

Event Report

Environmental claims in advertising. Is green a grey area?

A stakeholder consultation seminar

Advertising Standards Authority
Coin Street Neighbourhood Centre
London, 12 June 2008



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1. Introduction

The Advertising Standards Authority has seen a huge rise in the number of complaints about environmental claims in ads. Our own consumer research has shown that awareness of green issues is high but there is also confusion and a lack of basic understanding about environmental and ethical claims and what they really mean.

ASA adjudications have set standards for a range of environmental claims in advertising. These include carbon claims, claims about environmental impact and claims about renewable energy.

But a lack of official definitions and the emerging science and technology in this area make it difficult to make assessments. Where no standard methodology is established, the ASA considers evidence on a case-by-case basis, commissioning independent expert advice if necessary. This ensures that the evidence is thoroughly assessed but does make it difficult for advertisers to know in advance whether their claims are likely to be acceptable. The ASA does not want the lack of certainty in this area to discourage advertisers from investing in green or ethical initiatives or from promoting genuine environmental benefits.

The ASA invited stakeholders from industry, consumer and environmental groups and government departments to a consultative seminar on environmental claims in advertising in London on 12 June 2008. The aim was to establish the respective concerns of industry and environmental campaigners about the current use of green claims in advertising and the ASA's regulatory response to date. It also aimed to identify likely developments in the use of environmental claims in ads (e.g. new areas for claims to cover, emerging science and technology, development of new external standards).

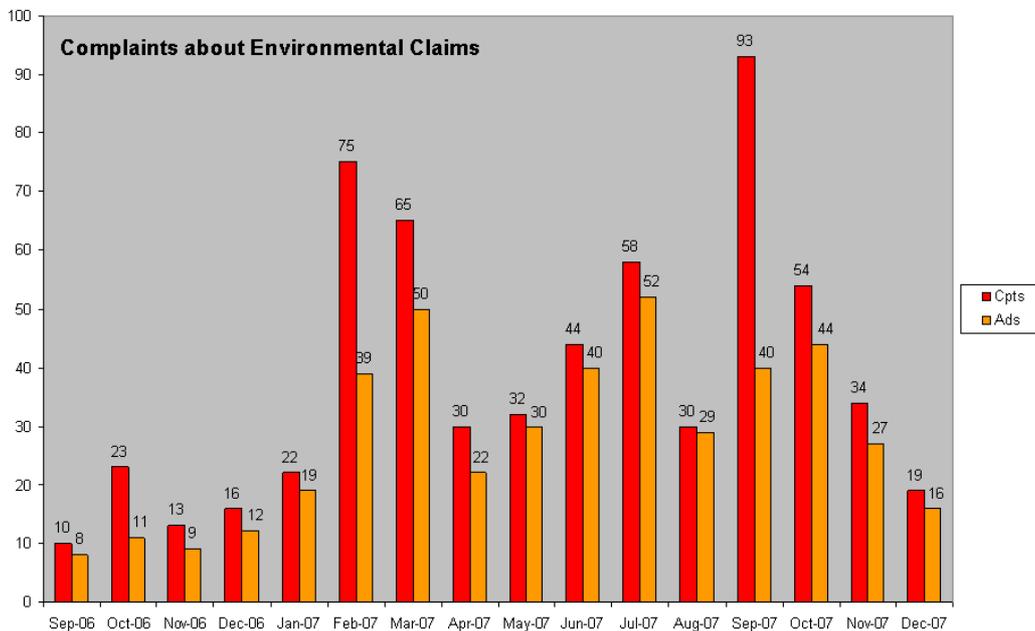
The seminar was led by the ASA's Chairman, Lord (Chris) Smith of Finsbury, and the Director General, Christopher Graham. Guest speakers were John Grant, Independent Consultant and author of *The Green Marketing Manifesto*, and Ed Mayo, Chief Executive of the New NCC.

2. Background

Public complaints to the Advertising Standards Authority (ASA) about environmental claims have risen sharply in the last year. In 2006, the ASA received 117 complaints about environmental claims in 83 advertisements. In 2007, complaints statistics revealed 561 complaints about 410 ads.

Independent consumer research commissioned by the ASA in November 2007 indicated a high awareness of green issues and environmental claims in ads. However, it also revealed a high degree of confusion and a lack of basic understanding about claims and what they mean.

