

When is a 'Free' cruise not a free cruise'?

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) list 31 commercial practices which are considered unfair in all circumstances and which are prohibited. One of the 31 prohibitions is:

'Describing a product as 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.' So for example if a trader advertises a 'free gift'. He then tells consumers that in order to receive their 'free' gift they need to pay an extra fee. This would breach the CPRs.

So for example if a cruise holiday advert states that the 'children go free' then all children under the age of 18 would have to go free with no additional charge.

The Advertising Standards Authority (ASA) has also given some guidance on the use of the word 'free'.

The ASA Code states that organisers must not try to recover their costs by reducing the quality or composition or by inflating the price of any service that must be brought as a pre-condition of obtaining the free item.' Further Organisers should not describe an individual element of a package as 'free' if the cost of that element is included in the package price. 'Consumers' liability for costs should be made clear in all publication featuring 'free' offers.

An offer should be described as free only if consumers pay no more than the minimum, unavoidable cost of responding to the promotion, e.g. the current postage rate or the standard cost of a telephone call.

Pure 'free' claims

'Free' in its purest sense, means that consumers receive something for nothing: no money or other consideration, (except, if applicable, the cost of postage or non-premium rate telephone charges) passes from the consumer to the advertisers.

However, the quality or composition of a holiday should not have been reduced and the price should not have been inflated, to recover the cost of supplying the 'free' service.

Where there is a conditional purchase the key distinguishing feature of this is that the item described as 'free' is genuinely separate from and additional to the items that the customer is required to pay for i.e. for example the holiday itself.

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A free offer can be shown to be a conditional purchase promotion in that the paid for service i.e. the holiday may be bought without the free item if preferred and has a genuine stand-alone price.

The free item is capable of being sold alone although it may not necessarily be sold alone in practice.

If consumers know the price of the holiday they are paying for without the free item and know that the price of the paid for the holiday remains the same if they do not take the free item, the offer is transparent and does not mislead consumers.

Therefore, to show that for example a service is genuinely being supplied free, conditional on the purchase of a cruise for example, organisers must be able to show either that the free service is genuinely additional to the holiday usually sold for that price or that the free service is genuinely separate from the paid for cruise. That the consumers are aware of the stand-alone price of the cruise holiday they are paying for and that price remains the same with or without the free service.

For example free insurance for customers who book their holiday online is justified if customers who book the same holiday by telephone are offered the same price but not offered free insurance or if internet customers who choose to buy their insurance from a different provider pay the same for their holiday as those who choose to take advantage of the advertisers insurance offer.

In contrast to a conditional –purchase promotion, the ASA Code prohibits the use of ‘free’ to describe ‘an individual element of a package, if the cost of that element is included in the package price. The ASA introduced that extra restriction on the use of ‘free’ in relation to packages to address concerns that organisers were advertising as ‘free’ individual elements of packages whose costs were included in the package price.

There is one exception to this according to the ASA and that is where Organisers sometimes add elements to their existing packages without increasing the price of the package or reducing the quality or composition of the elements that are already included in the package. In those circumstances, consumers are likely to regard the element that has been added to the package as additional to the established package for a period after its introduction; once the element has formed part of the package for a long time, consumers are likely to regard it as a standard feature of the package.

Organisers may therefore describe services that have been added to those pre-existing packages as ‘free’ for a reasonable period after their introduction: as a general rule Organisers should avoid describing elements that have formed part of a package for more than six months as ‘free.’

If the price of the package increases or its quality or composition is reduced after a new element is added, the new element may not be described as free.

In conclusion if a package price is payable, advertisers may describe elements that are included in the package as 'at no extra cost' or 'inclusive' but may not describe them as 'free' unless they have been recently added to an established package without increasing its price.

Below are a few cases where the ASA have adjudicated when the word 'free' has been used which will help to understand the rules in practice.

