



ASA_Contents

01_ASA Introduction	19_ASA Broadcast complaints	CAP Non-broadcast	42_The Advertising Advisory Committee
06_ASA Chairman's introduction	22_ASA Compliance	32_Review of the year	44_ASA Key performance indicators
08_ASA Senior management team	24_ASA Council members	35_Copy Advice	45_ASA Standards of service
09_ASA Review of the year	26_ASA Independent Reviewer	36_Direct Marketing	46_ASA Financial report
12_ASA Non-broadcast top 10	27_ASA In Europe	37_Sales Promotion	
14_ASA Broadcast top 10	30_CAP Chairman's introduction	CAP Broadcast	
16_ASA Non-broadcast complaints		39_Introduction and review	



The ASA received 1,797 complaints about **TV and radio ads** in its first two months as the broadcast regulator

Open for business

The one-stop shop for advertising standards

In 2004, the Advertising Standards Authority (ASA) took over responsibility for regulating broadcast advertising, under contract from the communications regulator Ofcom. Now, the ASA regulates advertising across all media.

2004: A milestone in advertising regulation

2004 marked a significant milestone in the history of advertising regulation in the UK. For more than 40 years the Advertising Standards Authority has regulated non-broadcast advertisements against the British Code of Advertising, Sales Promotion and Direct Marketing. In 2004, those responsibilities were extended to include television and radio advertising, under contract from the communications regulator Ofcom.

During the year, the ASA and CAP entered into a co-regulatory partnership with Ofcom for the regulation of broadcast advertising content. Two new legal entities were established: the Advertising Standards Authority (Broadcast) and the Broadcast Committee of Advertising Practice. A new funding body – the Broadcast Advertising Standards Board of Finance (Basbof) – was created to fund the new bodies via a levy on broadcast advertising expenditure.

The ASA and CAP's non-broadcast work remains independent of any relationship with Ofcom. New brand identities for the ASA and CAP (Broadcast) and CAP (Non-broadcast) illustrate the structure of the new system: while the public sees the one-stop shop front, behind the scenes separate systems operate for broadcast and non-broadcast media.

This Annual Report, for the Advertising Standards Authority and both Committees of Advertising Practice, tells the story of the creation of the one-stop shop and the benefits it brings to consumers, advertisers and broadcasters. The Report details 12 months of activity to promote the highest standards in non-broadcast advertising during a complex period of change. It also includes contributions from the Advertising Advisory Committee (AAC) and the Independent Reviewer of ASA Adjudications – two of the safeguards in place to ensure that the regulatory system listens and responds to the needs of stakeholders.

The one-stop shop makes sense – for consumers, advertisers, publishers and broadcasters. Consumers will no longer have to leap regulatory hurdles to get action on misleading, offensive or harmful advertising across all media. And as digital media converge and advertisers use both broadcast and non-broadcast platforms, there will be greater consistency of decision-making.

The Advertising Standards Authority's mission is to apply the advertising codes and uphold standards in all media on behalf of consumers, business and society.



Advertising Standards Authority
The ASA rules on complaints about advertisements in all media. It is independent of government and the ad industry and works in the public interest.



ASA Non-broadcast

Non-broadcast ASA remains quite independent of any relationship with Ofcom. It is funded by Asbof.

Asbof

Funds non-broadcast advertising self-regulation by a levy on display advertising and direct mail.

ASA Broadcast

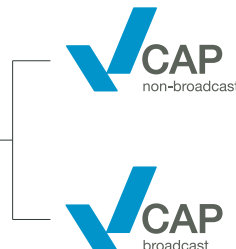
Regulates TV and radio commercials under contract from Ofcom. Is separately funded by Basbof.

Basbof

Funds broadcast advertising regulation via a levy on advertising airtime costs.



Committee of Advertising Practice
CAP is made up of two separate advertising industry bodies that write and enforce the codes of practice.



CAP Non-broadcast

Writes the code for non-broadcast ads, sales promotions and direct marketing.

CAP Broadcast

Responsible for the TV, radio and scheduling and teleshopping advertising codes.

AAC

A new independent committee, providing advice on broadcast advertising code issues.

RAY 15 MIL
TEAM AMERIC
OPEN V

Complaints about **cinema advertising** fell by 12.5%

DRIZZY

ASA

**Keeping UK
advertising
standards high**

Self-regulation under scrutiny

The ASA has been under scrutiny this year. Ofcom's consultation into the future regulation of broadcast advertising invited public comment on the reputation and effectiveness of the ASA. The advertising industry made its own judgements about the ASA as it committed to fund a 'one-stop shop' for advertising regulation. Finally, the ASA came under Parliamentary scrutiny as Ofcom's proposals to contract-out responsibility for regulating television and radio advertising were debated in both Houses of Parliament.

The last time I recall the Advertising Standards Authority being under such close examination was nearly three decades ago, when the then Consumer Minister, Shirley Williams, asked me, as Director General of Fair Trading, to review the ASA's effectiveness. At that time, I called for the availability of a legal backstop to support the fledgling self-regulatory system, never guessing that in 2004 I would be chairing the ASA as it was once more under the Ministerial magnifying glass.

Yet the ASA has stood up to such scrutiny and, in July, Parliament voted unanimously to extend our responsibilities to include broadcast advertising: a tribute to the success of the self-regulatory system and to all those in the advertising industry who have worked to keep their own house in order. Yet this extension of our remit also carries extended responsibilities. Speaking at an advertising industry conference, the Secretary of State for Culture, Media and Sport, Tessa Jowell, welcomed the development of the one-stop shop but issued a stark warning that it would need to be tough enough to discharge its regulatory duties.

This warning has not gone unheeded. The ASA will be no less robust or independent in its broadcast decisions than it has been in its non-broadcast rulings over the last 40 years. The advertising industry's need for social responsibility has been heightened, not lessened, by the extension of self-regulatory control.

The events of the last 12 months may also have a wider implication, beyond the advertising industry. Ofcom's decision to 'contract-out' the regulation of broadcast advertising under provisions in the Communications Act has created a co-regulatory partnership that may become a model for regulation in future. A socially responsible industry and a statutory regulator are working together to achieve a common goal of consumer protection and fair competition. A similar system may also be established under the current provisions of the Gambling Bill and I hope that the ASA's performance will prove a suitable model for others to follow.



As we assess the last 12 months, inevitably attention will be drawn to the first weeks of our work regulating television and radio commercials. But most of the content of this Report relates to our continuing work in regulating non-broadcast advertising content: resolving complaints, monitoring non-broadcast media and taking action against advertisers who refuse to comply with the Code.

Fewer campaigns generated large numbers of complaints than in previous years. It would be foolish of the regulator to suggest that this is because advertisers are no longer pushing at the boundaries of creativity and innovation. But, fewer posters have caused widespread offence because of sexual imagery, nudity or concern about what children might see. Instead, most complaints about outdoor advertising have been generated by religious imagery or references. In such cases the ASA must judge whether the offence caused to a minority is so serious that the unoffended majority should be prevented from seeing the ads in question.

Organisational change takes time, energy and commitment and the changes at the ASA have impacted on all of us. The ASA Council have accepted an increased weekly caseload, with additional TV and radio complaints to consider. One Council member, Lizzie Marsden, came to the end of her maximum six years on Council and I was pleased to welcome four new members to an expanded Council: Nigel Walmsley, Alison Goodman, Chitra Bharucha and Neil Watts. My thanks go to all my colleagues on Council who have approached their new broadcast responsibilities with the same attention to detail and considered judgements that characterise their non-broadcast deliberations.

A bigger team of staff – including those with broadcast expertise who joined us from Ofcom – is now working in our new offices in Holborn. The one-stop shop approach means that the public can contact a single regulator, while behind the scenes two separate systems work in parallel, ensuring the continuing independence of non-broadcast self-regulation. But the separation of the ASA's broadcast and non-broadcast responsibilities, with their corresponding legal entities, has not prevented teamwork across the company. I pay tribute to all the staff for their enthusiasm and professionalism during this period of change.

A handwritten signature in dark ink, which appears to read 'Lord Borrie'.

Lord Borrie QC, ASA Chairman



ASA_Senior management team

**Christopher
Graham**
Director General



from left to right:

Guy Parker
Director of
Complaints
& Investigations

Claire Forbes
Director of
Communications

Phil Griffiths
Director of Finance
& Support Services

Roger Wisbey
Director of
Advertising Policy
& Practice and
CAP Secretary

Alan Chant
Director of
Development

2004 marked the biggest change in advertising regulation for over 40 years. Many months of detailed work involving an advertising industry task force, Ofcom and the ASA culminated in the launch of the new one-stop shop for advertising regulation on 1 November.

| January

| February

| March

| April

Consultation process

Ofcom concluded its public consultation on The Future Regulation of Broadcast Advertising in January. In its response to the consultation, the ASA predicted a substantial increase in the number of complaints that the new ASA would receive, pointing out that not all of the thousands of TV and radio complaints turned away by the ASA each year were reaching the relevant regulator.