Claims about CO₂ emissions such as carbon 'neutral', 'zero' or 'negative' were particularly open to challenge, as were absolute claims such as '100% recycled' or 'wholly sustainable'.



3. Opening address

3.1 Lord Smith

Lord Smith opened the seminar by questioning just how environmentally friendly green products were. He welcomed green claims in ads but said they should accurately reflect the 'greenness' of the products. He questioned whether companies could always substantiate the claims made.

He said dealing with complaints about green claims was a challenge for the ASA because it was developing policy as it went. As environmental marketing was a relatively new and developing sector, the organisation did not have sufficient benchmarks, clear advice or guidance from government.

He told delegates that what the ASA can do is test claims against the advertising codes and question whether claims are honest, decent, legal and truthful.

He hoped that the gathered experts and businesses would help the ASA come to some conclusions on the following issues:

1. Low carbon

Should a low carbon claim for a product apply only to the carbon emissions made by the product in use or take into account the lifecycle of the product including its manufacturing process?

2. Green energy production

Can a green energy producer claim that it powers the local community if it sends its energy via the national grid?

3. Carbon neutral or zero carbon

Consumers do not immediately understand what constitutes a carbon footprint or what off-setting entails. Can products claim to be carbon neutral if their production process is not?

4. Sustainability

Is it legitimate to sell a product as greener than another even if it is inherently unsustainable with a significant effect on the environment?

3.2 Christopher Graham

As complaints have increased the ASA has noticed a number of recurring issues. The most common claims being challenged are:

- Carbon claims – carbon zero, carbon neutral, carbon negative
- Cradle to grave claims
- Claims about energy sources (e.g. 'renewable')

Spurred on by the exponential rise in complaints about green marketing, the ASA commissioned independent research in November 2007 into public understanding of environmental claims. The results revealed that whilst there is widespread awareness of environmental issues, consumers are also highly confused about green claims and the meaning of terms such as 'sustainable', 'green tariff', 'carbon neutral' and 'food miles'.

Many people questioned admitted to not reading the small print and, therefore, taking headline claims at face value. The Director General added that there was further confusion because many people did not distinguish between editorial copy and advertising.

The research also found that those who were the most concerned about the environment tended to be the most knowledgeable and most cynical about what they see as 'greenwash'. For others, green claims in ads had little or no impact.

The ASA currently evaluates green claims against the following rules in the advertising codes:

- No advertisement should mislead or be likely to mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise.
- The basis of any claim should be explained clearly and should be qualified where necessary.
- Absolute claims should be adequately qualified and supported by convincing evidence.
- Where there is a significant division of scientific opinion, this should be reflected in advertisement copy.
- The use of exaggerated language or bogus or confusing scientific terms should be avoided.

The Director General said the ASA wants to make consistent decisions so that advertisers can have confidence in making green claims.

4. Adjudications on green marketing

Here are just some of the ads the ASA has considered which have set benchmarks for the industry to follow.

4.1 Shell Europe Oil Products Ltd

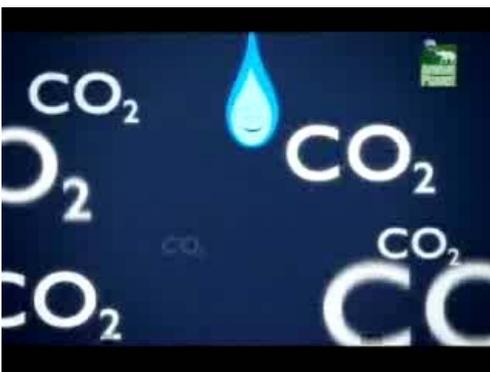


This national press ad, for Shell, was deemed misleading because the claim "We use our waste CO₂ to grow flowers" implied that Shell used all of its waste CO₂ to grow flowers, whereas it was shown only 0.325% of their emissions were used to grow flowers.

View the ASA's adjudication here:

http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_43476.htm

4.2 British Gas Trading Ltd



This television ad for green energy, in which the blue flame falls and squashes the CO₂, was deemed misleading because the claim "carbon zero" implied the fuel used was carbon free and did not produce carbon dioxide. Although the advertisers off-set the emissions produced so that the net effect on carbon dioxide levels in the atmosphere was zero, the ASA agreed

with complainants that the claim "carbon zero", implied that no carbon was produced.