1) ASA Adjudication on Ryanair Ltd

Ad

Carphone Warehouse Group plc (CW) complained about three national press ads for BT Total Broadband. a. One ad stated "Total Broadband ... Free UK Evening and Weekend calls over the internet ... BT Broadband from £9.95 for the first 6 months". Small print at the bottom of the ad stated "... 18 month term ... New customers only ...". b. A second ad stated "BT Total Broadband A more complete broadband experience from just £9.95 a month for six months* ... Free UK Evening & Weekend calls over the internet with BT Broadband Talk ...". Small print at the bottom of the ad stated "**Introductory price for option 1 achieved via £48.24 credit on your first bill. £17.99 a month from month seven. 18 month term" c. A third ad stated "BT Total Broadband. With BT Total Broadband you can get more out of the internet through the BT Home Hub. BT Total Broadband gives you ... free evening and weekend UK* calls ... UK*Local and national calls. Excludes non-geographical calls (0845, 0870) other exclusions apply".

Issue

CW, who believed the internet calls were an inclusive part of new Total Broadband packages offered by BT, thought that the claims "Free UK Evening and Weekend calls over the internet" and "free evening and weekend UK calls" were misleading.

Response

BT said, since the end of June 2006, they had given new subscribers to their Total Broadband packages the choice of a 12-month or an 18-month contract, whereas they had previously been able to have only a 12 month contract.

BT said, because it was fundamentally the same as the existing 12-month contract but included different pricing options and additional features such as internet calls, the 18-month contract was not a new package. They argued that the internet calls were a free part of an existing package. They said internet calls were offered to all BT customers without charge, regardless of which package they subscribed to.

Assessment

a) Upheld

The ASA considered that, because the contract length in the 18-month BT package was of longer duration than that in previously offered packages and was therefore more onerous on the consumer, it was a new package. The ASA considered that the internet phone calls were an inclusive part of that new package and that they should therefore not be described as "free".

The ASA considered that, because ads (a) and (b) were aimed at new customers for the 18-month contract only, it was misleading to describe the calls as free in those ads. The ASA noted ad (c) advertised both the 12-and 18-month BT Total Broadband packages. The ASA considered that, because they had been added to an existing package at no cost, it was not misleading to describe the internet calls used by subscribers to the 12-month contract as "free". However, because the internet calls could not be described as "free" to potential subscribers to the 18-month contract, the ASA considered that it was misleading to describe the internet calls as free in ad (c).

The ads breached CAP Code clauses 7.1 (Truthfulness) and 32.3 (Free offers and free trials).

The ASA told BT to ensure in future that they did not refer to the internet calls included in their new 18-month package as free.

2) ASA Adjudication on Ryanair Ltd

Ad

A national press ad, for Ryanair, claimed "BUY ONE FLIGHT & GET A SECOND ABSOLUTELY FREE PAY NO FEES, TAXES, LEVIES OR CHARGES!". Text continued "BUY AN ANNUAL TRAVEL INSURANCE FOR £39 & EARN A FREE FLIGHT" and the footnote stated " ... Subject to availability, terms & conditions. Flights direct from London (Stansted)".

Issue

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The complainant challenged whether:

1. the claim "FREE" was misleading for the second flight, because he understood that there was a charge of one pence as well as a baggage and credit or debit card fee and
2. the ad misleadingly implied the offer included all routes from London Stansted.

The ASA challenged:

3. the failure to include significant conditions of the offer, such as the limited travel period and
4. the claim "BUY AN ANNUAL TRAVEL INSURANCE FOR £39 & EARN A FREE FLIGHT", because we understood that consumers would still have to pay airport passenger duty, taxes and charges.

