

# Compliance Report

Digital Media Survey 2008

## **Contents**

### **1. Summary**

### **2. Introduction**

- 2.1 Background
- 2.2 Survey Objectives

### **3. Methodology**

- 3.1 Media Examined in the Survey
- 3.2 Sample Collection Methods
  - 3.2.1 Banners
  - 3.2.2 E-mail
  - 3.2.3 Virals
  - 3.2.4 Sponsored search
  - 3.2.5 Podcast
  - 3.2.6 Mobile Messaging
  - 3.2.7 Social Networking Sites

### **4. Findings**

- 4.1 Compliance Rate
- 4.2 Compliance by Media Type
- 4.3 Compliance by Market Sector
- 4.4 Breaches identified by the Compliance team
  - 4.4.1 Banner Ad Breaches
  - 4.4.2 E-mail Breaches
  - 4.4.3 Sponsored search Breaches
  - 4.4.4 Social Networking Site Breaches

### **5. ASA adjudications and complaints**

### **6. Conclusions**

### **7. Compliance advice**

### **8. Appendices: ASA adjudications**

## 1 Summary

As well as responding to and investigating complaints about advertisements, the Advertising Standards Authority (ASA) monitors advertisements to ensure maximum compliance with the CAP and BCAP Codes.

The ASA has undertaken this survey to determine the compliance rate of online and digital media advertisements with the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code). The Compliance team assessed a variety of digital media “ads” including banners and pop-ups, sponsored search listings, virals, commercial e-mails, SMS and ads that appeared on social networking sites. The team captured the data from a variety of sources during July and August 2008.

We assessed 551 ads and of those, 16 were considered to be in breach of the CAP Code, a compliance rate of 97%. The rate varied by media from a low of 95% for social networking sites to a high of 100% for virals.

When it identified a breach, the Compliance team sought assurances from the advertiser that it would amend the ad to comply with the CAP Code and consult the CAP Copy Advice team in future.

Although compliance with the Codes was good, the team will continue to monitor ads in digital media, especially those media with a lower than average compliance rate, to try to encourage the highest possible standards.

## 2 Introduction

### 2.1 Background

The Advertising Standards Authority (ASA) is the UK's independent watchdog that maintains high standards in advertising by enforcing the CAP and BCAP Codes, which apply to the content of non-broadcast and broadcast marketing communications. The ASA is responsible for ensuring that the self-regulatory system works in the public interest and takes effective and consistent action to prevent ads from being misleading, harmful or offensive. It achieves that by investigating complaints and actively monitoring advertisements through systematic research. Also, the ASA provides advice and training to marketers and advertising practitioners to help them avoid potential breaches of the Codes.

The Committee of Advertising Practice (CAP) is the body that writes and maintains the advertising codes. It represents advertisers, promoters and direct marketers, their agencies, the media and trade and professional organisations in the advertising, sales promotion and direct marketing industries. CAP provides a pre-publication advice service, Copy Advice, and co-ordinates the activities of its members to achieve the highest degree of compliance with the CAP Code.

The Compliance team works to ensure that marketing communications comply with the CAP and BCAP Codes and with ASA adjudications. The team follows up ASA adjudications, monitors both broadcast and non-broadcast marketing communications and takes immediate action to ensure ads that breach the Codes are removed from the media. One of the team's objectives is to create a level-playing field for marketers in each sector and it ensures that by communicating decisions that have sector-wide ramifications. The Compliance team conducts surveys (of which this is one) to assess compliance rates in particular industries, sectors or media. The surveys help to identify marketing trends and to anticipate subjects of concern that need to be addressed by the ASA or CAP.

The term "digital media" is a generic one, commonly used to refer to innovative methods of communication incorporating digital technology; other terms often used to describe this sphere of advertising are "new", "evolving" or "next generation" media. No fixed definition exists and the distinction between "old" and "new" media is sometimes blurred.

Digital media are increasingly important advertising channels accounting for a bigger proportion of ad spend year-on-year. Ad spend on the Internet accounts for a quarter of the total market, only 1% behind TV. Most agencies predict that in 2009 the Internet will overtake TV to become the biggest advertising medium in the UK. Most of the growth is being driven by search advertising.

Complaints to the ASA are rising in line with the medium's growth. Last year the ASA received just under 3,500 complaints about digital media, making that category the second most complained about after television. Around 70% of those complaints related to advertising that falls outside of the ASA's regulatory remit. A widespread expectation exists among consumers and policy makers that the ASA can and should regulate marketing communications within online media.

The compliance survey did not include media such as electronic outdoor, interactive TV, in-game ads and on demand TV. The two main reasons why we did not or could not assess them were:

- i) prohibitive cost of buying necessary hardware and software (for example, games systems)
- ii) the time needed to collect a meaningful sample (for example, on demand TV ads)

Advertising within games is a big growth sector that will need to be carefully monitored in future but last year the ASA received only 2 complaints about ads in computer games. For that reason, we believed the cost associated with including ads within games was not warranted. We noted that nearly all on-demand TV ads had already appeared on networked TV and had therefore been pre-cleared by Clearcast or other compliance professionals. Again, we considered that the effort involved in collecting a meaningful sample size was not justified.

## **2.2 Survey Objectives**

The purpose of the survey was to:

- Assess compliance rates for a representative sample of digital media ads
- Identify breaches of the CAP Code;
- Contact advertisers responsible for advertisements that appeared to breach the Code and obtain an assurance that future ads would comply fully with the relevant clause in future;
- Act as a deterrent to bad practice and an encouragement to good practice.

