UNITED KINGDOM

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1. Self-Regulation	
Topic:	Mobile Marketing
Who:	Committee of Advertising Practice (CAP)
When:	May 2004
What Happened:	CAP has published a Help Note on Mobile Marketing for mobile marketers and agencies. The Help Note stands on the shoulders of existing data protection and e-commerce legislation and shoulder to shoulder with industry codes from the likes of ICSTIS, the DMA and the IPA. Thankfully, it's easier to interpret than many txt msgs. Marketers are encouraged to gain explicit consent from consumers before texting them, but there may be a 'soft opt-in' for consumers whose details are known from previous dealings, provided any message relates to similar products or services and an opportunity to opt-out of future texts is always included. All SMS, MMS or 3G text ads must tell consumers how they can opt-out of future marketing and provide a simple means of doing so. The identity of marketers must also be provided along with a valid address. Given the limited characters available, a web address or text-back channel where such details can be found may be preferable.
Comments:	Text message marketing complaints have risen six-fold since 2002. The majority of the 393 complaints to the ASA in 2004 about mobile marketing involved unsolicited text messages. But Phonetastic UK's banned text message - "You are a d*ck and I am going to kick ur head in ya big useless donkey. UPGRADE UR MOB" - reminds us that 'decency' goes with 'legal, honest and truthful'.

2. Self-Regulation	
Topic:	Alcohol Advertising
Who:	European Court of Justice (ECJ)
When:	July 2004
What Happened:	In the UK, alcohol and sport go together like fish and chips. But in France, even indirect advertising of alcoholic drinks on TV is prohibited. Now that the ECJ has supported the *Loi Evin*, the French law banning the advertising of alcoholic drinks, that sober state of affairs looks to continue. The ban was the subject of two cases considered by the ECJ. The first began in 2001, when the European Commission challenged its compatibility with EU law. The second arose when foreign football clubs bowed to pressure exerted by a French TV broadcaster and refused to rent advertising hoardings to

	Bacardi France. The ECJ acknowledged Bacardi's grievance and accepted that *Loi Evin* also affects organisers of sporting events that take place outside of France. If alcohol advertising is visible, the *Loi Evin* limits opportunities for organisers to sell the retransmission rights to French broadcasters, restricting the freedom to provide services contrary to EU law. However, it also decided that reducing the temptation to drink justified the loss of freedom on public health grounds, and the *Loi Evin* was saved.
Comments:	Fortunately, the ban only affects bi-national sporting events whose retransmission is specifically aimed at the French audience. Forbidden footage from multinational events may still be broadcast thanks to an old concession of the Conseil Supérieur de l'Audiovisuel, the French body that regulates alcohol advertising. So if the Rugby World Cup sticks with sponsorship by Guinness, perhaps *L'Evian* should sponsor *Loi Evin*?

3. Legislative Powers	
Topic:	Misleading Advertising
Who:	Department of Trade and Industry (DTI)
What Happens:	Fancy chancing your arm with a bit of misleading advertising? Why not? What's the worst that could happen? A slap on the wrist from the Advertising Standards Authority? A skirmish with trading standards, perhaps, or a visit from the Office of Fair Trading? Well think again: now your entire company could be wound-up! The DTI has draconian powers under company and insolvency legislation to apply for orders to wind-up companies "in the public interest". The grounds for doing so include misleading marketing practices. It is quite rare, but it happens. The first you'll know about it is when DTI appointed investigators turn up at your offices demanding to see all your internal documents, confidential or not. And you can't just lock the doors and pretend you're not there, as failing to co-operate with the investigators is itself a criminal offence. You may not be told what the DTI is looking for, but once the investigation is completed you may hear nothing, or you may get a couple of days' notice of the presentation of a winding up petition and application for the appointment of a provisional liquidator. Once that happens, your company is effectively sunk, even if a winding up order is not ultimately obtained. And in a recent case, even an offer of an undertaking to behave in future did not save the company.
Comments:	Next time you thinking of dancing with the Devil, just remember, you might end up in clutches of the Grim Reaper.

