

## Annex A

### History of ad regulation

#### 1961 onwards - Protecting consumers, testing claims

When commercial TV started broadcasting in 1955, the advertisements were controlled by legislation. This was the first time that advertisements – and the claims they made - were subject to any form of formal regulation. When commercial radio was launched in 1973, they too were subject to statutory control.

In 1961, the Advertising Association, following discussions with other industry associations, agreed that it was important that advertisements were welcomed and trusted by consumers in non-broadcast media too.

As a result, the industry (agencies, media and advertisers) came together to form the Committee of Advertising Practice (CAP) and produced the first edition of the British Code of Advertising Practice. The industry's actions meant that an official report on Consumer Protection by the Molony Committee, published that same year, rejected the case for an American-style Federal Trade Commission to regulate advertising by statute:

*"We are satisfied that the wider problem of advertising ought to be, and can be, tackled by effectively applied voluntary controls. We stress, however, that our conclusion depends on the satisfactory working of the new scheme, and in particular on the continued quality and independence of the Authority at its pinnacle."*

#### Molony Committee

In 1962, CAP established the ASA as the independent adjudicator under the newly created Code. The Authority was set up to supervise the working of the new self-regulatory system in the public interest.

#### 1974 onwards - Introduction of the levy

In 1973, the Minister for Consumer Protection, Shirley Williams, criticised the system for not being well-known enough.

In response, the industry set up the Advertising Standards Board of Finance (Asbof) in 1974 to provide sufficient and secure funding for the system through a levy of 0.1% on advertising space costs.

Because the ASA is not responsible for collecting the levy itself, its independence is assured. The levy also provides enough funding for the ASA to promote itself to the public.

#### 1988 onwards - Legal backstop

In 1988, the introduction of the Control of Misleading Advertisements Regulations provided the ASA with legal backing from the Office of Fair Trading (OFT). These

regulations enabled the ASA, for the first time, to refer advertisers who made persistent misleading claims and refused to co-operate with the self-regulatory system to the OFT for legal action.

The ASA still has the ability to refer advertisers to the OFT for unfair or misleading advertising, but today we would refer under the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008, which replaced the Control of Misleading Advertisements Regulations 1988.

Referral to the OFT remains a last resort and is rarely needed: the overwhelming majority of advertisers work within the system.

### **2004 onwards - Becoming the one-stop shop**

In 2004, after more than forty years of successful self-regulation of non-broadcast ads, the ASA/CAP system assumed responsibility for TV and radio ads.

The newly-formed communications regulator, Ofcom, took the decision, in a move supported by Parliament, to contract-out responsibility for broadcast (TV and radio) advertising to the ASA system in a co-regulatory partnership. The co-regulatory agreement created for the first time in the UK a single regulator for advertising – a one-stop shop for advertising complaints.

To create the one-stop shop, broadcast equivalents of the non-broadcast institutions (ASA/ CAP/ Asbof) were established. A new industry committee, the Broadcast Committee of Advertising Practice, was created to write and maintain the Broadcast Advertising Codes. The Broadcast Advertising Standards Board of Finance (Basbof) was established to collect the 0.1% levy on broadcast advertising space costs and an ASA (Broadcast) was launched to administer the Codes.

Although there are various constituent parts, the system runs as a single advertising regulator. This is particularly important for members of the public who want a complaints system that's easy to navigate.

From under 100 complaints in its first year of operation, the ASA now receives around 26,000 complaints a year. This is mainly due to the fact that the one-stop shop ASA is well known; has a much broader remit and it is easier to complain.

### **Regulation today - Advertising under control**

More than 45 years on and advertising in the UK overwhelmingly complies with the Codes. Our compliance surveys regularly reveal that more than 97% of ads are in line with the Advertising Codes.

The vast majority of TV and radio ads are pre-cleared before they go on air. There is also lots of free help and guidance available to non-broadcast advertisers publishing the many millions of non-broadcast ads in the UK each year in the form of the Copy Advice team who offer free, independent and expert advice on how to avoid falling foul of the rules.

And because the industry is committed to making self-regulation effective, advertisements that break the Codes can be withdrawn swiftly without needing to resort to legal action. A range of sanctions can be brought to bear. For example, advertisers who continue to flout the rules can be denied access to advertising media space.

Today's self-regulatory system has come a long way since 1962, winning the confidence of consumers, industry and government along the way.