View the ASA's adjudication here:

http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_43902.htm

4.3 Lexus (GB) Ltd



Lexus' headline claim in a magazine ad "High Performance. Low Emissions. Zero Guilt" was ruled misleading because the text in the ad which clarified the claim was not prominent enough. The ASA also considered the claim "zero guilt" implied that the car caused little or no damage to the environment.

View the ASA's adjudication here:

http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_42574.htm

4.4 Ryanair Ltd



This press ad by Ryanair encouraged readers to send a protest email to the Treasury about UK Air Passenger Duty and claimed that aviation accounts for only 2% of emissions. The ASA discovered that although aviation accounts for only 2% of emissions globally, the figure is 5.5% in the UK. The ASA ruled the claim to be misleading.

View the ASA's adjudication here:

http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_42885.htm

4.5 easyJet Airline Co Ltd



Rival airline easyJet avoided an upheld adjudication because its claim “The Government sponsored Stern Review on climate change judged that aviation accounted for 1.6% of global greenhouse gas emissions aviation” was suitably qualified.

View the ASA’s adjudication here:

http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_42728.htm

4.6 Eurostar Group Ltd



Eurostar’s claim that its journeys would be carbon neutral was challenged by complainants. Some said it was misleading because Eurostar trains had to pass through the Channel Tunnel, which produced emissions as a result of its internal refrigeration system. Others were concerned that the energy used in constructing the

trains, the track, stations and the tunnels had not been taken into account when offsetting the journeys. The ASA noted Defra had no definition of carbon neutral. The ASA adjudicated that consumers were likely to interpret the claim as meaning that the carbon generated by the train during the journey would be offset but would not expect the emissions produced in the construction or refrigeration of the tunnel or the construction of the trains, station and track to be offset. After taking expert advice, the ASA accepted that Eurostar had done all it could to offset the carbon emissions generated by its train journeys in a robust and verifiable manner and consumers would not be misled.

View the ASA’s adjudication here:

http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_44493.htm

5. Greenwash vs. green marketing - John Grant

John Grant is the author of *The Green Marketing Manifesto*, a guide to making environmental claims in advertising. Mr Grant began by setting out the case against 'greenwash' – making environmental claims which are less about saving the planet and more about exploiting consumer concerns about the environment to increase profits. He cited as an example of 'greenwash' (and possibly the origin of the word) hotels asking customers to re-use towels as – not for environmental reasons but, he claimed, to cut down on the hotel's cleaning bill.

With a rise in advertising claims such as 'eco' or 'environmentally friendly', he said consumers were becoming cynical about how 'green' products were.

Mr Grant argued that there were no green products. He said all products damaged the environment in some way through their manufacture, use or disposal.

He argued that instead of making green claims for non-environmentally friendly products, companies should concentrate on making their products green - what he called 'doing green rather than claiming green'.

He gave seven reasons why green claims should be avoided in advertising:

1. Using environmental disasters to market a product is alarmist and unethical.
2. Non-governmental organisations are questioning green claims more vigorously – making complaints and challenging businesses.
3. Nobody's perfect - the bigger the claim, the more likely it is to be challenged.
4. Invites scrutiny from the media.
5. Some products may be considered green today but, with the definition of green continually changing, the claim may be unacceptable tomorrow.
6. Advertising deals in superlatives. As copy must be simple it cannot accurately qualify the claims so superlatives are likely to mislead.
7. Endorsements and accreditations are rarely as independent as they seem.

In order to have a positive impact on the environment, he proposed the following alternatives:

1. Create great brands that happen to be green.
2. Encourage consumers, through advertising, to change their behaviour.
3. Education and market development.
4. Make green alternatives seem normal to consumers.

6. Trust in green marketing - Ed Mayo

Trust in green marketing is one of the biggest challenges to advertisers according to Ed Mayo, Chief Executive of the New NCC.

