

- f 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.

## 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.

### *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.

## **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.

## **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.

## **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.

### **Prices**

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