



## Effective self-regulation Keeping advertising standards high

Advertising Standards Authority  
Annual Report 2008

# Setting a high bar for responsible advertising

ASA Chairman's introduction	02
ASA review of the year	04
Taking action in sensitive sectors	06
In focus: alcohol	08
Top 10 most complained about ads	10
Resolving complaints	12
Trends in complaints	14
In focus: environment	16
ASA Council and senior management team	18
Independent Reviewer	20
In focus: price comparisons	22
CAP Chairman's introduction	24
CAP review of the year	26
Code Review	28
In focus: digital media	30
Prevention through advice and training	32
Industry commitment	34
Advertising Advisory Committee	35
In focus: food	36
Financial report	38
Meeting our standards of service	40

The ASA was the best known media regulator according to an independent survey in 2008\*.

\* Ipsos MORI research commissioned by the Press Complaints Commission, March 2008.

Designed by: Columns Design  
Photography by: Fernando Manoso



---

The UK self-regulatory system for advertising sets the bar high for social responsibility. Ads must not mislead or cause harm or offence. As the independent watchdog, the ASA is committed to maintaining high standards in advertising for the benefit of consumers, advertisers and society at large.

**26,433**

complaints received

**2,475**

ads changed or withdrawn

---

“The need for effective marketing and advertising remains strong, if not stronger than ever. And the creativity of the British advertising industry remains extremely high. The quality, wit, ingenuity, and effectiveness of ads never cease to impress me. Overwhelmingly, in the midst of the economic storms, British advertising is in good creative shape, and delivers effective messages to the public in a responsible way.”

# ASA Chairman's introduction

We are living through very difficult economic times at the moment, with a serious downturn in the national and global economy, and at times like these the world of advertising suffers along with the rest. A recession inevitably affects the quantity of advertising, the kind of appeals that are made to consumers, and the competitiveness of the marketplace; and here at the ASA we are having to tighten our belt too, dependent as we are on the overall income of the advertising sector.

Despite these difficult times, however, the need for effective marketing and advertising remains strong, if not stronger than ever. And the creativity of the British advertising industry remains extremely high. The quality, wit, ingenuity, and effectiveness of ads never cease to impress me. Overwhelmingly, in the midst of the economic storms, British advertising is in good creative shape, and delivers effective messages to the public in a responsible way.

The ASA has, I believe, been able to help in this. It is because the Codes exist, and are robustly applied and independently upheld, that there is broad public trust in the claims made by ads in this country. Sometimes this imposes the most difficult of judgment calls on us, in the ASA Council. Is a claim for the existence or non-existence of God a statement of opinion or fact? Is a slap of a child, highlighting issues of child abuse, an acceptable piece of campaigning by a charity? Is a poster for a movie or a trailer for a video game glorifying violence or simply depicting the content of the product? Week in, week out, my colleagues on the ASA Council tussle with issues like this, and try to exercise the best common-sense judgment they can in applying the Codes that we are there to uphold.

In doing so, we rely on the investigative advice of our executive team, although there are times of course when the Council must exercise its own judgment. Our staff at the ASA are enormously able, dedicated, and skilful in helping us to do our job. During the course of 2008 we dealt with record numbers of complaints and of ads complained about, as the figures in this Report attest. We did so with real efficiency: we met all of our Key Performance Indicators for the time taken in investigating and resolving complaints, except for one which we missed by a whisker. During the year ahead we will endeavour to maintain or even improve on this performance.

We will be doing so, of course, at a time of great pressure on the world of advertising. Not only is the economic slowdown affecting us all; there is growing public and political interest in sensitive areas of marketing, such as alcohol, gambling and food for children – where the rules are especially strict, and we need to be able to show they are being rigorously applied. The use of price comparisons in ads is increasing, and we need to be vigilant on behalf of the consumer. There are new challenges, too, in fields such as the environmental claims increasingly being made for some products. On these and other issues we have held a number of very successful public consultations – most recently on alcohol advertising, in Edinburgh – and we aim to continue this form of open dialogue with stakeholders in 2009.

