

# update

January to June 2010

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RACC's Update is published bi-annually to ensure that script submitters of draft radio advertisements are kept up-to-date with code rule changes, regulatory policy and clearance decisions. Please go to [www.racc.co.uk](http://www.racc.co.uk) to download back issues.

### Help us to help you to keep ad clearance as fast as possible...some requests for RACC database users

Please do not:

- upload scripts on the same Word doc;
- create a new campaign instead of adding to an existing one;
- send comments or substantiation revised scripts by email, instead please upload them to the existing campaign;
- upload a campaign, go on holiday and not tick the box to “allow” colleagues to view the campaign in your absence.

## BCAP CODE OF BROADCAST ADVERTISING

Stations can order copies of the new Advertising Code from 15 July from this link: <http://www.tsoshop.co.uk/bookstore.asp?FO=1160041&DI=625495&CLICKID=003166>

The cost is £24.99.

The Code comes into force on the 1st September 2010.

# update

## ON RACC POLICY

### 1. Health claims and nutrition claims

Advertisements which contain claims that a food product has ‘*health benefits*’ have tended to create problems in the past as the claims were often hard to substantiate and required a very high standard of evidence. However, the situation is now easier because of an EC Regulation on “*Nutrition and Health Claims made on Foods*” which regulates the area, and sets out what can and can’t be claimed for certain foods or their ingredients.

The legislation covers two types of claim – ‘*nutrition*’ and ‘*health*’ claims.

A ‘*nutrition*’ claim is one that states or implies that a food has particular beneficial nutritional properties due to the presence or absence of a particular nutrient, or because of increased or reduced levels of energy provided by a nutrient. This would include claims such as ‘*low fat*’, ‘*high fibre*’ and ‘*sugar-free*’. Only those nutrition claims that are listed in the Regulation can be made for a food and only where the product complies with the specific conditions of use for that claim. For example, ‘*low fat*’ can only be claimed where the product contains no more

#### RACC Statistics

##### Script volume:

The RACC dealt with an average of 2,012 scripts per month during the months of January – June 2010.

##### RACC turnaround time:

51% of scripts were cleared for broadcast within 8 hours.

than 3g of fat per 100g for solids or 1.5g of fat per 100ml for liquids. A full list of permitted nutrition claims, including the conditions of use, can be found on the European Food Safety Agency (EFSA) website at: [http://ec.europa.eu/food/food/labellingnutrition/claims/community\\_register/nutrition\\_claims\\_en.htm](http://ec.europa.eu/food/food/labellingnutrition/claims/community_register/nutrition_claims_en.htm)

A 'health' claim is defined as 'any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health'. This would include, for example, 'calcium helps build strong bones in children' and may also cover more general claims such as 'good for you'. The Regulation provides for health claims that link food to reducing the risk of a disease. For example, EFSA has approved claims worded in a specified form for plant sterols, that are added to some spreads and drinks, given that plant sterols have been shown to reduce cholesterol and that high cholesterol is a risk factor in the development of coronary heart disease. Medical claims are not, however, permitted, e.g. 'prevents heart disease'. It is worth noting that food manufacturers are required to submit comprehensive evidence of a very high quality to the EFSA for assessment, and only claims that appear on the 'authorised list' can be used in advertising.

That list, (including the specific conditions of use), as well as a list of rejected health claims can viewed at: [http://ec.europa.eu/food/food/labellingnutrition/claims/community\\_register/health\\_claims\\_en.htm](http://ec.europa.eu/food/food/labellingnutrition/claims/community_register/health_claims_en.htm)

## 2. Laser treatments – an update

The Health and Social Care Act 2008 requires organisations/individuals to be registered with the Care Quality Commission (CQC) if they provide certain services, including different types of laser treatments. From 1 April 2010, the regulation of health and adult social care changed via a new registration system managed by the CQC. Consequently, from 1 October 2010, the regulation of Class 3B and Class 4 lasers and intense pulsed lights (IPLs) will be changing.

The following activities remain within the scope of CQC registration and evidence of such registration must be provided to RACC for clearance:

- Providers of surgical lasers using a Class 3B or Class 4 laser (e.g. for laser eye surgery or laser lipolysis);
- Providers of non-surgical Class 3B or Class 4 lasers and IPLs (healthcare professionals, e.g. medical practitioners, registered nurses, dental hygienists etc, who undertake the regulated activity 'treatment of disease disorder and injury', e.g. treatment for acne).