Fat free claims

A claim that a new yoghurt was 'virtually fat free' (see picture) was investigated by the ASA following a challenge from a competitor. Taking into account the Food Standards Agency recommendation that 'low fat' should be used for foods that contain less than 3% fat and 'fat free' for foods that contained less than 0.15% fat, the ASA ruled that the Danone yoghurt, with 0.9% fat, could not be described as 'virtually fat free'.

Religious offence

Members of the congregation at Woodside Park Synagogue in North London debated advertising content in public space at a forum attended by ASA Director General Christopher Graham. Later in the year complaints about advertising causing religious offence soared with two poster campaigns causing particular concern amongst religious communities (page 12).

Ministerial support

Secretary of State for Culture, Media and Sport, Tessa Jowell, welcomed the "very positive commitment made by the ASA and the advertising industry to the development of an effective co-regulatory system for broadcast advertising". Speaking at the ISBA Conference in March she acknowledged that the ad industry had shown that it could keep its own house in order, but said that Ofcom would need to ensure that any co-regulatory system would be robust enough to discharge its statutory duties.



May	June	July	August
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Ofcom announcement

On 17 May, Ofcom announced its decision to contract out responsibility for day-to-day regulation of radio and television commercials to the ASA. Welcoming the announcement, ASA Chairman Lord Borrie QC said that the public and industry would both benefit from Ofcom's decision: "Having the ASA as a one-stop shop will mean a simpler and more accessible standards system for consumers and more consistent decision making for the benefit of the advertising business."

Parliamentary go-ahead

Ofcom's proposals were debated, and approved, by both Houses of Parliament in July, clearing the way for the launch of the 'one-stop shop' on 1 November 2004.

Introducing 'new' ASA

The remit and responsibilities of the new ASA and its new brand identity were introduced to broadcasters and the advertising industry at a business seminar at the Royal Society of Arts in London in October (picture 4). The ASA published its first Annual Statement, setting out its objectives for the year ahead.



September

October

November

December

Open for business

The one-stop shop began operation from new offices in Holborn (picture 3). With new staff, including experienced broadcast advertising executives and managers from Ofcom, the 'new' ASA opened for business on 1 November.

New Council members

Four new members were appointed to an expanded ASA Council, with separate panels for ruling on broadcast and non-broadcast ads. Neil Watts, a secondary school headteacher, Alison Goodman of the Terrence Higgins Trust and consultant haematologist Chitra Bharucha joined the Council as independent members. Nigel Walmsley, Chairman of the Broadcasters' Audience Research Board, was appointed as an industry member.

Tango loses its fizz

Just days after the launch of the one-stop shop ASA Chairman Lord Borrie asked broadcasters to take an ad for soft drink Tango off air pending investigation, because of concern that the commercial might be copied by children.

The advertisement featured a young man rolling down a hill with some concrete pipes, then crashing into a tree (picture 1). Lord Borrie's decision followed complaints from relatives of a child who had been killed whilst playing with concrete pipes. In their subsequent 'upheld' adjudication, their first on a television commercial, the ASA Council ruled that the ad was likely to appeal to children and presented a serious and realistic risk of harm.

The public's view

Food, alcohol and social responsibility in advertising all came under the spotlight in November as the ASA met with members of the public at the annual Consumer Conference in Manchester. Delegates had the opportunity to debate ASA decisions with the Chairman, staff and Council members and to make their own judgements about whether particular advertisements were likely to offend or mislead. Read the public's verdict at www.asa.org.uk.

Not so grrr...eat

A cinema ad for Kellogg's Frosties had to be withdrawn after a member of the public complained about the use of the phrase 'eat right'. The ASA Council ruled that in a commercial showing children playing football, the words 'eat right' implied that the product was healthy and that the implication was misleading because of the cereal's high sugar content.

Alcohol clamp down

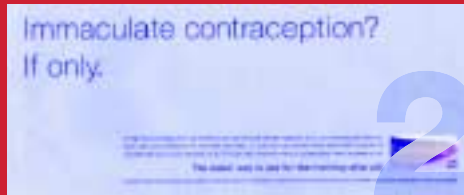
As the new one-stop shop launched, Ofcom published new alcohol rules for broadcast advertising to be administered by the ASA under its expanded remit (page 41). During the year, non-broadcast alcohol ads came under the spotlight with an adjudication against Diageo brand Archers setting a new standard for alcohol advertising. Council ruled that Archers had failed to comply with the spirit of the CAP Code by linking alcohol with sex in a poster campaign with the strapline: "Something for the ladies" (picture 2). Another alcohol poster, for Michelob Ultra beer, which pictured people jogging, was ruled irresponsible for implying that drinking the beer could help maintain health.

Non-broadcast top 10 ads

1 Channel Four Television Corporation

264 complaints. Not justified.

Press and poster ads for the TV series 'Shameless' that referred to Leonardo Da Vinci's painting of the Last Supper generated complaints that the ads were offensive and mocked a Christian sacrament. The ASA Council judged that an investigation was not justified because the ads parodied the painting, rather than the occasion of the Last Supper.



2 Schering Health Care Ltd

182 complaints. Upheld.

A poster for the morning after pill with the headline "Immaculate Conception?" led to complaints about religious offence. The ASA considered that the pun on the Roman Catholic dogma of the Immaculate Conception was likely to cause serious or widespread offence, particularly in an ad for a contraceptive product.

3 Channel Four Television Corporation

162 complaints. Not justified.

An insert promoting a television programme investigating the Royal Mail led to complaints that it was offensive and denigratory to postal workers because it implied they were thieves. The ASA Council decided that an investigation was not justified because the insert accurately reflected the content of the programme.



4 The Newspaper Marketing Agency

81 complaints. Upheld

Objections to this national press advertisement were that the ad was offensive and sexist. Although the image of a man impaled on a stiletto heel was obviously unrealistic, the ASA Council considered that the ad trivialised and stylised violence and was likely to cause serious or widespread offence.



5 Orther Ltd t/a Armani Junior

74 complaints. Upheld.

This magazine advertisement showed a photo of a long haired, topless child wearing baggy jeans and a necklace. The complainants said that the ad sexualised the child, particularly because the child's gender was ambiguous. The ASA concluded that the sexualisation of the child – a boy – was likely to cause serious or widespread offence.





8 Freeloader.com

News Group Newspapers t/a The Sun
55 complaints. Partly upheld.

An offer in The Sun for free computer games led to objections that the promotion was misleading because the games offered were not full versions of the games available in the shops. The ASA ruled that the offer was misleading because limitations to the offer should have been made clear.

9 Carter Products Ltd

a) 54 complaints. Not justified.
b) 41 complaints. Upheld.

The ASA received complaints for two posters for condoms featuring a photo of a woman with her eyes closed and mouth open. One poster, in the style of a magazine cover, featured the words: "Come online and Play THE SEX ORGAN".

Complaints that this poster was likely to cause serious or widespread offence were upheld by the ASA Council. But Council judged that an investigation into the other poster was not justified because the ad was not explicit.

10 Ryanair Ltd

47 complaints. Upheld.

A national press ad headlined: "FAWKING GREAT OFFERS!" led to complaints that it alluded to the expletive "fucking". Although the advertisement had appeared shortly before 5 November, the ASA considered that the word "Fawking" was likely to be seen as a play on "fucking" and to cause serious or widespread offence to readers.

6 Entertainment Film Distributors

72 complaints. Not justified.

An investigation into a poster for the horror film "Dawn of the Dead" was deemed to be not justified, despite the complaints that the poster was offensive and might scare children. The poster reflected the content of the film and the ASA Council judged it unlikely to cause undue distress or offence.

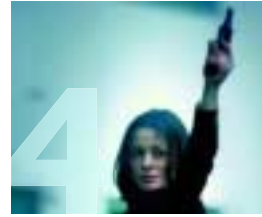
7 The Hospital Saving Association Ltd

t/a HSA Healthcare

60 complaints. Not upheld.

Claims about the maximum benefits offered by this health savings plan were challenged by 60 people, some of whom asserted that the advertisers had cancelled their policies. The ASA was satisfied with evidence sent by the advertisers to prove the claims made in the leaflet.





Broadcast top 10 ads

Up to 31 October 2004 complaints about TV and radio advertisements were handled by communications regulator Ofcom. Decisions on the top 10 broadcast ads of 2004 were made by Ofcom.

1 Auctionworld

1,360 complaints. Licence revoked.

Consistently poor customer service, misleading guide prices and delays in delivery of goods, resulted in a £450,000 fine for shopping channel Auctionworld and subsequent revocation of its licence to broadcast. In its ruling, Ofcom said that the grave breaches of the Code had led to demonstrable harm to consumers and prejudice to the teleshopping sector as a whole.

2 Mr Kipling Mince Pies

806 complaints. Upheld.

This television ad showed a woman called Mary giving birth in what seemed to be a hospital but was later revealed to be a church hall. It became clear that what the astonished audience were watching was a Nativity where the central character was actually giving birth. Most complainants felt the ad mocked a holy event in the Christian calendar. Ofcom ruled that the ad breached the Code's rules on offence and welcomed the advertiser's decision to withdraw it.

3 Virgin Mobile

459 complaints. Not upheld.

