

**ASA system submission to the Digital, Culture, Media and Sport Sub-committee on Online Harms and Disinformation's inquiry into online safety and online harms**

**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 Digital, Culture, Media and Sport Sub-committee on Online Harms and Disinformation's inquiry into online safety and online harms.

## 2. ASA rules and remit for online advertising

- 2.1. While the Committee's terms of reference for this inquiry don't focus on advertising-related harms online, we think it important to set out clearly that there is an effective online advertising regulatory framework in place in the UK to protect people, in particular children, young and vulnerable people from harm. Our submission sets out how that system works and the additional measures we're taking to bolster protections for UK consumers, business and society from irresponsible or inappropriate advertising online.
- 2.2. With almost 60 years' experience regulating advertising, the ASA provides a one-stop shop for consumers and for the industry across all media and platforms. We regulate almost all advertising online, including paid ads on platforms and the open internet, influencer ads, and companies' own website and social media advertising claims. (The exceptions are [political advertising](#) and misleading-related issues in non-broadcast financial advertising, which falls to the FCA.)
- 2.3. Moreover, under our [More Impact Online strategy](#) (which is discussed further at 4.1), we're using proactive, tech-assisted, collective regulation to tackle irresponsible ads at scale and speed.
- 2.4. Our role is to ensure that the content of ads seen by UK consumers, including those appearing online and in social media, follow the Advertising Code. The enduring principles of the advertising rules are that ads must not mislead, harm or offend and should be prepared in a socially responsible way. We also require that ads are targeted responsibly and are appropriate for the audience that sees, hears and engages with them.
- 2.5. The standards we apply through the Codes are, almost without exception, the same for broadcast advertising and for non-broadcast advertising, including online. That is in no small measure because many of the rules directly or indirectly reflect law that applies across media.
- 2.6. The ASA system sets specific standards for content and placement of advertising, including on a sectoral or thematic basis. For example, ads for alcohol, gambling and HFSS food and drink are all subject to placement rules, while advertising rules on misleadingness seek to reflect consumer protection regulation.
- 2.7. As mentioned in 1.4 and 1.5 the ASA operated a system of collective-regulation. We also have a long established and strong co-regulatory partnership with Ofcom and stand ready to build on that relationship in relation to any advertising issues that might emerge from its new role as the Online Safety Regulator. Through better intelligence sharing, referral processes, joint sector compliance work and joined-up enforcement action, our regulatory partners bolster our regulation. Collective regulation encompasses a range of expertise and enforcement mechanisms that would be impractical if not impossible for any new regulator to replicate.

## 3. ASA online advertising complaints

- 3.1.** The balance of the ASA's work has increasingly shifted to tackling online ads. In 2020, we received 17,379 complaints about online advertising resulting in 14,512 cases. For context, in 2020 we received in total 37,396 complaints resulting in 23,775 cases and 36,491 ads amended or withdrawn.
- 3.2.** Of those 14,512 online cases, the majority (7,334 cases) were about advertising claims on companies' own websites or social media channels. Ads appearing in third-party, paid-for space online ('paid ads') accounted for 2,682 online cases. Complaints about influencer ads made up almost a quarter of the online cases (3,355 cases). 61% of the influencer complaints in 2020 were about ad disclosure on Instagram.
- 3.3.** Many of the 36,491 ads amended or withdrawn in 2020 resulted from the ASA's own initiative sector compliance action. The ASA undertakes sector compliance action when it becomes apparent that a significant percentage of companies in a given sector are in breach of the Code. This can involve sectors where the number of organisations are relatively small (e.g. the broadband sector and other utility sectors); or, sectors involving a very large number of organisations characterised, in the main, by SMEs (e.g. dentists, florists, estate agencies, beauty clinics, complementary and alternative medicine practices etc.).
- 3.4.** We are able to secure compliance in over 99% of cases where a breach of the Advertising Codes is identified, without having to refer an advertiser to a legal backstop. Referrals are rare because UK media and platforms agree to act as gatekeepers for the ASA. If we spot a bad ad on YouTube, on Instagram, on a TV channel, in cinemas, in outdoor media or in print media, those organisations and platforms typically work with us to remove the offending ad quickly.
- 3.5.** Our experience tells us that the majority of advertisers want to play by the rules. However, we have a range of sanctions at our disposal which we can use when they don't comply. For example:
- CAP can issue Ad Alerts to its members, including the media, advising them to withhold services such as access to advertising space.
  - We can ask internet search websites to remove an advertiser's paid-for search advertisements when those advertisements link to a page on the advertiser's website that contains material which breaks the rules.
  - The name and details of problem advertisers may be featured on a dedicated section of our website, designed to appear in search engine results when a consumer searches for a company's website.
  - If necessary, we can also place our own ASA search ads, further highlighting a companies' non-compliance, thereby disrupting online 'footfall' to the site featuring non-compliant advertising claims.

