

Help Note

Lowest price claims and price promises



CAP Help Notes offer guidance for non-broadcast marketing communications under the UK Code of Non-broadcast Advertising, Sales Promotions and Direct Marketing (the CAP Code). For advice on the rules for TV or radio commercials, contact Clearcast www.clearcast.co.uk for TV ads or the RACC www.racc.co.uk for radio ads.

Background

These guidelines, drawn up by the Compliance team, are intended to help marketers and agencies interpret the rules in the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code). The “Key points” are intended to guide media ad departments. The Help Note is based on past ASA decisions and advice from the CAP General Media Panel and the CAP Sales Promotion and Direct Response Panel. It neither constitutes new rules nor binds the ASA Council in the event of a complaint about a marketing communication that follows it.

Key points for media ad departments

Unless the ad states prominently that the claim is based on prices for a sample of goods, “lowest price” claims (or “best price” claims) must be backed up by suitable evidence to show that marketers will always beat, not merely match, competitors’ prices (Section 2).

- If a “lowest price” claim is based on monitoring carried out on a specific date, the ad should include that date. Monitoring should be carried out by the marketer as close as possible to the appearance or distribution date of the ad. (Section 2).
- Offering a price promise (for example, to beat a competitor’s lower price if informed of that price by a consumer) does not justify a “lowest price” claim if the latter claim cannot be supported (Section 2).
- Any significant conditions attached to price promises should be stated clearly (Section 3).
- “Lowest prices guaranteed” and “lowest prices guarantee” are often confused. The former constitutes a claim that the product cannot be bought as cheaply or cheaper elsewhere; the latter, a price promise (Sections 3 and 4).
- Marketers offering to match, but not beat, competitors’ prices should ensure that their ad reflects that clearly (Section 2).
- Marketers should ensure that “lowest price” claims in media with long copy deadlines (for example, magazines) are still accurate when the ad appears. Similarly, “lowest price” claims in marketing material with a long “shelf-life” (for example, advertisements in directories or brochures) should remain accurate for the duration of the marketing communications’ appearance (Section 2).

1. The law and the Code

Marketers should seek legal advice or contact their Trading Standards home authority to ensure that their claims are legal. Individual circumstances will determine whether a marketing communication breaks the law but marketers should have regard to the Consumer Protection from Unfair Trading Regulations 2008.

The Code states:

Rule 3.1

“The ASA will take into account the impression created by marketing communications as well as specific claims. It will adjudicate on the basis of the likely effect on consumers, not the marketer’s intentions” (Background to Section 3 Misleading Advertising);

“Marketing communications must not materially mislead or be likely to do so”;

Rule 3.3

“Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner”;

Rule 3.7

“Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation”;

2. “Lowest price” claims

Marketers must be able to back up claims that they offer the lowest prices (for example, “lowest price guaranteed”).

Marketers that claim to offer “the lowest prices” (or “the best prices”) should be able to beat, not merely match, competitors’ prices.

“Lowest price” claims should relate to every product sold by the marketers unless the marketing communications state prominently that the claims relate only to specific products or that the claim is based on a sample of goods.

Unless they state prominently that their competitors offer more comparable, cheaper products, marketers should compare the same or the most similar products. Unless it is clear that the claims are a comparison with the marketer’s own previous prices, “lowest price” claims should apply only to products that are not exclusive to the marketers.

“Lowest price” claims must be verifiable on the basis of information given in the ad:

2.1 If the claim is based on prices for a selection of products, marketers should give a list of the selected products either in the ad or in material that consumers can easily locate on the basis of information in the ad;

2.2 If “lowest price” claims are based on monitoring carried out on a specific date, marketers should state that date. They should, however, be able to satisfy the ASA that price changes by their competitors are not so frequent that the claims are unlikely to be inaccurate by the time they appear.

2.3 If price changes by competitors are so frequent that “lowest price” claims are likely to be inaccurate by the time they appear, marketers should develop a price monitoring and adjustment policy to ensure that such claims can be supported. That might involve carrying out extensive monitoring of all relevant competitors’ prices and lowering prices when those competitors offer lower prices.

2.4 Marketers should try to ensure that any monitoring is carried out as close as possible to the appearance dates of marketing communications. Marketers who make “lowest price” claims in media with long copy deadlines (for example, magazines) or who make block bookings that do not allow for amendments to marketing communications should ensure, by adopting a price monitoring and adjustment policy, that claims remain accurate at the time that marketing communications appear. Similarly, those who use marketing material with a long “shelf-life” (for example marketing communications in directories or brochures) should ensure that “lowest price” claims remain accurate. In both cases, marketers should state when the price check was carried out.

2.5 Similarly, if they claim they always offer the lowest prices, marketers should develop a price monitoring and adjustment policy to ensure that that claim can be supported. Again, that might involve carrying out extensive monitoring of all relevant competitors’ prices and lowering their prices when those competitors publish or announce lower prices.

2.6 Offering a price promise (for example, to beat a competitor’s cheaper price if informed of that price by a consumer) does not justify a “lowest price” claim in the absence of adequate monitoring or an adequate price monitoring and adjustment policy. Even “lowest price” claims that are immediately qualified to refer to the price promise (for example “lowest prices or your money back”) should be backed up by adequate monitoring or an adequate price monitoring and adjustment policy.

3. Price promises

3.1 Price promises such as a “lowest prices guarantee” are often confused with absolute lowest price claims such as “lowest prices guaranteed”. Marketers should be aware that “guarantee” and “guaranteed” are different and they should distinguish clearly between the two (see section 4).

3.2 Any significant conditions attached to price promises should be stated clearly (for example, required proof of competitor’s lower prices, time limits, local or regional boundaries, exclusivity of handling or delivery costs, whether the price promise applies

only to a competitors' advertised prices). For advice on the prominence of any conditions, please refer to the CAP Help Note on Claims that Require Qualification.

3.3 Unless price promises provide for a specific level of compensation if consumers find lower prices elsewhere (for example, by promising "double the difference"), marketers should normally beat, not merely match, competitors' prices.

4. "Guarantee" and "guaranteed"

A useful rule of thumb to distinguish between "lowest price" claims and price promises when the word "guarantee" or "guaranteed" is used is to determine whether the word is being used in verb or noun form. If in verb form (for example "lowest prices guaranteed" and "we guarantee the lowest prices"), it is likely to be seen to relate to a "lowest price" claim (see section 2). If in noun form (for example, "we offer a lowest price guarantee"), it is likely to be seen to relate to a price promise (see section 3).

5. "Unbeatable low prices" claims and promises

Marketers that offer to match but not beat competitors' prices, or that offer a price promise to match but not beat competitors' lowest prices, should ensure that they do not imply that they will beat competitors' prices. They could, for example, claim "no one beats our prices", "unbeatable low prices", "we won't be beaten on price" or "unbeatable price guarantee". As with "lowest price" claims, marketers must be able to support those claims.

Guidance

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404, or you can log a specific written enquiry via our online request form <http://www.copyadvice.org.uk/Ad-Advice/Bespoke-Copy-Advice.aspx>. The Copy Advice website at www.copyadvice.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

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