In this TV commercial promoting customer service, a young man was seen standing at a urinal. An attendant approached and helped the man to urinate. Complainants were disgusted at the implication that the attendant was holding the man's penis. Ofcom acknowledged that the ad would not be to everyone's taste but accepted that it was intended to be both ludicrous and bizarre. Its final ruling concluded that the ad did not break the Code.

4 Land Rover, Freelander Sport

361 complaints. Upheld.

Complainants were concerned that this commercial, which showed a woman taking a gun from a drawer and hurrying after a man leaving the house, glamorised and normalised guns. As the man climbed into a car, the woman aimed the gun and shot it skyward and it became clear the gun was a starting pistol. Nevertheless, Ofcom ruled that the domestic setting and storage of the gun normalised the ownership of guns and that the commercial, albeit unintentionally, made light of the genuine public concern about gun culture. The advertisement breached the Code on the grounds of offence.

5 Trojan Condoms

317 complaints. Not upheld.

A commercial showing a close-up of a woman's head and face during a simulated orgasm generated complaints that the ad was unnecessarily and overly explicit, despite having a post 9pm restriction. Although the ad was strongly suggestive, Ofcom did not think that it was explicit or out of place to show after 9pm. The advertising did not breach the Code.



6 Walls Sausages

174 complaints. Not upheld.

A comical scene showing a dog fighting a man for a plate of cooked sausages concluded with the dog jumping out of the window which the man then shut. Trying to jump back in, the dog hit the glass and slid down the window pane. Viewers complained that the advertisement would encourage abuse of animals, or frighten children, although most acknowledged that it was obvious that the dog was not real. Ofcom considered that this type of exaggerated comic slapstick was unlikely to encourage real life mistreatment of animals or to frighten children.

7 Müller Rice

142 complaints. Not upheld.

Complainants expressed concern that this advertisement, which showed a man attempting to catch a budgie between two slices of bread, could incite cruelty to animals and set a bad example to children. In responding to complainants, Ofcom observed that the situation depicted was absurd and unlikely to provoke similar behaviour. Ofcom decided that the commercial did not breach the Code.

8 British Heart Foundation

92 complaints. Not upheld.

This commercial showed an artery with fatty deposits that had built up inside. A scene of people smoking showed the ash of their cigarettes changing into the same fatty substance. Complainants found the images distasteful and unnecessarily graphic, asking how such hard hitting scenes could be justified. The Broadcast Advertising Clearance Centre (BACC) had approved the advertisement for broadcast after 9pm. In their ruling that the advertisement was acceptable, Ofcom noted the aims of the campaign and the reasoning behind the approach. They believed that the importance of the message outweighed the objections and ruled that the complaints should not be upheld.

9 COI Adult Basic Skills

89 complaints. Upheld.

This commercial featured a gremlin taunting a woman about her lack of educational qualifications. As she pulled out a newly acquired educational certificate the gremlin exploded and the voiceover concluded: "Get rid of your gremlins". Complainants were concerned that children might be upset or scared.

Originally given an 'ex-kids' restriction, Ofcom ordered the BACC to impose a post 7.30pm restriction. It concluded that the commercial was suitable for an older audience, but that the 'ex-kids' restriction had not been sufficient. The commercial was ruled to breach the Code rules on distress and scheduling.

10 Teacher Training Agency

83 complaints. Not upheld.

This advertisement depicted headless figures in a variety of different work situations. The final scene showed a teacher in a classroom pointing to his head as he joked with pupils. The advertisement finished with the line: "Use your head. Teach". Some viewers complained that the ad was offensive because of recent events in Iraq where hostages had been decapitated. Others complained that the ad could scare children. However, because the advertisement had been on air for some time Ofcom rejected the complaints, stating that viewers would be familiar with the unusual imagery in the campaign.

While fewer campaigns caused shock headlines in 2004, more ads were investigated by the ASA. Despite a fall in complaints, the number of non-broadcast advertisements changed or withdrawn as a result of ASA action increased by 8% to 1,835.

Non-broadcast complaints

Complaints received and resolved

A total of 12,711 complaints were received during the year about 10,062 advertisements. Complaints fell 10.9% compared with 2003 and the respective number of ads complained about fell by 6.2%. One explanation for part of this drop is that few advertisements generated large numbers of complaints: eight of the top 10 most complained about campaigns (pages 12 and 13) received fewer than 100 objections. The ratio of advertisements to complaints supports this; at 1:1.26 it is one of the lowest recorded.

The number of ads investigated by the Executive increased by 4.5% to 1,687 of which 827 were subject to a formal investigation by the ASA Council. For the first time, more cases were resolved informally, with advertisers agreeing to withdraw or amend 860 advertisements without the need for a Council adjudication. Informal resolution of complaints is usually quicker and more straightforward than a formal investigation.

Of the advertisements that were subject to the formal procedure, 634 received an 'upheld' adjudication – a total of 77% of all formally investigated cases.

In line with the drop in the total number of complaints received, the number of complaints not investigated also fell, by 4.5% to 9,638. However the complementary number of ads not investigated fell by a smaller margin (1%) to 8,405.

The number of complaints where an investigation was judged to be not justified fell by nearly a quarter to 1,748. 'Not justified' means the Council decides that the Code has not been breached and that further investigation is not required. This outcome is most common where complaints about offensiveness are matters of judgement. Of the total complaints received in the year, 2,114 were judged to be outside of the ASA's remit and, where possible, the complainant was referred to another organisation.

The ASA Executive resolved 13,078 complaints during the year (including outstanding complaints carried over from 2003), a fall of 6.9% on the year before. Only 797 cases were left unresolved at the end of the year compared with 1,164 cases outstanding from 2003.

Most complained about campaigns

The most complained about campaigns of 2004 led to 1,092 complaints, or 8.5% of the total received during the year. This compares with the 1,623 complaints received about 2003's 'top 10'. Of the 11 ads involved in the 10 campaigns, seven were subject to a formal investigation, and, of these, six received upheld rulings (compared with two of the top 10 in 2003). More details about the most complained about campaigns can be found on pages 12 and 13.

Reasons for complaint

Complaints about taste and decency fell by nearly a quarter (23%), to 2,841, compared with 3,705 in 2003. There was a smaller fall in complaints involving truthfulness which declined by only 8% (2,680 in 2003 to 2,472).

Complaints by sector

A quarter of all complaints received by the ASA were about leisure advertising, although the total number of complaints (3,343) about this category fell by 15% on the previous year. Together with the other three most complained about sectors – computers and telecoms, health and beauty and holidays and travel – this represents over half (53%) of all the complaints received. Complaints about food and drink and alcohol fell significantly during the year (by 40% and 37% respectively), as did complaints about the non-commercial sector where 506 fewer objections were received.

Complaints by media

National press advertising generated more objections than any other media (2,270 complaints) with six of the ten most complained about campaigns including press advertising. However, this figure represents a 2.4% drop in complaints year on year.

Complaints figures

	Complaints	2004 Ads complained about	Complaints	2003 Ads complained about
Work brought forward	1,164	888	934	689
New work received in year	12,711	10,062	14,270	10,724
Total work considered	13,875	10,950	15,204	11,413
Formally investigated upheld	1,705	634	1,855	581
Formally investigated not upheld	435	193	755	233
Total formals	2,140	827	2,610	814
Resolved informally	962	860	909	800
Total investigated	3,102	1,687	3,519	1,614
No case to answer	4,459	4,439	4,078	4,039
Withdrawn	1,317	1,302	1,608	1,554
Outside remit	2,114	2,083	2,117	2,117
Not justified	1,748	581	2,290	773
Total not investigated	9,638	8,405	10,093	8,483
Mail order	129	129	156	156
Database	209	209	272	272
Total direct marketing	338	338	428	428
Work resolved	13,078	10,430	14,040	10,525
Work outstanding at year-end	797	520	1,164	888

Bigger declines were recorded in the second and third most complained about media, with complaints about direct mail falling by 11.7% to 2,228 and objections to posters falling by 18.7% to 1,820 – the second year that complaints in this category have declined substantially. In the other direction, complaints about online advertising continued to rise and there was a sizeable increase in the number of complaints recorded in transport advertising, albeit from a low base.

Source of complaints

The proportion of industry complaints rose for the first time in two years to 9% of the total. However these led to fewer formal investigations – 24% of the total compared with 31% in 2003.