## **3 Methodology**

### **3.1 Media Examined in the Survey**

We checked a selection of ads that appeared in July and August 2008 from these digital media:

- Banners and pop-ups
- Virals
- Sponsored search
- Commercial e-mail
- Podcasts
- Mobile messages
- Ads on social networking sites

### **3.2 Sample Collection Methods**

#### **3.2.1 Banners**

These were harvested using date searches on Billets media.

#### **3.2.2 E-mail**

These were harvested using date searches on Billets media.

#### **3.2.3 Virals**

These were harvested by registering to receive virals by e-mail and from online viral charts.

#### **3.2.4 Sponsored search**

We decided to collect a sample of around 250 sponsored search ads. We collected the first five ads that appeared for each of 16 search terms on three search engines. For a medium with a limitless number of potential search terms, it was difficult to select a robust method for determining search terms; for example, had we chosen "botox", every resultant ad would have breached the CAP Code ("botox" is a prescription-only medicine that cannot be advertised to the public).

To address that problem, we decided to use the product category list in the ASA database to select our search terms. Every complaint that is loaded on the database has a product category assigned to it. We ranked entries in the product category list by the number of complaints received; the most complained about category was first on the list, the second most complained about was second on the list and so on. We then chose the first entry and then every 23rd one to arrive at a final list of 16 search terms. The resultant search terms were:

Bank Accounts  
Batteries  
Cable TV  
Credit  
Disability  
E-mail  
Financial  
Furniture  
Homework Schemes  
Season Tickets  
Skips  
Slimming  
Sports Clothing  
Storage  
Tourist Boards  
Underclothes

### **3.2.5 Podcast**

Ad hoc harvesting by listening through the top podcasts on iTunes.

### **3.2.6 Mobile Messaging**

We registered on various websites that required a number for a mobile telephone and an opt-in to receive text messaging marketing material. We are grateful to PhonePayPlus for helping us collect our sample of ads.

### **3.2.7 Social Networking Sites**

We signed up to three social networking sites and harvested all ads encountered over two days.

## 4 Findings

### 4.1 Compliance Rate

The survey sought to establish the proportion of new media ads, sampled during July and August 2008, that complied with the CAP Code.

The Compliance team considered 551 unique ads. 16 ads seemed to breach the CAP Code, a compliance rate of 97%.

### 4.2 Compliance by Media Type

Table identifying compliance rate by media type:

Media	No. of ads	No. of breaches	Compliance rate by media type (%)
Banners/Pop Ups	67	1	98
E-mail	117	4	97
Virals	31	0	100
Sponsored search	222	7	97
Podcast	13	0	100
Mobile Messaging	26	0	100
Social Networking	75	4	95
Total	551	16	97

The compliance rates for the more established types of on-line advertising such as **banners, pop-ups and e-mails** were encouragingly high. The figures suggest advertisers and agencies are comfortable applying the Codes to those media. Although based on a relatively small sample, the data suggested a potential cause for concern with commercial e-mails for cosmetics: two of the four Code breaches in e-mails were in that sector.

None of the **viral e-mails** we collected contained Code breaches. We noted, however, that many of the virals we did not include in the survey for remit reasons pushed the boundaries of taste, decency or social responsibility and would have breached the Code.

A phenomenon worthy of note is the viral that sends-up an existing ad - often produced by amateurs without the knowledge or consent of an advertiser. Ultimately, advertisers must take a reputational and PR view on how to deal with the reaction. Advertisers might leave alone versions of their ads that are popularly received but might insist on the removal of versions that are too risqué or offensive to certain groups. Although we found no evidence of it, the possibility exists of illicit versions of ads being created with the knowledge or support of advertisers as a means of circumventing the rules. Such 'guerrilla marketing' could be an important part of some companies' advertising strategy.

Nearly half the breaches found in the survey (7 of 16) were in **sponsored search** ads. But sponsored search accounted for 222 of the 551 surveyed ads so the compliance rate of 96% for that media type was encouraging.

We must emphasise that using the data we collected to draw firm conclusions about sponsored search ads is unwise because there is an almost limitless number of search terms; we collected data for only 16. Had we collected data for 16 different search terms, we might have found something very different. For practical reasons, our work in policing this medium is likely to be dictated by ASA adjudications and potential problems that are brought to our attention in other ways.

The small number of podcast ads elicited no breaches. Audience sizes for **podcasts** are growing rapidly and the medium is likely to become much more attractive to advertisers in future.

We found no breaches in the small sample of **mobile messaging** ads. All call costs, web links and company names were stated clearly and the ads did not contain misleading product or service descriptions.

95% of the 75 ads from **social networking** sites were compliant. The ads in the sample were mostly banners and pop-ups or, on one of the sites, paid-for ads that users generated themselves. User-generated advertising models will need to be watched closely in future. Although the typical user of the model could well be an entrepreneurial individual or small business owner with perhaps a low awareness of CAP Code requirements, in this survey, the four ads that breached the Code were placed by established companies. Three of those four ads included prima facie breaches of the Code and were placed by companies that either should have known the applicable rules or that had previously been told by us to amend claims when they appeared in other media. We have followed-up our findings with the advertisers and received assurances that they will not repeat the ads.

### 4.3 Compliance by Market Sector

Table identifying compliance rate by market sector

Sector	No. of ads	No. Of breaches	Compliance rate of sector (%)
Computers and Telecommunications	83	2	96
Leisure	77	1	99
Health and Beauty	36	10	72
Employment	6	1	83
Household	48	1	98
Retail	105	1	99

The ASA and CAP categorise ads using 23 market sectors. In this survey only six of those sectors contained ads that breached the CAP Code. 355 of the surveyed ads appeared across the six sectors that contained a Code breach. The remaining 196 ads appeared across the 17 other sectors that did not contain a Code breach. The ads revolved almost entirely around looking good, feeling good, having the latest gadgets and music and, if you could not afford that, borrowing money - a commentary on life in the digital space in the summer of 2008.