Response

1. Ryanair said the baggage fee and credit card fee were optional, because passengers with only hand luggage were not charged for baggage and purchasers could use the Visa Electron service without incurring a charge. They explained that the charge of one penny was necessary because their system required them to input a numerical amount. Ryanair pointed out that the amount was insignificant and that they paid all the taxes, charges and fees. They said the fact that there was only one complaint out of a circulation of four million copies of the ad showed that the majority of people considered that it was a free second flight. They also said they were happy to refund the complainant his penny charge.
2. They pointed out that the ad stated that flights departed from London Stansted, not that all routes were available from London Stansted.
3. They explained that it was not possible to include all the terms and conditions in the ad and said, like all other airline advertising, they directed purchasers to their website.
4. They explained that they were committed to complying with the CAP Code and, in this case, the travel insurance strapline was an unintentional breach because the passenger did have to pay for taxes and charges.

Assessment

- a) *Not upheld*

The ASA noted people could avoid a credit card and baggage fee. They acknowledged Ryanair's explanation that a charge of one penny was made so that they could log the fares on their computer system. The ASA considered that one penny was not a meaningful charge for the flight, and because Ryanair paid all other non optional fees, they considered that the claim "FREE" did not mislead.

On point 1, the ASA investigated the ad under CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 32.1 (Free offers and free trials) and 34.1f (Significant conditions for promotions - Restrictions) but did not find it in breach.

b) Upheld

The ASA noted Ryanair's comments but considered that the text "Flights direct from London (Stansted)" was at best, ambiguous and, at worst, misleadingly implied the promotion included all Ryanair flights from London Stansted. Because the ASA understood that it did not, they concluded that the ad was likely to mislead.

c) Upheld

The ASA understood that the promotional flights were available between 16 January and 8 February 2007 and that four days advance purchase was required. They noted Ryanair's comments that all the terms and conditions were found in full on their website, but they nevertheless considered that those conditions were significant and should have been included in the ad.

d) Upheld

The ASA welcomed Ryanair's acknowledgement that the promotional flight offered with annual travel insurance was not free, because the passenger had to pay taxes and charges for the flight.

On points 1-4, the ad breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 32.1 (Free offers and free trials) and 34.1f (Significant conditions for promotions - Restrictions).

Action

The ASA told Ryanair to amend their advertising and advised them to consult the CAP Copy Advice team before submitting future ads for publication.

Adjudication of the ASA Council (Non-broadcast)

3) ASA Adjudication on Euro Disney Associs SCA

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Ad

A TV ad showed a series of rides at Disneyland Paris. The voice-over stated "Hop over to the magic of Disneyland Paris and meet all your family's favourite characters. From January 3 to April 1 enjoy two nights three days from only £150 per adult in a Disney hotel. Plus all kids go free ... ". The text "all kids go free" appeared in gold on the screen. On-screen text stated "One paying adult per room. Kids under 12. Excludes transport ...".

Issue

The viewer challenged whether the ad was misleading, because they believed the claim "All kids go free" was contradicted by the on-screen text "kids under 12".

Response

Euro Disney Associs SCA (Euro Disney) said the ad clearly stated on screen that children had to be under the age of 12 to be eligible for the offer and also invited the viewer to check full terms and conditions on their website. They said it was common in the airline industry to define children as 2 to 11 years of age and attached examples.

Clearcast said they had made sure the material parts of the offer were made clear to the viewer. They said "kids" referred to younger children (aged 12 and under) and airlines used a similar classification when pricing air fares. They said Eurostar (the other popular way of travelling to the park) had a similar policy with children aged 4 to 11 enjoying lower prices than "youths" (classified as 12 to 25).

Although they felt confident "all kids" was consistent with the travel and holiday industry's classification of a child they had, nonetheless, requested that the advertiser include the qualifying text "kids under 12".

Assessment

Upheld

The ASA noted the travel and holiday industry generally defined "kids" as younger children aged 2 to 11. However, they considered the average viewer might not hold such a specific definition, and the claim "All kids go free" was contradicted rather than clarified by the claim "kids under 12". Because of that, they concluded the ad was misleading.

The ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1.1 and 5.1.2 (Misleading advertising) and 5.2.3 (Qualifications).

Action

The ad must not be broadcast again in its current form.

Adjudication of the ASA Council (Broadcast)

Case source: ASA Adjudication taken from their website.

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