ASA_Non-broadcast complaints

Complaints resolved by sector		
	2004	2003
Leisure	3,343	3,929
Computers and telecommunications	1,322	1,579
Health and beauty	1,282	887
Holidays and travel	954	1,287
Retail	759	539
Non-commercial	659	1,165
Financial	628	609
Publishing	622	408
Business	614	395
Motoring	578	614
Household	447	452
Clothing	305	337
Food and drink	292	489
Property	240	147
Employment	212	210
Utilities	194	119
Not specified	183	302
Alcohol	144	230
Industrial and engineering	101	85
Electrical appliances	74	100
Education	67	64
Agricultural	27	35
Tobacco	17	30
Unknown	14	28
Total	13,078	14,040

Complaints resolved by media type		
	2004	2003
National press	2,270	2,326
Direct mail	2,228	2,523
Poster	1,820	2,239
Internet	1,265	1,100
Magazine	1,036	1,200
Regional press	889	874
Leaflet	836	888
E-mail	405	456
Unknown	403	584
Brochure	309	311
Text message	225	393
Catalogue	217	150
Point of sale	214	174
Insert	175	84
Circular	165	70
Packaging	162	128
Transport	162	34
Directory	130	152
Press general	117	168
Other	103	102
Mailing	98	97
Cinema	84	96
Facsimile	76	68
Electronic	41	59
Ambient	21	31
Voicemail	16	6
Video	2	3
Computer games	1	0

Areas of complaints in 2004		
	All complaints	Ads complained about
Legality	78	35
Decency	2,841	635
Honesty	548	308
Truthfulness	2,472	1,802
Substantiation	1,478	1,047
Comparisons	250	192
Denigration	70	54
Imitation	12	12
Matters of opinion	148	74
Fear and distress	518	167
Safety	205	74
Violence and anti-social behaviour	548	83
Political advertising	18	12
Protection of privacy	86	24
Testimonials and endorsements	74	62
Free offers	126	89
Availability of products	77	70
Guarantees	35	31
Identifying advertisers and recognising advertisements	157	66
Prices	333	232

Ofcom licencees – the commercial TV channels and radio stations – have responsibility for clearing ads prior to transmission. Most TV and radio ads are pre-cleared on the broadcasters' behalf by the Broadcast Advertising Clearance Centre or Radio Advertising Clearance Centre.

Broadcast complaints

Statistics relating to January – October 2004 are reproduced with the kind permission of Ofcom. The ASA took over responsibility for receiving and resolving broadcast complaints on 1 November 2004.

Complaints received and resolved

In 2004, Ofcom and the ASA received a total of 9,860 broadcast complaints about 2,532 commercials where the product was identified. This compares with 9,082 complaints about 1,642 ads in 2003 as reported by Ofcom.

During the year, 10,155 complaints were resolved either by Ofcom or the ASA – a 12% increase on 2003. The ASA received 1,797 complaints about 551 broadcast advertisements in November and December. The vast majority of those complaints (1,722) were about television ads, the remaining 75 related to radio commercials. 302 complaints were outstanding at the year-end.

Reason for complaint

The most common cause of complaint to the ASA was misleadingness (820 complaints), followed by objections on the grounds of offensiveness (440 complaints) and harm (216 complaints).

During the two month period, 493 complaints were investigated by the ASA and 352 of those complaints were upheld. 127 were not upheld and, for the remaining 14, advice was offered to broadcasters.

ASA_Broadcast complaints

Most complained about advertisements

The ten most complained about ads were all TV commercials and, in total, generated 3,883 complaints or 38.2% of the total complaints resolved. Complaints were upheld against four of the ten commercials (pages 14 and 15). The most complaints were received about teleshopping channel Auctionworld resulting in Ofcom issuing a fine and, subsequently, revoking Auctionworld's licence to broadcast.

ASA to Ofcom referrals

Between January and October 2004, the ASA received 5,814 complaints about television and radio advertising. These complaints were referred to Ofcom although it is not known how many of these complaints are reflected in the Ofcom totals.

Complaints received and resolved

	Complaints received		Complaints resolved	
	Complaints	Total ads*	Complaints	Total ads*
January-October	8,063	1,981	8,562	1,979
November-December	1,797	551	1,593	530
Total	9,860	2,532	10,155	2,509

Complaints received and resolved

	Complaints received		Complaints resolved	
	Complaints	Total ads*	Complaints	Total ads*
November	1,107	303	806	281
December	690	248	787	249
Total	1,797	551	1,593	530

Code clause complaints resolved

Main category	November-December
Harmful	216
Misleading	820
Offensive	440
Miscellaneous	97
Unknown	20
Total	1,593

Media

November-December	Complaints received	Complaints resolved
TV	1,722	1,539
Radio	75	54
Total	1,797	1,593

* Where product identified

225 complaints were received about **text messages**, a reduction of over 40%



Keeping compliant

The Compliance team acted against non-compliant advertisers 846 times during the year; just 13 cases remained unresolved at the year-end. 21% of active cases related to post-investigation compliance, when advertisers had not given the ASA a signed assurance that they would change or withdraw an ad after an upheld adjudication. Most advertisers eventually agree to change their ads, but in 12 cases sanctions were applied, including the distribution of Ad Alerts – requests to the media to withhold publication of advertisements that break the Code. The team issued 54 Ad Alerts during the year.

The Compliance team often intervenes pro-actively: it checks over 4,500 ads each month as part of its routine monitoring. The monitoring, which covers press, magazine and online ads as well as direct mailings, highlighted 429 advertisements that seemed to break the Code. The team secured 341 assurances that advertisers would change their ad without the need for other action. When no such assurances were forthcoming, sanctions were applied or advice given. Eight post monitoring compliance actions remained in progress at the end of the year.

Level playing field

The self-regulatory system works to protect businesses as well as consumers. By upholding a level playing field between companies, the ASA helps to ensure fair competition. The Compliance team contributed to that end in 2004 by promoting compliance with the Code in six different business sectors, including advertisements for skin creams, telecoms and driving instructor training.

Two decisions made by the ASA Council were communicated across the relevant business sector to ensure compliance: one, that television screen and tube sizes should be provided in the same unit of measurement so as not to confuse consumers; the other, that sponsored search engine results on the Internet should be clearly identified as such.

Three budget airlines were among the companies against whom compliance action was taken for repeatedly breaching the Code. The team continued to improve compliance across the budget airline sector and raised 90 separate breaches of the Code directly with flight marketers.

Legal backstop

When the ASA's non-statutory powers do not persuade an advertiser to change their advertising, the Compliance team may ask the Office of Fair Trading (OFT) to back up the self-regulatory system with legal action.

One company that flouted an upheld ASA ruling – Sport Newspapers – was referred to the OFT during the year. The ASA ruled against a front-page flash that stated: “Daily Sport 10p Today”. In fact, the 10p offer related to a separate magazine: the cover price of the Daily Sport was 40p (see picture). After OFT action, Sport Newspapers provided a signed assurance that future layouts and headings of the paper would not give a misleading impression about the price at which the paper could be bought.



The OFT also stopped some misleading homeworking advertisements after a referral by the ASA. The advertisements, published by Neath Mailing Services, implied that respondents could earn money at home by filling and returning envelopes, when in fact the only way to earn money was to help recruit new agents to the scheme.

Despite several signed assurances from the advertiser after an upheld ASA ruling, Neath Mailing Services continued to distribute mailings that contained the same misleading claims and the Compliance team referred the company to the OFT.

The team achieved another success with cross-border court action in Europe against Belgian company D Duchesne SA, which had been sending catalogue mailings to UK consumers under the trading names TV Direct Distribution and Just 4 You. The recipients were notified of a large cash prize win but were led to believe that they had to make a purchase from the catalogue to secure their prize. In fact, prize-winners had been pre-selected. Following an ASA referral, a commercial court in Brussels ruled in favour of the OFT, preventing the company from sending misleading mailings to the UK.

The ASA Council is appointed by the Chairman and two-thirds of the members are independent of the advertising industry. Two panels operate within one Council, **judging broadcast and non-broadcast ads separately.**

From left to right:



Non-broadcast

Donald Trelford

Visiting Professor,
University of Sheffield

Mike Ironside

Partner, Media Liaisons
Non-executive Director,
Shopcreator plc

David Lipsey

Labour Peer



Non-broadcast and broadcast

David McNair

Chief Executive,
Food From Britain

Dan O'Donoghue

Head of Strategic Planning,
Publicis Worldwide

Jean Coussins

Chief Executive,
The Portman Group

Sunil Gadhia

Chief Executive Officer,
Stephenson Harwood

Susan Murray

Non-executive Director,
Imperial Tobacco Group plc,
Enterprise Inns plc,
SSL International plc



Lord Borrie QC
ASA Chairman



Non-broadcast and broadcast

Neil Watts
Headteacher,
Northgate High School

Christine Farnish
Chief Executive,
National Association
of Pension Funds

Martyn Percy
Principal,
Ripon College Oxford

Pauline Thomas
Magistrate
Non-executive Director,
St Mary's NHS Trust London



Broadcast

Alison Goodman
Fundraising Manager,
Terrence Higgins Trust

Nigel Walmsley
Chairman, Broadcasters'
Audience Research Board

Chitra Bharucha
Consultant Haematologist

Council members are appointed for a renewable three year term and receive an honorarium of £15,000 p.a. A Register of Members' Interests may be inspected on application to the Company Secretary.



Under review

The volume of review requests at 43 was 17% down on the previous year and below the average of 48 per year for the previous five years.

The most striking feature of 2004 has been the small proportion of requests satisfying the criteria for reference to the ASA Council. The average for the previous five years has been 40%. In 2004 it was just 12%. As a consequence only 9% of the total requests received in 2004 has resulted in any change to the published adjudication. The average for the past five years has been 27%. In 2004 no verdict has been reversed; the only changes resulting from reconsideration by the Council have been changes to the wording of four adjudications.

The main source of requests in 2004 has been the advertiser rather than the complainant. Two thirds came from the advertiser and only one third from a complainant – an almost complete reversal of the position in 2003 but more in line with the position in previous years.

