, showing a third-party branded vehicle which has broken down.

It is also important to avoid references to third parties that might give rise to an infringement of their copyright or design rights.

11 CULTURAL CONCERNS

11.1 Are there any rules that are particular to the culture of the United Kingdom which affect advertising (eg, Swedish gender equality law)?

The CAP Code states that marketing communications must not use the Royal Arms or Emblems without prior permission from the Lord Chamberlain's office. References to a Royal Warrant should be checked with the Royal Warrant Holders' Association.

Members of the Royal Family should not normally be shown or mentioned in a marketing communication. However, Royal images may be used to advertise material such as a book, article or film about a member of the Royal Family.

As in many other countries, there is increasing concern about the portrayal of women in advertising. Sometimes this is focused upon the depiction of women as sexual objects, and sometimes about sexualization of young women, often in advertising for lingerie, etc. Other concerns are raised about the portrayal of women involving unachievable, idealist images through the use of post-production enhancements. There are rules on harmful gender stereotypes. The ASA has also provided guidance about avoiding racist and ethnic stereotypes.

11.2 Are there any other cultural norms that should be considered (eg, religious concerns)?

The CAP and BCAP Codes have very general principles stating that advertising must not cause widespread harm and offence. These principles have been applied widely by the ASA across a range of issues, reflecting the fact that the UK is a modern, liberal, multi-cultural democracy. Non-governmental organizations representing the interests of minority groups will often take the opportunity created by an advertisement to promote their particular aspect of the equality agenda. Their complaints are not always upheld by the ASA, but there will still be a significant amount of negative press coverage.

In recent years, eg, there have been complaints about the portrayal of gypsies in advertising for a television show, 'My Big Fat Gypsy Wedding'; about a kiss between a gay couple in a TV commercial for Heinz mayonnaise; and about the portrayal of transgender people in a commercial for Paddy Power.

12 MISCELLANEOUS

12.1 Is there any other general advice or cautions you would give to advertisers operating in the United Kingdom?

Generally speaking, most issues concerning advertising compliance will be dealt with by the ASA. If an advertisement is investigated by the ASA, it is essential to 'front load' the defense. If an informal resolution is not appropriate, advertisers must make the best possible submission, with the requisite substantiation. If the Executive submits a Draft Recommendation to the Council with an upheld recommendation, that will usually be followed. In practice, it is then very difficult to have that decision reviewed.