

2023 Independent Reviewer's report

An independent review of the ASA Council's rulings enables complainants and advertisers to question whether those decisions were fair and reasonable in substance or rationale.

The tests I apply are: Was the ruling irrational or indefensible? Are those that a court would apply in a process of judicial review?

In 2023, there was a decline in the number of cases that were referred to me on broadcast ads, but, as usual, there was an enormous variety of ads and issues which the ads involved.

In this year's report, I will comment on two ads, one non-broadcast and one broadcast. The first attracted many complaints and led to a large number of articulate review requests that were clearly deeply felt; the second, a TV ad for a memorial medallion of Princess Diana, raised questions about descriptions in ads and substantiation.

The first ad was a poster on a bus for the horror movie "Saw X". It showed a man with a mechanism around his head and two long tubes protruding from where his eyes were. The image of the man had a pained expression on his face. The ASA council took the view that while some people would find the ad distasteful, there was no gore or explicit depiction of torture, and it was, therefore, unlikely to be perceived as excessive in the context of an ad for a horror film. I received five review requests, an unusually high number. I knew I had to respond to them carefully to protect the reputation of the review process. A summary of my response follows.

I acknowledged that the image on the poster was "rather gruesome and challenging", but I did not accept that it was logical to conclude that it, therefore, explicitly depicted a man being tortured. I said that the Council's decision was just about defensible, albeit close to the line of acceptability. This was a bus poster which passed by and that only those who focussed on it and knew about what the Saw franchise involved would come to the depiction of "torture" conclusion. I looked carefully at previous Council decisions in "horror" ad cases. I noted that some of the banned ones were especially gory or were often 'static' ads, such as posters at bus stops where parents and children might be waiting.

The second TV ad gave the impression that the product, described as a "gold coin", was exclusively made from 24-carat gold. But, the "coin" was obviously of very low weight, and the advertiser failed to provide a clear explanation as to why. The advertiser asked for an independent review and provided me with an example of the product. The so-called "coin" was incredibly thin and so flexible that it could easily be bent. On reconsideration, the ASA Council decided that describing the object as a "coin" was misleading.

**Sir Hayden Phillips, GCB DL
Independent Reviewer of ASA Council Rulings**



Review Cases 2023-2022

	Non-broadcast		Broadcast	
	2022	2023	2022	2023
Total cases received of which:	14	26	13	7
Ineligible/withdrawn	3	5	0	1
In progress	1	0	0	0
Not referred to Council	7	16	12	4
Referred to Council of which:	3	5	1	2
Unchanged	0	1	0	0
Decision reversed	0	0	0	0
Wording changed	0	0	0	0
Re-opened investigation	3	4	1	2
In progress	0	0	0	0