Mr Mayo opened by saying that trust in companies was low and, according to a Consumers International Report, just 20% of consumers trusted environmental claims. He argued that businesses should focus on building consumer confidence in green claims. The way to do this, he said, is to be rigorous in handling the issues emerging out of the debate on green marketing. He said it was easy to spot 'greenwash' but hard to build trust. The New NCC wants to reward and incentivise businesses for doing the right thing.

League tables, accreditation and superlative claims should be approached with scepticism as many were not as robust as they appeared. Fifteen years ago, the NCC ranked countries in a 'green league of nations'. Australia, Mr Mayo said, was one of the least green of the Organisation for Economic Co-operation and Development (OECD). This caused a huge furore and the Australian government commissioned a reworking of the statistics and Australia became the greenest.

He warned businesses to be careful about making consumers feel guilty. He argued that if they feel too guilty they are less likely to change their behaviour which is the engine that drives environmental products. He said climate change required everybody to take responsibility. People will change their behaviour if they see others doing the same.

He said environmental claims were as confusing as health claims for food. Food had been described as healthy if it was low in fat. But often these foods were high in something else, usually sugar. He said that, by 2000, UK consumer trust in claims for foods was the lowest in the European Union. The Food Standards Agency has since tightened regulations and helped consumer trust in food in the UK increase to now be the highest. He argued that trust is essential because with trust comes better sales.

He made the following recommendations:

1. The ASA should move faster because it is close to the market.
2. Formal regulatory backstop may be required to ensure consumer trust and business confidence.
3. Standards should be introduced for green energy so consumers can easily understand green claims.

7. Discussion

The advertising codes

- A significant number of delegates called on the ASA to lead on green marketing claims. Delegates said it was difficult to determine the rules because there were a number of codes and guides from government, NGOs and regulators. As each code was constantly changing because of the sector changing quickly, companies are often confused about what they can claim. A delegate called for the ASA to collate the different codes and create a unified code.

The Director General said the ASA was keen to do whatever it could. He said more rules may be needed but it would be the ASA's sister organisation the Committee of Advertising Practice (CAP) that would decide on changes to the advertising codes.

- A delegate suggested the ASA updates its own codes to reflect the changing landscape and update its Help Notes on green marketing. A further delegate suggested the ASA renew its guidance notes every three months.

The Chairman said CAP was currently amending the advertising codes and the drafts would be sent out in Autumn for consultation. Changes were due to be finalised in Spring 2009.

He suggested that the ASA and CAP ensure that its guidance notes were up to date. The notes were easier and quicker to update than the codes.

- A delegate asked what the ASA was doing to educate its staff on green marketing.

The Director General said it held regular training sessions for staff at the ASA offices. In addition, ASA's Policy team maintains close contact with governmental and non-governmental bodies with an interest in environmental issues.

- A delegate said their company was working on a guidance note for the industry on carbon emissions from cars. He said it provided a model for how other groups can work with the ASA on guidance.

Pressure Groups

- A delegate recommended the ASA contact the pressure groups making complaints about green claims. A discussion with pressure groups would give advertisers a better understanding of the issues that were important to them and create a richer debate. The delegate was interested in how advertisers could change consumer behaviour. He believed advertising was an opportunity to tell people how to be green.
- A delegate believed NGO positioning on off-setting was becoming more tolerant. He said, a year ago, NGOs were opposed to off-setting but the advent of accreditations had helped build trust. He believed green advertising was the way to push the debate forward.

Complaints

- A delegate asked how the ASA assessed complaints about green claims.

The Director General said the ASA assessed complaints against the advertising codes and through precedent cases. It often used experts in the field when investigating a complaint. He explained that advertisers could use the CAP Copy Advice service and seek guidance from the CAP Help Notes. The Chairman added that because the sector was constantly developing and changing no claim could be set in stone. He advised advertisers to ensure they had robust evidence to back up their claims.
- A delegate said he was surprised by how few complaints there had been. He questioned whether this was a reflection of a lack of interest from consumers. Another delegate added that the increase in complaints was proportionately smaller than the increase in the amount of green marketing being produced.

Educating the public

- A delegate recommended consumers be told what measures they could take to off-set their carbon emissions. The delegate said their company was interested in how their products could improve people's lives. He believed that consumers were engaged and committed and advertisers should continue to use environmental marketing to maintain consumers' interest.
- However, a delegate warned that green marketing was being undermined. Consumers were influenced by blogs, the media scrutiny and academic criticism all of which were shaking their trust in green marketing. The delegate said some of his clients were starting to do less environmental advertising. He considered that future ads would focus on ethical and humanitarian issues – helping impoverished people rather than the environment.

