Compliance Report

Direct Marketing Survey 2001

CONTENTS

		Page
1.	Summary	3
2.	Introduction	4
3.	Methodology	5
4.	Findings	6
	4.1 Overall compliance rate	6
	4.2 The 1996 survey	6
	4.3 By month	7
	4.4 By sector	7
	4.5 Overseas mailings	11
5.	Complaints	12
6.	Follow Up Action	14
7.	Conclusions	15
Appendix 1 – Mailings from Overseas		16

1. SUMMARY

This survey has been undertaken to determine the compliance of direct marketing material with the British Codes of Advertising and Sales Promotion (the Codes).

A representative sample of 678 mailings was assessed over seven months. The overall compliance rate was 91%. Excluding duplicates, the number of mailings totalled 533 and the compliance rate was 89.5%.

Of the 65 breaches, 60 were serious. Most related to misleading copy. The remaining five breaches were technical, for example not giving sufficient prominence to an important condition in a sales promotion.

Three sectors contained a high proportion of problematic mailings: household, health and leisure. The problems with the mailings in the household and health sectors mostly concerned exaggerated claims for mail order products. The problems with the mailings in the leisure sector mostly concerned prize draw and lottery promotions that suggested that recipients had won a prize when that was not true.

Nine mailings in the sample originated outside the UK and all of them broke the Codes. They represented 14% of the total breaches. The ASA and CAP have been working closely with the European Advertising Standards Alliance (EASA), overseas regulators, the Royal Mail, trading standards officers, government departments, the Office of Fair Trading and relevant trade associations to stop misleading mailings being sent to UK consumers from overseas. That work has achieved some success, but the ASA, CAP and other interested parties experience particular difficulties in enforcing the Codes against companies based overseas.

All advertisers that broke the Codes and had not already been contacted by the ASA or CAP were told to amend or withdraw their mailings.

The ASA and CAP will undertake another direct marketing survey, with a comparable methodology, in three years time to monitor trends in compliance.

The ASA and CAP have also produced a fact sheet, “Mailings from Overseas” (see Appendix 1), both to explain how it tackles problematic mailings that originate outside the UK and to warn consumers to treat those mailings with the utmost caution.

2. INTRODUCTION

2.1 Background

The Advertising Standards Authority is the independent body that endorses and administers the British Codes of Advertising and Sales Promotion. It promotes and enforces high standards in advertisements, investigates complaints, identifies and resolves problems through its own research, ensures that the system operates in the public interest and acts as the channel of communication with those who have an interest in advertising standards. The Committee of Advertising Practice (CAP) writes, updates and enforces the Codes and co-ordinates the activities of its members to achieve the highest degree of compliance with the Codes.

The Compliance team works to ensure that advertisers and promoters place advertising that conforms to the Codes. The team follows up ASA adjudications, regularly monitors various media and takes immediate action to ensure the removal of obviously problematic advertisements. It is responsible for communicating ASA rulings with industry-wide ramifications to relevant sectors to ensure a level playing field. The team also conducts surveys to assess the compliance of advertising in specific media categories and product areas. The aim of this research is to assess levels of Code compliance, to identify advertising trends and to anticipate areas for CAP and ASA action and guidance.

2.2 The rules

The Codes lay down the criteria for good advertising, of which the most important are that all advertisements should be legal, decent, honest and truthful. Advertisements should also be socially responsible and conform to the accepted principles of fair trading. Specific rules apply to areas of note such as alcoholic drinks, children, motoring, slimming products and distance selling.

The Codes' rules apply to all non-broadcast media, ranging from advertisements in the national press to on pack sales promotions and from roadside hoardings to internet banner advertising. Two aspects of direct marketing are covered: the content of mailings and the way in which personal information is used.

3. METHODOLOGY

The survey was conducted using a representative sample of direct mailings and circulars distributed between September 2000 and March 2001 inclusive. The sample was selected by AC Nielsen MMS, a media monitoring organisation, from the mailings received by their representative panel of 7,500 households around the UK. AC Nielsen MMS weighted the sample to reflect the proportion of mailings received by their panel in each product sector every month. The sample also took account of the volume of each mailing issued and included duplicates of the highest-volume mailings.

