

## COVER SHEET FOR A CAP OR BCAP CONSULTATION RESPONSE

### BASIC DETAILS

Consultation title: The Regulation of Unfair Practices in TV and Radio Advertisements

To (CAP or BCAP contact):

Your name: Jocelyn Hay CBE

Are you responding as an individual  or on behalf of an organisation

Organisation name: Voice of the Listener & Viewer (VLV)

E-mail, postal address or fax no.: [info@vlv.org.uk](mailto:info@vlv.org.uk).

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### CONFIDENTIALITY

What do you want CAP or BCAP to keep confidential?

Nothing  Your name/contact details/job title

Whole response  Organisation

Part of the response  If you have not put the confidential parts of your response in a separate annex, please identify them here:

If part of your response is confidential, can CAP or BCAP include it in a general summary of responses that does not disclose the specific information provided or enable you to be identified?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. Unless otherwise specified on this cover sheet, this response can be made public by CAP or BCAP and, if it is sent by e-mail or fax, CAP or BCAP can disregard any standard e-mail or fax cover sheet confidentiality disclaimers. I authorise CAP or BCAP to make use of the information in this response to meet their regulatory objectives.

CAP and BCAP may make responses public before a consultation has ended. If all or part of your response is not confidential but you would like us to make it public only once the consultation period has ended, please tick here.

Name: Mrs Jocelyn Hay

Signature: Jocelyn Hay

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July 2008

## **Response by Voice of the Listener & Viewer (VLV) to Consultation by BCAP on the Regulation of Unfair Practices in TV and Radio Advertisements**

*Voice of the Listener & Viewer (VLV) is an independent, non-profit-making association, free from political, commercial and sectarian affiliations, working for quality and diversity in British broadcasting. VLV represents the interests of listeners and viewers, and increasingly new media users, as citizens and consumers across the full range of broadcasting issues. VLV supports the principles of public service broadcasting and is concerned with the structures, regulation, funding and institutions that underpin the British broadcasting system. VLV does not handle complaints.*

1. The provisions of the UK's Consumer Protection from Unfair Trading Regulations 2008 derive originally from the European Directive 2005/29/EC of 11 May 2005.
2. Voice of the Listener & Viewer (VLV) welcomes the aims of this Directive to protect consumers from misleading advertising and other types of unfair commercial practices, and to put in place effective systems to address their complaints and provide the means for redress.

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Registered office: 101 King's Drive, Gravesend, Kent DA12 5BQ.

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Honorary Officers: Jocelyn Hay CBE Chairman      Hugh Peltor CBE Treasurer  
Company Secretary: Messrs. Waterlow Registrars Ltd.

### **3. ASA / BCAP's proposals to amend its Code of Practice for radio and television advertising.**

3.1 VLV is concerned, however, that the regulatory framework within which BCAP operates may not guarantee an effective system for viewers of UK-licensed television services, or listeners to UK-licensed radio services to progress their complaints and provide the means for them to gain adequate redress.

3.2 One of VLV's concerns is the means by which the ASA and BCAP will enforce the provisions in their code if things should go wrong. As currently worded, the code proposes to transfer the burden of responsibility for remedying an infringement of the code from the advertiser to the broadcaster, at the end of a three stage process:

- (i) First, a consumer must raise a complaint with the ASA/BCAP about the misleading nature of the advertisement. We believe, however, that few consumers (and certainly not the 'average' consumer specified in UK regulation) will know to whom to complain.
- (ii) Second, the complaint about the allegedly misleading advertisement must be upheld by the ASA; and
- (iii) Third, the broadcaster who originally broadcast the misleading advertisement – *but apparently not any other broadcasters who might have transmitted it* - must *continue* to broadcast the advertisement before Ofcom can take action against the broadcaster. It also seems that Ofcom can only take action against the original *broadcaster*, not against the advertiser.

3.3. Unless we have misread the code, it seems to us that this process is unnecessarily confusing and convoluted and highly unlikely to remedy an abuse. We cannot see either how it equips the ASA/BCAP with effective tools to remedy an abusive situation or where exactly it places the responsibility for taking action. Presumably it is ASA/BCAP's responsibility to refer the complaint to Ofcom in order for the regulator to take action against the broadcaster. The wording however, does not make this clear.

