

ASA system submission to the Competition and Markets Authority's Call for Inputs on environmental sustainability advice to government

1. Background and Introduction

- 1.1.** This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the 'ASA system.'
- 1.2.** The ASA is the UK's independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for 59 years and the broadcast Advertising Code (written and maintained by BCAP) for 17, with our remit further extended in 2011 to include companies' advertising claims on their own websites and in social media spaces under their control.
- 1.3.** We are responsible for ensuring that advertising is legal, decent, honest and truthful and our work includes undertaking proactive projects and acting on complaints to tackle misleading, harmful or offensive advertisements. We are committed to evidence-based regulation and we continually review new evidence to ensure the rules and our application of them remain fit-for-purpose.
- 1.4.** As the UK's frontline advertising regulator, the ASA brings together different statutory, co-regulatory and self-regulatory enforcement mechanisms so they appear seamless to people and businesses. Our system of collective-regulation involves the active participation of a range of legal backstops in the consumer protection landscape. We work closely with a network of partners including the Gambling Commission, the Information Commissioner's Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority and the Competition and Markets Authority.
- 1.5.** We use our convening powers to bring together the ad industry and media owners to set, maintain and police high standards. Through the sharing of information, joined-up enforcement action and referral processes, our partners bolster our regulation and assist us, where necessary, to bring non-compliant advertisers into line. Together, this 'collective regulation' helps to protect people and responsible business from irresponsible ads: ads that mislead, harm or offend their audience.
- 1.6.** The UK Advertising Codes are drafted and maintained by CAP and BCAP, supported by experts in our Regulatory Policy team. This authorship of the rules by the ad industry is an important part of our system. It means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set and creates a level-playing field amongst them. Many of the rules derive directly from legislation, of course. For example, the rules requiring ads not to mislead or be likely to mislead originate from UK consumer law. However, many do not, particularly those seeking to prevent harm, offence and social irresponsibility. Whichever the case, in setting the rules which govern UK advertising, CAP and BCAP have multiple checks and balances in place to ensure the process is transparent, open to scrutiny and follows the principles of good regulation. From calls for evidence and public consultations on rule changes, having an independent consumer panel advising CAP and BCAP, Ofcom signing off on BCAP rule changes and, ultimately, the ASA System's processes being open to judicial review. All to ensure the system is wholly accountable to everyone with a stake in advertising.

- 1.7. In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place. CAP and BCAP provided 722,523 pieces of advice and training in 2020.
- 1.8. The ASA system is providing this written submission in response to the Competition and Markets Authority's Call for Inputs on environmental sustainability advice to government.

2. Scope of ASA consultation response

- 2.1. We understand that the CMA has launched this Call for Inputs with the intention of using it to inform the advice the CMA will provide to government on how competition and consumer regimes could better support the UK's net zero and environmental sustainability goals.
- 2.2. The ASA welcomes the opportunity to respond to the Call for Inputs, but we should note at the outset that most of the subject matter (for example, competition law enforcement, merger control regime and markets regime) falls outside the ASA's remit and / or expertise. As such, we have provided an account of our existing regulation of environment-related advertising issues, in the hope that it provides information relevant to question 18, which asks:

Question 18: What other considerations should the CMA take into account in responding to the Secretary of State's request for advice?

- 2.3. We consider information about the existing regulation of environment-related advertising issues under the Advertising Codes, both through purely self-regulatory rules and rules which reflect consumer protection legislation, is relevant to the consideration of changes to the existing consumer protection legislation referred to in the Secretary of State's request for advice. The rest of this response therefore sets out a comprehensive account of the ASA's regulation in this area.
- 2.4. We hope this response is useful, and would be happy to provide further information on any of the areas we have covered.