Industry awareness

- Two delegates said that knowledge about green, sustainability and ethical claims within industry – particularly agencies - was poor. One of the delegates, who had conducted a survey of advertising agencies and space sellers, believed the industry was some way behind current expert thinking on environmental issues. They said of the top 39 advertising sellers, only three had heard of 'greenwash'. They recommended companies create an internal policy on issues of 'greenwash' to educate their staff.

Emotive images

- Addressing John Grant's statement that advertisers should not use emotive images of natural disasters, a delegate said that shocking images associated with climate change should be used in advertising because it was a way of affecting climate change.

Mr Grant said he was a supporter of green claims but believed it was wrong to make corporate claims in the emotional context of a disaster.

Accreditation

- A delegate believed that consumers were confused by green marketing. She believed that part of the confusion was due to awards and league tables. She claimed that in order to get into a leading national newspaper's recent list of green companies, businesses had to pay £1,500. This, she said, made the list meaningless because some companies would not pay and, therefore, would be excluded from the list.

The Director General said if a complaint was made about a claim based on this list the ASA would investigate whether the basis of the claim was credible and valid. However, he said the ASA could not tell the newspaper not to operate in this way.

- A delegate suggested the ASA supply a list of suppliers (i.e. sustainability consultancies or experts) who have successfully proved their claims. He noted that there would be commercial benefit to companies listed, but argued that some guidance about which firms can deliver these assessments properly would a) save agencies time and confusion in finding suppliers and b) increase the quality of submissions made.
- A delegate said there were many accreditation and verification schemes which caused confusion. To help clarify the issue, could the ASA define what is and what is not green?

The Chairman said it was almost impossible to define 'green' as environmental, sustainability and ethical issues are largely interlinked and science is fast evolving.

- A delegate from an energy provider said it was difficult to find a body which would approve your carbon neutral claims. Another delegate called for a sound third party accreditation body to be found or created to approve carbon neutral claims. She said any carbon neutral claim needed to have the same level of integrity, otherwise the consumer could be misled.

ASA – use of experts

- A delegate questioned how suitable the ASA team of experts were. She recommended the ASA use practitioners in green marketing – not a scientific consultant, nor a government official, nor a professor but a professional working in green marketing.

Renewable energy

- A delegate from a renewable energy company addressed the ASA's position on renewable energy. To date, the ASA has required advertisers to explain that renewable energy reaches consumers via the national grid. He argued that the ASA should allow companies to claim that the renewable energy it produces is delivered to its customers without mention of it going via the national grid. He argued that under European legislation, all suppliers are required to publish their fuel mix on all marketing material (excluding newspaper, billboards and television advertisement). The aim of this is to show consumers where their energy is coming from. He believed that this measure means the energy is traceable.

He said while, in reality, the physical electrons generated may not reach the specific customers concerned, because the customer has asked for the energy, the supplier has purchased it. Thus the specific energy was bought for the customer by the supplier.

He said the ASA should ensure that companies have substantiation to prove claims to supply 100% renewable energy because, he believed, in some cases, some companies supply less.

- A delegate from a company trading in renewable energy asked the ASA to avoid punishing the smaller companies when setting rules for the bigger companies.

8. Summary

The Director General acknowledged that dealing effectively with green marketing claims would require concerted work from the ASA. Its main role, he said, was to make sure companies produce marketing communications that comply with the advertising codes. The Director General urged advertisers to ensure their claims were substantiated with robust evidence and qualified in a way that is clearly understood by consumers.

The increased public awareness of environmental issues coupled with fast evolving scientific knowledge and the prolific rise in green initiatives pose a tough challenge for advertisers in ensuring their claims comply with the rules and regulations. The Director General emphasised that the ASA does not want to discourage companies from communicating their initiatives but to help them to do so in a credible and responsible way.

The ASA was not in a position to define 'green' and would continue to use experts for opinions in investigations.

He finished by saying that he understood that advertisers want to use superlatives to sell products. Such a technique would inevitably mean that claims would sometimes go too far, impacting on the brand's credibility and erode consumer trust.

