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13 February 2014
By email

The Consumer Rights Bill: ASA written evidence to the Public Bill Committee

1. Introduction and summary

- 1.1** The Advertising Standards Authority (ASA) is grateful for the opportunity to submit written evidence to the Public Bill Committee to help inform its consideration of the Consumer Rights Bill.
- 1.2** The ASA is the UK's self-regulatory body for ensuring that all advertisements, wherever they appear, are legal, decent, honest and truthful for the benefit of consumers, business and society. For over 50 years the ASA has provided effective advertising regulation at no cost to the tax payer.
- 1.3** The Committee has indicated that it would value an overview of:
 - The regulatory framework for online advertising;
 - The requirements of the UK Advertising Codes on clear pricing; and
 - The role of advertising in informing people of their consumer rights
- 1.4** This submission provides information on the above and, to show how the ASA system works to protect consumers online, highlights recent ASA activity tackling misleading letting agent fees and ticket pricing, as well as our ongoing work around so-called 'copycat' websites.

Legal, decent, honest and truthful

Chairman Rt Hon Lord Smith of Finsbury **Chief Executive** Guy Parker
ASA Council Louisa Bolch, Alan Bookbinder, Sally Cartwright, Rachel Childs, Roisin Donnelly, Ray Gallagher, David Harker, John Mayhead, Andrew Motion, Martin Narey, Hamish Pringle, Ruth Sawtell and Anthony Wilkes

The Advertising Standards Authority Limited, registered in England No 733214, Mid City Place, 71 High Holborn, London WC1V 6QT.
The Advertising Standards Authority (Broadcast) Limited, registered in England No 05130991, Mid City Place, 71 High Holborn, London WC1V 6QT.

2 An overview of the ASA's role as the UK's advertising regulator

- 2.1 The independent ASA administers the UK Advertising Codes that are written and maintained by two industry bodies, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP)¹.
- 2.2 The Advertising Codes cover ads in all media including broadcast (television and radio) and non-broadcast (e.g. billboards, magazines, newspapers, direct mail and including video-on-demand). The non-broadcast rules also apply to online advertising (e.g. marketing communications on companies' own websites and social media under their control, pop-up and banner ads, email, paid-search).
- 2.3 In 2012 the ASA received complaints about 18,990 ads across all media (31,298 complaints). As a result of ASA action, 3,700 ad campaigns were amended or withdrawn.
- 2.4 **Enforcement** - The ASA is recognised by Government, Trading Standards and other regulators as being the 'established means' for bringing about compliance with the Consumer Protection from Unfair Trading Regulations 2008 in relation to misleading, aggressive or unfair advertising.
- 2.5 Whilst the majority of advertisers and the millions of ads that appear in the UK each year comply with the rules, non-broadcast advertisers who continue to break the rules on misleading advertising face referral to Trading Standards. Trading Standards has acted as our 'legal backstop' since November 2013, taking over from the Office of Fair Trading.
- 2.6 ASA referrals to the OFT were, historically, rare. This is testament both to the effectiveness of self-regulatory sanctions², the deterrent effect of the legal backstop and the advice and training³ services provided by CAP and BCAP to ensure advertisers understand their responsibilities.
- 2.7 It is essential that Trading Standards is empowered to act as our legal backstop, and so the ASA welcomes the provisions within the draft Consumer Rights Bill to remove current restrictions in legislation and enable Trading Standards to enforce or take legal proceedings outside their own local area.
- 2.8 **Regulating online advertising** - The rapid growth of online advertising and marketing has been perhaps the greatest test facing advertising regulation in recent years. To meet this challenge, in March 2011 the ASA's online remit was extended to include advertisers' own marketing communications on their own websites and in other non-paid-for space online under their control (e.g. on Facebook and Twitter).