### **2010 onwards - What next for advertising self-regulation?**

Over the years, the advertising self-regulatory system has responded to changes in society and media. The system is continuing to develop based on the enduring principles that ads should not mislead, harm or offend.

A major challenge for the system is to maintain standards in fast-developing new media as effectively as in established media.

### **Video-on-demand**

In December 2009, following the UK government's decision that new rules relating to video-on-demand (VOD) services should be delivered under a co-regulatory framework, the ASA entered into a co-regulatory partnership with Ofcom to regulate advertisements accompanying VOD services. With the rise of VOD consumers are able to watch programmes at a time of their own choosing, and it was necessary that these new services be subject to the same standards as 'linear' programming on TV.

In May 2010 the ASA upheld its first complaint about an ad accompanying VOD content, judging that the ad in question had not been appropriately targeted around a suitable programme.

As with broadcast advertising, broadcasters who continually air ads that break the Codes can be referred to Ofcom, which has the power to fine them or even revoke their license.

### **Digital Media**

In 1995 the self-regulation of the internet began as the ASA's remit was extended to cover advertisements in 'non-broadcast electronic media', predominantly in 'paid-for space' such as banner and display ads and paid-for (sponsored) search.

Such has been the growth in online content and usage that in 2007 the Internet became the second most complained about medium behind television - drawing approximately three thousand complaints per year - and has remained so ever since. However, nearly two-thirds of these complaints fell outside of the ASA's remit as they related to claims made on companies' own websites.

To address this regulatory gap and to broaden the existing protections for consumers and children online, Industry recommended that the ASA extend its remit in digital media to cover marketing communications on companies' own websites.

In September 2010 the Committee of Advertising Practice (CAP), the body responsible for writing the CAP Code, responded to this formal request by announcing the extension of the ASA's online remit to cover advertisers own marketing communications on their own websites and in other non-paid-for space under their control, such as social networking sites like Facebook and Twitter. Journalistic and editorial content and material related to causes and ideas - except those that are direct solicitations of donations for fund-raising - are excluded from the remit.

The extended remit came into force on 1 March 2011, following a six month period of grace to allow the ASA and CAP to conduct training work to raise awareness and educate business on the requirements of the CAP Code.

### **Process review**

In October 2009 the ASA, with the help of independent consultants, began a review into the way both it and the Committee of Advertising Practice (CAP) performed its core executive functions.

The review identified where a number of improvements can be made which will benefit both consumers and advertisers, and the ASA seeks to publish its final response to the review in 2011.

### **Conclusion**

Few of those present at the first meeting of the fledgling Authority in 1962 could have predicted the changes ahead. Today, over 30 million press ads alone are published in the UK each year. Consumers are savvy and enthusiastic recipients of advertising, who enjoy its entertainment value and make use of the information it provides. The flexibility of the system to respond to changes in society and technology means self and co-regulation continues to be the best and most effective way to secure high standards in advertising – both for business and consumers.

### **Timeline**

#### **1950s**

1954

The Television Act establishes commercial television and sets up the Independent Television Authority (ITA) as the regulator.

1955

Independent television begins, in the London area, with a live transmission from the Guildhall.

The first commercial for Gibbs SR toothpaste is screened

## 1960s

1961

The Council of the Advertising Association decides to establish a self-regulatory system for non-broadcast advertising.

The Committee of Advertising Practice (CAP) is established

The first edition of the CAP Code is published

The ASA incorporated under the Companies Act 1948 (22 August)

1962

The ASA holds its inaugural meeting (24 September)

1964

Spot checks begin on ads for slimming diets, hair treatments, knitting and sewing machines, vitamins, cigarettes, beauty treatments, gin, cocktails, vodka and health food drinks.

1965

Guidance is given to the travel industry to make sure that holidaymakers do not suffer inconvenience, disappointment or financial loss as a result of advertisements.

Cigarette advertising is banned on television (cigars and loose tobacco can continue to be advertised until the early 1990s)

1966

Restrictions on advertising pregnancy testing kits are lifted and the ASA advises publishers they can use their discretion subject to safety conditions.

1968

Trade Descriptions Act gains Royal Assent. Government expresses its hope that the self regulatory system would continue to operate alongside the statutory system.

