



CAP and BCAP Regulatory Statement: the use of “unlimited” claims in telecommunications advertising

The CAP and BCAP review of two types of claims used in telecommunications advertising has now concluded. Along with the issue of “unlimited” claims, the Review also focused on the use of “up to” speed claims in broadband advertising.

CAP and BCAP are pleased to have received around 40 responses on both issues from a wide variety of stakeholders in industry, in the regulatory and not-for-profit sectors and from members of the public. CAP and BCAP are grateful to all who took part in the process and helped to shape the Help Notes.

Objective

CAP and BCAP’s objective was to produce guidance for the industry on how to interpret the Misleading Advertising sections of the Advertising Codes in relation to “unlimited” claims as they appear in both consumer and business-to-business advertising.

Background

The CAP and BCAP Review of Telecommunications Advertising followed concerns about potentially misleading advertising of “unlimited” telecommunications services when those services were subject to fair usage policies (FUPs) or various other usage restriction, such as traffic management.

In summer 2010, CAP and BCAP conducted a pre-consultation with industry stakeholders and consumer representing bodies. They also engaged the technical expertise of Ofcom as the statutory regulator of telecommunications services. The process culminated in a public consultation, which took place between 26 January and 25 February 2011.

CAP and BCAP members reconvened to evaluate all the points made by consultation respondents. Both committees were advised by the General Media Panel (GMP), an advisory group of advertising industry practitioners, and BCAP were advised by its Advertising Advisory Committee (AAC), a consumer representing body that advises on broadcast advertising issues.

In August 2011, CAP and BCAP submitted their draft Help Note to the ASA Council who agreed to have regard to it when considering complaints against advertisements for “unlimited” telecommunications services.

Protecting consumers and guiding advertisers in a dynamic, evolving sector

The CAP and BCAP Help Note outlines approaches to the use of “unlimited” claims in telecommunications advertising that are likely to be compliant with the Codes i.e. the claims should not mislead the average consumer into making a transactional decision that he or she would not have otherwise taken. As “unlimited” claims are made in advertising across a wide range of media, the guidance takes the form of a combined Help Note for both broadcast and non-broadcast advertising.

The approach outlined in the guidance recommends a change in advertising practice to better reflect consumer expectations of “unlimited” telecommunications services. Most notably, the Help Note recommends that services featuring provider-imposed limitations that involve charging or suspension of service for usage that is considered excessive should not be described as “unlimited”. The Help Note also specifies the types of traffic management that are likely to be compatible with the description of a service as “unlimited” in advertising.

The Help Note also provides advertisers and agencies with a clear framework in which to develop their marketing, both for existing products and services and for future innovations. The higher bar for the use of an “unlimited” claim will, in CAP and BCAP’s view, help preserve the meaning of the term to the benefit of consumers and so that advertisers can more clearly explain the benefits of their offerings.

The guidance comes fully into effect on 1 April 2012. Advertisers should produce any new campaigns in line with the guidance.

The Help Note and the law

The ASA’s interpretation of the Misleading Advertising sections of the Codes takes into account factors identified by the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs) and The Business Protection from Misleading Marketing Regulations 2008 (BPRs).

Because the EU Directive from which the CPRs derive is a maximum harmonisation measure, CAP and BCAP cannot apply a greater or lesser restriction on advertising than is provided for in the CPRs. Specifically, they cannot generally prohibit a marketing practice that is not listed in schedule 1 of the CPRs. Issues such as the use of the “unlimited” claims must be judged on a case-by-case basis.