**4. VLV submits, therefore that the ASA/BCAP should introduce two changes to their procedures:**

- (i) First ASA/BCAP should devise mechanisms through which they inform consumers how to complain about an allegedly misleading advertisement, for example by requiring advertisers to place advertisements from time to time on the main television and radio channels and by referring them to the ASA/BCAP websites; and by informing Citizens' Advice Bureaux and other sources of information of their complaint procedures.
- (ii) VLV also considers that the ASA should take steps to equip itself with the power, immediately it has upheld a complaint about a misleading advertisement, to ban any future broadcasts of it on any licensed UK broadcaster. We do not think it good enough simply to force its withdrawal from the broadcaster against whom the original complaint was made. This change we believe, would necessitate all

advertisers signing an agreement with the ASA/BCAP requiring them to immediately withdraw misleading advertisements against which a complaint had been upheld *from all UK-licensed broadcasters*. In order to enforce the agreement, the ASA/BAP should have the power to levy a substantial fine on any who fail to do so.

4. **VLV is concerned that the code should also establish an effective mechanism of redress when things go wrong.** We submit therefore, that the ASA/BCAP should put in place arrangements to ensure that any contract which is established between a listener or viewer and the perpetrator of a misleading advertisement, could be used to absolve the misleading advertiser from his responsibility to provide the wronged consumer with adequate redress.

6. Following abuses revealed in recent years, VLV also considers that the ASA/BCAP can not assume that consumers, *certainly not an 'average' consumer who is reasonably well-informed, reasonably observant and circumspect* (as required by the regulations) will keep receipts – including telephone receipts - for every transaction they make in response to a broadcast advertisement, just in case they might later require them in order to seek redress from a misleading advertisement.

7. For example, when ITV and C4 were fined by Ofcom for misleading UK viewers into dialling premium rate telephone numbers in order to participate in

voting in certain TV shows, those viewers who had been induced into using premium rate lines were required to produce documentary evidence that they had done so before they could seek redress. Many lost out because they did not have itemised telephone bills to provide documentary proof.

**8. VLV submits, therefore, that broadcast advertisements which promote follow-up transactions must advise listeners and viewers that they should keep receipts of all personal transactions arising from advertisements of this nature.**

#### **8. Cross-Media Promotions**

Few viewers understand the boundaries in the regulation of different media. one problem is that the scope of the new European Audiovisual Media Services Directive is unclear, in particular, the boundary between it and the e-Commerce Directive. The Government appears to favour splitting the regulation of Video-on-Demand Services between those established by traditional broadcasters, which will be regulated under the provisions of the Audiovisual Media Services Directive, and those established by other providers, which will be regulated under the provisions of the e-Commerce Directive, the terms of which are themselves about to be revised.

9. There was, moreover, also some uncertainty in Ofcom, as to whether the premium-rate telephone incidents should be treated as an editorial issue

under the regulation of television broadcasting or whether it was an abuse of premium rate telephone services. Yet, because of the convergence of different technologies and delivery methods it is now possible to advertise a product or service on radio or television for a deal which is delivered on-line, or a legal contract under UK or possibly other EU jurisdiction.

**10, VLV considers therefore, that regardless of what subsequently happens in other media, listeners and viewers to UK broadcasts must be able to obtain redress in regard to goods or services which were wholly – or even partially – promoted by broadcast advertising.**

**11. VLV submits therefore, that the ASA/BCAP should establish transparent cross-media correlation and interaction between the regulation of broadcast advertising and subsequent non-broadcast commercial activity by the perpetrator of a misleading advertisement in order to ensure that listeners and viewers can obtain full and speedy recompense.**

12. It may also be necessary for the ASA/BCAP to establish a reserve fund to recompense listeners and viewers from the results of any misleading advertisements placed by advertisers (or their agents) who subsequently go bankrupt.

**Mrs Jocelyn Hay CBE  
Chairman  
Voice of the Listener & Viewer (VLV)**

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