The compliance rate for **computers and telecommunications** was good; we recorded only two breaches. Given previous problems with online ads in those sectors the result was encouraging and suggests advertisers have adjusted to the need to ensure ads in all media are Code-compliant.

Ten of the sixteen breaches occurred in the **health and beauty** sector. To find ten breaches in a sub-sample of 36 ads was concerning. The 72% compliance rate indicates that the sector should be singled out for special attention when monitoring online ads in future. Nearly all the breaches were in either sponsored search ads or e-mails. From a sample of 15 sponsored search ads, we identified five breaches but one of the searches we ran was “slimming”, a term likely to give results with problematic claims for slimming pills.

#### **4.4 Breaches identified by the Compliance team**

Sixteen breaches were identified in the survey

##### **4.4.1 Banner Ad Breaches**

An ad for a weight-loss product included unsubstantiated efficacy claims that breached clause 3.1 of the CAP Code. We asked the advertisers to remove the claims.

##### **4.4.2 E-mail Breaches**

Two ads for skin creams, which included unsubstantiated claims suggesting the products had a physiological anti-ageing effect, breached clause 50.1 of the Code. We asked the advertisers to remove the claims.

An ad for a weight-loss product included unsubstantiated efficacy claims that breached clause 3.1 of the Code. We asked the advertisers to remove the claims.

An ad that quoted VAT-exclusive prices breached clause 15.2 of the Code. We asked the advertisers to include VAT-inclusive prices in future.

##### **4.4.3 Sponsored Search Breaches**

Five ads for five separate weight-loss products included unsubstantiated efficacy claims. Some also contained weight-loss claims that exceeded the recommended weekly weight-loss rate. The ads all breached clauses 50.1; four breached clause 50.20 and three breached clause 51.10.

An ad breached clause 15.2 because it quoted VAT-exclusive prices.

An ad for a homework scheme included unsubstantiated earnings claims. The claims breached clause 52.4d. We asked the advertisers to remove the claims.

##### **4.4.4 Social Networking Site Breaches**

An ad for an online competition implied readers were luckier than they were and misled by suggesting the competition was exclusive to a website. The ad breached clauses 35.3 and 7.1; we asked the advertiser to remove claims that implied the ad was unique to the website and not to exaggerate the chances of a contestant winning.

An ad for a weight-loss product included unsubstantiated efficacy claims that breached clause 3.1. We asked the advertisers to remove the claims.

Two ads for broadband services included unqualified download speed claims. The ads breached clause 7.1; we asked the advertisers to qualify speed claims in future.

## **5 ASA Investigations and Complaints**

Between July and August the ASA published eight adjudications about digital media ads. The adjudications are attached in the Appendix: three banner breaches, three sales promotion breaches and two e-mail breaches. Two of the ads were picked-up in the survey.

## 6 Conclusions

The 97% compliance rate for digital media was encouraging but the Compliance team was concerned by the high number of breaches by health and beauty sponsored search ads and e-mails.

Of the 16 ads that broke the Code, two attracted complaints to the ASA. The Compliance team addressed the remaining 14 breaches by contacting the advertisers and asking them for an assurance that future ads would comply fully with the Code's requirements.

The generally high level of compliance indicates that the common perception of digital ads being the "wild west" of non-broadcast media in terms of compliance with the Code is far from the truth. Widespread concern nevertheless remains about digital marketing communications that currently fall outside of the ASA's regulatory scrutiny, such as companies' own websites.

The team will continue to monitor digital media to help ensure a high level of compliance with the Code. Digital media evolve rapidly and will soon, as a group, form the biggest UK advertising sector.

## 7 Compliance advice

Seeking confidential and free advice from the Copy Advice team is the best way to ensure that non-broadcast marketing communications stay on the right side of the CAP Code without hindering the creative process. The dedicated and experienced team can draw on ASA research and previous adjudications when advising on compliance as well as the likely reaction of both the public and competitors. Consult the Copy Advice team on 020 7492 2100 (telephone), 020 7242 3696 (fax) or e-mail [copyadvice@cap.org.uk](mailto:copyadvice@cap.org.uk). The team responds to almost all written enquiries within 24 hours.

Advertisers, their agencies and the media can also minimise the chances of their campaign breaching the rules by using AdviceOnline, which is an up-to-date database of advice that informs advertisers about what they can and cannot do and links users to relevant Code clauses, Help Notes and past ASA decisions. CAP also encourages users to subscribe to Update@CAP, its e-mail newsletter. Both services are free and available on [www.cap.org.uk](http://www.cap.org.uk).

For TV or radio pre-clearance advice, advertisers are urged to consult Clearcast ([www.clearcast.co.uk](http://www.clearcast.co.uk)) for TV ads or the RACC ([www.racc.co.uk](http://www.racc.co.uk)) for radio ads. Such pre-clearance is an explicit requirement of the BCAP Radio Code but does not guarantee exemption from the ASA's regulatory scrutiny.

