Why this matters

there is little doubt that similar activities outside this sector would potentially attract regulatory attention.

What has to be in doubt, however, is whether the ASA-enforced CAP Code as presently drawn would extend to activity such as arranging for a search engine to display links to, for instance, websites advertising Hummer motor vehicles when the words ‘environmentally friendly cars’ are keyed in. Perhaps this will change as and when the CAP Code extends more fully into online advertising.

Lee Rubin, Osborne Clarke, London
lee.rubin@osborneclarke.com

Prices

Jenny Reid

Journal of Direct, Data and Digital Marketing Practice (2010) **11**, 244–245.
doi:10.1057/dddmp.2009.39

Who: ASA and Tesco Stores Ltd (‘Tesco’)

Where: United Kingdom

When: 16 September 2009

Law stated as at: 30 September 2009

The Advertising Standards Authority (ASA) recently published an adjudication relating to a complaint made by Alliance Boots (‘Boots’) regarding an advert published in the national press on behalf of Tesco. The advert, with the headline ‘Fill Your Boots At Tesco’, contained photographs of various products with the prices at which they were sold at Tesco and at Boots, claiming ‘All This £5.99 Cheaper Than Boots’.

What happened

One of the items featured was a pack of Gillette MACH3 razor blades that the advert claimed cost £11.24 at Boots and £9.76 at Tesco. Boots complained that the Boots price quoted for the product was only an online price and that the razor blades were on sale for £9.60 in Boots stores. They said that the advert was misleading as it did not make it clear that the prices quoted did not apply in-store. The advert did, however, contain small print stating ‘Prices checked online at Boots.com on 25/03/09’ and ‘Also available at www.tesco.com’.

Tesco said that they had been comparing their online and in-store prices (which were the same) with Boots’ online prices since April 2008 and they believed that Boots’ online and in-store prices did generally match, unless there was an exclusive promotion online.

Tesco suggested that they could have added a disclaimer to the advert stating that Boots’ online and in-store prices should match, subject to promotions and errors, but added that they felt this would be disproportionate.

‘Disproportionate to include a disclaimer’ say Tesco

Why this matters

The ASA did not uphold Boots' complaint. They said that the comparison was fair as it related to the online prices for both sellers and they understood why Tesco felt it was reasonable to compare their prices against Boots' online prices alone. The ASA pointed out that Tesco had come across instances where the Boots online prices were cheaper than the in-store prices, with the razor blades being the only instance where they have found the online price to be more expensive than the in-store price. Boots were not willing to confirm whether the price difference was an error, and they did not provide details to the ASA as to how often the online and in-store prices differed.

The ASA found that Tesco were justified in comparing Boots' online price with Tesco's online/in-store price. Details of the prices used by Tesco to make the comparison were contained in the small print of the advert and as a result the ASA did not feel that this would be regarded as misleading to consumers. They further stated that Tesco would not be required to insert the suggested disclaimer into their advert.

It seems that, as long as the prices quoted in such comparative adverts were accurate as at the date and location/sales channel detailed in the small print, the advertiser will not be obliged to check that their competitor's price of the products for every sales channel is the same or to detail the differences.

Jenny Reid, Osborne Clarke, London
jenny.reid@osborneclarke.com

Distance selling

Konstantin Ewald

Journal of Direct, Data and Digital Marketing Practice (2010) **11**, 245–246.
doi:10.1057/dddmp.2009.40

Who: European Court of Justice (ECJ) — Pia Messner (a consumer)
v. Stefan Krueger (an online merchant) (Case C-489/07)

Where: European Court of Justice, Luxembourg

When: 3 September 2009

Law stated as at: 30 September 2009

ECJ clampdown on distance sellers' cancellation charges

Article 6 of the Distance Selling Directive (Directive 97/7/EC) requires that consumers purchasing goods via distance selling must have a right to withdraw from such contracts and return the goods against reimbursement of the purchase price within 7 days of receipt of the goods.