

Help Note

The marketing of spiritual and psychic services, astrologers and lucky charms

CAP Help Notes offer guidance for non-broadcast marketing communications under the UK Code of Non-broadcasting 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.

1. Background

These guidelines, drawn up by CAP, are intended to help marketers and their 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. It neither constitutes new rules nor binds the ASA Council in the event of a complaint about a marketing communication that follows it.

2. Key points for media ad departments

- Marketers should hold documentary evidence to prove any claims that are capable of objective substantiation (Section 4).
- Marketers should not mislead or exploit vulnerable people (Section 5).
- Claims about successfully solving problems or improving health etc should be avoided because they are likely to be impossible to prove (Section 5).
- Claims of ‘help offered’ should be replaced with ‘advice’ (Section 5).
- References to healing should refer to spiritual rather than physical healing (Section 5).
- Direct marketers should not imply that they have personal knowledge about recipients (Section 5).
- Claims relating to the accuracy of readings or guaranteed results should not be made unless they are backed up by appropriate evidence (Section 5).
- Claims about being a personal advisor to stars, the wealthy etc and claims such as ‘...as featured on TV’ should be backed up by appropriate evidence (Section 5).
- Claims relating to the length of time that a marketer has been established should be backed up by evidence (Section 5).

- Money-back guarantees should be clear and genuine (Section 5).
- Any testimonials used should be genuine (Section 5).
- Marketers should not imply that a lucky charm can directly affect a user's circumstances (Section 6).
- Claims that a lucky charm can act as a confidence prop are acceptable if emphasis is placed on a user's state of mind (Section 6).
- Unproven beliefs that do not relate to the effect of a lucky charm may be acceptable if expressed as a matter of opinion (Section 6).
- Marketers offering premium rate fortune telling services should adhere to the PhoneyPayPlus Code of Practice (Section 7).

3. The Law

Marketers should seek legal advice or contact their Trading Standards Authority to ensure that their claims comply with the law. As a result of the repeal of the Fraudulent Mediums Act 1951 psychics, mediums and spiritualists are now subject to the 2008 Consumer Protection Regulations. These regulations make it the marketers' responsibility to prove that they did not mislead or coerce the average consumer and thereby cause them to purchase a product or service they would not have taken otherwise. The average consumer is deemed to be either a member of the group to whom the marketing communication was targeted at or consumers who are particularly vulnerable to unfair commercial practices.

4. The CAP Code

Marketers should comply with the CAP Code and, in particular, with these rules:

4.1 General rules

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;

and

Rule 3.47

Claims that are likely to be interpreted as factual and appear in a testimonial must not mislead or be likely to mislead the consumer.

5. Additional guidance

5.1 Marketing by spiritualists, clairvoyants, psychics, fortune tellers, astrologers etc

Marketers of services that involve the prediction of the future, or the promise to make specific dreams come true, should advertise their services in a way that is neither misleading nor likely to exploit vulnerable people. Claims that marketers will successfully solve all problems, break curses, banish evil spirits, improve the health, wealth, love life, happiness or other circumstances of readers should be avoided because they are likely to be impossible to prove;

5.1.2 Claims of 'help offered' should be replaced with 'advice' and the emphasis should be on the individual helping him or herself rather than events or changes happening to them as a result of some external force;

5.1.3 Psychics and mediums may be able to make some claims about healing only if it is clear that they are referring to spiritual, not physical, healing;

5.1.4 Marketers should not state or imply that they have personal information or knowledge about recipients of direct marketing e.g. "I see a major change or a move for you and possibly someone close to you". They should not imply that they send personalised readings to recipients if the same, or a substantially similar report is sent to everyone who requests a reading;

5.1.5 Marketers should not make claims relating to the accuracy of their readings or claim that results are 'guaranteed' unless they are able to provide evidence to prove the claims;

5.1.6 Claims that a marketer is a personal adviser to royalty, the police, celebrities or wealthy business people or that he or she has been featured on television, radio or in newspapers or magazines should be backed up by adequate and relevant evidence;

5.1.7 Claims that a marketer has been 'established in the UK since...', '...nobody has been established longer...', or similar, should be backed up by evidence;

5.1.8 Marketers should ensure that the terms of any money-back guarantee are clear and that the guarantee is genuine; and

5.1.9 Testimonials used in marketing communications should be genuine. Testimonials and newspaper articles alone are not sufficient to substantiate claims (see rule 3.47 of the CAP Code).

6. The marketing of lucky charms (formerly the Help Note on the Marketing of Lucky Charms, August 1996)

6.1 Marketing communications for lucky charms or other products with unproven supernatural properties should not imply that these products can directly affect the user's circumstances.

Examples:

"Could the Lucky Charm make you popular?" - Unacceptable.

"I bought the Lucky Charm and got promoted at work" - Unacceptable.

6.2 Claims that they could act as a confidence prop are acceptable if the emphasis is on the user's state of mind and not the product's effect.

Examples:

"When you're feeling lonely clasp the Lucky Charm and tell yourself you're an attractive person with lots to offer" - Acceptable.

"I used the Lucky Charm as a focus for positive thinking and got promoted at work" - Acceptable.

6.3 Unproven beliefs that do not relate to the effect of the product may be acceptable provided they are expressed as matters of opinion.

Example:

"Some Himalayan tribesmen believe the Lucky Charm vibrates with cosmic energy" - Acceptable.

7. Premium rate fortune telling services

7.1 Premium rate fortune telling services may either be live (where a caller speaks to a live operator) or recorded (where they listen to a prerecorded message). As well as complying with these guidelines, special provisions that apply to promotional material for live premium rate services are regulated by PhonepayPlus.

Marketers should contact PhonepayPlus for further advice or visit their website at www.phonepayplus.org.uk.

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.