

**Alliance of Independent Agencies**


**Diploma 2025**

**Keeping It Legal**

23 January 2025

Dominic Bray & Rebecca Bennis  
Lee & Thompson LLP

LEE&THOMPSON



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**Today**



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<p><b>Regulation</b></p> <ul style="list-style-type: none"> <li>• Across all industries- CAP and BCAP Codes</li> <li>• Industry specific – financial services, healthcare etc.</li> <li>• Codes of Practice – DMA, IAB etc.</li> </ul>	<p><b>Law</b></p> <ul style="list-style-type: none"> <li>• IP (copyright and trade marks)</li> <li>• Consumer Protection</li> <li>• Defamation and privacy</li> <li>• Data protection</li> <li>• Gambling</li> <li>• Contract</li> </ul>
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Two Marketing Codes

CAP and BCAP

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 Writes the Codes and provides free guidance:  
[www.cap.org.uk](http://www.cap.org.uk)

 Administers and enforces the Codes  
[www.asa.org.uk](http://www.asa.org.uk)

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What is the most complained about advert of all time?

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**Booking.com**

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**Pot Noodle**

LEE&THOMPSON



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**Paddy Power**

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A: Paddy Power

LEE&THOMPSON



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Pot Noodle

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What if you breach the Codes?

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# Withdrawal (can be immediate)



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## Adverse Publicity

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## Non-compliant online advertisers

We expect all advertising online to be legal, decent, honest and truthful. Here we list those who continue to make claims on their online sites that do not stick to the rules despite repeated requests for changes.

You're here: Home > Codes and ratings > Non-compliant online advertisers

34 results

- BOXO Ltd**  
https://www.boxo.com/ | Mushroom based drink | 08 January 2025
- Limitless Torbay Ltd**  
Limitless Blends | Mushroom based drink | 08 January 2025
- Action Rehab**  
Lead Generation-Referral Centre for Rehab Clinics | 20 December 2024
- Angelic Crystals Ltd**  
www.angeliccrystals.co.uk | Crystals | 03 December 2024
- Antel Electric Limited**  
Antel Electric | Electric Scooters | 03 December 2024

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### Non-compliant social media influencers

Influencer name	Social handle	Date added
Jacqueline Osborne	jacjossa	20 June 2022
Charlotte Dawson	charlottedawsey	4 April 2022
Scott Timlin	scottgshore	14 December 2021

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### Disqualification from awards



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### Contract breach

"The Agency warrants that the Advertising shall not infringe any third party rights and shall comply with all applicable laws and regulations throughout the Territory."

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### Sanctions

- Withdrawal/amendment
- Adverse publicity
- Disqualification from industry awards
- Breach of contract
- Media refusal
- Poster and press ad pre-vetting
- Withdrawal of trading privileges (Mailsort contracts etc)
- No fines, but referral to CMA/Ofcom

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### The CAP Code

The UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing



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“Legal, decent, honest and truthful”.

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“a sense of responsibility to consumers and society”

and

“reflect the spirit not merely the letter of the codes.”

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**What do the Codes cover?**

Cover:

- Print, press, TV, radio, cinema ads
- Billboards + posters
- Teleshopping
- Sales promotions
- Emails + text messages
- Internet ads (banners etc.)
- Online marketing
- Marketing on own website
- Social media controlled by advertiser

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### What do the Codes *not* cover?

Do not cover:

- Sponsorship
- Packaging (unless a sales promo)
- Shop windows/street marketing
- Telephone calls
- Press releases
- Online editorial

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### Online remit

- on advertisers websites or in other non-paid-for space online under their control ...
- **... directly connected with the supply or transfer of goods, services, opportunities and gifts ... or direct solicitations of donations as part of their own fund-raising activities.**

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### Online remit: Key distinction

"... **directly connected** with the supply or transfer of goods, services, opportunities and gifts..."

In remit ...

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## Online remit: Key distinction

### Outside remit ...

DBC

★★★★★ **Very impressed.**

Reviewed in the United Kingdom on 2 January 2025

Verified Purchase

I have noticed a big difference in my mental health since I started taking these tabs. I have a year's supply at a great price. Highly recommend. Thank you.

4 people found this helpful

Helpful Report

Jo

★★★★☆ **Winter supplement**

Reviewed in the United Kingdom on 25 December 2024

Verified Purchase

I struggle missing my sunshine intake in winter and have tried these for the Vitamin D. Although early days I'm feeling an improvement in my overall mood due to taking these.