John Grant said the seminar was a good opportunity to celebrate the progress that had been made to date in green marketing. He noted the delegates' comments regarding the low levels of technical knowledge about green marketing in both the industry and public. He said imaginative uses of robust information would catch consumer's attention and was the most effective way of achieving a change in consumer behaviour.

Lord Smith reiterated that companies should be aware of the rise in consumer awareness of environmental and ethical issues alongside confusion and scepticism. The ASA and CAP have a responsibility to help advertisers ensure their ads are compliant.

He said the following needs to happen:

1. Ensure ASA/CAP staff expertise is up-to-date and comprehensive so they can give clear advice and can evaluate green claims effectively

2. Ensure the advertising code review process responds to the views of consumers and companies
3. Investigate whether the CAP guidelines could be more explicit even if it means acknowledging that guidelines would be fluid due to the fast evolving nature of science and technology in this sector
4. The ASA to continue to work with agencies and companies alike to bolster technical understanding of issues and existing rules on environmental claims.

Appendix 1 – The Advertising Codes

Relevant code clauses from the Television, Radio and Non-broadcast advertising codes:

CAP Code – Non-Broadcast

Substantiation

3.1 Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation.

Relevant evidence should be sent without delay if requested by the ASA or CAP. The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the marketing communication. The full name and geographical business address of marketers should be provided without delay if requested by the ASA or CAP.

3.2 If there is a significant division of informed opinion about any claims made in a marketing communication they should not be portrayed as generally agreed.

Environmental Claims

49.1 The basis of any claim should be explained clearly and should be qualified where necessary. Unqualified claims can mislead if they omit significant information.

49.2 Claims such as 'environmentally friendly' or 'wholly biodegradable' should not be used without qualification unless marketers can provide convincing evidence that their product will cause no environmental damage when taking into account the full life cycle of the product. Qualified claims and comparisons such as 'greener' or 'friendlier' may be acceptable if marketers can substantiate that their product provides an overall improvement in environmental terms either against their competitors' or their own previous products.

49.3 Where there is a significant division of scientific opinion or where evidence is inconclusive this should be reflected in any statements made in the marketing communication. Marketers should not suggest that their claims command universal acceptance if that is not the case.

49.4 If a product has never had a demonstrably adverse effect on the environment, marketing communications should not imply that the formulation has changed to make it safe. It is legitimate, however, to make claims about a product whose composition has changed or has always been designed in a way that omits chemicals known to cause damage to the environment.

49.5 The use of extravagant language should be avoided, as should bogus and confusing scientific terms. If it is necessary to use a scientific expression, its meaning should be clear.

BCAP Radio Code

The vast majority of clauses in the BCAP Radio Code are consistent with The Consumer Protection from Unfair Trading Regulations 2008 (CPRs), which came into force on 26 May 2008. To the extent that any rules are inconsistent with the Regulations, the provisions of the Regulations take precedence. The BCAP consultation on the Regulation of Unfair Practices in TV and Radio Advertisements ends on 22 July 2008; it proposes changes to the BCAP TV and Radio Codes to reflect the CPRs.

3 Misleadingness

All advertisements must comply with the requirements of the Control of Misleading Advertisements Regulations 1988 (as amended). The ASA is empowered to regard a factual claim as inaccurate unless adequate evidence of accuracy is provided within a short period of time when requested. The ASA will require advertisements that are found to be misleading to be withdrawn and not played again.

The Control of Misleading Advertisements Regulations define an advertisement as misleading if "...in any way, including its presentation, it deceives or is likely to deceive the persons to whom it is addressed ... and if, by reason of its deceptive nature, it is likely to affect their economic behaviour or ... injures or is likely to injure a competitor of the person whose interests the advertisement seeks to promote." In exercise of powers contracted out to it by Ofcom, the ASA has a specific duty under the regulations to investigate complaints (other than frivolous or vexatious ones) about alleged misleading advertisements.

In particular:

a) Advertisements must not contain any descriptions, claims or other material which might, directly or by implication, mislead about the product or service advertised or about its suitability for the purpose recommended.

b) Advertisements must clarify any important limitations or qualifications, without which a misleading impression of a product or service might be given.