Approximately one hundred mailings were selected each month; a total of 678 mailings across all product sectors, of which 145 were duplicates. The Compliance team assessed each of the mailings to determine if there was a breach of the Codes. The breaches fell into two distinct categories; technical breaches consisting of minor errors or oversights, for example an advertiser including only a PO Box address, not their full address, in their advertising for mail order products; and serious breaches where the fundamental approach of the mailing broke the Codes, e.g. a mailing that implied recipients had won a prize when they had merely got an opportunity to enter a prize draw.

Where a breach was identified, the advertisers were contacted and told how to change their advertising to bring it in line with the Codes' requirements. They were asked for an assurance that the appropriate changes would be made.

For the purposes of this survey, direct mailings were those personally addressed to the recipient and circulars were those addressed to "The Occupier" with the recipient's address. Leaflets and unaddressed mailings were not included in the sample assessed in this survey.

4. FINDINGS

4.1 Overall compliance rate

The main objective of the survey was to establish the proportion of mailings that complied with the Codes.

65 of 678 mailings in the sample broke the Codes – an overall compliance rate of 91%.

If duplicates are excluded, 56 of 533 mailings broke the Codes – a compliance rate of 89.5%.

If technical breaches are excluded, 60 of 678 mailings broke the Codes – a compliance rate of 91.1%.

If technical breaches and duplicates are excluded, 53 of 533 mailings broke the Codes – a compliance rate of 90.1%.

4.2 The 1996 survey

The last direct marketing survey the ASA carried out was in 1996. 15 of the 100 mailings broke the Codes – an overall compliance rate of 85%.

There were no duplicates in the sample assessed in 1996.

Of the 15 breaches in the 1996 sample, 11 were technical. Excluding duplicates, 96% of the 1996 sample complied with the Codes.

The methodologies of the 1996 and 2001 surveys differed substantially. The 1996 sample consisted of 100 mailings selected in the first two weeks of January. The 2001 survey assessed almost 700 mailings distributed over a seven month period.

Furthermore, the 1996 survey included all literature pushed through the letterbox, including unaddressed mailings and leaflets. The 2001 survey included only mailings either personally addressed to the recipient or those addressed to “The Occupier” at a specified address.

Because of the differences in sample size and methodology, it is not appropriate to compare the results of the 1996 and 2001 surveys.

4.3 By month

Analysing the sample by month, the highest breach rate was in October (accounting for 20% of total breaches) followed by January (18.5%).

	Sept	Oct	Nov	Dec	Jan	Feb	Mar
No. of mailings	113	96	96	95	108	97	73
No. of mailings excluding duplicates	101	79	72	78	78	72	53
No. of serious breaches	9	13	11	9	9	5	4
No. of technical breaches	1	0	0	1	3	0	0
Total breach rate each month %	9	14	11	11	11	5	5
Total breach rate as % of total breaches	15.4	20	16.9	15.4	18.5	7.7	6.2

4.4 By sector

Ignoring those sectors with very few mailings, some sectors fared much better than others. Four sectors contained no breaches at all, i.e. clothing, electrical, holidays & travel and non-commercial, even though two of those sectors (clothing and non-commercial) appeared relatively frequently in the sample. The highest number of mailings in a sector was financial with 230 and yet it suffered only one breach.

At the other end of the spectrum, the three sectors with the highest breach rates as a percentage of total breaches were household, health and leisure.

SECTOR	No. of mailings	No. of serious breaches	No. of technical breaches	Total no. of breaches	Breach rate within sector %	As % of total breaches
Business	2	1	0	1	50	2
Clothing	38	0	0	0	0	0
Computers & telecomms	21	2	3	5	24	8
Electrical goods	2	0	0	0	0	0
Employment	1	1	0	1	100	2
Financial	230	0	1	1	0.4	2
Food & drink	25	4	0	4	16	6
Health	32	14	0	14	44	21
Holidays & travel	20	0	0	0	0	0
Household	40	11	0	11	28	17
Leisure	76	14	1	15	20	23
Motoring	13	1	0	1	8	1
Non-commercial	67	0	0	0	0	0
Publishing	56	4	0	4	7	6
Retail	43	6	0	6	14	9
Utilities	12	2	0	2	17	3
TOTAL	**678**	**60**	**5**	**65**	**10**	**100**

Household

The number of household mailings in the monthly samples fluctuated over the seven month period but the level of breaches was fairly constant except in the month of October. It is likely that the high breach rate in October was a result of advertisers promoting their products to the pre-Christmas market.