Summary analysis 1999-2004

	1999	2000	2001	2002	2003	2004	Total
Total cases received	46	53	37	38	52	43	269
Cases withdrawn etc	4	16	9	9	9	10	57
Cases in progress	0	0	0	0	0	0	0
Cases dismissed	22	21	17	12	24	28	124
Cases to council	20	16	11	17	19	5	88
of which reopened/in progress						1	1
Verdict unchanged	7	10	1	4	3	0	25
Verdict reversed	4	2	4	4	4	0	18
Wording changed	9	4	6	9	12	4	44

In 2004 there was a smaller proportion of requests relating to adjudications on industry complaints. In the past five years the proportion has averaged 37%, but in 2004 it was no more than 21%.

The transfer of responsibility for broadcast advertising to the ASA means that requests for a review of adjudications relating to broadcast advertising have now been brought within the Independent Reviewer system. Early in January 2005 requests began to arrive on my desk. I have already received six.

Finally a word about the time it takes me to deal with a request. I am glad to be able to report that the speed of turn round has increased. In the first two years of my tenure I was taking about eight weeks to reach a decision whether to accept or dismiss a review request. In the last two years the average has dropped to about five weeks.

As for cases which have been accepted and have been referred back to the Council, the average time taken has dropped from a peak of over 20 weeks in 2002 to just over 12 weeks in 2004.

Sir John Caines, Independent Reviewer

The ASA is a member of the European Advertising Standards Alliance (EASA) – the single authoritative voice of advertising **self-regulation in Europe.**

EASA includes self-regulatory organisations (SROs) similar to the ASA from 19 of the 25 Member States of the European Union.

EASA members resolve cross-border complaints on the basis of mutual recognition and the Country of Origin principle. In 2004, EASA resolved six complaints from other member states and consideration of four other cross-border complaints was ongoing at year-end. Similarly, the ASA referred 90 complaints to SROs in other member states for adjudication. Of these, 80 were resolved: 19 upheld, 8 not upheld, and 53 transferred to the appropriate regulatory body in the country of origin. The ten other referrals remain outstanding. For example, complaints about commercial e-mails addressed to UK consumers by the Dublin based low-cost airline Ryanair were resolved by the Advertising Standards Authority of Ireland. ASA ruled that e-mails that quoted prices exclusive of taxes and other charges were misleading. This ruling is in line with the ASA's policy that applies to low-cost airline ads in UK media.

An Unfair Commercial Practices Directive will harmonise consumer protection laws across the Single Market. EASA has argued that effective advertising self-regulation should be recognised as the 'established means' for implementing the new rules. The ASA has argued that the implementation of the Directive in the United Kingdom should make use of the ASA system.

May 2004 saw the enlargement of the European Union. Of the ten new Member States, four were already members of EASA. The ASA has been active in helping to establish SROs in the other six new Member States. SRO staff from Poland visited the ASA for training and ASA staff joined roadshows in Warsaw, Prague and Vilnius to help in the development of self-regulation in Poland, the Czech Republic and the Baltic States. ASA staff took part in workshops on copy advice and alcohol advertising in Paris and Warsaw, designed to strengthen the self-regulatory system.

The Chairman of EASA during 2004 was the ASA Director General, Christopher Graham. A major project for the year was the development and adoption of a Self-Regulation Charter – a best practice commitment signed by advertisers, agencies and media alike at a special Self-Regulation Summit in Brussels in June.

Christopher Graham was invited to give evidence to the European Economic and Social Council who were conducting a study of self-regulation and co-regulation in the single market. The ECOSOC report concluded: "Co-regulation and self-regulation offer many advantages: they remove barriers to the single market, they simplify rules, they can be implemented flexibly and quickly, they free up legislative capacity and ensure the co-responsibility of the stakeholders involved."



Complaints about **posters** fell for the second year running to 1,820



CAP

Setting the UK advertising codes

Change and consistency

Media convergence has been the principal driver of this change in regulatory structure. The one-stop shop is important because advertising is fast-moving and the industry is at the forefront of new opportunities presented by evolving technology. We all need a regulatory model that is fast, flexible and can adapt quickly to technological change. Self-regulation has proved it can do this.

Yet within the changes, some things stay the same. The advertising industry's commitment to self-regulation is unchanged. This commitment has been demonstrated in non-broadcast media through the ASA, which has operated successfully for over 40 years. The key principles of the non-broadcast system have now been carried into the new self-regulatory system for broadcast advertising that operates in a co-regulatory partnership with Ofcom. Advertisers, through ISBA, have demonstrated their commitment by agreeing to a levy on broadcast advertising that operates on the same principle as the existing non-broadcast advertising levy. This commitment is no

empty promise: the new levy, collected by the Broadcast Advertising Standards Board of Finance, is already providing funds.

The advertising industry has adopted the existing broadcast advertising codes and this will provide the industry with continuity and the public with the same high standards of advertising content. The new system is highly focused on the needs of real viewers and listeners. Public trust in advertising is crucial and this is in great part dependent on consumers' ability to ensure their views are heard and reflected in regulatory decisions. The creation of a one-stop shop will make it easier for consumers to lodge complaints about advertising. Lay input on future broadcast Code development will be provided through the Advertising Advisory Committee (AAC): a new committee of independent experts, under the leadership of Elizabeth Filkin.

CAP has already begun to introduce the new one-stop shop to agency staff: a week of seminars for the new graduate intake in IPA member agencies took place in October. A continuing programme of industry seminars and presentations aims to ensure that advertisers, agencies and media are all aware of their roles and responsibilities within the new system.

Ofcom's announcement followed detailed discussions with all sides of the advertising industry. My thanks go to my colleagues on the advertising industry task force who combined meticulous attention to the detail of how the new regulatory structure would work with an unwavering vision of the purpose and benefits of extending self-regulation.



Committee of Advertising Practice

Broadcast Committee of Advertising Practice

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The fact that CAP's day-to-day work continued alongside all this activity is a credit to the members of the CAP Executive. As you will read in the following pages, in 2004 CAP provided guidance on issues as diverse as mobile marketing and advertising by psychics. Our e-mail newsletter, Update@CAP, continues to go from strength to strength, providing industry subscribers with important news and analysis of ASA adjudications. A new Code Policy and Monitoring team sets and monitors compliance with the advertising codes and the Copy Advice team continues to provide expert pre-publication advice on non-broadcast campaigns.

I am also very grateful to the members of the General Media Panel and the Sales Promotion and Direct Response Panel for their hard work throughout the year. The individuals who serve on the panels give up their time to do so and provide invaluable expertise to the self-regulatory system.

There are more changes ahead for the advertising industry and its self-regulatory system. Our consultation on Guidance Notes on the new TV alcohol advertising rules that Ofcom announced last November will result in guidance for the interpretation of rules that are tough, but workable. Other sectors, most notably food advertising, are also in the public spotlight. The public's confidence in advertising standards is essential for the commercial viability of the industry. The one-stop shop is well placed to maintain that confidence.

A handwritten signature in black ink, appearing to read 'Andrew Brown'.

Andrew Brown, CAP Chairman

General Media Panel

Grant Duncan, Chairman
Publicis Worldwide

Stephen Allan
MediaCom

Tess Alps
PHD Group UK

Teresa Brooke
Newspaper Publishers Association

Carol Fisher
The Ingram Partnership

Bruce Koster
Consultant

John Laidlaw
Staples UK

Andrew Melsom
Agency Insight

Mike Moran
The Orchard Consultancy

Chris Nadin
Development Council Member,
Tomorrow's People

Martyn Percy
ASA Council

Simon Rhodes
Commercial Director
in the Foods Industry

Claire Watson
Marketing Society

Gillian Wilmot

Working with industry

January

February

March

April

May

June

The Committee of Advertising Practice creates, revises and enforces the advertising codes. In 2004, the CAP Executive continued to work with and support the non-broadcast advertising industry, offering advice and guidance for advertisers, training for agencies and new rules for award organisers.

Industry help and guidance

CAP's guidance for the industry helps advertisers to interpret the Code in line with ASA Council rulings. In 2004, a steady increase in complaints received and upheld by the ASA about advertising for fortune tellers; clairvoyants; palm, crystal ball and tarot card readers and psychic healers led CAP to issue new guidance for advertisers in this area.

CAP acted after being concerned that some advertising for spiritual and psychic services contains claims that are impossible to prove and could mislead and exploit the vulnerable. In particular, some advertisers make exaggerated promises of wealth and good fortune and others promise to reunite separated partners or to solve all problems with 100% guaranteed results (see picture).

The Help Note on the Marketing of Spiritual and Psychic Services, Astrologers and Lucky Charms requires that emphasis should be placed on individuals helping themselves instead of implying that events or changes caused by some external force might happen to them. Results should not be 'guaranteed' unless the advertiser can prove that claim and, when sending direct marketing, advertisers should not imply that they have personal knowledge about recipients.