365 tablets, one per day, so good value. Tiny tables and easy to swallow with a drink

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## Comments/UGC – adopted or not?

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## Comments – in remit when adopted



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### UGC – adopted - in remit

Home Games Competition My Parties **Public Party Pics**

Here are some pics from parties organised using VodkatParty.com.  
 You and your mates can upload pics from your party and they could be displayed here.

Please note that images will be only be shown here once they are approved by VODKAT Schnapps.

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### UGC – adopted in remit

Frisbeel Liquors Official UK  
 December 7 · 0

Very poor effort! Can you do better than this?  
[http://www.facebook.com/frisbeelliquors/album\\_130982183723816](http://www.facebook.com/frisbeelliquors/album_130982183723816)

Like Comment Share

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### Likes/retweets – maybe in remit

**DEBENHAMS** @DebenhamsRetail  
 We're here to help you find the best Debenhams deals in store and online.  
<http://www.debenhams.com>

Follow

Timeline Favorites Following Followers Lists

**DebenhamsRetail** Debenhams  
 If you entered our baking competition, check out our Facebook page - we've announced the winner! <http://on.fb.me/aYxvCg>  
 1 hour ago

Just noticed the HI cape I loved at the @DebenhamsRetail press day all those months ago is on the site! Must pop to the store after work...  
 2 hours ago

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### Key considerations

#### Likely to be in remit

- Moderating for negative or off-brand comments
- "Liking" otherwise unmoderated content
- UGC created in response to a specific request

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### Key considerations

#### Likely to be out of remit:

- No moderation of user comments, or only filtered for swearing etc.
- No request for specific content or "shares"

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### The Rules

#### General Sections:

- Misleading advertising
  - Harm and offence
- Social responsibility
  - Children
  - Privacy
- Sales promotions
  - etc.

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**The Rules**

Category Specific Sections:

- Children
- Alcohol
- Gambling
- Financial Products
- Medicines, medical devices, health & beauty
- Food, food supplements
- Weight control and slimming
- Motoring

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**Misleading Advertising**

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Do not mislead

Important limitations and qualifications must be made clear

Must have evidence to substantiate claims

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Q: Why do you think the following ads were considered misleading

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Horizontal lines for handwritten notes.

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Burger King



LEE&THOMPSON



Horizontal lines for handwritten notes.

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J Sainsbury plc



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Horizontal lines for handwritten notes.

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### P&G Olay Definity



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### Brewdog

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**Eurostar**

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**Deliveroo**

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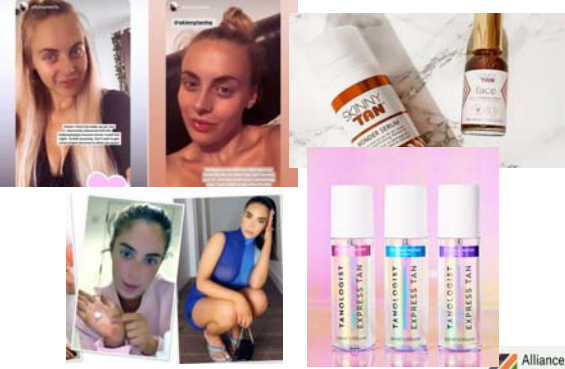
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**Misleading social media filters**



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**Mid-contract price increases**

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**Comparative marketing**

**"Market Leader"**

"The best"

Fastest download speed

"Unbeatable customer service"

**"The greenest car on the planet"**

"Cheaper than all high street supermarkets"

"Lowest emissions"

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**Environmental Claims**

- CAP Code
- CMA Green Claims Code
- UK Consumer Protection from Unfair Trading Regulations (CPRs)
- ASA Guidance Note

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### CAP Code: Rule 11

- explain the basis of claims
- qualify where necessary
- acknowledge whether informed debate exists
- explain whether the claim applies to the entirety life cycle of a product
- hold robust evidence for claims and comparisons and avoid misleading consumers by using confusing or pseudo-scientific claims

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### ASA Guidance (June 2023)

Areas of focus:

- Initiatives designed to reduce environmental impact
- Clarity of Terms (e.g. 'carbon neutral'/'net zero')
- Documentary Evidence of Claims
- Full lifecycle of Products
- Scientific Opinion
- Adverse Effects
- Environmental Benefit
- Energy efficiency class and product fiche information