## 8 Appendix: ASA Adjudications

**MFI Retail Ltd**  
333 The Hyde  
Edgware Road  
London  
NW9 6TD

**Date:** 20 August 2008  
**Media:** Internet (sales promotion)  
**Sector:** Retail

**Number of complaints:** 1

### Ad

A sales promotion, on the MFI website, stated "50% PLUS AN EXTRA 20% OFF ALL SALE ITEMS IN YOUR BASKET! Excludes appliance, sink and tap packages Terms & Conditions apply, minimum spend of £199". Further text at the foot of the page stated "SAVE UP TO 50% + AN EXTRA 20% CLICK HERE TO SEE OUR OFFERS Terms & Conditions apply". One of the sale items was a towel rail, reduced from £500 to £311.

### Issue

The complainant challenged:

1. whether the claim "PLUS AN EXTRA 20% OFF ALL SALE ITEMS IN YOUR BASKET!" was misleading, because when he purchased the towel rail at £311, he was told that the price already included the 20% discount and
2. whether the maximum possible discount of 70% was available at all, because MFI told him no items attracted the full discount.
3. The ASA challenged whether the headline claim was misleading and should have stated "up to 50%".

**The CAP Code:** 3.1;7.1;27.4;15.1

### Response

1. MFI said the promotion offered discounts of between 20% and 50% across their bathroom products category. They said most ranges, consisting of several hundred products, were discounted by 50%, with some accessory ranges attracting a 20% discount. They added that all sale items attracted a further 20% discount off the sale price where the customer spent at least £199. MFI said all products included in the sale carried the original and sale prices and explained that the additional 20% reduction was applied to the sale price of the goods in the customer's online basket before the customer paid for them.

2. MFI confirmed that no items were available at 70% off the original price. They reiterated that the promotion offered up to 50% off the original price plus an extra 20% off the sale price, where the customer spent a minimum of £199.

3. MFI said the headline "50% PLUS AN EXTRA 20% OFF ALL SALE ITEMS IN YOUR BASKET" had been removed. They pointed out, however, that the headline banner across the site stated "up to 50% + AN EXTRA 20% terms and conditions apply" and considered that visitors to their site would therefore have been aware that a range of savings "up to 50%" were available and would not have been misled.

### **Assessment**

#### **1. Upheld**

The ASA understood that, when the complainant tried to purchase a towel rail at the discounted price of £311, he was told that the price already included the 20% discount and that this discount applied to the sale price and not the original price.

We noted the promotion stated "... PLUS AN EXTRA 20% OFF ALL SALE ITEMS IN YOUR BASKET!". We considered that readers were likely to infer from the claim that the price quoted for promotional goods on MFI's online shopping pages excluded the additional 20% discount and that the reduction was to be applied once items were selected for purchase and placed in their online basket. We noted, however, that had not been the complainant's experience and understood that the price quoted for promotional items over the threshold value of £199 on MFI's online shopping page incorporated both the 50% discount off the original purchase price and the additional 20% discount. We also understood that this additional 20% discount applied to the sale price and not the original price. We considered, therefore, that the mechanics of the promotion were not clear. We also considered that the ad gave the impression that, once customers proceeded to the 'checkout', the 20% discount would be applied at that point.

Because we considered that customers would expect from the headline claim that the additional 20% discount would be off the original price rather than the sale price and would be applied at the checkout and be verifiable at that point, we concluded that they were likely to be disappointed to find out that that was not the case and the claim could mislead.

On this point, the promotion breached 7.1 (Truthfulness), 15.1 (Prices) and 27.4 (Unnecessary disappointment).

## 2. Upheld

We noted MFI's confirmation that no items attracted a reduction of 70% off the original price; the promotion offered up to 50% off the original price and an additional 20% off the sale price where the minimum spend requirement was met. We noted claims in the promotion stated "50% PLUS AN EXTRA 20% OFF ALL SALE ITEMS IN YOUR BASKET!" and "SAVE UP TO 50% + AN EXTRA 20% ...". We considered, however, that the claims were ambiguous and that most readers were likely to infer that a total discount of 70% off the original price was available. Because we understood that no items attracted a discount of 70% off the original price, we concluded that the promotion could mislead.

On this point, the promotion breached 7.1 (Truthfulness) and 27.4 (Unnecessary disappointment).

## 3. Upheld

We noted MFI had removed the claim "50% PLUS AN EXTRA 20% OFF". We understood items included in the sale attracted a discount of between 20% and 50% off the original price, although most items were discounted by 50%. We therefore considered that the ad should have made clear that not all items in the sale would attract a 50% discount by stating that customers could save "up to 50%". We acknowledged that text at the foot of the ad had stated "SAVE UP TO 50% + AN EXTRA 20% terms and conditions apply", and that similar text had appeared across their website, but considered that each reference to the maximum saving should have stated "up to 50%". Because the headline claim had not stated "up to 50%", we concluded that it could mislead.

On this point, the promotion breached CAP Code clause 7.1 (Truthfulness).

### **Action**

The ad must not appear again in its current form. We advised MFI to contact the CAP Copy Advice team for help with the wording of future, similar promotions.

Adjudication of the ASA Council (Non-broadcast)

**Bauer Active Ltd t/a Practical Fishkeeping**

Media House  
Lynchwood  
Peterborough Business Park  
Peterborough  
PE2 6EA

**Date:** 13 August 2008**Media:** E-mail**Sector:** Publishing**Number of complaints:** 1**Ad**

An e-mail, for Practical Fishkeeping magazine, had the subject line "Get an external filter worth £79.99 when you subscribe!". Text in the body of the e-mail stated "Subscribe today and get a Tetrattec EX600 external filter (worth £79.99) for free! ... As a special treat, exclusive to PFK website members, we're offering one of our best ever subscription offers this month. If you subscribe now you'll get a FREE Tetrattec external filter worth £79.99 with your annual subscription to the print magazine. However, we've got very limited quantities of these, so if you're interested don't wait a second longer and subscribe now!". Towards the end of the e-mail, it stated "Exclusive Offer. Subscribe today and get a Tetrattec EX600 external filter (worth £79.99) for free! The Tetrattec EX600 suits aquariums from 60-120 litres. This is a limited offer exclusively available to UK newsletter readers. We reserve the right to send you an alternative gift once we have exhausted our stocks".

