HOW THE SYSTEM WORKS

The self-regulatory system

The self-regulatory system comprises three bodies: the Advertising Standards Authority (ASA), the Advertising Standards Board of Finance (ASBOF) and the Committee of Advertising Practice (CAP). Their work is described below.

The strength of the system depends on the long-term commitment of all those involved in advertising, promotions and direct marketing. Practitioners in every sphere share an interest in seeing that marketing communications are welcomed and trusted by their audience: unless they are accepted and believed, marketing communications cannot succeed. If they are offensive or misleading, they discredit everyone associated with them and the industry as a whole.

The UK Code of Non-broadcast Advertising, Direct and Promotional Marketing (the CAP Code), and the details of the guidance and training offered by CAP Services to help advertisers comply with the rules, can be found at www.asa.org.uk. The ASA publishes rulings weekly on www.asa.org.uk.

The Advertising Standards Authority

The ASA was established in 1962 to provide independent scrutiny of the newly created self-regulatory system set up by the industry. Its chief tasks are to promote and enforce high standards in marketing communications, to investigate complaints, to identify and resolve problems through research, to ensure that the system operates in the public interest and to act as the channel for communications with those who have an interest in marketing communication standards.

The ASA is a limited company and is independent of both the Government and the marketing business. The Chairman of the ASA is appointed by ASBOF and is unconnected with the marketing business. Most of the 12-member Council appointed by the Chairman to govern the ASA is also unconnected with the marketing business. All Council members sit as individuals and are selected, as far as possible, to reflect a diversity of background and experience. Vacancies for independent members of Council are publicly advertised. Members serve for a maximum of two three-year terms.

The ASA investigates complaints from any source against marketing communications in non-broadcast media. Marketers are told the outcome of the ASA Council's rulings and, if necessary, are asked to withdraw or amend their marketing communications. The rulings reached by the Council are published weekly on www.asa.org.uk. The ASA website contains

information about the ASA's procedures for handling complaints about a marketing communication.

The ASA gives equal emphasis to conducting a substantial research and monitoring programme by reviewing marketing communications that fall within its scope. Specific media and product categories may be identified for scrutiny. In that way the ASA can identify trends and prevent future problems.

Publicising the ASA's policies and actions is essential to sustaining wide acceptance of the system's integrity. A comprehensive programme of seminars and speeches, advertising, e-mail and website updates, briefing notes on a wide range of topics, articles written for professional journals and newspaper, magazine, TV and radio coverage all augment the ASA's extensive media presence.

The Advertising Standards Board of Finance

The Advertising Standards Board of Finance sets the framework for industry policy making and is responsible for the Committee of Advertising Practice and for funding the self-regulatory system.

The self-regulatory system is funded principally by a levy on advertising and direct marketing expenditure collected by ASBOF. The separation of operation and responsibilities helps to ensure that the independent judgement of the ASA is not compromised.

ASBOF's members are advertisers, promoters and direct marketers, their agencies, the media and the trade and professional organisations of the advertising, direct and promotional marketing businesses.

The Committee of Advertising Practice

CAP's role is to ensure that marketing communications within the Code's remit that are commissioned, prepared, placed or published in the UK comply with the CAP Code.

CAP co-ordinates the activities of its members to achieve the highest degree of compliance with the Code. It creates, reviews and amends the Code. From time to time, it produces for the industry Help Notes that give detailed guidance on specific sectors or subjects that are covered only generally in the Code. It oversees the sanctions operated by its members. It operates a website, www.asa.org.uk, to provide information and guidance to the industry, including access to Help Notes, Advice Online and relevant Ad Alerts. It convenes ad hoc

Working Groups for limited periods to address specific subjects arising out of the self-regulatory process.

The Code establishes a standard against which marketing communications are assessed. Other codes exist in many sectors; many require practitioners to comply with the CAP Code.

The Chairman of CAP works on a part-time basis and is appointed for an agreed period and remunerated by ASBOF.

CAP actively encourages participation in the self-regulatory system. Suggestions for improving Code rules or modifying their application should be sent in writing to the Chairman. If changes are adopted by CAP their introduction is normally deferred for a short time to give marketers an adequate opportunity to amend their marketing communications.

CAP Services

As well as writing and maintaining the rules, CAP also places great emphasis on the prevention of breaches and works to promote high compliance. CAP Services are a range of bespoke advice, training seminars and online resources to help all practitioners stay on top of advertising regulation, the requirements of the CAP and BCAP Codes, and how those are interpreted by the ASA.