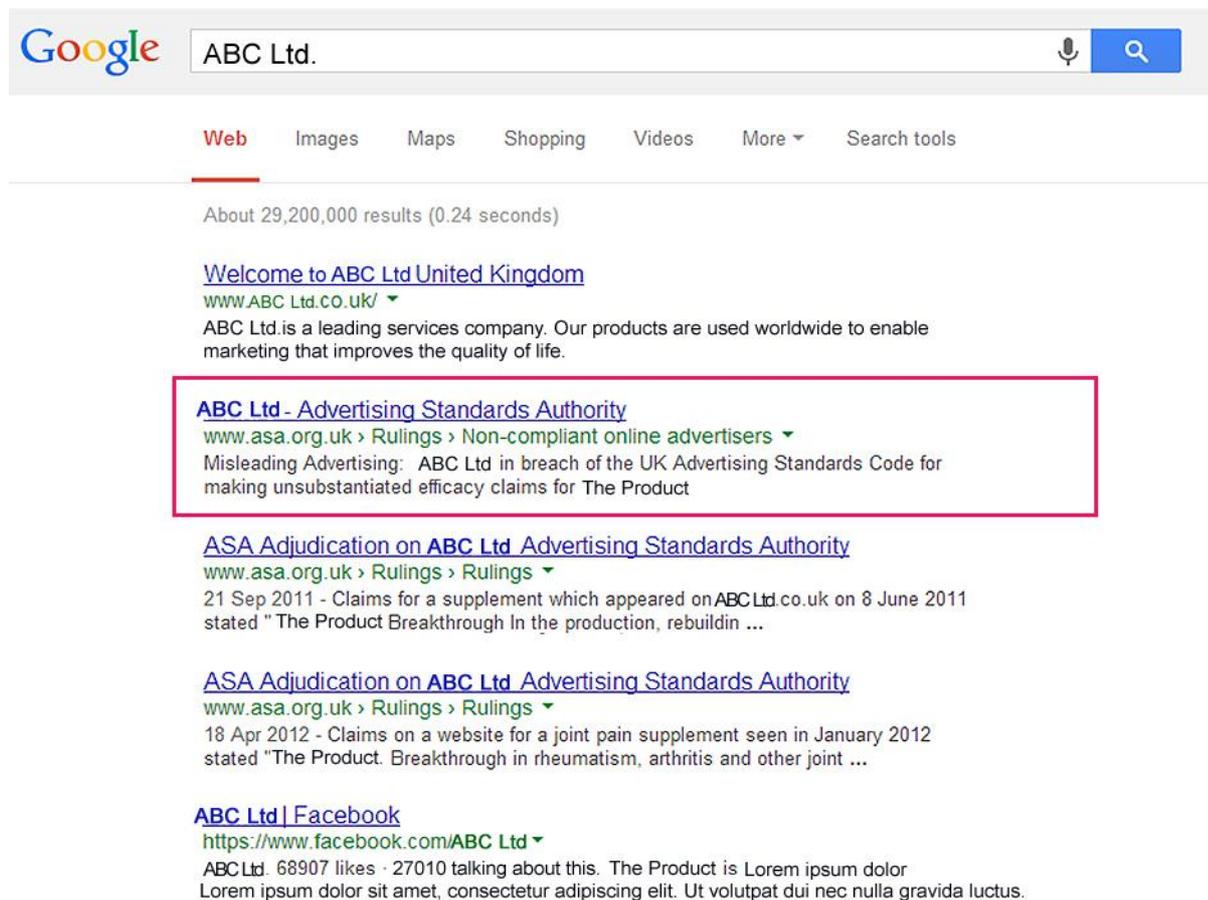
¹ www.cap.org.uk

² <http://www.asa.org.uk/Industry-advertisers/Sanctions.aspx>

³ <http://www.cap.org.uk/Advice-Training-on-the-rules.aspx>

- 2.9** Previously, the ASA's online remit had applied only to advertisements in paid-for space (e.g. display ads and paid search) and sales promotions wherever they appeared.
- 2.10** With the landmark extension of the ASA's remit online, consumers and society benefit from a cost free, fast and established cross-media complaints-handling service. They do not have to track down different complaints bodies for the same advertising appearing in different places, e.g. on a poster or a website, and can be confident that robust rules apply to advertising wherever it appears.
- 2.11 Online sanctions** – Compliance with the Codes is mandatory for all advertisers; there is no opt-out.
- 2.12** When we began regulating advertising on companies' own websites, new sanctions needed to be developed. In more traditional media, we can call upon the 'media gate-keeper', e.g. the billboard owner, to remove an ad or refuse to take one that we've ruled against.
- 2.13** However, when it comes to companies' own websites, such gate-keepers usually don't exist. As a consequence, CAP developed further sanctions to ensure that online advertisers comply with the Codes:
- CAP can ask internet search websites to remove a marketer's paid-for search advertisements when those advertisements link to a page on the marketer's website that hosts non-compliant marketing communications.
 - An advertiser's name and non-compliance may be featured on a dedicated section of the ASA website.
 - If necessary, CAP can launch an AdWords campaign against a misleading business to warn consumers about their services/products when they search for them on the internet (**Figure 1**, below).

Figure 1 – Example CAP AdWords campaign



2.14 Copycat websites

- 2.15 One of the key online misleading practices we're currently dealing with is that of companies offering services including passport renewal, driving licences, tax returns and European Health Insurance Cards. These sites are commonly known as 'copycat' websites because they offer services from government departments and contain features similar to that of the official site making it appear as though they are 'official' or 'authorised'.
- 2.16 Many of these companies use website tools to achieve high positions in search engines often ranking them higher than the official site, and the majority of them charge a premium for a service that is often provided much cheaper or even free by Government departments.