**Issue**

A recipient said he responded the same day he received the e-mail but was told the filter was no longer available. He said he was offered a water test kit as an alternative, which he understood was not of an equivalent value to the filter. He believed the e-mail was misleading because Practical Fishkeeping did not have sufficient stock to satisfy demand.

**The CAP Code:** 27.4;30.1;30.2;30.4;31.1**Response**

Bauer Active (Bauer) explained that they only had a small number of filters, but nonetheless believed that, based on fulfilment of previous subscription offers, there would be enough to satisfy demand. They said the demand, however, was much higher than they expected with orders totalling nearly three times the amount of stock available. They said the subscription orders were placed within two hours of the e-mail being distributed and once they realised stock had run out, they removed the offer from their website. Bauer said they initially allowed those subscribers who were unable to take advantage of the free filter to cancel

their subscription but, in order to avoid disappointment, they then decided to buy more filters and wrote to all subscribers whose orders could not be fulfilled to offer them the gift. They said those readers who had cancelled their subscription because the filter was not available were given the opportunity to re-instate their subscription. They denied that they offered a water test kit as an alternative gift to the filter and said the water kit was an additional existing subscription offer on their website and in the magazine.

Bauer believed the e-mail made clear that the filter was a limited offer with limited quantities and said they offered the e-mail promotion in good faith. They believed they had taken reasonable steps to avoid disappointment by purchasing further filters at a much higher price and sending them to subscribers to ensure they received exactly what they expected.

### **Assessment**

#### **Upheld**

The ASA noted Bauer had based expected demand for the filter on previous Practical Fishkeeping subscription gift offers. However, we also noted previous offers were for items such as DVDs, books and test kits, which were of significantly less value than the Tetratec external filter on offer. We acknowledged that the promotion had achieved a higher response rate than expected, but were concerned that Bauer had not based their estimate of likely response on promotional items of a similar value and had been unable to supply demand for the free gift. We noted the e-mail stated "we've got very limited quantities ..." and "This is a limited offer ..." but considered that this did not relieve Bauer of the obligation to take all reasonable steps to avoid disappointment to respondents. Although we welcomed their subsequent actions to fulfil the offer, we noted unsuccessful respondents were initially told only that they could cancel their subscription and considered that, at the time the e-mail was sent, Bauer had not taken adequate steps to avoid disappointing consumers.

The e-mail breached CAP Code clauses 27.4 (Sales promotion rules), 30.1, 30.2 and 30.4 (Sales promotion rules - Availability) and 31.1 (Sales promotion rules - Administration).

#### **Action**

We told Bauer to take more care when planning similar offers in future and to ensure that they had enough stock to satisfy demand.

Adjudication of the ASA Council (Non-broadcast)

**CYC Marketing Ltd t/a thepinkpatch.co.uk**  
Cherrytree (Suite 2)  
Union Road  
Nether Edge  
Sheffield  
S11 9EF

**Date:** 30 July 2008  
**Media:** Internet (display)  
**Sector:** Health and beauty

**Number of complaints:** 19

### **Ad**

An internet ad, for a weight loss product, showed a woman's midriff with a pink patch stuck to it. White dots circled the patch. Text stated "Want to lose the tummy?" and was then replaced with further text that stated "Drop a Stone in 2 Weeks! Get a FREE\* Pink Patch Sample [CLICK HERE ThePinkPatch.co.uk](http://ThePinkPatch.co.uk)". The asterisk linked to smaller text that stated "\*P & P charges apply".

### **Issue**

1. Eight complainants challenged whether the claim "Drop a Stone in 2 Weeks" could be substantiated.
2. Seven complainants challenged whether the ad was irresponsible, because it encouraged weight loss at a rate that was incompatible with good medical and nutritional practice.

The ASA challenged:

3. whether the weight loss would be achieved by a loss of body fat as opposed to fluids.

**The CAP Code:** [2.2](#);[3.1](#);[7.1](#);[51.1](#);[51.9](#);[51.4](#);[51.10](#)

### **Response**

1., 2. & 3. CYC Marketing (CYC) believed significant scientific evidence supported the claims in the ad. They explained that the Pink Patch contained a number of herbal ingredients, all of which had been shown to promote weight loss and/or increase metabolic rate.

CYC submitted a number of ingredient-specific studies in support. They sent a paper drafted by another supplier of weight loss patches which summarised the results of studies carried out on one of the ingredients of the Pink Patch. They also sent a number of study abstracts carried out on the remaining ingredients by universities in Japan, Korea, Denmark and the USA. Some studies were carried

out on humans; other studies used rats and dogs. CYC sent a full copy of one study which considered the effects of one ingredient, taken orally as a capsule, on obese adults.

CYC said they were no longer using the ad but had designed a new version.

### **Assessment**

The ASA welcomed CYC's decision to amend their advertising. We nevertheless noted CAP guidance indicated that they had yet to see convincing evidence that slimming patches alone could result in weight loss and that slimming patches should be advertised either on an availability-only platform or as a prompt to remind wearers to stick to their diets.