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### CMA Green Claims Code

September 2021 CMA guidance:

The principles are:

- claims must be truthful and accurate
- claims must be clear and unambiguous
- claims must not omit or hide important relevant information
- comparisons must be fair and meaningful
- claims must consider the full life cycle of the product or service
- claims must be substantiated



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### CMA Investigation: Fast Fashion and Sustainability



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### Virgin's 'misleading' environmental impact claims

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### Lipton Tea

LEE&THOMPSON



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### Lloyds misleading environmental claims

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### Shell misleading environmental claims

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### Tesco Plant Chef

LEE&THOMPSON



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### Air France, Etihad and Lufthansa ads banned over misleading environmental claims

Etihad Airways- mentioned "Environmental Advocacy" as part of its service

Air France - "Committed to protecting the environment"

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### Harm and Offence

Ads shouldn't contain anything likely to cause serious or widespread offence (especially on grounds of race, religion, sex, sexual orientation or disability)

Ads may be distasteful without necessarily breaching the Code

If a particular product is offensive to some people this is not sufficient grounds for objecting to an ad for it

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**CHEL TENHAM FIREWORKS**  
WE DON'T SELL PET EAR DEFENDERS BUT  
WE DO SELL FAWKING GOOD FIREWORKS!  
UP TO 50% OFF  
DELIVERED TO  
YOUR DOORSTEP!  
07496 124651  
www.cheltenhamfireworks.co.uk

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**LOOK AT ME.**

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**Great Grass**

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LEE&THOMPSON



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Wahed Invest

LEE&THOMPSON



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The Calvin Klein Debate

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The Calvin Klein Debate

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## Social Responsibility

A sense of responsibility to consumers and society

Marketing addressed to, targeted at or featuring children shouldn't contain anything likely to result in their physical, mental or moral harm

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## Ersoy Health Services Tourism Ltd t/a Clinic Haus

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**Rimmel London ad banned for implying girls need make-up**  
© 20 December 2023

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**Ad filmed at TV stars' wedding banned over smoking**

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**Category Specific Sections**

- Children
- Alcohol
- Gambling
- Financial Products
- Medicines, medical devices, health & beauty
- Food, food supplements
- Weight control and slimming
- Motoring
- Electronic cigarettes

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**Children**

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**Key principles**

Ads must not:

- take advantage of children's inexperience
- encourage pester power
- imply a child would be inferior to others if they don't use a product or service
- contain material which could lead to social, moral, psychological or physical harm of children

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**ASA Guidance: Targeting Ads at Children**

**Key steps for responsible targeting of online age-restricted ads**

As a marketer, it's your responsibility to ensure your age-restricted ads are targeted away from children and young people. New guidance from CAP sets out key steps to ensure you make responsible targeting choices.

Read the guidance to find out more: [asa.org.uk/online-targeting](https://asa.org.uk/online-targeting)

Legal, decent, honest and truthful 

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### Targeting ads on Social Media

Ads for age-restricted products must not be placed in media directed at children e.g. on their social media accounts:

- Under 18: alcohol, gambling, lotteries, e-cigarettes
- Under 16: HFSS products

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### Targeting ads on Social Media

Ads not for age-restricted products, but content unsuitable for children/public display should be appropriately targeted.

When cannot individually target, must not place ads in mediums where more than 25% of audience is under 18/16.

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### Merlin Entertainments (Dungeons) Ltd



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# High fat, salt or sugar

**What restrictions apply to my HFSS product advertising?**

- Do children make up over 25% of the audience for my ad?**
  - YES**: HFSS ad placement restrictions apply. You cannot use this medium to advertise an HFSS product.
  - NO**: HFSS content restrictions are unlikely to apply.
- Does the ad include a promotion, reward or celebrity popular with children?**
  - YES**: HFSS content restrictions apply. You cannot include these elements in your ad.
  - NO**: HFSS content restrictions are unlikely to apply.
- Does the content of the ad directly target under-12s?**
  - YES**: HFSS content restrictions are unlikely to apply.
  - NO**: HFSS content restrictions are unlikely to apply.

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# McDonald's & Burger King

Burger King ad at bus stop 96m from a school

McDonald's ad at bus stop 47m from a school

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# KP Snacks' sponsorship of The Hundred cricket tournament

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### Sexualisation of Children

Must not portray or represent **anyone who is, or seems to be**, under 18 in a sexual way.