#### **4. Our More Impact Online Strategy**

- 4.1.** We know people are spending more time online, businesses are increasingly advertising online and the pace of technological change online is contributing to societal concerns. That's why, in November 2018, we launched our five year strategy, [More Impact Online](#), which focuses on improving the effectiveness of our online advertising regulation. We're proud of the technological initiatives we've undertaken as a part of that.
- 4.2.** The strategy prioritises:

- Delivering high quality, proactive regulatory projects on ads that cause the most detriment to people, particularly children and other vulnerable people.
  - Working more closely both with the large online platforms and with the government and Ofcom, both on Video Sharing Platform advertising regulation and to address any gaps in online advertising regulation.
  - Using machine learning to improve our regulation, act more nimbly, simplify and make more efficient our regulation where we can.
- 4.3. One of the first projects launched as a part of our strategy was our Avatar Monitoring programme, our proactive capture and analysis of online ads using 'avatars' that mimic the browsing profiles of children and young people. This innovative technology helps us to identify inappropriate ad targeting by, for example, gambling operators, HFSS and alcohol brands, enabling us to take swift action to tackle problems. This is world leading work and we're sharing the methodology with advertising and media regulators in many other countries. Additionally we've worked on proactive tech-related projects around ads in Children's Apps and e-cigarette ads on Instagram.
- 4.4. Our message to companies and platforms is clear: if you fail to use or develop filters and controls to target age-restricted ads away from children and other vulnerable people, we will take action.
- 4.5. Under the strategy, we've been working more closely with online platforms and using machine learning to improve our regulation as outlined in the next two sections.

## 5. Our relationship with the online platforms

- 5.1. Under the UK Advertising Code, parties involved in preparing or publishing marketing communications accept an obligation to abide by the rules. For non-broadcast media, this means taking steps to ensure third party ads comply with the Code and, where they don't and the advertiser refuses to cooperate with the ASA, the medium works with the ASA to remove the ad.
- 5.2. The ASA has and continues to work effectively with social media platforms and other online ad networks in this way, developing informal compliance procedures and partnerships with the larger platforms and other advertising networks.
- 5.3. Social media platforms and online advertising networks help the ASA secure advertising standards by removing non-compliant ads we bring to their attention, and raising awareness of our regulation.
- 5.4. As an example of our work with platforms, in 2020, we [issued an enforcement notice](#) to 130,000 wide-ranging businesses across the beauty and cosmetic services industry about ads for Botox. Botox is a prescription-only medicine, and so is prohibited from being advertised to the public. We identified a trend of these ads appearing on social media, particularly in organic Instagram posts, and took action to ensure advertisers reviewed their advertising. We used monitoring technology to identify where these ads were appearing on Instagram, and flagged them with the platform to have them quickly removed. We made it clear that any advertisers that continue to break the rules risked being referred to the Medicines and Healthcare products Regulatory Agency or their professional regulatory body.

- 5.5. These industry partners also participate in our Scam Ad Alert system, which has successfully led to the disruption of fraudulent activity online, by identifying and removing paid-for scam ads across multiple platforms.
- 5.6. In the context of a changing online regulatory landscape, we and the platforms we engage with are determined to adapt and play our part in delivering a more inclusive and accountable form of advertising regulation for everyone's benefit. As part of that, we want to see greater transparency and accountability from online platforms and ad networks for the role they play in upholding the advertising rules. We are engaging with them and government in exploring how we achieve this, including reporting publicly on how they perform. Culture Secretary Oliver Dowden has signalled his support and made clear he will be watching the progress we make.