All of the breaches were serious and all but one consisted of misleading and unsubstantiated claims for household products offered by mail order. One advertiser claimed its pest repellent would deter rodents from a specific area – a claim for which neither the ASA nor CAP has seen convincing supporting evidence. Another advertiser said its product would remove limescale from hard water, but again satisfactory evidence was lacking.

	Sept	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**
No. of mailings	5	9	6	4	9	5	2
No. of breaches	1	5	1	0	2	1	1
Breach rate %	20	56	17	0	22	20	50

Health

Health is a sector that traditionally causes problems in the press as well as in the direct marketing industry. Advertisers in this sector are required to hold rigorous evidence to support “new” or “breakthrough” claims and, without this, cannot state or imply that their products have a beneficial effect.

Most of the breaches in the health sector were due to misleading or unsubstantiated claims. Problematic claims for slimming products featured highly, as did unsubstantiated claims for vitamins and supplements. Alternative therapies were represented; three mailings misleadingly claimed that magnetic products would benefit the user’s health despite magnetic therapy not having been proved to be effective.

The distribution of mailings over the seven month period was fairly consistent and the proportion of breaches was high, particularly in January. This is perhaps due to the seasonal proliferation of health and slimming products, with unsupported efficacy claims, aimed at consumers trying to get over their Christmas excesses.

	Sept	Oct	Nov	Dec	Jan	Feb	Mar
No. of mailings	4	5	4	6	5	6	2
No. of breaches	2	2	3	1	4	2	0
Breach rate %	50	40	75	17	80	34	0

Leisure

The sector with the worst compliance rate as a percentage of total mailings was the leisure sector with 23.1%. One of the breaches was a minor technical breach but the remaining 14 were serious. Eight of the 14 serious breaches in the sample were mailings promoting prize draws that suggested misleadingly that recipients had won a major prize and asked them to send money in order to claim that prize.

	Sept	Oct	Nov	Dec	Jan	Feb	Mar
No. of mailings	11	10	5	13	14	11	12
No. of breaches	3	2	2	3	1	2	2
Breach rate %	27	20	40	23	7	18	17

4.6 Overseas mailings

Health and leisure have already been identified as the two worst performing sectors in the sample. Within the sample for each of those sectors was a proportion of mailings that originated from outside the UK.

In the health sector, three of the 14 serious breaches were mailings that originated overseas. In the leisure sector, six of the 14 serious breaches concerned overseas mailings that suggested misleadingly that recipients had won a major prize and asked them to send money to claim that prize.

All nine mailings in the sample that originated outside the UK broke the Codes. They represented 14% of the total breaches.

See “Mailings from Overseas” in Appendix 1 for an explanation of how the ASA and CAP tackle advertisers who send misleading mailings to UK consumers from overseas.

5. COMPLAINTS

The Compliance team analysed the results of the survey sample and the complaints received by the ASA about the content of mailings over the same period of time. The team compared the proportions of mailings appearing in each sector and the breach rates. The survey sample contained 678 mailings of which 65 broke the Codes' requirements (including duplicates) This showed an overall compliance rate of 91%. Over the same period of time, the ASA received 644 complaints about the content of direct mailings of which 63 broke the Codes; a compliance rate of 90%. The similarity between the number of complaints/mailings and the number of breaches was a coincidence.

	SURVEY SAMPLE		COMPLAINTS	
SECTOR	**As % of total mailings**	**As % of total breaches**	**As % of total mailings**	**As % of total breaches**
Business	0.3	1.5	5.0	6.4
Clothing	5.6	-	0.6	-
Computers & telecomms	3.0	7.7	5.0	3.2
Electrical goods	0.3	-	0.1	-
Employment	0.1	1.5	1.6	4.8
Financial	34.0	1.5	6.9	12.6
Food & drink	3.7	6.2	0.3	-
Health	4.7	21.5	7.2	7.9
Holidays & travel	3.0	-	1.6	3.2
Household	5.9	13.8	1.4	1.6
Leisure	11.2	23.1	57.6	38.0
Motoring	1.9	1.5	2.3	9.5
Non-commercial	9.9	0	3.6	1.6
Publishing	8.3	6.2	4	6.4
Retail	6.3	9.2	0.3	1.6
Utilities	1.8	6.2	2.5	3.2
TOTAL	**100**	**100**	**100**	**100**

The Compliance team expected to find a higher proportion of breaches in the direct mailings that were the subject of complaints to the ASA because those mailings were likely to be more contentious. That is not, however, borne out by the figures.

