



digital advertising

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Regulation of Television Advertising in the United Kingdom

The UK has a long history of self-regulation of advertising with the first advertising code dating back to 1925. It also has a long tradition of consumer protection, which is reflected in its advertising. Arguably, tight regulation has helped produce some of the most inventive and successful advertising in the world, particular TV spot commercials. Perhaps when there is so much you cannot say, you think harder about what you can say.

Department of Culture Media & Sport (DCMS)

The DCMS is the government department that has ultimate responsibility for broadcasting in the UK. It does not directly administer it, nor is it directly involved in drawing up rules and regulations on advertising. Administration and regulation is delegated as outlined below.

Office of Communications (Ofcom)

The Communications Act 2003 established Ofcom as the independent regulator and competition authority for the UK communications industries. It can be described as an autonomous non-governmental organisation (with similarities to the FCC). Under the government's self-regulation policy Ofcom has delegated day-to-day regulation of broadcast advertising to the Advertising Standards Authority, who already have responsibility for print advertising and direct marketing.

Advertising Standards Authority (ASA)

The ASA is the independent body set up by the advertising industry to police the rules laid down in the advertising codes. The strength of the self-regulatory system lies in the independence of the ASA and the support and commitment of the advertising industry, through the Committee of Advertising Practice codes. The ASA also aims to protect consumers and create a level playing field for advertisers.

Committee of Advertising Practice (CAP)

Advertising in the UK is subject to the Committee of Advertising Practice's Code, known as the CAP Code. Radio and TV are subject to the Broadcast Committee of Advertising Practice's Code (BCAP Code). The two codes are broadly similar in principles.

BCAP inherited the Television Advertising Code from earlier regulatory authorities, which had existed since the introduction of commercial television to the UK in 1955. In addition to the BCAP code, TV advertising must also comply with various laws and regulations, principally concerned with consumer protection.



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Pre-transmission clearance of TV commercials

A requirement of each broadcaster's Ofcom licence is that advertisements will adhere to the Code and other regulations. In 1955 the new commercial network (ITV) set up a department to vet commercials before they went to air (the Independent Television Companies Association).

With the expansion of commercial television in the 1980's ITV's clearance division became the Broadcast Advertising Clearance Centre. Channel Four, Sky and other commercial networks contracted the BACC to clear their commercials. In 2007 the BACC was rebranded as *Clearcast*. It remains a subsidiary of ITV plc and is funded by the major networks, including ITV, Channel Four, Channel Five, Sky, UKTV, Virgin Media and Discovery Networks. Individual advertisers do not directly fund Clearcast.

The requirement to broadcast compliant commercials results in most networks and stations demanding that advertisers pre-clear their commercials through Clearcast, and obtain their *Notice of Acceptance* for each ad. Indeed, most networks can only transmit a commercial if it is flagged on their scheduling systems as cleared. The clearance process is now managed via Clearcast's website. The only major network that does not use Clearcast is MTV, but they do not broadcast infomercials. A small number of minor satellite shopping channels will accept non-cleared commercials but often fall foul the ASA.

Direct response advertising is managed at Clearcast by one account executive – Paul Burrows. Paul has long and extensive experience of DRTV, but will often refer to outside consultants for detailed advice on technical issues such as fitness and health.

Compliance Summary

- The majority of channels require infomercials to comply with the **BCAP** Code and consumer protection law.
- The **ASA** investigates and reports on non-compliant commercials and marketing material, including TV.
- **Clearcast** pre-clears advertisements on behalf of the broadcaster, but deals directly with the advertiser or their agents. It has no direct relationship with BCAP or the ASA.
- Even with a Clearcast Notice of Acceptance once on air the ASA can determine that an advertisement does not comply with the Code. Clearcast are not infallible.
- As well as adjudicating on complaints about commercials the ASA monitors channels and can instigate its own investigations. It publishes complaint adjudications each week on its website, which are frequently reported in the press.
- Ofcom has powers to fine broadcasters over breaches in their licence (including non-compliant advertising) and ultimately to revoke a licence. To date, it has only used those sanctions in rare and extreme cases. It has no powers to fine advertisers directly.



Broadcasting infomercials

Platform profiles

Digital TV via Antenna (Freeview)

- **Freeview** is the brand name for Digital Terrestrial TV.
- Ofcom estimates that 70% (18m) homes have Freeview (Q1 2009). The remainder will have analogue TV via antenna, digital satellite or cable.
- The switchover from analogue to digital began in 2008 and completes in 2012.
- Freeview broadcasts around 20 free-to-air channels and a small number of subscription channels.
- The principle broadcasters on this platform are the BBC (8 channels), ITV (4 channels), Channel 4 (5 channels), Five (3 channels).
- There are four live shopping channels, some of which have off-peak time available for cleared infomercials.
- Within the past few months Ofcom has extended the licences of the main commercial terrestrial channels to permit them to broadcast blocks of teleshopping (direct response TV).

• Digital Satellite

- The principle platform is British Sky Broadcasting, known as **Sky**.
- Ofcom estimates that 34.3% (8.9m) homes have digital satellite. (Q1 2009)
- The majority of channels require a Sky subscription, but a limited number of channels can be received without a subscription, including all BBC channels.
- Channels 640 to 690 are dedicated to TV shopping with about 30 channels currently on air. These include live shopping, around 20 infomercial channels, and channels dedicated to auctions, jewellery and vacations.
- The audience for shopping channels tends to decrease as the channel number gets higher (perhaps because they are further away from QVC on 640, which is undoubtedly the brand leader in TV shopping).
- All commercial programme channels may broadcast infomercials, including daytime, evening and overnight.
- Some of the minor channels will accept infomercials that have not been cleared by Clearcast; they occasionally fall foul of the ASA.

• Cable TV

- Following recent mergers, the main cable network is **Virgin Media**.
- Ofcom estimates that 12.9% (3.3m) homes have digital cable. (Q1 2009)
- All channels require a subscription.
- There are currently seven channels dedicated to TV shopping with four broadcasting infomercials.
- All channels require Clearcast approval.

- All commercial programme channels may broadcast teleshopping (infomercials), including daytime, evening and overnight.

Digital Advertising Ltd

The Company is owned and managed by David Halliday. David has worked in TV for over 25 years, most of that time as a trailer producer/scriptwriter and studio director. He began in DRTV in 1996 with one of Britain's major satellite and cable networks – Flextech TV (now branded Virgin Media). As Head of Production he helped establish their infomercial shopping channel *Screenshop*, and was responsible for scripting, producing and directing over 50 studio infomercials. He was also responsible for commissioning infomercials from outside production companies. He left *Screenshop* in 2001 to establish Digital Advertising, which was incorporated as a limited company in 2006.

Amongst the leading US infomercials Digital Advertising has repackaged for UK broadcasters are Tristar's *Lateral Thigh Trainer*, *Jack Lalanne Power Juicer* and *Ab King Pro*. At its peak *Lateral Thigh Trainer* was airing on over forty UK channels, including major networks such as ITV2, History Channel and Paramount Comedy, and is undoubtedly one of the most successful infomercials to air on British TV. Digital Advertising steered three versions through to clearance.

It would be fair to say that one of our specialities is obtaining clearance for 'difficult' infomercials, particularly for fitness and health products. Using strong marketing and script-writing skills, our aim is always to achieve clearance efficiently, while maintaining or enhancing the power of the commercial to sell product in the UK market.

In addition to producing and repackaging infomercials, the company has other marketing-related activities. We manage four TV shopping domains, including an all-video site tvshoppingdirect.co.uk

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