## 1970s

1970

A CAP working group looks at how to distinguish ads from editorial. New ruling and guidance issued: ads must be clearly and immediately recognisable as such

1972

The ITA becomes the Independent Broadcasting Authority (IBA)

1973

ASA publishes summaries of its rulings for the first time – but only persistent offenders are named

Commercial radio launches in the UK (LBC begins broadcasting in October 1973)

1974

British Code of Sales Promotion published by CAP.

Secretary of State for Prices and Consumer Protection, Shirley Williams, criticises the ASA for not being sufficiently well-known by the public.

1975

The Advertising Standards Board of Finance Ltd (ASBOF) is set up to operate the levy arrangements.

The ASA launches its first advertising campaign to inform the public, industry and government of its existence and role and to invite them to refer specific complaints.

New Codes for alcoholic drink and cigarette advertising introduced, along with pre-vetting for the latter

1978

Director of Fair Trading, Gordon Borrie, calls for speedier response times and more effective compliance action in his report on the ASA.

**1980s**

1981

Adjudications into competitive complaints are published.

BCC (Broadcasting Complaints Commission) established

BARB (British Audience Research Bureau) created

1982

Research into women's attitudes to ads finds that women most dislike images of sexual suggestiveness and stereotypes in advertising.

1984

Misleading Advertisements Directive adopted, although this doesn't become law until 1988. Self-regulation is the 'established means' of implementing the directive.

1987

The Hungerford shooting leads to amendments of the Codes to include new rules on violence and anti-social behaviour.

1988

The Control of Misleading Advertisement Regulations add a legal backstop to the self-regulatory sanctions.

1989

The first referral to the Office of Fair Trading results in an injunction to prevent misleading slimming claims for Speedslim.

**1990s**

1990

ASA agrees to oversee new sections of the Codes that apply to list and database management.

The Broadcasting Act sets up the Independent Television Commission (ITC)

1991

The ASA co-founds the European Advertising Standards Alliance with 11 other countries.

Complaints top 10,000 for the first time.

1995

Advertisements on the Internet come under the Codes.

1998

The Commission for Racial Equality becomes the first advertiser to be subject to poster pre-vetting.

1999

The 10th edition of the Codes removes party political advertising from the Codes' remit (in order to comply with the new Human Rights Act 1998).

**2000s**

2000

Yves St. Laurent's Opium ad featuring model Sophie Dahl attracts more complaints than any other ad for five years.

2001

ASA adjudications are published weekly on the Internet.

2003

The Tobacco Advertising and Promotion Act 2002 came into force, prohibiting the advertising and promotion of tobacco products. It does not, however, cover ads for rolling papers or filters and it does permit certain tobacco advertising at point of sale.

The 11th edition of the Code comes into force, renamed The British Code of Advertising, Sales Promotion and Direct Marketing or the CAP Code.

2004

The new broadcast regulator Ofcom contracts-out the regulation of broadcast advertising regulation to the advertising self-regulatory system. The ASA becomes the one-stop shop for advertising complaints.

2005

Kentucky Fried Chicken's TV ad that showed people singing with their mouths full becomes the most complained-about ad ever. The ASA did not uphold the 1,671 complaints that the ad could encourage bad manners amongst children.

The TV and non-broadcast alcohol rules are significantly tightened in response to public concern about irresponsible drinking.

2007

New rules are introduced into all the Advertising Codes to regulate the advertising of foods and soft drinks to children.

The Gambling Act 2005 comes into force. New rules are introduced for gambling advertisers.

CAP and BCAP commence the first ever concurrent review of all the Advertising Codes.

The internet becomes the second most complained about medium for the first time.

2008

The Control of Misleading Advertisements Regulations (and many other pieces of consumer protection legislation such as the Trades Descriptions Act 1968) are repealed and replaced with the Consumer Protection from Unfair Trading Regulations and the Business Protection from Misleading Marketing Regulations. The ASA's role as the 'established means' remains unchanged.

2009

The Christian Party's 'There definitely is a God. So join the Christian Party and enjoy your life' became the most complained-about non-broadcast ad ever, attracting 1,204 complaints. The ad was a riposte to the British Humanist Association's 'There is probably no god, now stop worrying and enjoy your life', which attracted 391 complaints.

The ASA enters into a co-regulatory partnership with Ofcom to regulate advertisements accompanying VOD services.

2010

The new CAP Code comes into effect.

The first edition of the BCAP Code comes into force, replacing the four separate BCAP Codes for broadcast advertising.

2011

The ASA's digital remit is extended to include marketing communications on companies' own websites and in other non-paid-for space under their own control.