When comparing the sector breach rate in the survey sample with the sector breach rate from complaints, the main similarity is that, in both samples, leisure scored the highest proportion of breaches – 23.1% and 38%. Clothing and electrical goods performed particularly well with no breaches in either sample.

The main differences are that far more complaints led to breaches in the financial sector than had been apparent in the survey sample and far fewer complaints led to breaches in the health sector than had been apparent in the survey sample.

6. FOLLOW UP ACTION

Although there were 56 mailings that broke the Codes, the Compliance team only had to contact 27 of the advertisers responsible to ask for their assurance to either amend their mailings or contact the CAP Copy Advice team for pre-publication advice. The other mailings had already been dealt with, either in the course of an ASA investigation or as a separate compliance issue.

The results were encouraging: of the 27 advertisers contacted, only two failed to respond with an appropriate assurance. In both those cases, Ad Alerts were issued to the direct marketing industry and the Royal Mail asking them to contact the CAP Copy Advice team before handling or distributing the mailings again.

7. CONCLUSIONS

Although the overall compliance rate in the direct marketing industry is encouraging, compliance rates in certain sectors remain poor. The ASA and CAP are working hard to communicate the Codes' requirements to direct marketers, particularly in the household, health and leisure sectors, and will continue to monitor those areas closely.

All advertisers that broke the Codes and had not already been contacted by the ASA or CAP were told to amend or withdraw their mailings.

The ASA and CAP will undertake another direct marketing survey, with a comparable methodology, in three years time to monitor trends in compliance.

The ASA and CAP have produced a fact sheet, "Mailings from Overseas" (see Addendum 1), both to explain how it tackles problematic mailings that originate outside the UK and to warn consumers to treat those mailings with the utmost caution.

The ASA and CAP will continue to reconnect with the industry by visiting direct marketing agencies and explaining how self-regulation works.

In 2000, CAP produced a video, How to Get Ahead in Direct Marketing, for new graduates entering the direct marketing industry. The video introduces industry staff to the Codes and the body that writes and enforces them. It explains how to get advice from the CAP Copy Advice team and examines what happens if the ASA investigates a complaint.

The ASA and CAP will continue to liaise with the European Advertising Standards Alliance, the Royal Mail, the Direct Marketing Association, the Office of Fair Trading and others with an interest in high standards in direct marketing to ensure consumers are protected and those standards are maintained.

APPENDIX 1
MAILINGS FROM OVERSEAS

Background

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the British Codes of Advertising and Sales Promotion (the Codes) that apply to all UK non-broadcast advertisements and sales promotions. The Committee of Advertising Practice (CAP) is the industry body that writes and enforces the Codes.

The ASA is a founder member of the European Advertising Standards Alliance (EASA). EASA co-ordinates a cross-border complaints system that allows consumers to complain to the self-regulatory organisation in their country about advertisements that appear in media that are principally circulated, or originate, in another country.

Problem mailings

The number of mailings sent to UK consumers by advertisers based outside the UK has increased significantly in the last few years. The ASA's Direct Marketing Survey 1996 contained no mailings that originated outside the UK. By contrast, the ASA's Direct Marketing Survey 2001 contained nine mailings that originated outside the UK. All nine broke the Codes.

The content of overseas mailings often falls into the following categories:

- health, beauty and slimming products for which "miracle" claims are made
- clairvoyants, lucky charms or other superstitions for which unproven claims are made exploiting the vulnerability of those who may be down on their luck
- promotions that suggest misleadingly that recipients have won a major prize and ask recipients to send money to claim that prize

Consumers who respond to such overseas mailings are very likely to receive numerous further mailings.

Jurisdiction

The Codes cover non-broadcast UK advertisements (including direct mailings). The question of jurisdiction is less clear if mailings originate outside the UK, even if they are targeted exclusively at UK consumers.