#### **1., 2. & 3. Upheld**

While we noted we had seen summaries of trials for the individual ingredients of the Pink Patch, we noted some studies had been carried out on animals, not humans. We noted the CAP Code stated that claims for weight loss products should be backed by rigorous trials on people. In addition, we noted we had not seen evidence to show that, when combined together in the Pink Patch, the ingredients resulted in any weight loss, nor had we seen evidence that it could help wearers to "Drop a Stone in 2 Weeks".

The evidence did not persuade us that wearing the Pink Patch would result in a loss of body fat and we concluded that the claim "Drop a Stone in Two Weeks" was unsubstantiated and could mislead.

We noted the Code stipulated that marketing communications should not contain claims that people could lose precise amounts of weight within a stated period or that weight or fat could be lost from specific parts of the body. We also noted the Code stated that, for those who were normally overweight, a rate of weight loss greater than 2 lbs per week was unlikely to be compatible with good medical and nutritional practice. For those who were obese, a rate of weight loss greater than 2 lbs per week in the early stages of dieting may be compatible with good medical and nutritional practice. We considered that the claim "Want to lose the tummy?" meant that the ad was likely to be perceived as targeting those readers who were overweight or obese. We understood that a stone equated to 14lbs and considered that the claim "Drop a Stone in 2 Weeks" therefore advocated weight loss at a rate of 1lb per day, contrary to good medical and nutritional practice. We concluded that the ad was therefore irresponsible.

On points (1) and (3), the ad breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 51.1 and 51.4 (Weight control).

On point (2), the ad breached CAP Code clauses 2.2 (Responsible advertising), 51.9 and 51.10 (Weight control).

**Action**

The ad must not appear again in its current form. We told CYC to contact the CAP Copy Advice team for guidance on future ads.

Adjudication of the ASA Council (Non-broadcast)

**Jet2.com Ltd**  
Low Fare Finder House  
Leeds Bradford Airport  
Leeds  
LS19 7TU

**Date:** 30 July 2008  
**Media:** E-mail  
**Sector:** Holidays and travel

**Number of complaints: 2**

### **Ad**

An e-mail sent to consumers offering cheap air fares had the headline "April Bargains frm £4.99 with Jet2.com" Text in the body of the e-mail stated "Jet2.com are offering fantastic fares frm £4.99 for travel in April to some amazing destinations ...". A list of destinations at the bottom of the e-mail included "Geneva £9.99".

### **Issue**

Two complainants challenged whether flights were available at the advertised prices. One of the complainants objected that they could not find any flights to Geneva that were available at the advertised price of £9.99 at the time the e-mail was sent.

**The CAP Code:** 3.1;7.1;15.2;15.4;16.1 (old);27.4;30.1

### **Response**

Jet2.com Ltd (Jet2) said they ensured that any prices featured in an ad were live in their booking system, and continued to be live, for two weeks following the date of the ad. They said they also ensured that a minimum of 20% of the available fares were available at the lowest advertised price.

Jet2 submitted documentation that showed the proportion of flights to Geneva that were available during the seven-day promotional period following the email newsletter going live. They said 33% of the seats on flights to Geneva in April were available at the advertised fare of £9.99 one way including taxes. Jet2 also sent documentation that showed that, in the period 2nd to 10th April 2008, 30 customers had taken advantage of that offer. They said, if demand exceeded supply, they would instantly add additional fares at the promotional price.

Jet2 said they still had fares available at £9.99 for that route on the Low Fare Finder section of their website. They submitted documentation from their website that they said showed that the £9.99 promotional fare for flights from Leeds Bradford airport to Geneva were available for dates in May, June and August.

## **Assessment**

### **Upheld**

The ASA noted the evidence submitted by Jet2. We accepted that the documentation showed that the minimum advertised fare of £9.99 was available on 33% of the seats on flights to Geneva during April 2008. We also noted that that documentation showed that 30 customers had booked flights to Geneva for £9.99 on a variety of dates at which that fare was available. Nevertheless, we considered that the ad should have stated that the £9.99 fare to Geneva was a "from" price, in order to make it clear to consumers that not all of the fares to Geneva would be available at the advertised price. We also understood from the website documentation submitted by Jet2 that the £9.99 fare excluded a compulsory fuel supplement charge. We considered that the advertised fare should have included all taxes and compulsory charges paid by customers up to and including the point of purchase. Because it did not, and because the ad did not make it clear that the advertised fare was 'from' £9.99, we concluded that the ad was misleading.

The ad breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 15.2 and 15.4 (Prices), 16.1 (Availability of products), 27.4 (Sales promotion rules) and 30.1 (Availability).

### **Action**

The ad must not appear again in its current form. We told Jet2 to make sure that the advertised fare included all compulsory taxes and charges paid at the point of purchase of the ticket. We also told them to make it clear in future advertising that the advertised fare was 'from' a minimum price.

Adjudication of the ASA Council (Non-broadcast)

**DentaCare Europe Ltd t/a Dental Care  
London**  
10 Church Views  
Cookham Road  
Maidenhead  
Berkshire  
SL6 7EH

**Date:** 23 July 2008  
**Media:** Internet (display)  
**Sector:** Health and  
beauty

**Number of complaints:** 1

### **Ad**

An ad on yell.com for Dental Care London gave their address as 10 Stanhope Place, London W2 2HH.

### **Issue**

Stanhope Place Dental Practice challenged whether the ad was misleading, because the address listed in the ad was their own address, and because they believed the advertisers used it to imply that they were located in London.

Investigated under CAP Code clauses 3.1 (Substantiation) and 7.1 (Truthfulness).

**The CAP Code:** 3.1;7.1

### **Response**

Dental Care London maintained that they did have a practice at the address stated in the ad, but they did not send evidence in support of the claim.