PSYCHIC COUNSELOR VOWS TO HEAL THE HEART AND WARM THE SPIRIT

By Pamela Zee, reincarnated psychic counselor

The last thing I remember was crashing headfirst into a highway pole. After coming to again, consciousness, I was horrified to discover that I was actually looking at my own lifeless body laid out on a hospital stretcher. I was as if my spirit was hovering over the scene of the accident. But then a stranger thing happened. "I felt a warm presence beside me. I looked to my left, and saw an incredibly beautiful figure standing there. As if by magic, the figure thrust its hands through the body of an ambulance attendant and placed them upon the head of my body. The next thing I remember, I was in a hospital bed."

It was only then that Pamela recalled who the wondrous figure actually was. "It was my Guardian Angel," she says. "One only had to push me back from the brink of death, but it rescued me with perfect precision that made me to protect the future and heal illnesses."

From that moment on, Pamela has made it her life's work to help others. Over the years, she has amassed an impressive list of credentials that include: International Association of the Professional Psychic Counseling Network, Associate Member of the National Association for the Advancement of Psychopaths, and Associate Member of the American Board of Astrologists and Certification.

But it is her caring, compassionate approach that causes Pamela Zee's clients to seek her again and again. After writing through a pile of haunting correspondence on the counselor's desk, I was surprised to find absolutely identical when Pamela offered to read my Tarot cards. But all those doubts were removed when she proceeded to tell me things about my past that even my closest friends didn't know. As for the future, I can't tell you how the incredible things she predicted, only that every last one of them has come true!

PSYCHIC COUNSELOR VOWS TO HEAL THE HEART AND WARM THE SPIRIT

WITH SOMETHING HAPPENING THAT CHANGED PAMELA ZEE'S LIFE FOREVER.

results, her eyes growing misty at the memory. "The last thing I remember was crashing headfirst into a highway pole. After coming to again, consciousness, I was horrified to discover that I was actually looking at my own lifeless body laid out on a hospital stretcher. I was as if my spirit was hovering over the scene of the accident. But then a stranger thing happened. "I felt a warm presence beside me. I looked to my left, and saw an incredibly beautiful figure standing there. As if by magic, the figure thrust its hands through the body of an ambulance attendant and placed them upon the head of my body. The next thing I remember, I was in a hospital bed."

Pamela has made it her life's work to help all creatures - great and small.

I felt a warm presence beside me. I looked to my left, and saw an incredibly beautiful figure standing there.

December 19, 2002 4"

July	August	September	October	November	December
------	--------	-----------	---------	----------	----------

An updated Help Note on the Marketing of Publications was prepared during the year in response to large numbers of upheld complaints to the ASA about ads for non-fiction books (especially those that refer to medical conditions). Such complaints usually involve challenges such as whether the ads could encourage self-diagnosis or self-treatment for serious medical conditions, whether the claims were capable of being substantiated and whether they exploited vulnerable people.

The revised Help Note expands on earlier guidance and illustrates claims that are likely to be acceptable and claims that are likely to fall foul of the Code.

Other Help Notes issued during 2004 include the Help Note on Ticket Pricing and the Help Note on Mobile Marketing (page 36). **CAP Help Notes can be downloaded from www.cap.org.uk.**

Training for industry

New graduate recruits to IPA member advertising agencies were introduced to the new one-stop shop for advertising complaints by ASA and CAP staff at a series of autumn seminars. The roles of the two separate CAP committees – broadcast and non-broadcast – were outlined to delegates, who were asked to take on the role of the ASA Council and decide if a selection of ads had broken the Codes.

Industry awards

Awards commending innovation and creativity in advertising are keenly fought over by advertising agencies; but winning ads must demonstrate creativity within the boundaries of the CAP Code. Marketing communications that have been subject to an upheld ASA adjudication are disqualified from entering advertising industry awards and during the year a new set of rules establishing entry criteria were developed to aid award organisers when vetting submissions. CAP’s rules mean that campaigns including an execution that has been subject to an ASA upheld adjudication are ineligible as is any campaign that has included a flyposter, irrespective of an ASA ruling. Similarly, ads in campaigns that have been subject to an Ad Alert may not be entered.

Flakes of wholewheat
and oats with fruit
and hazelnuts

OPEN TO

Two pairs of tickets to Disneyland, Paris up for grabs. Se

Two sales promotions featured in the top 10 most complained about non-broadcast ads

The CAP Copy Advice team provides free pre-publication advice and guidance on non-broadcast marketing communications. By getting advice before an ad appears, advertisers, agencies and media can help avoid later problems with the ASA.

The Copy Advice service is available over the phone, by e-mail or online. The team has access to the ASA database of all past decisions and responds to 90% of written enquiries within 24 hours. CAP's AdviceOnline at www.cap.org.uk includes a regularly updated searchable database of advice for non-broadcast ads, links to previous ASA rulings and good advertising checklists. A quarterly e-mail newsletter – Update@CAP – also provides advice on ASA decisions and information on the latest Help Notes and entries to AdviceOnline.

Poster pre-vetting

The public is more concerned about poster advertising than any other type of non-broadcast advertising media. Readers of a magazine can turn a page and unwanted direct mail can be binned but poster ads are there for everyone to see.

Poster advertisers who breach the Code on the grounds of taste and decency or social responsibility may be required by CAP to seek pre-vetting approval from Copy Advice for all poster ads for the relevant product or service for two years. CAP works with the Outdoor Advertising Association and its members to ensure that no posters from companies on the poster pre-vetting list appear without prior Copy Advice approval.

This sanction was imposed against five advertisers during the year: Stiffy's Shots Ltd, Ann Summers Ltd, Halewood International Ltd, Beverage Brands (UK) Ltd and French Connection Group plc.

The decision to pre-vet FCUK's posters for a second two-year period was the result of an ASA ruling against posters for the advertisers' radio station – FCUK FM. The advertisements stated 'FCUK FM FROM PNUK TO RCOK AND BACK. NON-STOP FNUK. FCUK FM'. The ASA concluded that the posters would cause offence because readers would interpret the FCUK-trademark as the expletive 'fuck'.

In previous rulings, the Authority had warned the advertisers against using their trademark if it would be interpreted in this manner.

The same sanction was imposed against Ann Summers after the ASA upheld complaints against two posters promoting new store openings in different parts of the UK. The first ad, which appeared in 2003, claimed 'Lancashire hotbot' and showed a woman in black underwear with her hands handcuffed behind her back. The ASA decided that the ad was degrading to women, offensive and unsuitable for use as a poster. The second poster, for a new Banbury store, showed a woman in underwear astride a model horse with the headline: 'Ride a Cock Hoarse'. The ASA ruled that the use of a nursery rhyme was likely to attract the attention of children and that the advertisement was unsuitable for the medium in which it appeared.

Explicit consent required

The CAP Code controls the use of personal data for direct marketing purposes, in addition to the content of direct mailings. In 2004 CAP updated the Code to bring it into line with the EU Privacy & Electronic Communications Regulations 2003.

After consultation with the Office of the Information Commissioner, the Direct Marketing rules in the CAP Code now distinguish clearly between business to business and business to consumer communications. The explicit consent of consumers is usually required before marketing to them by e-mail or fax but unsolicited messages sent to business are allowed. The amendments were published and distributed to Code holders in May 2004.

Mobile marketing

The use of mobile phones as a marketing device has become more popular over recent years. As complaints to the ASA about commercial text messages continued, CAP issued new guidelines – the Help Note on Mobile Marketing – to ensure that only those wanting to receive advertising via mobile phones do so.

The guidelines remind marketers of their obligation to comply with the law in conducting mobile marketing campaigns. As with e-mail and fax, the explicit consent of consumers is required before sending a text message, unless the marketer is offering a similar product to an existing customer. The identity of mobile marketers must be clear at all times and the message must include all significant conditions. Other requirements of the guidance include the need for verifiable and explicit consent from a parent or guardian when communicating with children by mobile phone.

Members of the CAP Executive were on hand at the International Direct Marketing Fair at Earls Court to answer questions from marketers about the new guidelines. The ASA and CAP stand at the exhibition was themed around the new guidelines which are available at www.cap.org.uk.

Breaking the rules

A complaint to the ASA from a member of the public about moviechoices.com highlighted the need for explicit consent. The complainant was surprised to receive an e-mail from moviechoices.com because he had never given permission to them to contact him. He was also concerned that the e-mail did not give him the opportunity to opt out of receiving other e-mails from the advertisers.

The complainant's details had been sold to moviechoices.com's owners – Home Entertainment Corporation – by a company to whom he had given his e-mail address for marketing purposes and that had subsequently gone into liquidation. Home Entertainment Corporation could not prove that he had given his explicit consent to receiving advertising from a third party. Although they had argued that they believed consent had been given, the ASA told them they had to be certain of explicit consent before sending out future advertising.



Premium offers, free trials, front-page flashes, one-off competitions and prize draws are all covered by the **Sales Promotion** clauses in the **CAP Code**.

Sales Promotion & Direct Response Panel

Clive Mishon, Chairman

Jane Asscher
23red Ltd

Peter Batchelor
Triangle Group

Mark Challinor
International Newspaper
Marketing Association

Philip Circus
Institute of Sales Promotion

Mark Dugdale
Flying Brands

Lesley Godwin

Oliver Hickson
Central Office of Information

Caroline Roberts
Direct Marketing Association

Jane Rose

Pauline Thomas
ASA Council

Paul Whiteing
ICSTIS

In December, CAP's quarterly e-mail newsletter, Update@CAP, warned advertisers running special offers and sales promotions to be aware of the CAP policy on "free" claims. The reminder came at the end of a year when several sales promotions had been deemed by the ASA to breach the CAP Code's Sales Promotions rules.