Mailings that originate in an EASA member country

If mailings originate in a country that holds membership of EASA, the ASA and CAP will ask the appropriate self-regulatory organisation in the country of origin to take action under that country's rules. This cross-border action is co-ordinated by EASA. If the advertiser continues to send problematic mailings to UK consumers, EASA may issue a Euro Ad Alert to advise its members of the repeat offence and to ask

them not to handle problem mailings without first checking their acceptability. If the ASA/CAP/EASA system is unable to prevent further problem mailings being sent out, the ASA may refer the matter to the Director General of Fair Trading for legal action.

Mailings that originate in a non-EASA member country

If mailings originate in a country that does not hold membership of EASA, the ASA will investigate and publish any complaints under the Codes and, at the same time, refer the mailings to the appropriate regulatory body in the country of origin.

ASA decision-taking and immediate compliance action

The ASA endeavours to investigate complaints as speedily, fairly and thoroughly as possible. Although individual investigations, particularly those that involve complex issues, can take some time, the ASA can ask the CAP Compliance team to take concurrent immediate action against overseas mailings that appear to contain clear breaches of the Codes. If that happens, the Compliance team endeavours to prevent further distribution of the mailings concerned while the ASA investigation proceeds. The team might send out an Ad Alert, warning the UK industry about the problem mailings. Or it might look to apply pressure through the Royal Mail or the Office of Fair Trading.

If the ASA receives complaints against mailings that have already been investigated (either by the ASA or by an EASA member organisation) and found to break the appropriate Codes, it usually refers the matter direct to the Compliance team for immediate action. The Compliance team co-ordinates any sanctions that might be taken against persistently offending advertisers.

Working with others

At all times, the ASA and CAP work closely with the Royal Mail, relevant trade associations (e.g. the Direct Marketing Association), trading schemes (e.g. the QMP quality mark scheme for mailing houses), trading standards officers and government departments to apply sanctions against advertisers who appear unable or unwilling to ensure that their mailings are legal, decent, honest and truthful.

Enforcing decisions

Taking decisions under the appropriate Codes is one thing, enforcing those decisions another.

First, it is often difficult to track down overseas advertisers. They are quick to move from country to country to avoid detection, setting up post boxes in “third party” countries and regularly switching their use of postal services. Sanctions that exist in one country are often unusable in another.

Second, the advertisers responsible for the worst overseas problem mailings are not deterred by the adverse publicity that often results from the publication of ASA rulings. Furthermore, they invariably operate on the fringes of the industry and do

not use reputable agencies, mailing houses or list brokers (thus rendering most Ad Alerts ineffective).

Until the recent introduction of the Stop Now Orders, the ASA and CAP have also been unable to fall back on their usual legal backstop: the referral of persistent offenders to the Director General of Fair Trading under the Control of Misleading Advertisements Regulations 1988 (as amended).

The ASA and CAP do, however, work closely with the Royal Mail. Although the Royal Mail is not legally entitled to open mail (and thus cannot prevent the distribution of problem mailings by advertisers with no record of breaking the Codes), it can act against persistently offending advertisers who either have Mailsort contracts or use intermediaries with Mailsort contracts. In such cases, the Royal Mail can withdraw those contracts, removing the discount on bulk mailings that is so important to advertisers. The ASA and CAP are dedicated to maintaining communication and co-operation with the Royal Mail to ensure that this sanction is brought to bear as quickly as possible.

Other organisations, such as the Department of Trade and Industry and the Office of Fair Trading, have at times been involved in dealing with overseas mailings.

The recent implementation into UK law of the Injunctions Directive (as the Stop Now Orders) might provide organisations who are qualified to use those powers (e.g. the Office of Fair Trading) with more leverage against advertisers based in EU member states who target UK consumers.

Consumer action

The ASA welcomes complaints against overseas mailings that have been received by UK consumers in the last three months. It will continue to take action where it can to prevent further mailings being sent out but is unable to enforce its decisions in all cases.

Consumers who wish to stop overseas mailings should replace them in their envelopes and clearly mark them “Return to sender, I do not wish to receive similar mailings in future”.

The Advertising Standards Authority promotes and enforces the highest standards in all non-broadcast advertisements in the UK. The Authority is independent of both the government and the advertising industry. It acts in the public interest and in co-operation with the whole of the industry by ensuring that everyone who commissions, prepares, places and publishes advertisements observes the British Codes of Advertising and Sales Promotion.

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