The following activities fall outside the scope of registration and are exempt from CQC registration

- Providers of non-surgical lasers and IPLs currently registered for non-surgical cosmetic/aesthetic purposes, such as hair removal or fat reduction by a healthcare professional or a non-healthcare professional (e.g. a beautician);
- Registered dentists using lasers for teeth whitening.

For those providers of laser services falling outside CQC registration, RACC will require full written details of the laser being used, qualifications of the operators, confirmation of professional indemnity insurance and other suitable credentials.

For information, and following proof of registration and adequate substantiation for safety, efficacy and any factual claims, the RACC has approved advertising for

the following laser treatments and other cosmetic procedures: IPLs, laser lipo, vaser lipo, smart lipo, laser treatment for hair removal/reduction, laser treatment for thread vein reduction, endermologie (for cellulite reduction), thermage, collagen, restylane and dermal fillers (but not Botox).

### 3. Unacceptable alcoholic drinks promotions

From 6 April 2010, alcoholic drink retailers were banned from using sales promotions such as “*all you can drink for £10*”, “*free drinks for women*” and “*speed drinking*” competitions. RACC can therefore no longer accept references to these types of drinks promotions.

### 4. Air and train fares – spread of availability of discounted fare

Claims such as “*Fly to Vienna from only £99*” and “*London to Birmingham from only £10*” have been recently queried by listeners who were unable to find the discounted fares, for example, in a certain month, as it appeared that the cheaper fares were not spread evenly across the relevant promotional period. Subsequently, RACC has tightened up its clearance policy by asking advertisers of such claims to demonstrate (rather than to confirm) that availability is spread evenly across the promotional period.

### 5. Qualifying information needed in broadband ads

How much qualification consumers should have when they listen to an offer of broadband in a radio ad is currently being reviewed by the industry in collaboration with BCAP.

The terms and conditions, plus limitations and exclusions, vary from offer to offer but, currently, RACC normally requires tags such as “*top speeds vary with distance from local exchange; conditions apply*”; “*top speeds vary significantly; conditions apply*”. Ads should also clarify where a minimum contract applies, if a BT line is required, that speeds quoted are “*up to*” the maximum and whether the speed quoted is for upload or download.

### 6. Betting bonuses – an update

RACC deals increasingly with ads for online bookmakers offering account bonuses to new customers.

A recent ASA upheld adjudication concerning an emailed ad gives an idea of how ASA would be likely to approach similar claims in radio ads.

William Hill offered a “*£66 free (bonus), no deposit required, and up to £150 first deposit bonus*”. The complainant believed the ad misleading because it didn't make clear that customers had to make lots of high value bets in order to redeem the £66 “*free*” bonus and that a deposit of £35 was applicable to withdraw any winnings from the bonus, up to a limit of £200. The advertiser acknowledged that “*terms and conditions apply*” had been accidentally omitted from the copy but that on clicking the link, and during the sign up process, customers would be made aware of the terms and conditions.

However, the ASA considered that the claims would imply to customers that

#### Keep up with the latest on radio advertising regulation by:

- viewing or checking the BCAP Radio Ad Standards Code – go to [www.cap.org.uk](http://www.cap.org.uk) and click on the relevant links
- subscribing to “Update@CAP”, a quarterly bulletin about cross-media advertising policy – go to [www.cap.org.uk](http://www.cap.org.uk) and click on the relevant links
- reading ASAB radio advertisement complaint adjudications – go to [www.asa.org.uk](http://www.asa.org.uk) and follow the relevant links
- viewing the RACC's Radio Copy Guidelines – go to [www.racc.co.uk](http://www.racc.co.uk) – they are arranged alphabetically and serve as a quick reference guide when drawing up copy proposals
- regularly checking the new “NEWS” section via the “News & FAQs” tab of the RACC's website for latest tidbits of information about radio copy clearance

their account would immediately be credited with £66 at no additional cost, on sign up. In this case, not only did the conditions to the offer mean that customers would actually be required to make a minimum of 50 bets within the 30 day promotional period (totalling a minimum of £1320), before they could withdraw any winnings from successful betting of the bonus, but winnings could only be withdrawn once, up to a maximum of £200. If players were to win more than this, any winnings over £200 would be deleted from their account. Further to this, customers would have to deposit £35 into their account to withdraw any winnings at all.