### **Assessment**

Upheld

The ASA acknowledged that Dental Care London had contacted us about the complaint. However, in the absence of any evidence to substantiate the address used in the ad, we considered that the claim had not been proven. We therefore concluded that the ad was misleading.

The ad breached CAP Code clauses 3.1 (Substantiation) and 7.1 (Truthfulness).

### **Action**

We told Dental Care London not to use the address at 10 Stanhope Place unless they held evidence that their practice was based there.

Adjudication of the ASA Council (Non-broadcast)

**Littlewoods Gaming**  
Walton House  
55 Charnock Road  
Liverpool  
L67 1AA

**Date:** 2 July 2008  
**Media:** Internet (display)  
**Sector:** Leisure

**Future Publishing Ltd**  
Beauford Court  
30 Monmouth Street  
Bath  
BA1 2BW

**Number of complaints:** 1

#### **Ad**

An internet banner ad, for a gambling website, showed a cartoon image of Spiderman and stated "The Amazing Spiderman 25 Line Jackpot Slot £50 SIGN UP BONUS T's & C's apply Click Here for more ... ALL THIS AT onlinegamblerweb.com".

#### **Issue**

The complainant objected that the ad was irresponsible, because it was likely to appeal to children.

**The CAP Code:** 57.2;57.4(l)

#### **Response**

Future Publishing said they had created the website onlinegamblerweb.com in partnership with Littlewoods Gaming (Littlewoods) and it was a landing page through which users could then link through to Littlewoods casino and poker websites to register and download software to play the games. They said they had become aware that there were concerns about the ad before the ASA had contacted them and because of those concerns had promptly removed the ad from their websites and magazines. They said they had no plans to use the ad again.

Future Publishing said they had not intended for the ad to appeal to or target anyone under 18 years of age. They said MacFormat, the website where the ad had appeared, was a magazine primarily read by adults and according to its last reader survey the average reader age was 41 years. They said they therefore considered that the ad was appropriately targeted on that website.

Future Publishing said both they and Littlewoods were committed to preventing underage gambling and sought to promote a responsible attitude towards gambling. They pointed out that the [onlinegamblerweb.com](http://onlinegamblerweb.com) website clearly displayed that users had to be 18 years or over to play and throughout the registration process several conditions were displayed to alert the user that they had to be over 18 years to play. They said there were also several procedures to prevent under 18s registering, accessing and using the gambling software available through the website and Littlewoods website. For example, they said if a user set up a fraudulent account, they would be prevented from playing because they would have to provide credit card verification beforehand.

Littlewoods said they had been running a similar 'Marvel Hero' campaign since 2005 and since that time they were not aware of any other complaints made in respect of brands such as Spiderman being used in their advertising or being associated with their games. They said the campaign was not exclusive to Future Publishing and the ad had been run in several publications and across several websites. They said that considering the extent to which their ads were circulated through print and online media they believed one complaint in three years was not representative of public opinion about their ads.

Littlewoods said several other companies in the gaming industry used branded games such as Spiderman to appeal to responsible gamblers over the age of 18 years. They believed that if those types of ads were really appealing to children and encouraging them to gamble then a larger number of people would have voiced their concerns that the ads were socially irresponsible.

### **Assessment**

Upheld

The ASA noted Future Publishing had already withdrawn the ad from their websites and magazines and did not intend to use it again. We noted the website on which the ad had appeared had an average reader age of 41 years and we were therefore satisfied that the ad had not been directly targeted at children or young people.

We noted, however, the Code stated that marketing communications should not be likely to be of particular appeal to children or young persons, especially by reflecting or being associated with youth culture. We acknowledged that Spiderman appealed to some adults but considered that the depiction of the popular comic book character was likely to have particular appeal to children and young people, regardless of the context in which it appeared. We concluded that the ad breached the Code.

The ad breached CAP Code clauses 57.2 and 57.4 (I) (Gambling).

**Action**

We welcomed Future Publishing's action to remove the ad and their assurance that they would not repeat it. We told Littlewoods and Future Publishing to ensure that they did not use images that were likely to appeal to children in any future ads for gambling products. We advised them to seek guidance from the CAP Copy Advice team when preparing similar ads in future.

Adjudication of the ASA Council (Non-broadcast)

**Bradford & Bingley plc**

PO Box 88  
Croft Road  
Crossflats  
Bingley  
West Yorkshire  
BD16 2UA

**Date:** 9 July 2008  
**Media:** Internet (sales promotion)  
**Sector:** Financial

**Number of complaints:** 1

**Ad**

An internet ad was headlined "Tell me about the 'Property Woman of the Year' Awards." The ad stated "Judging will be based on your financial nous, feedback from your tenants, how long it took to build your business, how you run it, and your personal drive and determination to succeed. We don't want much do we?"

**Issue**

The complainant, who was shortlisted for her region in that tier of the competition but did not win, challenged whether the competition had been properly administered. She said she had not been asked to provide any evidence which might objectively be compared with that of other competitors and believed the regional winners may have been chosen without verification.

**The CAP Code:** 27.4;34.1a;35.9f

**Response**

Bradford & Bingley Plc (B&B) said they took their responsibilities under the CAP Code very seriously. They said they had appointed a PR firm to advise on the best way to structure and promote their competition. They said it was advertised on their website, via a press release, and independently via the National Landlord Association's e-mail alert, and was open to any woman with a buy to let property, regardless of whether or not they held mortgages with B&B.

They said they had appointed a panel of three experts to judge all aspects of the competition, including the regional heats and had ensured some of them were independent of B&B. They said the competition had a full set of legal terms and conditions accessible from the website and these set out the criteria on which competition entrants would be judged, namely: financial acumen, how long it had taken to build up their business, how they ran their business including property conditions, and their personal drive and enthusiasm.