Advertisements must not misleadingly claim or imply that the product advertised, or an ingredient, has some special property or quality which cannot be established.

Scripts must not contain complicated technical jargon. Relevant scientific terminology may only be used in a way that can be readily understood by listeners without specialist knowledge.

Scientific terms, statistics, quotations from technical literature, etc. should be used with a proper sense of clarity to the unsophisticated listener. Irrelevant data and scientific jargon should not be used to make claims appear to have a scientific basis they do not possess. Statistics of limited validity should not be presented in such a way as to make it appear that they are universally true. This paragraph is especially relevant to environment-related claims (see Section 2, Rule 5).

c) Before accepting advertisements, Licensees must be satisfied that all descriptions and claims have been adequately substantiated by the advertiser. A half-truth, or a statement which inflates the truth, or which is literally true but deceptive when taken out of context, may be misleading for these purposes. Ambiguity in the precise wording of advertisements and in the use of sound effects must be avoided.

All factual claims need substantiation and advertisers must provide supporting written evidence if claims are likely to be challenged. 'Puffery' is only acceptable in descriptions of products and services where listeners can very easily recognise and accept it as such. Claims in sung jingles should be substantiated in the same way as those using the spoken word.

Advertisements must not falsely suggest or imply official approval for a product.

5 Environmental claims

Central copy clearance is required. Sound factual evidence must support all claims.

a) Generalised claims for environmental benefit must be assessed on a 'cradle to grave' basis. The complete life-cycle of the product and its packaging, the environmental effects of its manufacture, use, disposal and all other relevant aspects must be taken into account;

b) Categorical statements such as 'environment friendly', 'safe' or 'green' are inappropriate;

c) Limited claims, relating to specific aspects of products or services, are acceptable in circumstances where more general ones cannot be justified;

d) Qualified claims (such as 'friendlier') are acceptable only where products/services can demonstrate significant advantages over competitors or improvements in, for example, the chemicals or packaging they use. In such cases the nature of the benefit must be explained, e.g. "our unbleached nappies are kinder to the environment";

e) Claims based on the absence of a harmful chemical or damaging effect are unacceptable if the product category does not generally include the chemical or cause the effect. Claims for the absence of harmful constituents are also unacceptable if the product contains other, equally harmful elements. Spurious "free from X" claims are unacceptable.

Advertising should also follow the Green Claims Code, published by the Department for the Environment, Food and Rural Affairs (Defra).

BCAP Television Code

The vast majority of clauses in the BCAP Television Code are consistent with The Consumer Protection from Unfair Trading Regulations 2008 (CPRs), which came into force on 26 May 2008. To the extent that any rules are inconsistent with the Regulations, the provisions of the Regulations take precedence. The BCAP consultation on the Regulation of Unfair Practices in TV and Radio Advertisements ends on 22 July 2008; it proposes changes to the BCAP TV and Radio Codes to reflect the CPRs.

5.1 Definition of misleading advertising

No advertisement may directly or by implication mislead about any material fact or characteristic of a product or service

Notes:

(1) See also 7.1 (Misleading advertising and children) for additional rules about advertising for products and services likely to be of interest to children.

(2) Advertising is likely to be considered misleading if, for example, it contains a false statement, description, illustration or claim about a material fact or characteristic. Material characteristics include price, availability and performance. Any ambiguity which might give a misleading impression must be avoided.

(3) Even if everything stated is literally true, an advertisement may still mislead if it conceals significant facts or creates a false impression of relevant aspects of the product or service.

(4) Scientific terms or jargon, statistics and other technical information should not be used to make claims appear to have a scientific basis that they do not possess. Equally, statistics of limited validity must not be presented in such a way as to mislead, for instance by implying that they are universally true.

(5) An advertisement may be misleading even if it does not directly lead to financial loss or a misguided purchasing decision. The ASA and BCAP may also regard an advertisement as misleading if, for example, it causes viewers to waste their time making enquiries, only to find that offers are unavailable or that there are important limitations. This could involve encouraging viewers to visit shops, or to make lengthy telephone calls (including freephone calls).

(6) When assessing whether an advertisement is misleading, the ASA and BCAP consider the overall impression likely to be conveyed to a reasonable

viewer. They do not consider the intentions of the advertiser, nor simply whether the advertising meets legal or other regulatory requirements.