Except where principal function is to promote the welfare of, or to prevent harm to, under-18s, provided any sexual portrayal or representation is not excessive.

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American Apparel



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**'Socially irresponsible' PrettyLittleThing ad banned for sexualising a minor**

By George Wright - August 19, 2023



// PrettyLittleThing advert found for using "socially irresponsible" images of a 16-year-old model that depicted her in a sexual manner, the ASA has ruled

// Images by P11 which featured a 16-year-old posing in a "sexual way" were also banned

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## Alcohol

Must be socially responsible

Should not

- encourage excessive drinking
- suggest drinking can overcome problems (e.g. boredom)
- be directed at under 18s
- feature people who look/are under 25
- link alcohol with seduction, sexual activity or sexual success
- imply alcohol can enhance attractiveness, masculinity or femininity

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## Alcohol






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## Dutch Barn Vodka/Jack Daniels

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## Alcohol alternatives

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**Gambling**



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**Key principles**

Ads must not:

- Portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm
- Exploit susceptibilities of children, young persons or vulnerable persons
- Suggest gambling as a solution to financial concerns/personal problems
- Link gambling to sexual success

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**Primegaming**

"I am a single mom and I live on family benefits. I played and won £46,799.

I was very stressed for my son's future and I couldn't sleep, but now that I won I know that I can help my son build a better future."



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**bet-at-home.com**

**Bet Promotions** @BetPromotions4u · Nov 26  
 It's your lucky day!  
[bit.ly/1HjJLXv](https://bit.ly/1HjJLXv)  
 #betting #gambling #europaleague #liverpool #klopp



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**William Hill**

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**Responsibility and problem gambling**

Targeting 'risk factors' that might influence vulnerable groups, e.g.

- Inappropriate sense of urgency – "Bet Now!" offers during live events
- Irresponsible perception of risk – "Risk Free Deposit Bonus"

Vulnerability

- Men aged 18-34 at heightened risk of irresponsible gambling behaviour

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## Gambling – ASA rules from October 2022

Ban on ads “likely to be of strong appeal to children or young persons, especially by reflecting or being associated with youth culture.”

Ads “must not include a person or character whose example is likely to be followed by those aged under 18 years or who has a strong appeal to those aged under 18.”

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## Gambling- Protecting Under 18s

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### Gender stereotyping

Marketing communications must not include gender stereotypes likely to cause harm or serious or widespread offence

e.g.

Gender-stereotypical roles and characteristics

Aimed at/featuring children

Aimed at/featuring potentially vulnerable groups

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### "THE BAD OLD DAYS"

- ◆ generalised view or preconception
- ◆ attributes
- ◆ characteristics
- ◆ roles



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### Q: Would you ban the following ads



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**JML**

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**Volkswagen**

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**Buxton**

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People Per Hour



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Identification of marketing communications

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“Marketing communications must be obviously identifiable as such.”

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Two questions:

When do you have to identify content as an ad?

How do you do it?

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**Identification of ads**

CAP:  Identify

CMA:  Identify

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### Mondelez UK Ltd t/a Oreo

Editorial nature  
 "Thanks to Oreo for making this possible"  
 Most of the disclaimers also required engagement with the videos  
 Not obviously identifiable as ads



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### How effective are these Instagram hashtags?

#spon #sp  
 #ambassador #partner  
 #gifted #ad  
 #affiliate #sponsoredbutiloveit

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### How to identify - what should the label say?

Recommended	Not recommended
<ul style="list-style-type: none"> <li>• Ad</li> <li>• Advertising feature</li> <li>• Advert</li> </ul>	<ul style="list-style-type: none"> <li>• Sponsored, #sp, #spon</li> <li>• Brand publisher</li> <li>• Brought to you by X</li> <li>• Thanks to X for making this possible</li> <li>• With</li> <li>• @</li> <li>• Affiliate</li> </ul>

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## A word from the ASA..

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**BuzzFeed** LOL win omg cute fail wtf

News Buzz Life Quizzes Videos More ~ Get Our App

### 14 Laundry Fails We've All Experienced

You aren't the only one who has turned everything pink.

asheleebk 1,235,412 likes

Dylan Brand Publisher

f e p t

1. You may as well throw in the towel. If you can find it in that laundry explosion. Seriously, that is messy AF.

Colour Catcher

For the best of your health is the first

Colour Catcher

It's #ThrowbackThursday and we are so grateful we don't have to clean rugs like this anymore - effort!