Whilst the ASA accepted that “*terms and conditions apply*” had been omitted in error, they took the view that the minimum number of bets, the minimum spend and the withdrawal limits and requirements were “*significant*” conditions which should have been stated in the advertisement.

## **7. Betting tipsters will be acceptable advertisers from 1st September 2010**

Radio advertisements for betting tipsters may be accepted when BCAP’s Code of Broadcast Advertising comes into force on 1st September 2010. The overriding principle is that ads for tipsters should be transparent and unlikely to mislead listeners.

The rules can be found in their entirety on page 100 of the new Code by using this link: <http://www.cap.org.uk/The-Codes/New-Advertising-Codes.aspx>

The majority of the rules seem straightforward and are self explanatory, for example, ads must not be of particular appeal to under 18s, they must not make money-back guarantees and they must not state or imply that they guarantee success or that punters can create a long-term income by following the advertiser’s tips.

However, there are other rules which require broadcasters to hold the tipster’s name (not just its company name) and full permanent address on file, and ads for premium rate phone services must include the service/information provider’s usual trading name and contact details. If a service is associated with, or run by, another tipster service, then this should be made clear.

As for claims regarding past successes, (e.g. “*we gave x winning tips in the last 6 months*”), these would only be acceptable if the tips were lodged with an independent and “*suitably qualified*” third party before the event. This is known as “*proofing*” and third parties would tend to be accountants, solicitors or similar legal representatives. Claims regarding notional profits in the future are unacceptable.

Please send your draft scripts to RACC for clearance from 1st September.

## **8. Sale and rent back agreements**

This is a difficult area to regulate and only companies registered with the Financial Services Authority (FSA) can advertise sale and rent back agreements. Now there are new rules from the FSA to provide protection for potentially vulnerable customers entering into sale and rent back agreements. Exploitative advertising and high-pressure sales techniques and the use of emotive terms such as ‘*fast sale*’, ‘*mortgage rescue*’ and ‘*cash quickly*’ are unlikely to be acceptable under the new regime. Care is needed in this complex area.

## Upheld complaints against RACC-cleared ads

Remember that all broadcast adjudications are posted online by the ASA every Wednesday. For full details of the following adjudications, please go to [www.asa.org.uk](http://www.asa.org.uk)

Since the publication of Update 40 in January 2010, there have been 7 upheld adjudications published by the ASA against RACC-cleared advertisements; details are as follows:

**Department of Health** – The ASA concluded that an ad for teenage contraception should not have been broadcast at 3.58pm when 20% of the audience were under 16. RACC had advised that the ad be broadcast outside of breakfast and drive time.

**COI/DVLA** – The ASA concluded that the ad misled because it failed to mention the compulsory £20 fee involved when exchanging a paper driving licence for a photocard one.

**Reed Executive** – The ASA felt that the portrayal of a tyrannical German-sounding voiceover reinforced an outdated, cultural stereotype of German people and that the ad had “*the potential to cause serious offence to some listeners*”.

**Safestyle** – The claim “*flexible monthly payments*” should have been accompanied by the typical APR; its omission breached the Consumer Credit Regulations.

**Licensed Taxi Drivers Association** – The ASA felt that the portrayal of a foreign-sounding taxi driver reinforced a negative stereotype of foreign drivers as being underhand and unreliable and concluded that the ad had “*the potential to cause serious offence to some listeners*”. It also breached misleadingness and fair comparisons rules.

**Galliard Homes** – The ASA found the ad to be misleading because it had not seen satisfactory documentary evidence in support of a claim relating to the liquidation of stock.

**Bedlam** – The ASA found the ad to be misleading because it did not make clear that the offer was an opportunity to receive a voucher to put towards a paintball session.

## Main contacts:

RACC by post:	RadioCentre, 5 Golden Square London W1F 9BS
Submit scripts online via:	<a href="http://www.racc.co.uk">www.racc.co.uk</a>
or email scripts to:	<a href="mailto:adclear@racc.co.uk">adclear@racc.co.uk</a>
Radio copy helpline:	020 3206 7808
Website:	<a href="http://www.racc.co.uk">www.racc.co.uk</a>

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