- 2.17 Following a number of complaints about the misleading nature of some of these sites we've been taking action to ensure their ads are clear and up-front. We've banned 11 ads against 10 different operators, and have been working to raise awareness to help make sure people aren't misled into paying for a service that

could have otherwise been free or cheaper. We've also been working with Government Digital Services and search engine providers to limit the activity of websites that advertise their services in misleading ways.

- 2.18** We're concerned, however, that problems remain around sites that might not yet have prompted complaints. Consequently we've commissioned consumer research to help us better understand the different aspects of these sites that might cause confusion. Our research will help us understand how people find and use these sites and whether and how they understand they're a commercial service.
- 2.19** We expect to have the results from that in spring 2014, after which we'll be able to plan any further enforcement work as soon as possible. As highlighted above, we have recourse, ultimately, to refer misleading advertisers to Trading Standards for legal action.
- 2.20** It should be noted that there is no direct action which the ASA can take to prevent these websites from operating all together – our role is to make sure their ads and the claims on their websites are not misleading. The legitimacy of this kind of business practice, while we understand it is questionable to many, is a matter for Government and Trading Standards to tackle.

3 The requirements under the UK Advertising Codes on clear pricing

- 3.1** The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code) contains a dedicated section on pricing⁴. Advertisers must have regard to the Department for Business Innovation & Skills (BIS) Pricing Practices Guide. Our rules include the following requirements:
- ***Price statements must not mislead by omission, undue emphasis or distortion.***
 - ***Quoted prices must include non-optional taxes, duties, fees and charges that apply to all or most buyers.***
 - ***If a tax, duty, fee or charge cannot be calculated in advance, for example, because it depends on the consumer's circumstances, the marketing communication must make clear that it is excluded from the advertised price and state how it is calculated.***

⁴ http://www.cap.org.uk/Advertising-Codes/~/-/media/Files/CAP/Codes%20CAP%20pdf/CAP%20Section%203_2013.ashx

3.2 Recent areas of ASA focus online: Letting agent fees and ticket prices

3.3 Theatre tickets In 2013 the Advertising Standards Authority (ASA) ruled against four theatre ticket providers for quoting misleading ticket prices on their websites. The rulings made clear that advertised prices for theatre tickets must include all compulsory fees either within or alongside quoted ticket prices.