3. Existing regulation under the Advertising Codes

- 3.1. We take environmental issues seriously, and address them through the UK Advertising Codes which reflect, and / or supplement existing legislation, comprehensive guidance and ASA rulings against specific ads/ad campaigns.
- 3.2. The CAP and BCAP Codes contain dedicated sections on environmental claims. Both Codes also have rules to ensure ads are not misleading. These rules will apply to ads that feature environmental claims along with other rules that ensure ads are socially responsible. In interpreting and applying rules relating to misleadingness, the ASA has regard to the Consumer Protection from Unfair Trading Regulations and the Business Protection from Misleading Marketing Regulations.
- 3.3. Section 3 of both the CAP and BCAP Code deals with misleading advertising. Both these sections of the Codes state that marketing communications/advertisements must not 'materially mislead' or be likely to do so.
- 3.4. The Codes define 'material' information as information that consumers need to make informed decisions about a product. If this important information is omitted, exaggerated, or presented in an ambiguous or untimely way, an ad can be considered materially misleading. Where ads

refer to products' environmental credentials or make claims about their impact on the climate, those claims are likely to count as material information. If those claims aren't accurate, or if they present an incomplete, exaggerated or otherwise misleading picture of the product they are describing, they risk breaching the Advertising Codes.

- 3.5.** The Codes also state that any claim that is likely to be regarded as objective must be substantiated and supported by evidence. Advertisers should hold this evidence before they make objective claims, rather than gathering the evidence after the fact. This evidence should relate specifically to the products being advertised.
- 3.6.** Though the principles on misleading advertising apply to all ads, no matter the product type, there are also dedicated sections on environmental claims. These apply the principles outlined in the rules on misleading advertising, but go into greater detail about the requirements for claims that are specifically about the environmental impacts or 'green' credentials of products and services.
- 3.7.** In the CAP Code, this is Section 11, and for the BCAP Code, Section 9 is the relevant part for 'green' claims. Although the wording of the CAP and BCAP Code rules differs in places, they place equivalent requirements on advertisers.
- 3.8.** The Codes require that whenever an ad makes an environmental claim, the basis of the claim must be clear. If the ad doesn't also include a qualification to explain the basis of the claim, it could be considered materially misleading.
- 3.9.** Another important requirement for ads containing environmental claims is that the meaning of all terms used in the ad must be clear to consumers. If an environmental claim uses terminology that the audience is unlikely to understand the meaning of, the ad could breach the Codes.
- 3.10.** The Code rules also apply different standards to 'absolute' environmental claims and 'comparative' environmental claims. Absolute claims are claims such as "green" or "environmentally friendly", whereas comparative claims are claims such as "greener" or "friendlier". A higher standard of evidence applies to absolute claims, and the default requirement for absolute claims is that they need to be backed up by robust evidence about the product's entire life-cycle.
- 3.11.** If an ad uses a comparative environmental claim instead, the ad should clearly state the basis of the comparison. This means that if an ad contains a claim such as "greener", it should make clear what exactly the product (or a specific aspect of the product) is being compared against.
- 3.12.** These sections of the Advertising Codes contain a number of other important requirements that apply whenever advertisers choose to make environmental claims, and are worth reviewing in detail.
- 3.13.** Section 1 of both the CAP and BCAP Code may also be relevant for 'greenwashing' claims, as they feature rules regarding social responsibility. If an ad depicts harmful or socially irresponsible behaviour, it risks breaching the Codes. Advertisers should therefore avoid depicting or condoning behaviours that are environmentally harmful or irresponsible.