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## Influencer Marketing

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## Daniel Wellington AB

“sippin on yummy coconuts 3x size of my skull! Wearing my @danielwellington classic petite Melrose 28mm watch and matching cuff... you can get 15% off using the code ‘LOUISE’”



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## A: Where should the label go?

Commercial intent should be made clear **prior** to engagement


Whole content ads:


- Label should be visible before video is viewed (in thumbnail/title or top of article)



Partial content:

- Label should be visible/audible when ad content starts



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## Where should the label go? Influencer posts

Recommended	Not recommended
<ul style="list-style-type: none"> <li>Upfront – in title, thumbnail or image itself</li> </ul>	<ul style="list-style-type: none"> <li>#ad hidden among other text or hashtags</li> <li>Requiring viewer to expand a post or click through to see</li> </ul>

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### Influencers promoting their own products



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### Jimmy Choo



Original wording:  
 "a d. On Mondays we play Mini Golf in @jimmychoo #jimmychoosummer".

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### CMA Investigation



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## CMA Platform Guidance: Hidden Ads

### Social Media Platforms

Six Principles for Compliance:

1. Inform users
2. Provide content creators with tools to label
3. Use available technology to prevent hidden advertising
4. Make it simple for users to report
5. Facilitate legal compliance by brands
6. Enforce terms and conditions and take appropriate action

### Brands/ Influencers

- Requirement to label ads applies to content creators who promote products from a brand they own (or which employs them)
- Businesses which partner with content creators have obligations to work with them and regularly check their posts

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## Help and Resources

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### Influencer's cheat sheet and guidelines

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# AIA + Lee & Thompson LLP = *Legal Advice Helpline*



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## Misleading advertising

The Consumer Protection from Unfair Trading Regulations 2008 (soon to be replaced by Digital Markets, Competition and Consumers Act 2024 (DMCC Act)).

Regulate commercial communications (and marketing and ads) relating to promo, sale + supply of products and services

Communications before, during and after sale

Covers: 31 prohibited practices, misleading acts and omissions, aggressive practices and general obligation not to trade unfairly

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## Tesco strawberry 'scandal'



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### Online reviews

- Unlabelled endorsements (native advertising)
- Fake reviews
- Site practices



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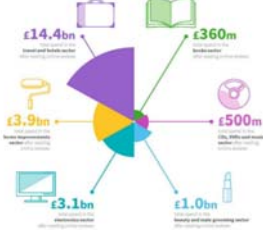
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## Online Reviews

Consumer spending after reading online reviews 



**£23.3bn**  
UK consumers' yearly spend in six key sectors after reading an online review.

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## Amazon and Google investigated by UK regulator over fake reviews

**CMA will decide whether consumer law was broken by not taking sufficient action to protect shoppers**



The CMA says its work so far has raised 'specific concerns' that Google and Amazon were not doing enough to detect fake reviews, investigate them and impose adequate sanctions. Photograph: Denis Charlat/AFP/Getty

Amazon and Google are to be investigated by the UK competition watchdog over concerns the tech companies have not done enough to tackle the widespread problem of fake reviews on their websites.




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### Digital Markets, Competition and Consumers Act 2024 (DMCC Act):

Enhanced powers :

- Fines up to 10% of their global turnover or £300,000 (whichever is higher) for breach of law;
- Fine up to 5% of their global turnover or £150,000 (whichever is higher) for breaching undertakings.
- Daily penalties

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### Intellectual Property

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### Intellectual property

Copyright

Trade marks and passing off

Confidentiality

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### Copyright

Does not protect "ideas"

Protects creative works (drawings, literary works, photos, music, film etc.)

Owner has exclusive right to use the work

First owner = author (creator)

- not the client, not the agency if it sub-contracts
- employers own rights in employee work

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### Copyright infringement

Are you using a substantial part?