4. Case Law	
Topic:	Trade Marks and Passing Off
Who:	UK High Court
Case Report:	*Red Bull GmbH and another v Mean Fiddler Music Group Plc and others* (Unreported, CA, 28 April 2004)
When:	April 2004
What Happened:	Ask for a can of *Red Bull* at a Mean Fiddler bar and you'll be in for a big

	surprise. The barman will explain that he only has *Sinergy*, Mean Fiddler's own-brand energy drink. For the avoidance of doubt, he may also inform you that *Sinergy* is not a *Red Bull* product. Why? In April, *Red Bull* sought an injunction from the High Court to prevent Mean Fiddler from selling *Sinergy*. The Mean Fiddler was accused of passing off *Sinergy* as *Red Bull*, or a product associated with it, and for switch-selling (giving *Sinergy* to those who asked for *Red Bull*). The infamous *Red Bull* branding needs little introduction. The silver and blue trapezoidal quadrilaterals and the charging red bulls hold the lion's share of Europe's multimillion pound energy drinks sector. The *Sinergy* branding is like *Red Bull's*, only slightly different. The judge conceded that from a distance it was difficult to tell one can from the other. On closer inspection, however, the prominence of the *Sinergy* brand name was considered sufficient to dispel deception. The judge was also persuaded by the Mean Fiddler's undertakings (as rehearsed by the barman). The injunction was refused and *Red Bull* has called for a full trial.
Comments:	Brand owners will watch this case with interest. If *Red Bull* is unsuccessful, it may be seen as a green light for competitors to sail closer to the wind. If they win, however, as they did against the energy drink *Shark*, copycat branding may need rebranding.

5. Self Regulation	
Topic:	Advertising Regulation
Who:	Office of Communications (Ofcom)
When:	2004
What Happened:	Ofcom has been busy recently, spewing out consultation documents like confetti, three of which have big implications for advertisers. The proposed new rules for TV and Radio retain the key principles of editorial independence, transparency, and the separation of editorial and sponsorship messages. But otherwise, they have been shortened and simplified. Non-promotional references to the sponsor in the programme may become possible, if editorially justified. Current rules on using sponsors' products or extracts from their advertising campaigns being used in credits will go, along with restrictions on the descriptions of sponsors' relationships with programmes. Ofcom proposes a "significant toughening" of the rules linking alcohol with anti-social behaviour, sexual content, irresponsible handling and serving of alcohol, and most of all, 'youth appeal'. One proposed rule would forbid the presentation of alcoholic drinks as "other than a mature, adult pleasure". Another would outlaw advertising tapping into youth culture through the use of personalities, sport or music. And beware. "Little leeway or benefit of the doubt" will be given in the interpretation of these rules. As a result of research just published, Ofcom has ruled out a total ban on food advertising to children, but has indicated a need for "tightening of specific rules". These could include making ads less attractive to young children by avoiding the use of cartoon characters or celebrities, targeted scheduling restrictions and provision of better information about nutritional content of the

	products advertised.
Comments:	Consultation periods remain open, so go consult at www.ofcom.org.uk.

6. Criminal Law	
Topic:	Flyposting
Who:	Camden Council
When:	August 2004
What Happened:	Camden Council has shone the criminal spotlight on some not so usual suspects: advertising agency and record company directors. The charge? Signing-off flyposting campaigns. No other medium matches the urban cool and street credibility associated with flyposting. It's also inexpensive, saving some record labels millions by not having to pay for advertising space. It's almost become mainstream, but flyposting is illegal and Camden has stumbled across a novel fly-swat. Local authorities have traditionally used powers under the Town & Country Planning Act to fine offenders up to £1,000. But given the sums involved, that's easily absorbed and the threat ignored. Cue the Anti-Social Behaviour Order (*aka* 'ASBO'), usually reserved for errant kids with a penchant for spray cans and vandalism. A person who breaches an ASBO could be looking at a 5-year stretch and a fine. Offenders causing harassment, alarm or distress. Their appropriateness in this context is therefore open to question. The threat, however, appears to be working. Faced with a court summons, the executives at one record company have already given undertakings not to authorise flyposting again. In late July, the Commons Environmental Audit Committee endorsed these tougher tactics and called for stiffer fines and streamlined procedures for prosecution.
Comments:	In September, Camden Council succeeded in obtaining an ASBO against a guerrilla marketing agency and a number of record producers have since given undertakings to cease their flyposting activities. It seems that the writing is on the wall for flyposting.