3.3.1 Since September 2013 the ASA has been conducting comprehensive enforcement work to make sure that ticket sellers are up front about compulsory admin fees so consumers aren't misled. We've assessed 130 websites, including major ticket agents and London theatre websites, and have worked directly with 55 businesses to correct the pricing on their sites. We're now conducting the same exercise with regional theatre websites where around 50% of 650 sites are being contacted to bring them into line.

3.4 Letting agent fees Since November 2013 CAP has required lettings agents and private landlords to make sure that fees are prominently displayed in ads alongside rental prices. CAP's guidance was triggered by an ASA ruling against rental ads on an internet property portal; it reflects wider public concerns about the lack of transparency about fees in the rental sector.

3.5 Fees that can be calculated in advance must be quoted beside the asking rent. For example, a fixed admin fee of £100 per tenant should be displayed in ads as "£1500pcm + £100 admin fee per tenant" or similar. If non-optional fees can't be calculated in advance – because they depend on individual circumstances, for example – then ads must clearly state the nature of the fees and how they will be calculated.

3.6 **Figure 2**, below, is an extract from a guidance letter sent by CAP to advertising trade bodies on how to apply with the rules in practice.

Figure 2

The screenshot shows a CAP website interface. At the top left is the CAP logo. At the top right is contact information: Mid City Place, 71 High Holborn, London WC1V 6QT, Telephone 020 7492 2200, Textphone 020 7242 8159, Email enquiries@cap.org.uk, www.cap.org.uk. The main content area features a property listing for a studio apartment. The asking rent is £1,500 pcm (£346 pw). A 'Lettings fees information' pop-up window is open, listing various fees: general administration fees, reference fees (including credit checks, bank, guarantor, previous landlord, etc), application fees, fees for drawing up tenancy agreements, inventory fees (including check-in and check-out fees), guarantor arrangement/application fees, additional occupant fees, and pets disclaimer fees/additional pet deposit. Below the pop-up is a photo slideshow of the property. To the right of the pop-up is a sidebar with search filters and social media buttons (Tweet, Pin it). At the bottom of the listing, there is a 'Request Details' button and an Experian CreditExpert advertisement.

Landlords and agents that do not charge any upfront fees should contact the portals to request removal of the statement.

The portals will disable the "fees apply" statement for properties with a Scottish postcode.

Sponsored search / Banners / Pop-ups / short-form social media (e.g. twitter)

Usually space is an important consideration for these platforms. We would suggest either not including an asking rent at all or making simple statements such as "2 beds from £1200pcm + fees". The landing page should feature the more detailed information about the fees and how they are calculated.

4 The role of advertising to inform consumers of their rights

4.1 In general, the CAP Code will require mandatory information in marketing communications when these are a requirement in law. If CAP was asked to consider introducing information requirements into the CAP Code, it would consider whether these were evidence-based, targeted and proportionate to the harm they were intended to prevent.

- 4.2** The CAP Code contains a section of rules on distance selling, defined under the CAP Code as the final written advertised stage in the process that allows consumers to buy products or services without the buyer and seller meeting face-to-face.
- 4.3** The distance selling rules cover websites that sell products or services and, reflecting the requirements of the Consumer Protection (Distance Selling) Regulations 2000 (as amended), include the provision that marketing communications must include a statement that, unless inapplicable, consumers have the right to cancel orders for products. Marketers of services must explain how the right to cancel may be affected if the consumer agrees to services beginning less than 7 working days after the contract was concluded.
- 4.4** To further protect consumers, CAP has also seen fit to introduce within the CAP Code a rule that prohibits ads from presenting rights given to consumers in law as a distinctive feature of the marketer's offer.
- 4.5** Mandatory information requirements, e.g. around terms and conditions, can have a varying impact on advertisers depending on the medium in which their ads are deployed – especially if those requirements are detailed or lengthy. It can also have unintended consequences. For example, there are questions as to whether consumers can be overwhelmed by information and, consequently, find it unhelpful.
- 4.6** Should you require further information on any of the particulars in our response please do let us know, as we'd be happy to assist.

5 Contact details

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