Main defences

- Incidental use
- Fair dealing
- (Reporting current events)
- (Criticism and review)
- Caricature, parody and pastiche
- Quotation

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## Fred v John Lewis

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## BoohooMAN



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## Caricature, parody and pastiche

Can use copyrighted work without permission for caricature, parody or pastiche

As long as the use is "fair dealing"

- limited, moderate amount
- reasonable and proportionate

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### Copyright



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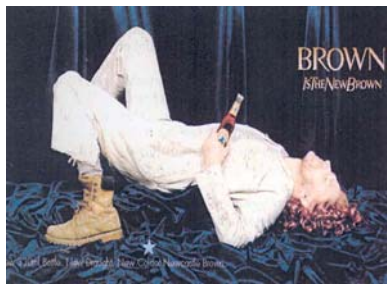
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### Copyright



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### BRLO/Calvin Klein

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## Copyright

If you infringe:

- May have to withdraw the campaign
- And pay:
  - compensation (damages) for unauthorised use
  - legal costs

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## Trade marks

### Trade Marks Basics

- Trade marks protect brand identity:
  - names
  - logos
  - signatures
  - shapes, colours, smells etc.
- Some registered, some not.
- Trade mark infringement or passing off.

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Trade mark number  
**UK00002603787** Status  
Registered

[View history details](#)  
[Display content without ads](#)

[Overview](#) [List of goods and services](#) [Names and addresses](#) [Publications](#)

**Trade mark**  
THE GREAT BRITISH BAKE OFF

**Dates**  
Filing date: 07 December 2011  
Date of entry in register: 05 October 2012

[Print this trade mark](#) | [Glossary of terms](#)

**Classes and terms**

Class 9  
Class 16  
Class 24  
Class 25

Printed matter, newspapers, periodical publications, magazines, books, stationery tickets, notice books, cards, books and brochures, posters, calendars, prints, art prints, greeting cards, telephone address books, diaries, printed and non-printed web marketing materials, including books, children's activity books, travel books, stationery, printed labels, shipping labels, covers for books, book covers, paper gift tags, envelopes, stationery, printed correspondence, business paper accessories for cards, baking paper, containers and covers of paper or card for baking

Textile articles, table linen, table cloths, napkins, handkerchiefs, umbrellas, coats, jackets, shirts, trousers, nightgowns, nightdresses, bed linen, beach towels, towels and handkerchiefs, face towels, tea towels, bathmats, bathrobes, bathrobe slippers and slippers, bed covers, chrysal covers, picnic covers, bed spreads, bed blankets

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### Registered trade mark infringement

Mark	Goods/services	Infringement?
Identical	Identical	Yes
Identical	Similar	Yes if confusion
Similar	Identical	Yes if confusion
Similar	Similar	Yes if confusion
Well known marks – extra protection		
Identical or similar	Identical or similar	Yes if: Unfair Advantage Tarnishment Dilution

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### Unregistered trade marks - Passing Off

$$\begin{aligned}
 &\text{Goodwill/reputation} \\
 &+ \\
 &\text{Misrepresentation (through use of the mark)} \\
 &+ \\
 &\text{Likelihood of confusion} \\
 &= \\
 &\text{Passing Off}
 \end{aligned}$$

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Spec saving at Asda



Be a real spec saver at Asda



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### Passing off



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Q: Do you think a claim for passing off was successful here?



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M&S begins legal action against Aldi over Colin the Caterpillar cake



Colin and Cuthbert caterpillar cakes

PA/ALDI

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### Colin vs Cuthbert publicity

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### Marks & Spencer sues Aldi for 'copying' Christmas gin - just months after caterpillar cake row

#### Aldi loses court battle with M&S over festive gin bottles design

The ruling could mean Aldi having to pay damages to M&S or pass on profits from sales of the product.

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### Cidermaker wins appeal in 'lookalike' dispute

#### RIPPED OFF Aldi could be forced to remove popular drink from shelves after supermarket accused of copycat design

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### Comparative Advertising (The rules)

To be lawful a claim must:

- not mislead in a way likely to affect the economic behaviour of consumers or injure the competitor (eg, misleading regarding the characteristics of the goods or services or how prices are calculated);
- compare like with like – ie, compare goods or services meeting the same needs;
- be an objective comparison of one/more material, relevant and verifiable features of the goods or service;
- not denigrate or discredit the competitor, nor take unfair advantage of the reputation of the competitor's brand.