Full details of CAP Services can be found at www.asa.org.uk. Practitioners are urged to register on the site and subscribe to the newsletters to help them keep up-to-date with regulatory developments, training events and updates to guidance.

The Copy Advice team

The Copy Advice team gives bespoke advice to marketers, their agencies, the media and other practitioners on the likely conformity with the CAP Code of marketing communications before they are published or distributed. It also checks marketing communications produced by marketers subject to mandatory pre-vetting (for example, those subject to the poster pre-vetting sanction).

Copy Advice is free, provided by a specialist team of advertisers and confidential from competitors. Advice is not binding either on enquirers or on the ASA. Favourable pre-publication advice does not automatically protect marketers from complaints being investigated and upheld by the ASA. It is, however, the best guide to what is likely to comply with the Code.

Online resources, including a comprehensive library of advice entries and Advertising Guidance documents, are available at advice.

Online: advice

The Compliance team

The Compliance team ensures that marketing communications comply with the Code to protect consumers and ensure a level playing-field. It enforces ASA rulings, disseminates any ramifications of them for an industry sector and acts against marketers that persistently break the Code. Exceptionally, if a marketing communication obviously breaches the Code, for example, if it contains a claim that is blatantly misleading, the team takes immediate compliance action to stop the marketing communication from reappearing. If it seems necessary to avoid harm, the Executive may take interim action during an ASA investigation (see "Sanctions").

The team co-ordinates the sanctions operated by the Executive and by CAP members; in particular, it issues Ad Alerts to CAP members, including the media, advising them to withhold their services from non-compliant marketers or deny those marketers access to advertising space.

Information on compliance is available on www.asa.org.uk. Companies that are members of a CAP trade association or professional body can access a database of relevant Ad Alerts on a secure section of the CAP website.

The Panels

Much of the detailed work of CAP is done by its Panels. The Promotional Marketing and Direct Response Panel concentrates on promotions and direct marketing. The Online Publications Media Panel advises on the proper distinction between editorial and advertising in online publications. The Industry Advisory Panel concentrates on all other CAP-related and BCAP-related matters. The Promotional Marketing and Direct Response Panel and the Industry Advisory Panel are composed of industry experts and one ASA Council member; the Online Publications Media Panel is composed of the Chairmen of ASBOF and The Regulatory Funding Company.

The Panels guide the Executive and help the ASA and CAP to produce advice for the industry and to interpret the Code.

The Panels provide a forum to reassess recommendations and advice given by the Executive. The parties to a complaint can request a Panel assessment before the ASA Council has ruled; Council will take account of the Panel's opinion. Council's judgement on the interpretation of the Code is, however, final. Anyone directly affected by copy advice given by the Executive on behalf of CAP can ask for it to be considered by the relevant Panel. The Panel Chairmen can reject requests and will do so if it seems that a Panel is being used to hamper the effective running of the self-regulatory system.

The Independent Review Procedure

In exceptional circumstances, the ASA Council can be asked to reconsider its ruling (including a Council decision not to investigate a complaint). Details of how to make a request for Independent Review can be found in the ASA's Complaint Handling Procedures for broadcast and non-broadcast advertising.

Administration of the system

The ASA and CAP share a joint Executive whose duties are organised to recognise the distinct functions of the two bodies. The Executive carries out the day-to-day work of the system and acts as a channel of communication, ensuring that industry expertise, specialist advice and the decisions of the ASA Council are co-ordinated and disseminated. The ASA Council and CAP form an independent judgement on any matter reported to them after they have considered the Executive's recommendation.

Marketers bear principal responsibility for the marketing communications they produce and must be able to prove the truth of their claims to the ASA; they have a duty to make their claims fair and honest and to avoid causing serious or widespread offence. Agencies have an obligation to create marketing communications that are accurate, ethical and neither mislead nor cause serious or widespread offence. Publishers and media owners recognise that they should disseminate only those marketing communications that comply with the Code. That responsibility extends to any other agent involved in producing, placing or publishing marketing communications. They accept the rulings of the ASA Council as binding.

The ASA Council judges whether marketing communications breach the Code. Everyone responsible for commissioning, preparing, placing or publishing a marketing communication that breaches the Code is asked to act promptly to amend or withdraw it.