B&B said that entries, of which there were 50 in total, were first checked in-house to ensure entrants had filled out the forms correctly and provided sufficient

information. They said that at stage one of the competition the entries from all those shortlisted in the regional heats were submitted to the judges, who were asked to score them based on criteria which distilled those set out in the competition rules into four easy to score categories. B&B said these were: "overcoming personal obstacles"; "clear business strategy explained", "taking some form of risk in their venture" and "overall success (evidence of making a reasonable profit on a property portfolio)". They said the judges awarded scores of between 1 and 5 for each category, with 5 being the highest.

B&B said that, at stage two of the competition, once the regional shortlisted candidates were scored and winners chosen for each region, their PR company contacted the tenants of the regional winners to check their credibility and to obtain views on matters such as property upkeep. They said a team from B&B also checked semi-finalists on their Mortgage Express database (MX) to establish if the accounts they held were properly conducted. They said that, if any of the regional winners did not have properties with them, they searched through HM land registry. They sent documents from the PR company employed to manage the competition to show that. B&B said this further information was then cross-referenced with the scores the judges had previously given to the eight semi-finalists, in order to arrive at the overall winner.

B&B said they accepted that whilst verification checks were carried out on semi-finalists (winners of the regional heats) they were not carried out on all applicants, but said they believed this was a reasonable and proportionate way for them to have administered the competition.

They sent Judges Packs for the two independent judges, but not for the third in-house judge, detailing the scores given by them to those entrants shortlisted in the regional heats of the competition, which lead to the choice of regional winners. They said unfortunately the in-house judge had destroyed her records after the final as she had not foreseen the need to keep them. However, they sent the PR company's records of all three of the judges' scorings on the semi-finalists for the regional heats.

## **Assessment**

### **Upheld**

We noted B&B had ensured independent judges were appointed to their competition. We also noted that each entrant shortlisted in the regional heats of the competition was numerically scored by the three judges based on four criteria. However, we noted that the regional shortlists put before the judges were drawn from all entries in-house and that the process and criteria for regional short-listing were unclear.

We noted the ad stated "Judging will be based on your financial nous, feedback

from your tenants, how long it took to build your business, how you run it, and your personal drive and determination to succeed." We considered that the four scoring categories given to the judges; "overcoming personal obstacles", "clear business strategy explained", "taking some form of risk in their venture", "overall success (evidence of making a responsible profit on property portfolio)" did not map clearly onto the criteria set out in the ad. We noted the ad did not mention "overcoming personal obstacles" or "taking some form of risk in their venture" as judging criteria. We also noted that "feedback from your tenants" was a criterion that had been applied only to the regional winners to determine the overall winner from amongst them, and considered the ad gave the misleading impression this criterion would be applied across the board. We concluded that B&B had not satisfied us that they had administered the promotion according to the criteria stated in the ad and thereby dealt fairly with entrants throughout all stages of the competition.

The ad breached CAP Code clauses 27.4 (Promotions) and 34.1a (Promotions: participation) and 35.9f (Promotions: judging).

**Action**

We told B&B to ensure the advertised judging procedures and criteria for their competitions matched those applied in practice in future.

Adjudication of the ASA Council (Non-broadcast)

**Redten Communications Ltd**  
23 Castalia Square  
Docklands  
London  
E14 3NG

**Date:** 23 July 2008  
**Media:** Internet (sales promotion)  
**Sector:** Computers and telecommunications

**Number of complaints:** 7

### **Ad**

A website promotion, for broadband packages, featured a headline that alternated between "8Mb\* broadband and a desktop PC from £12.99 per month", "8Mb\* broadband and a Toshiba laptop from £17.99 per month", "Unlimited \*\* broadband" and "Free upgrade to 24Mb broadband". The asterisks led to footnotes that stated "\*Actual download speed dependent on distance from local BT exchange. \*\*Subject to a fair usage policy". Further text on the page that described the 8Mb offer stated "Sign up to our desktop PC Package and we'll not only connect you up to super-fast 8Mb\* broadband with unlimited\*\* internet downloads ...". The company logo stated "redten internet unlimited".

### **Issue**

1. Customers challenged whether the claims "Unlimited broadband" and "unlimited internet downloads" were misleading and whether they could be substantiated, because their downloads had been capped at 5 GB or 15 GB and on reaching that limit their service was reduced to dial up speed.

2. One of the customers objected that the claim "Free upgrade to 24Mb broadband" was misleading, because he was told 24 Mb was not available as a free upgrade.

**The CAP Code:** 3.1;7.1

### **Response**

Redten Communications (Redten) did not respond to the ASAs enquiries.

### **Assessment**

1. & 2. Upheld

The ASA was concerned by Redten's lack of response and apparent disregard for the Code, which was a breach of CAP Code clause 2.6 (Non-response). We reminded them of their obligations under the Code and told them to respond promptly in future.

We understood that Redten had recently changed broadband provider. We noted complainants had since reported that their downloads had been capped at 5 GB or 15 GB and when that point was reached their service was reduced to dial-up speed. We also noted the ad stated that the broadband package was subject to a fair usage policy. Because we had not seen evidence to show that the download cap excluded only atypical users, or that customers were able to obtain an upgrade to 24 Mb free of charge, we concluded that the claims "Unlimited broadband", "Unlimited downloads" and "Free upgrade to 24Mb broadband" were misleading.

**Action**

We told Redten not to repeat the promotion in its current format.

Adjudication of the ASA Council (Non-broadcast)