## 6. Influencer advertising

- 6.1. 'Influencer marketing' is covered by the Code, be it in the form of a blog, vlog, tweet, post, story or other channel-specific format. Influencer marketing is an advertising trend that has evolved alongside the rise of social media and advances in technology.
- 6.2. In practice, the ASA defines an influencer as anyone who has been paid by a brand, in money or in kind, to advertise a product or service on their own social media account. Advertisers and brands enter into commercial relationships with influencers as a means of directly reaching the viewers, listeners and subscribers who follow them.
- 6.3. Our remit covers influencers and brands based in the UK, but the ASA works with regulatory bodies in other countries and occasionally refer cases to them so that they can take relevant action against posts in their own jurisdictions.
- 6.4. Influencer posts tend to be either '[advertorial](#)' or '[affiliate](#)' ads, but instances where an influencer is promoting their own products/services etc. are also covered by the Code. Put simply, advertorials on social media are copy, usually presented in a similar way as the influencer's editorial content, which is controlled by the brand and disseminated by the publisher (the influencer) in exchange for a payment or other reciprocal arrangement. Affiliate ads include links in social media posts that direct consumers to the website of a company, where the influencer is paid on a cost per click and/or cost per purchase arrangement.
- 6.5. Though the ASA recognises there are differences between the arrangements behind 'advertorial' and 'affiliate' advertising, both are subject to exactly the same rules, including that they must be obviously identifiable to the audience as advertising.
- 6.6. If a particular post is found to breach the Code, both the publisher (i.e. the influencer) and the brand can be named in the ASA ruling. The negative publicity that arises from our interventions can erode consumers' trust in the brand and followers' trust in the influencer; so, neither party wins from a failure to disclose advertising as such. Although we have additional sanctions, as outlined in section 3.5, negative publicity (or merely the threat of it) tends to be an effective sanction in the majority of cases.
- 6.7. The majority of our regulatory work involving influencer advertising, to date, concerns issues around disclosure i.e. is an influencer being upfront and clear with their followers when they have been paid to post an ad.

- 6.8. The [CAP Code](#) states that advertising needs to be obviously identifiable. This means that it should be immediately obvious to a consumer when the media content they see, hear or interact with is advertising. Put simply: viewers of social media content should not have to 'play the detective' to deduce the status of that content. This rule is well established in offline media and existed long before influencer marketing became a trend.
- 6.9. The ASA expects such posts to include a prominent 'ad' label upfront to highlight that a post is a marketing communication. We consider that, in most cases, the use of #ad (or similar) is the clearest way of communicating the commercial nature of advertising content, though using a platform's own disclosure tools, such as Instagram's Paid Partnership tool, can also distinguish advertising from other content.
- 6.10. These rules are important because our own [ad labelling research](#) and [Ofcom research](#) shows that consumers have difficulty in recognising and distinguishing certain types of online ads from independent editorial or organic user-generated content. [A survey by the BBC](#) also found that 82% of respondents thought it was not always clear when an influencer had been paid to promote an ad.
- 6.11. If something falls within the ASA's remit, it has to comply with all appropriate rules contained within the Code. It therefore should not, amongst other things, [materially mislead consumers](#) or cause serious or widespread [offence](#). Some sections within the CAP Code are sector-specific, which means that ads for particular product types (e.g. products high in fat, salt or sugar, alcohol, gambling and e-cigarettes) must comply with very specific rules, whereas other parts of the Code (e.g. misleadingness, harm and offence) apply to all ads irrespective of the product/service they are advertising.
- 6.12. [Age-restricted products](#) like alcohol and gambling must not be advertised directly to under-18s. The rules also prohibit the creative content of ads (including those posted by influencers) for alcohol, gambling, lotteries and e-cigarettes from being of particular appeal to under-18s, especially by reflecting youth culture, and from featuring under-25s (or people who look under 25) in a significant role. For example, in 2019, we ruled against Instagram ads by four different e-cigarette brands ([British American Tobacco](#), [Ama Vape](#), [Global Vaping Group](#), [Attitude Vapes](#)) because they featured people under the age of 25.
- 6.13. These rules mean that brands should take into account the age/demographics of an influencer's followers before deciding to work with them. For example, the ASA has previously considered and ruled against the targeting of a [Tanya Burr story for Heineken](#) (alcohol) and a post from [PointlessBlog for Nutella](#) (HFSS); in both cases the ASA was not persuaded that the under 18/ under 16 audience comprised less than 25% of the overall audience, as required by the relevant rules.
- 6.14. Although technically not 'age-restricted' products, similar rules apply to ads for slimming/weight loss products/regimes in that they must not be directed at under-18s or appeal particularly to them, so brands / influencers should consider this before promoting them. We have taken action, and will continue to take action, against irresponsible social media ads which contribute towards a culture of negative [body image and confidence](#). For example, we recently ruled against an influencer for irresponsibly [promoting weight loss products](#).
- 6.15. [Beauty filters](#) are designed to enhance a person's appearance and are included as in-app features on social media, including on Instagram, TikTok and Snapchat. They are becoming increasingly popular and are often applied when sharing selfies to social networks. Influencers and advertisers promoting beauty products, and indeed any other products, are