(7) In addition to its delegated powers under the Communications Act 2003, the ASA has a duty to enforce the Control of Misleading Advertisements Regulations 1988 (as amended).

An advertisement is misleading if:

- (a) it is likely to deceive those who see it and
- (b) as a result of that deception, is likely to affect consumers' economic behaviour or
- (c) for the reasons given in (a) and (b), it injures or is likely to injure a competitor of the person whose interests the advertisement promotes.

5.2 Claims

5.2.1 Evidence

Licensees must obtain adequate objective evidence to support all claims

Notes:

(1) Where a claim is based on scientific research or testing, that work should have been conducted in accordance with recognised best practice. Where licensees lack the specialised knowledge to assess the adequacy of evidence, they must consult independent experts.

(2) Licensees must make their own independent assessment of evidence submitted in support of advertising, and of any advice they have commissioned.

(3) Absolute claims – e.g. 'best on the market', 'lowest prices guaranteed' – should be avoided unless they are backed up by clear evidence and are based on a formula on which an advertiser can completely deliver. In particular, licensees should be alert to the fact that such claims may be invalidated by sudden changes in the market or the actions of competitors while the advertising is still on air. For this reason, absolute price claims should be treated with great caution.

(4) Under the Control of Misleading Advertisements Regulations 1988, the ASA is empowered to regard a factual claim as inaccurate unless adequate evidence of accuracy is provided to it when requested.

(5) A claim can be implied or direct, written, spoken or visual. The name of a product or service may in itself be regarded as a claim.

5.2.2 Implications

Descriptions, claims and illustrations must not imply attributes, capabilities or performance beyond those that can be achieved in normal use

5.2.3 Qualifications

All important limitations and qualifications must be made clear

Note: Important limitations and qualifications include those on availability, particularly where failure to mention such conditions is likely to lead viewers to assume that an advertised offer is available on equal terms to all who might see it. Such restrictions might include geographical restrictions, limited numbers of purchases per person, age or sex restrictions etc.

5.2.6 Environmental claims

Advertisements must not make unsubstantiated claims about environmental impact

Note: Best practice on environmental impact claims is contained in ISO 14021 and the Department for the Environment, Food and Rural Affairs' Green Claims Code. Licensees must satisfy themselves that any departure from this best practice is justified.

Appendix 2 – Organisations represented at the seminar

Advertising Association	Global Radio
Advertising Standards Authority	Good Energy
Advertising Standards Authority for Ireland	Internet Advertising Bureau
Best Foot Forward Ltd	ISBA
British Gas	ITV Broadcasting
British Telecom	London Environment Centre
BSkyB	Low Carbon Vehicle Partnership
Business in the Community	Marks & Spencer
Clearcast Ltd	McCann Erickson
Committee of Advertising Practice	National Consumer Council
Co-operative Financial Services	New NCC
DDB Worldwide	Ofgem
DEFRA	Practical Law Company
Department of Transport	Radio Advertising Clearance Centre
E.on Energy Limited	Scottish and Southern Energy
Energy Retail Association	Shell Brands International
enoughsenough.org	Shell International Ltd
Eurostar UK Ltd	SMMT
Feel	SQW Energy
Freud Communications	SustainAbility
Futerra Sustainability	Teletext Ltd
Communications Ltd	The CarbonNeutral Company
Global Action Plan	The Newspaper Society
	The Open University

ASA / CAP participants

Rt Hon Lord Smith of Finsbury, ASA Chairman
Christopher Graham, Director General
Esra Erkal-Paler, Director of Communications, Policy and Marketing
Catherine Thomas, CAP Code Policy Executive
James Turner, CAP Copy Advice Executive
Britta Griffiths, CAP Compliance Executive
Jenny Alexander, Investigations Executive
Elizabeth Gannon, Investigations Executive
Hayley Fletcher, Complaints Executive
Olivia Campbell, Press and Policy Assistant
Zoë Kalu, Events Organiser
Debra Quantrill, Marketing Communications Executive

For more information about the Advertising Standards Authority and its work, or to make a complaint about an advertisement, please visit www.asa.org.uk or call 020 7492 2222.

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