A spring promotion by Avon Cosmetics (see picture) offered a free Pay As You Go mobile phone to customers who spent £15 or more on a particular skin care range. The availability of the offer was challenged by consumers who had not received their phone or a substitute product. The promoters explained to the ASA that they had estimated the number of phone vouchers required based on demand for previous, similar promotions but in its ruling the ASA expressed concern that the previous promotion had offered a gift of much smaller value. In its judgement, the ASA upheld the complaints and told the promoters to take greater care in estimating demand for free gifts in the future.

The ASA also ruled that Avon's offer of half price skin cream to disappointed customers could be deemed as merely a goodwill gesture, not a substitute for the phone.

Other promotions that did not meet the requirements of the Code included a Daily Sport front-page flash suggesting that the newspaper was on offer for only 10p whereas the cover price was 40p. The advertiser's refusal to comply with the upheld ASA adjudication led to their referral to the Office of Fair Trading (page 23). Another newspaper promotion, by The Sun, offering free computer games, generated 55 complaints and ranks in the top 10 most complained about marketing communications of the year (pages 12 and 13).

To subscribe to CAP's free quarterly e-mail newsletter Update@CAP, visit the CAP website at www.cap.org.uk.

2,228 complaints were received about **direct mail**, a fall of 12%



At the heart of the one-stop shop, the newly-established Broadcast Committee of Advertising Practice (BCAP) will work alongside the ASA to secure the delivery of broadcast advertising content regulation to the highest standards.

Also referred to as CAP (Broadcast), the new committee has members from across the broadcasting and advertising industries and has been charged with functions relating to setting, reviewing and revising advertising standards codes for television and radio. A Memorandum of Understanding between CAP (Broadcast), the Advertising Standards Authority (Broadcast) and the Broadcast Advertising Standards Board of Finance (Basbof) setting out the rights and responsibilities of all parties can be viewed in full on Ofcom's website at www.ofcom.org.uk.

Membership

CAP (Broadcast) exists alongside and separately from the non-broadcast Committee of Advertising Practice. The two Committees share a single Chairman – Andrew Brown, Director General of the Advertising Association – and partly overlapping members for liaison between the two code-owning bodies.

Broadcast Committee of Advertising Practice

[Advertising Association](#)

[British Sky Broadcasting Limited](#)

[British Television Shopping Association](#)

[Channel 4 Television Corporation](#)

[Channel 5 Broadcasting Limited](#)

[Commercial Radio Companies Association](#)

[Direct Marketing Association](#)

[Flextech Television Limited](#)

[GMTV Limited](#)

[Incorporated Society of British Advertisers](#)

[ITV plc](#)

[Institute of Practitioners in Advertising](#)

[Satellite & Cable Broadcasters' Group](#)

[Teletext Limited](#)

Legal foundation

The legal foundation for the establishment of CAP (Broadcast) and its role within the new broadcast co-regulatory system is the Deregulation and Contracting Out Act 1994. This Act allows for a Minister or public authority to delegate or 'contract out' specific functions or duties to another person or organisation. Ofcom has been given the power to contract out its functions under DCOA by Section 1(7) of the Act.

The broadcast advertising Codes

The contracting-out process means that the broadcast advertising Codes, previously known as the Radio Authority's Radio Advertising and Sponsorship Code and the Independent Television Commission (ITC) Television Advertising Standards Code, are now owned by the Broadcast Committee of Advertising Practice. The broadcast Codes retain their statutory foundation and Ofcom, which retains all its legal powers under the new system, must approve all Code changes and is ultimately able to insist on changes to the Codes, although it would not normally do so.

Few immediate changes have been made to the content of the Codes – although the names and branding now reflect the new ownership and one-stop ASA shop, not the previous regulators. References in the Codes to the ITC or Radio Authority have, where relevant, been changed to the new regulatory bodies as appropriate.

The TV Advertising Standards Code is complemented by separate sections that cover: text services, appeal to children, scheduling, text and subtitles, interactive TV and the complaints-handling process that the ASA now operates on complaints about broadcast ads. Both the radio and TV Codes have been updated to reflect recent legislation that affects advertising and marketing in the UK. Radio code sections that dealt with programming, sponsorship and broadcaster discrimination between advertisers have been deleted: they remain the responsibility of Ofcom; the CAP (Broadcast) Codes cover advertising content only.

When making future changes to the broadcast Codes, CAP (Broadcast) will consult the independent Advertising Advisory Committee (AAC), chaired by Elizabeth Filkin, which met for the first time early in 2005. The AAC's report of its activities in 2004 can be found on pages 42 and 43.

Pre-clearance and monitoring

Television and radio broadcasters are required by the terms of their Ofcom licence to ensure compliance with the broadcast Codes and with the ASA. CAP (Broadcast) has no role in pre-clearing advertisements before they go to air – this remains the responsibility of the Broadcast Advertising Clearance Centre (BACC) and the Radio Advertising Clearance Centre (RACC).

Advice, training and support for advertisers and media is available from a new Code Policy and Monitoring team, which has been established as part of the CAP Executive to set and monitor compliance with the advertising codes.

The team will monitor advertising across all media and follow up code breaches that it finds.

CAP (Broadcast), like the ASA, is accountable to Ofcom for the effectiveness of broadcast self-regulation and is required to report to Ofcom quarterly on compliance, policy initiatives and proposed code changes and rule reviews.

Teleshopping

Concern about the potential for misleading pricing on teleshopping channels resulted in new guidance for broadcasters being issued within weeks of CAP (Broadcast) starting work. The guidance, given in the Help Note on Price Indications and Comparisons in Teleshopping Advertising, followed the £450,000 fine issued by Ofcom to the teleshopping channel Auctionworld for various breaches of the Television Advertising Standards Code ('Top 10 Broadcast advertising complaints' on page 14).

Another channel, Shop Smart Television Ltd, also lost its licence after a referral to Ofcom by the ASA. Shop Smart had not responded to the ASA's enquiries about delivery delays and poor customer service.

The Teleshopping Help Note is intended to prevent the use of false Recommended Retail Prices, exaggerated price cuts and deceptive comparisons with higher quality products by teleshopping channels. Broadcasters are entitled to price products at any level they want but must ensure that comparative or illustrative prices, whether they be Recommended Retail Prices (RRP), guide prices or similar, are genuine and not likely to mislead.

Alcohol

After public consultation and in response to public concern about Britain's drinking culture and the need to protect under 18s, Ofcom published revised rules on the television advertising of alcohol on 1 November 2004.

In particular, the new rules intend to reduce the appeal of alcohol advertising to children and young teenagers, reduce the sexual content of some alcohol advertising and ensure that advertising does not encourage or condone anti-social or irresponsible behaviour and especially excessive or binge drinking.

The rules include requirements that:

- > Advertisements for alcoholic drinks on television must not be likely to appeal strongly to people under 18, in particular by reflecting or being associated with youth culture. This could include ensuring that elements such as animation or music do not have strong youth appeal.
- > Advertisements must not link alcohol with sexual activity or success or imply that alcohol can enhance attractiveness. Romance and flirtation scenes between the over 25s will still be allowed unless the ad is likely to appeal to youngsters or suggests that drinking has smoothed the path of passion.

> Television advertising for alcoholic drinks must not show, imply, or refer to daring, toughness, aggression or unruly, irresponsible or anti-social behaviour.

> Alcoholic drinks must be handled and served responsibly in television advertising and not splashed around or poured out lavishly in a carefree party setting.

Describing the new rules as 'tough but workable' CAP (Broadcast) confirmed that it would consult on guidance notes for interpreting and implementing them. Advertisers who have already committed themselves to campaigns that would not comply with the tougher new rules have a period of grace until 30 September 2005. All alcohol ads on air on or after 1 October 2005 will have to comply with the new rules. More information about the CAP (Broadcast) consultation is available at www.cap.org.uk.

CAP (Broadcast) has established a new consumer panel to provide advice on the advertising codes. The Advertising Advisory Committee (AAC) began work in January 2005, offering independent, third party guidance to CAP (Broadcast) on consumer issues and concerns.



Seven members of the AAC are lay experts and are independent of the advertising industry. Appointed following public advertisement, each one brings different skills and expertise to the AAC. The eighth member is Andrew Brown, who brings his knowledge and experience of the advertising industry to the Committee.

Our role is not to comment on specific advertisements, but to ensure that the concerns of viewers and listeners are taken into account whenever the broadcast advertising Codes are revised or updated. The Broadcast Committee of Advertising Practice must ask the AAC for input whenever it decides to change the Codes and provide a formal response to the advice given.

The AAC welcomes contributions from viewers and listeners outlining their concerns about TV. Comments can be sent via the AAC website at www.advertisingadvisorycommittee.org.uk.