7. UK Regulations	
Topic:	Consumer Credit Advertising
Regulation:	Consumer Credit (Advertisement) Regulations 2004
When:	31 October 2004
What Happened:	The introduction of the Consumer Credit (Advertisement) Regulations 2004 on 31st October will see the archaic current rules swept away. Goodbye confusing distinctions between 'simple', 'intermediate' and 'full' credit ads. Hello information. Lots of information. Any reference to repayments of credit, payments or charges payable under the transaction advertised, or the total amount payable by the debtor, trigger a requirement for information about the APR, the amount of credit available, deposit or advance payment requirements and the cash price.

	A postal address and the usual security notices (e.g. "Your Home May Be Repossessed etc") must be included in all non-broadcast credit ads. The APR must be given greater prominence than any other credit information – at least one and a half times the size of any other credit information. The rest of the specified information must be given equal prominence and shown "together as a whole". There is also a new general requirement that every credit ad must use plain and intelligible language, be easily legible and specify the name of the advertiser.
Comments:	Whether all this will leave the poor advertiser better or worse off, and the consumer more or less confused, is difficult to tell. It's unlikely to lead to a major reduction in small (but intelligible and legible) print, but at least it will no longer be necessary to guess whether your credit advertising is simple, intermediate or full.

8. Legislation	
Topic:	Price Marking
Regulation:	Price Marking Order 2004 (S.I. 2004 No.102)
When:	22 July 2004
What Happened:	From 22 July 2004, retailers and advertisers can take comfort from some welcome clarification to price marking rules set out in the Price Marking Order 2004. The old rules meant that, in theory, retailers had to mark the reduced price next to every sale item in their shop (e.g. "Was £1, now 50p"). The increasingly popular practice amongst retailers of using general notices referring to reduced items (e.g. "Everything 50% off") was technically unlawful. That is now permitted, provided that the details of any reduction are "prominently displayed, unambiguous, easily identifiable and clearly legible". So there's still something for those keen trading standards officers to get their teeth into. The new rules also bring on-line advertisers into line with their off-line colleagues. The price of items in "distance advertisements" must be given in proximity to a visual or written description of the product on sale. So what on earth are "distance advertisements"? The Order does not say, but presumably it is advertisements on a trader's website or in a catalogue, for example, intended to encourage customers to enter into distance contracts. Expensive jewellery and watches costing more than £3,000 and displayed in shop windows do not need to have a price shown next to the item. This exemption was included partly due to concerns over the safety of sales staff and partly to assist shops getting insurance cover. In other words, if you have to ask you can't afford it.
Comments:	The new rules help to bridge the divide between law and practice and between the high street and the internet just in time for Christmas. So the next time a trading standards officer enters your shop, he may just be looking for a bargain.

9. Self Regulation	
Topic:	Broadcast advertising
Who:	Ofcom
When:	17 May 2004
What Happened:	After a pregnant pause, Ofcom finally delivered its decision concerning the future regulation of broadcast advertising on 17 May 2004. Ofcom has always envisaged contracting out the regulation of broadcast advertising to a self-regulatory body. The seductive simplicity of the proposal was that it effectively mirrored the existing structures for the regulation of non-broadcast advertising, which have been tried and tested for over 40 years. The Broadcast Committee of Advertising Practice (BCAP) would be responsible for drafting and reviewing the appropriate codes, the Advertising Standards Authority (Broadcasting) for enforcing them, and the Broadcast Advertising Standards Board of Finance responsible for raising the levy of 0.1% on media airtime to finance it all. Ofcom, meanwhile, would retain responsibility for monitoring their effectiveness, with "backstop powers" enabling it to bring regulation back in house if the new system failed. The drive for consistency across media to reflect the single Advertising Standards Authority (ASA) portal may also result in stricter application of the rules, particularly as both Ofcom and the ASA acknowledge the greater power of broadcast media relative to print and press media. Historically, the ASA has sometimes appeared to interpret equivalent rules more strictly than their opposite numbers at the ITC and BACC, so perhaps we should expect an overall raising of the requirements for substantiation and accuracy.
Comments:	One of the most interesting developments is the introduction of the Advertising Advisory Committee (AAC), intended to make the self-regulatory system more accountable and transparent by providing for input by between four and six lay individuals, tasked with the responsibility of representing the interests of consumers. Will the AAC counteract the vested interests of advertisers? Will it operate as the consumers' voice of reason? Or will it be the advance party of lunatics, come to take over the asylum?