4. ASA review

- 4.1. The ASA recognises that as Government sets new and ambitious targets, and as the scale of the challenge to avoid catastrophic climate change becomes ever clearer, advertising and, by extension, ad regulation needs to play its part in working towards agreed climate goals.
- 4.2. This is why we've carried out a review of our regulation on this important topic, as part of our [project](#) launched earlier this year. Our review builds on the decades of regulation that we've already delivered on ads that make environmental claims. It has been carried out to ensure that our regulation remains effective in the context of a society which is increasingly concerned about the impact human behaviours are having on our planet.
- 4.3. We carried out a comprehensive review of our rules and guidance to ensure they are still fit for purpose to meet these challenges. In doing that, we've reviewed the regulation of advertising that touches on environmental issues across the globe. We've also analysed the legislative and policy landscape to ensure that our work in this area is aligned to the priorities identified by climate change experts and legislators.
- 4.4. In 2019, the UK set a statutory [target](#) of reaching net zero carbon emissions (relative to 1990 levels) by 2050, and in 2016 signed the Paris Agreement, a treaty in which nearly 200 countries have committed to limit global temperature rise to 1.5C.
- 4.5. Meanwhile this summer the UK Government went even further, setting a legally binding [target](#) of a 78% reduction by 2035; and while the devolved nations are included in this, Wales has set its own legislative [target](#) for net zero by or before 2050, and [Scotland](#) by 2045. Northern Ireland also introduced a [Bill](#) in March 2021 in line with the Scottish deadline.
- 4.6. Alongside these ambitious targets, the UK's Climate Change Committee, which produces government recommendations and targets for net zero, has established as a necessity the reduction of consumption emissions which will require broad behavioural changes in society.
- 4.7. Their [Sixth Carbon Budget](#) of 9 December 2020 stated that over 40% of the requirements to meet the 2035 targets requires some degree of change from consumers and their [Behaviour Change, Public Engagement and Net Zero](#) report of October 2019 specifically highlighted consumption emissions from aviation, cars, waste, animal-based foods and heating as being priority areas for carbon reduction.
- 4.8. We looked back at our work regulating environmental claims. We have a long track record of calling out misleading advertising in this area. Our review found that the types of misleadingness issues encountered and our decision making is in line with other advertising regulatory bodies across Europe and further afield. Whilst it was positive that our decision making is consistent with others, it was also apparent that the issues encountered when making claims that touch on the environment can be complex. There is significant scope for businesses to make mistakes, and to mislead, when making environmental claims, which can lead to consumer detriment and harm to the planet.
- 4.9. On the other hand, our review found that social responsibility issues (for example, ads that encourage unsustainable behaviours or behaviours likely to harm the environment) have not been a key concern for those who complain to us or otherwise encountered much by us, to date (or by our regulatory partners in Europe and beyond). But with the signal being sent from Government and experts that consumer behaviour change is key to achieving net zero, this is an area that we believe will require greater regulatory scrutiny in future.

4.10. Our thorough review of other ad regulators' rules and current and planned legislation reassuringly found that we have sufficient and comprehensive rules already in place to tackle misleading and socially irresponsible ads about the environment. However, the broad context outlined above indicates that over the next few years businesses are going to need to take more account of changes that are likely to occur to meet government targets. Expectations are rising for businesses to play a more prominent role in encouraging responsible consumer consumption behaviours. Businesses are increasingly wanting to burnish their eco-credentials, but the issues encountered in this area can be complex and hard for them to navigate.

4.11. For these reasons we've concluded that a blend of issue-based enquiries, research and, subject to the evidence base, new guidance to help businesses get their advertising right are called for at this time.

4.12. Following the outcome of the first stage of our review:

- CAP will issue Advertising Guidance to industry that sets out the key principles advertisers need to follow to ensure their ads don't mislead about the environment and are socially responsible when considering environmental issues.

That Guidance will re-affirm that the ASA will be shining a brighter regulatory spotlight on environmental matters in the years to come and tightening up our positions on problematic ad claims where there is an evidence base to do so. It will also make clear that our regulation is contextualised by the UK and Devolved Governments' stretching climate targets and the UK Climate Change Committee's priorities around the need for consumer behaviour change. This Advertising Guidance will complement the recently published [Guidance](#) on misleading environmental claims issued by the CMA.

- We are commencing a series of enquiries into specific issues starting with the Climate Change Committee's identified priority areas requiring carbon reduction. These include: aviation, cars, waste, animal-based foods and heating.

Our work will focus on energy, heating and transport issues to begin with. That will include partnership working with the Department of Business, Energy and Industrial Strategy on their current [enquiry](#) into green energy tariff reform. We'll then move onto the issue of waste (i.e. 'recyclable'/'recycling', 'biodegradable'/'compostable' and "plastic alternative" claims) in spring 2022, and then onto meat-based and other forms of food sustainability issues later in that year. We'll be looking closely at current advertising claims in each of those areas, using a range of tools including technology-assisted monitoring. We'll work systematically, reporting on our findings, and then address any concerns we discover using a blend of activities: investigation, research and partnership work with organisations with whom we work closely, such as the CMA. We anticipate producing new issue-specific Guidance for businesses in the light of this work.

- We will commission research this autumn into consumer understanding of Carbon Neutral and Net Zero claims and research to understand consumer perceptions of claims in the electric vehicle market. These have both been identified as priority areas to explore through a review of intelligence we've carried out over the last three months, and we expect that research will inform additional Guidance next year. Further research pieces on other topics will follow, in 2022.

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