The law

Marketers, agencies and publishers have primary responsibility for ensuring that everything they do is legal. Since the Code was first published, the number of laws designed to protect consumers has greatly increased. More than 200 statutes, orders and regulations affect marketing communications here (see www.asa.org.uk for a non-exhaustive list). The ASA maintains a rapport with those responsible for initiating or administering any law that has a bearing on marketing communications. The system is reinforced by the legal backup provided for the work of the ASA by the Digital Markets, Competition and Consumers Act 2024 and the Business Protection from Misleading Marketing Regulations 2008 (see Scope of the Code).

The Code, and the self-regulatory framework that exists to administer it, was designed and has been developed to work within and to complement those legal controls. It provides an alternative, and in some instances the only, means of resolving disputes about marketing communications. It stimulates the adoption of high standards of practice in matters, such as taste and decency, that are extremely difficult to judge in law but fundamentally affect consumer confidence in marketing communications.

Some important aspects are governed by legislation enforced by local authority trading standards and environmental health officers. They include product packaging (except for on-pack promotions), weights and measures, statements on displays at point-of-sale and the safety of products.

Many Government agencies administer consumer protection legislation that ranges far wider and deeper than could be enforced through self-regulatory codes of practice. Marketers who break the law risk criminal prosecution or civil action. The Code requires marketers to ensure that all their marketing communications are legal but any matter that principally concerns a legal dispute will normally need to be resolved through law enforcement agencies or the Courts.

Europe

Most member States of the European Union, and many non-EU European countries, have self-regulatory organisations (SROs) that are broadly similar to those in the self-regulatory system in the UK. Together with organisations representing the advertising industry in Europe, those SROs are members of the European Advertising Standards Alliance (EASA), the single voice of the advertising industry in Europe on advertising self-regulation. The ASA is a founder member of EASA. EASA is located in Brussels and meets regularly to co-ordinate the promotion and development of self-regulation at a European level.

Among its wide range of operations, EASA acts as a focal point for cross-border complaints investigated by individual members; consumers need complain only to the SRO in their country, no matter where the marketing communication originated. EASA is a source of information and research on self-regulation. It helps in the development and establishment of SROs in Europe and corresponds internationally.

EASA has published a statement of common principles, the core values that underpin each of its constituent SROs, and recommended standards for operating best practice in self-regulation that all SROs should seek to achieve. Both are available on www.easa-alliance.org.

Information on EASA's objectives, activities and publications, including the Alliance Update and order forms for The Blue Book, which contains an analysis of self-regulation in 24 European countries, is available from the EASA website, www.easa-alliance.org.

Sanctions

Compliance surveys published periodically by the Executive have demonstrated that the vast majority of marketing communications comply with the Code. By providing advice, guidance or pressure, media owners, agencies and other intermediaries play a crucial role in ensuring compliance. If a marketing communication breaks the Code, the marketer responsible is told to amend or withdraw it. Most willingly undertake to do so. If they do not, the Compliance team will consider the sanctions available to it.

The ASA and CAP do not adopt a legalistic attitude towards sanctions and they ensure that sanctions are both proportionate to the nature of the breach and effective. They focus on ensuring that noncompliant marketing communications are amended, withdrawn or stopped as quickly as possible.

The ASA and CAP are not restricted to applying sanctions only against marketers that have been subject to a formal investigation. If a marketing communication is obviously misleading or offensive, the ASA and CAP may take compliance action in the absence of complaints or during an investigation (see "The Compliance team").

Adverse publicity

Publicising the ASA's rulings is essential to sustaining wide acceptance of the system's integrity and the principal sanction available to the ASA is the unwelcome publicity that could result from the rulings it publishes weekly on www.asa.org.uk. Adverse publicity is damaging to most marketers and serves to warn the public. Marketers may face more adverse publicity if they cannot or will not amend their own non-compliant marketing communication on their

own website or in other non-paid-for space online under their control. Their name and their non-compliance may be featured on a dedicated section of the ASA website and, if necessary, in an ASA advertisement appearing on an appropriate page of an internet search website. Anyone who is interested can access ASA rulings quickly and easily on the website and can set up a profile-specific account so they are automatically notified by e-mail of relevant rulings as soon as they are published. ASA rulings receive a substantial amount of coverage in local, regional, national and international media.

An adverse ASA ruling could have consequences for compliance with other codes or legal requirements. For example, personal data gathered as a result of a misleading marketing communication might not comply with the fair processing requirement in the first data protection principle of the Data Protection Act 1998.