advised to avoid applying filters to photos or videos which are directly relevant to the product being advertised and which are likely to exaggerate the effect the product is capable of achieving. For example, we recently banned a post by an [influencer](#) for using an Instagram filter to exaggerate the efficacy of a tanning product.

- 6.16.** As part of our More Impact Online strategy, both the ASA and CAP have invested significant resource and effort into helping the influencer marketing industry understand their responsibilities under the ad rules.
- 6.17.** On top of the numerous rulings the ASA has published on ad disclosure on social media, we have hosted an [‘Influencer Responsibility’](#) event and produced myriad and comprehensive pieces of [advice online](#), including the [‘Influencers guide to making clear that ads are ads’](#) and an [ABC Guide](#) specifically designed to help Love Islanders navigate the rules.
- 6.18.** We offer clear and concise advice to influencers/brands when advertising on specific social media platforms, including [Instagram](#), [TikTok](#), [Twitter](#), [Facebook](#), [Snapchat](#), as well as on [YouTube](#) videos, and guidance for advertisers when marketing materials are [directed at children](#).
- 6.19.** Although we work closely with influencers and brands to encourage them to follow the rules, we reserve the right to apply sanctions to both influencers and brands if we identify an ongoing problem such as an unwillingness or inability to adhere to the rules.
- 6.20.** In September 2020, we undertook a three-week monitoring exercise to review the Instagram accounts of 122 UK-based influencers to assess whether advertising content was being properly disclosed. That involved assessing over 24,000 Instagram Stories, posts, Reels and IGTV to check compliance rates.
- 6.21.** Influencers were primarily chosen to be monitored on the basis of having been previously contacted about non-disclosure of advertising by the ASA, either in response to a complaint or via our self-initiated, proactive engagements with them on the matter.
- 6.22.** Our [findings](#), published in March 2021, categorised nearly one in four Stories as marketing, but found that only 35% of them were clearly labelled as ads.
- 6.23.** Our Compliance Team contacted all the influencers and put them on notice that if future spot checks we carry out on any platform reveal problems, we will take enforcement action. That might include promoting their non-compliance on a dedicated page on our website, promoting their non-compliance through our own targeted paid search ads and working directly with the platforms and the CMA on further enforcement action.
- 6.24.** The ASA were disappointed with the findings. While many influencers do stick to the rules, our monitoring shows how much more there is to do. We have given influencers and brands fair warning, which is why we’re committed to carrying out follow-up monitoring and are preparing to take enforcement action against those continuing to flout the rules.
- 6.25.** We’ve launched a [new dedicated page](#) on our website, highlighting influencers who, despite being told that they would face further sanctions if they didn’t follow our rules, have repeatedly failed to disclose when their Instagram posts are ads. Four influencers have been named so far for failing to provide assurance that they would include clear and upfront ad labels in their ads, and will be subject to a period of enhanced monitoring spot checks.

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