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### Comparative Advertising (Trade marks)

*"Save £[x] per day"*      *"Swap and Save £[x]"*  
*"Try something new"*

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### Major events/Ambush marketing

Be careful of:

- Use of official names and logos
- References to 'partner', 'sponsor' 'supporter' etc.
- Creating domain names using the event name
- Creating products/packaging using event name/logo
- Implied messages of endorsement
- Ticket promotions/prize competitions: breach of ticket conditions

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### Ambush marketing – masterclass from Nike

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### Use of celebrities – false endorsement



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**Radio X: spot the issues**



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**Radio X: spot the issues**

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**Q: The ASA received 106 complaints.  
What do you think the issues are**

**?**

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**Prize promotions**

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**Prize promotions**

Legal if:

- 1) No payment to enter; or
- 2) Payment to enter, plus
  - a) genuine free entry route; or
  - b) skill, judgment or knowledge-based.

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**Prize promotions ...**

What is payment?

- Payment of money;
- Entry via premium rate telephone line;
- Transferring money's worth;
- Inflated price for products.

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### Prize promotions continued

Free Entry Routes

- Letter sent by ordinary post / online entry
- Publicise the free entry route
- Must not affect allocation of prizes

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### Prize promotions continued

Skill, judgment or knowledge, must:

- Deter significant proportion from entering or
- Prevent significant proportion from receiving a prize.

Judge must be independent.

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### T&Cs – significant conditions

- How to participate
- Free entry route
- Start date
- Closing date
- Proof of purchase
- Number of prizes/gifts
- Restrictions – e.g. location, age, access to internet
- Limit on availability
- Promoter’s name and address

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### Significant conditions - limited space

If limited by space (e.g. on packaging, in Tweet):

- Include as much information as possible; and
- Direct consumers to easily accessible source where all significant conditions are stated (e.g. link to website)

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### Fairness

Changing entry route

Changing terms and conditions

Availability of prizes

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### Love Island's Molly-Mae Hague broke rules with Instagram giveaway



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## Vindicta Digital

“We’ve decided to give everyone another way of increasing their chances of winning this competition ... LEAVE us a 5 STAR REVIEW on Facebook and DOUBLE YOUR ENTRY”

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## Children: Promotional Marketing

Promotions addressed to or targeted directly at children must make clear that adult permission is required if a prize or an incentive might cause conflict. Examples include:

- Animals;
- Bicycles;
- Tickets for outings;
- Concerts; and
- Holidays.

Previously, the ASA advised that adult permission might be needed if a cost is necessary to enter (for example, premium-rate lines) or if a cost is associated with the prize. However, in light of the CPRs and amendments to the Code, promoters should ensure that they do not invite children to enter at cost because that could constitute making a direct exhortation to buy something (Rule 5.7).

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## Promotions on social media

Additional rules will depend upon the platform used:

Twitter/X

- Discourage creation of multiple accounts
- Discourage posting the same Tweet repeatedly

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### Promotions on social media

Facebook – Promotion Guidelines:

- Promotions can be run on page timelines and apps with entry by posting, commenting, liking, voting
- Can't run promotion involving posts/shares on personal timelines
- Can't encourage people to tag themselves in pictures to win a prize

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### Data protection: very simply

UK GDPR Data Protection Act 2018

Privacy and Electronic Communications Regulations (PECR)

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### Another word on data protection..

PECR

What does PECR apply to?

- Electronic marketing (emails, texts, calls)
- Use of cookies and similar technologies
- Communications security (e.g. phone directories)
- Public electronic communications networks and services (e.g. phone contract)

(Generally speaking, prior consent is required)

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### Soft Opt-in and B2B Exemption (PECR)

Two relevant exemptions to the general rule of prior consent:

#### B2B Exemption:

- ✓ Prior consent rule does not apply
- ✓ Applies only to "corporate subscribers"
- ✓ Sole traders/freelancers are not considered to be corporate subscribers

#### Soft Opt-in Exemption

- Prior consent rule does not apply to direct marketing emails IF
- ✓ you've got recipient's contact details during a sale of a product or service
  - ✓ your marketing email relates to similar products or services
  - ✓ opportunity to opt-out at data collection and in every communication

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### Agency/Client Contracts

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### The Agency/Client Contract

Term

Services

Delivery Dates

Payment

Exclusivity

IP

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### The Agency/Client Contract (cont'd)

- Use of Ideas
- Responsibility for Compliance
- Data protection
- Territory
- Team
- Limitations and Exclusions of Liability

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### Contact

Dominic Bray  
 dominicbray@leeandthompson.com

Rebecca Bennis  
 rebeccabennis@leeandthompson.com

020 3073 7600

www.leeandthompson.com

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Rebecca

Dominic

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**Keeping it Legal**

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