Denial of media space

Ad Alerts

CAP may issue Ad Alerts to its members, including the media, advising them to consult the Copy Advice team before accepting advertisements for publication or, in some circumstances, to withhold their services from non-compliant marketers or deny the latter access to advertising space. Ad Alerts are issued at short notice, are carefully targeted for greatest impact, are sent electronically and, once issued, are available on a secure section of www.asa.org.uk to those who might need to consult them. They contain the name and contact details of the non-compliant marketer, a description of the compliance problem and, if possible, a scanned image of the marketing communication in question. CAP may issue Ad Alerts that cover an entire sector if it perceives a widespread problem. CAP may ask internet search websites to remove a marketer's paid-for search advertisement if that links directly to a page hosting the marketer's own non-compliant marketing communication on the its own website or in other non-paid-for space under the marketer's control.

Trading privileges and recognition

Many CAP trade associations and professional bodies offer their members, and others, recognition and trading privileges, which they may revoke, withdraw or temporarily withhold. For example, agency recognition offered by the print media members of CAP may be withdrawn or the substantial direct mail discounts offered by the Royal Mail on bulk mailings withheld. In exceptional cases of noncompliance, CAP members may expel companies from membership.

Pre-publication vetting

The ASA and CAP may require persistent offenders, or those whose marketing communications bring advertising into disrepute, to have some or all of their marketing communications vetted by the CAP Copy Advice team until the ASA and CAP are satisfied that future communications will comply with the Code.

The poster industry members of CAP operate a poster pre-vetting sanction to deter abuse of the medium. If the ASA rules against a poster on the grounds of serious or widespread offence or social irresponsibility, the poster advertiser becomes a candidate for mandatory pre-vetting. If they believe that the advertiser either is incapable of complying with the Code or seems to have deliberately flouted the Code with the intention of generating complaints, PR and subsequent notoriety, the poster industry members of CAP and the CAP Executive will compel the advertiser to check future posters with the CAP Copy Advice team for a fixed period (usually two years).

Legal backstop

The self-regulatory system is recognised by the Government, the Competition and Markets Authority (CMA), Trading Standards and the Courts as one of the "established means" of consumer protection in non-broadcast marketing communications. If certain types of marketing communication, including those that are misleading or contain an impermissible comparison, continue to appear after the ASA Council has ruled against them, the ASA can refer the matter to Trading Standards for action under the Digital Markets, Competition and Consumers Act 2024 or the Business Protection from Misleading Marketing Regulations 2008. Trading Standards can seek an undertaking that the marketing communication will be stopped from anyone responsible for commissioning, preparing or disseminating it. If that is not given or is not honoured, Trading Standards can seek an injunction from the Court to prevent its further appearance. Anyone not complying can be found to be in contempt of court and is liable to be penalised.

The ASA and CAP maintain a rapport with Trading Standards and with other bodies that have a responsibility for creating, administering or enforcing laws that have a bearing on marketing communications. If necessary, they may notify those bodies of non-compliant marketers and work with them to ensure that unacceptable marketing communications are amended, withdrawn or stopped.

The CMA, Trading Standards Authorities and other enforcement bodies have powers to enforce consumer protection laws, including under the Digital Markets Competition and Consumers Act 2024, and the Business Protection from Misleading Marketing Regulations

2008. Both the Act and the Regulations provide that, before taking action, qualified entities should have regard to the desirability of encouraging control by the "established means".

Cross-border marketing communications

The Code does not apply to marketing communications in foreign media. If marketing communications appear in media based in countries that have self-regulatory organisations (SROs) that are members of EASA or if direct marketing originates from countries that have SROs that are members of EASA, EASA will co-ordinate cross-border complaints so the SRO in the country of origin of the marketing communication has jurisdiction; consumers need complain only to their SRO. If not, the ASA will take what action it can. The SROs with jurisdiction are formally responsible for applying any sanctions, though the ASA and CAP will, whenever they can, adopt a pragmatic approach to ensure that consumers are protected.

The ASA and CAP work closely with CAP trade associations and professional bodies, Trading Standards officers, Government departments, the CMA and other UK regulators, EASA and overseas SROs and statutory authorities to stop unacceptable marketing communications, especially misleading or offensive mailings sent direct to UK consumers from overseas. That work has achieved some success but the ASA, CAP and other authorities, whether statutory or self-regulatory, experience difficulties in enforcing the Code and laws against companies based overseas. Statutory authorities can, however, act to ensure compliance with Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market throughout the European Union.

To clarify what can and cannot be done, the ASA and CAP have produced a fact sheet, "Overseas Mailings", to explain how they tackle unacceptable mailings that originate outside the UK and to warn consumers to treat those mailings with the utmost caution. That fact sheet is available on www.asa.org.uk.