Elizabeth Filkin, Chair



Elizabeth Filkin
Chair

Members of the Advertising Advisory Committee

Elizabeth Filkin, Chair

Elizabeth Filkin is currently Chair of the Royal Pharmaceutical Society's Post-Shipman Group and is a member of the Regulatory Decisions Committee of the Financial Services Authority. From 1999-2002 she was the Parliamentary Commissioner for Standards. Previously she was a Commissioner for the Audit Commission, The Adjudicator for the Inland Revenue and Customs and Excise and Chief Executive of the National Association of Citizens Advice Bureaux.

Left to right (opposite)

Jenny Watson

Jenny Watson is a Senior Human Rights Advisor for Global Partners and Associates and is Deputy Chair of the Equal Opportunities Commission.

David Jessel

David Jessel was appointed as a Commissioner to the Criminal Cases Review Commission in 2000. He is also the presenter of Channel Four's Trial and Error programme.

Laura Simons

Laura Simons is an independent consultant in communications and public relations with considerable experience in the not-for-profit sector. She sat on the ITC Advertising Advisory Committee as an independent consumer representative from 2002-2003.

Dr Michael Wilks

Dr Michael Wilks joined the Metropolitan Police in 1992 as a senior forensic physician. He now combines the police work with an active role within the British Medical Association.

Stephen Locke

Stephen Locke is a specialist consultant on consumer policy and regulation. He currently serves on the boards of the National Consumer Council and ICSTIS as well as on the Consumer Panel advising the Financial Services Authority.

Andrew Brown

Andrew Brown is Director General of the Advertising Association and Chairman of the Committees of Advertising Practice. He is a Director of the Advertising Standards Board of Finance and a Director and member of the Executive Committee of the European Advertising Standards Alliance (EASA).

Jacqueline Hughes-Lundy

Jacqueline Hughes-Lundy has worked in the financial services, broadcasting and charity sectors. She is currently Vice-President of the Community Foundation for Greater Manchester.

Colin Munro

Colin Munro is Professor of Constitutional Law at the University of Edinburgh, where he teaches and writes on public law. Colin is a member of the Consultative Council of the British Board of Film Classification and of the Scottish Media Lawyers Society.

Committed to improvement

12,711

non-broadcast complaints received

3,892

written requests for Copy Advice

6,709

telephone enquiries

13,078

non-broadcast complaints resolved

95%

of Copy Advice cases handled in 24 hours

4,162

e-mail enquiries

58%

overall satisfaction figure (complainants)

27 days

average turnaround for
non-broadcast complaints

584,000

visitors to www.asa.org.uk

For the complete list visit www.asa.org.uk.

We are committed to publishing information about **the standards we set ourselves and our performance against them. A rolling programme of research ensures we keep in touch with how our customers and advertisers perceive us.**

68%

overall satisfaction figure (advertisers)

47%

of complaints made online

43

requests for review

Accessibility

Nearly half (47%) of all complaints were made by e-mail or via our website. Usage of the site increased by 23% compared with 2003 and 83% of complainants aware of the site said that they found the information useful. On 1 November, we began to take complaints by telephone.

First contact

In 2004, 84% of calls to our switchboard were answered within four rings. Our Customer Satisfaction research showed that 84% of people were also satisfied with the time taken to acknowledge their complaint.

Resolving complaints

The average time taken to resolve non-broadcast complaints was 27 days – outside our 25 days target. Nevertheless, 76% of complainants said they were satisfied with the speed with which we act.

70% of complainants were satisfied with the way we explained the complaints procedure and 63% said they were happy with the information given to them throughout the process. 58% expressed satisfaction with the knowledge and professionalism of ASA staff.

Independence

59% of complainants stated that they considered the ASA to be independent of the advertising industry and 79% of advertisers agreed with that statement. Three new independent Council members were appointed.

Review requests

The number of requests for review fell slightly, down from 44 requests in 2003, to 43 in 2004. More details about those requests can be found on page 26.

The full text of our Standards of Service can be found at www.asa.org.uk.

The Advertising Standards Board of Finance, (Asbof) and The Broadcast Advertising Standards Board of Finance (Basbof) fund the one-stop shop by collecting a levy on advertising expenditure.

Year to 31 December 2004

Audited income and expenditure figures for the combined non-broadcast and broadcast activity in 2004 are shown overleaf: these figures are reflected in the sum of the finalised Report and Financial Statements that were adopted by the Non-broadcast and Broadcast Councils of the Authority at their respective Annual General Meetings held on 8 April 2005.

Income

Compared with 2003, income received from the Advertising Standards Board of Finance Ltd rose by £31,128 (0.68%) to £4,596,128. Additionally, income of £1,467,000 was received from the Broadcast Advertising Standards Board of Finance Ltd, which had been established to collect monies from a levy from broadcast advertising in like manner to the levy on non-broadcast advertising. The total income was £6,063,128. Interest received fell by £2,074 but produced additional income of £29,961.

Expenditure

The expenditure budget for 2004 was initially agreed at £4,744,000: an increase of £154,844 (3.4%) on the actual expenditure in 2003. However, in anticipation of the Authority's remit being extended to include broadcast advertising, a 'New ASA' Business Plan was prepared in January 2004, which revised the estimated expenditure for the year to £6,614,000, for the combined operation.

The main assumptions were that the new operation would be effective from 1 July 2004; staff numbers would increase from 76 to 107; and new premises providing some 14,000 sq ft of office space would be required. In the event, formal approval for the contracting-out of broadcast advertising was not granted until mid-July 2004, and a go-live date of 1 November 2004 was anticipated.

In August 2004, the combined budget was revised using the same assumptions for staff numbers, salary rates and accommodation requirements, but taking account of the later start date, and a revised budget of £6,125,000 was agreed. This latest budget also reflected a decision to 'lease finance' some £800,000 of capital IT equipment, and office fit-out and equipment costs, rather than to purchase them outright, so as to smooth and reduce the call on funds in the early years of operation when income from the new broadcast levy was uncertain.

In the autumn of 2004, end of year forecasts were made against the revised budget and expenditure of £5,982,600 was anticipated. At the turn of the year, pre-audit estimates of expenditure against the revised budget and the end of year forecast for 2004 saw expenditure rising to £6,783.885. In cash terms, expenditure would be within budget and forecasts. But in terms of profit and loss, a considerable loss would be made. This was because accounting reporting standards required the potential liability for the premises at Torrington Place, and the outstanding depreciation of the leasehold improvements therein, to be recognised in 2004. Additionally, the rent-free period of 15 months and the financial inducement of some £300,000 to rent Mid City Place had to be apportioned over the period of the new lease. Discounting the exceptional items of the premises liability and the write down of leasehold assets, expenditure overall would be under budget by about £70,000, but because of the exceptional items a pre-tax loss of some £750,000 was anticipated.

The audited figures reflected the estimates very closely. During the audit the premises liability was updated as advised by independent external property consultants, and resulted in the liability being assessed at £698,800. Overall, the audit confirmed expenditure of £6,860,266, which included exceptional items of £800,037. Discounting these items, expenditure was £6,060,189 against a budget of £6,125,000.

The finalised Report and Financial Statements for the two companies reflect a split of costs between non-broadcast and broadcast activity based on applying 57% and 43% respectively (the Asbof/Basbof agreed budget for staff costs) and applying them to the non-specific costs – overheads, general office costs and the like. Specifically identifiable costs were allocated in full to the relevant function.

Profit/loss

The combined loss before tax for both non-broadcast and broadcast activity was £764,187. After tax the combined loss was £789,101.

ASA_Financial report

Non-broadcast and broadcast combined

For the year ended 31 December 2004

	2004	2003
	£	£
Income		
Cash received from the Advertising Standards Board of Finance Ltd	4,596,128	4,565,000
Cash received from the Broadcast Advertising Standards Board of Finance Ltd	1,467,000	
Total	6,063,128	4,565,000
Expenditure		
Salaries and staff costs	2,937,154	2,770,103
Rent and accommodation costs	672,189	343,898
Travel, subsistence and entertaining	72,857	54,975
Consultancy and professional fees	745,067	284,644
Council remuneration and expenses	277,634	160,381
Depreciation	270,286	134,304
Telephone, postage, printing, stationery and other general expenses	685,710	521,949
Advertising and promotion	395,595	314,995
Admark scheme	2,937	3,907
Onerous lease provision	696,800	–
Write down of leasehold assets	104,037	–
Total	6,860,266	4,589,156
Operating loss	(797,138)	(24,156)
Profit on sale of tangible fixed asset	6,200	–
Interest receivable	29,961	32,035
Finance charges payable under finance leases	(3,210)	–
(Loss)/profit on ordinary activities before tax	(764,187)	7,879

Registered office:

The Advertising Standards
Authority Ltd
Mid City Place
71 High Holborn
London
WC1V 6QT
Telephone:
020 7492 2222

Registered in England:

No 733214

Registered office:

The Advertising Standards
Authority (Broadcast) Ltd
Mid City Place
71 High Holborn
London
WC1V 6QT
Telephone:
020 7492 2222

Registered in England:

No 5130991

47% of all complaints come via the ASA's website at www.asa.org.uk





OPEN

Advertising Standards Authority

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