We also face the rapid growth of marketing in the website environment, and we look forward to helping to implement the proposals of the Advertising Association's Digital Media Group in this respect. We are also now at the start of the public consultation on the new revisions to the CAP and BCAP Codes, the outcome of which will determine how we do our work in the years to come. We have recently heard that Government agrees that we are the right system for regulating video-on-demand advertising under the Audiovisual Media Services Directive. This is testament to the system's capability of delivering high standards in TV and radio advertising through co-regulation whilst keeping pace with technological trends. We must now work hard with stakeholders to implement the necessary structure and guidance. It will be a busy year ahead.

During the past year we said goodbye to two stalwart members of the ASA Council, Christine Farnish and Donald Trelford. Both had made an outstanding contribution to our work, and we already miss them. Joining us in their place have been Andrew Motion – the first time a Poet Laureate has been part of our deliberations – and Louisa Bolch. With their help, we face the challenges ahead with confidence.



**Rt Hon Lord Smith of Finsbury**  
ASA Chairman

A handwritten signature in dark ink, which appears to be 'Christine Farnish'.

# ASA review of the year

This has been a year of partnership and new approaches to getting things done. We worked with the CTPA to produce guidance for the cosmetics industry, participated in the Byron Review and worked with the Department of Health on their development of a code of practice for NHS advertising. New members of Council helped to provide a fresh perspective to our work. We've also kept a close eye on sensitive sectors and emerging trends by carrying out eight compliance surveys.

## 1 Byron Review

In March, Dr Tanya Byron published her Review, *Safer Children in a Digital World*, looking at the risks to children from exposure to potentially harmful or inappropriate material on the internet and in video games. Some of the recommendations made in the Review focused on advertising practices and reflected the ASA's work in this area. As well as helping to shape our future priorities, many of the proposals are also being addressed by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) through training and advice for advertisers and the review of the advertising Codes. Beyond this, the ASA stands ready to play its part in implementing the advertising industry's project to extend self-regulation to ads in digital media.

## 2 Ryanair referred to OFT

In April, the ASA asked the Office of Fair Trading (OFT) to consider taking action against the budget airline Ryanair under the Control of Misleading Advertisements Regulations 1988 (now the CPRs). In a two-year period, Ryanair repeatedly breached the CAP Non-broadcast Advertising Code through misleading claims and unfair comparisons. The ASA upheld complaints about the company on seven occasions. Separately, the ASA also found Ryanair in breach of the TV Advertising Standards Code. The OFT is the legal backstop to the ASA for misleading non-broadcast advertisements. Formal referrals to the OFT by the ASA are rare, the previous case being in 2005, and are only made once it has been established that an advertiser is unable to work within the rules.

## 3 New Council members

The ASA Council welcomed two new members in April. Andrew Motion, Poet Laureate and Professor of Creative Writing at the University of London, joined the non-broadcast Council. Louisa Bolch, former Editor for science programming at Channel 4, took up a role across both the broadcast and non-broadcast Councils. They replaced the outgoing members Christine Farnish and Donald Treford who had both served their full term of six years on Council.

## 4 NHS ads in remit

In April, the NHS launched the *Code of Practice for Promotion of NHS Services*, following the lifting of the ban on NHS advertising by the Department of Health. As a result, NHS marketing communications are now regulated by the ASA and must comply with the advertising Codes. We were pleased to support NHS staff by introducing the self-regulatory system and raising awareness of the Codes' requirements. In July, the ASA and CAP ran a training seminar with the support of the Department of Health and NHS Elect.





#### 5 A new Director

In June, Esra Erkal-Paler joined the senior management team in charge of Communications, Policy and Marketing following the departure of Claire Forbes for the Youth Justice Board. Esra brings extensive industry experience with previous roles as Director of Corporate Communications and External Affairs at L'Oréal and Head of Corporate Affairs at Unilever. Her priorities are to ensure the ASA is well placed to respond to key policy and public concerns, and to promote the self-regulatory system's resources to keep ad standards high in a convergent media environment.

#### 6 Cosmetic claims

Cosmetic ads have been a contentious area in recent years, with the ASA finding fault with several advertisers for not providing adequate evidence to prove strong performance claims, particularly for anti-ageing creams. In October, the Cosmetic, Toiletry and Perfumery Association (CTPA) published its *Guide to Advertising Claims*. The document, which had extensive input from the ASA and Clearcast (the pre-clearance body for TV ads) is designed to help advertisers ensure their claims are backed up by robust evidence. Welcomed by the ASA, the initiative complements the advertising Codes and provides useful advice to advertisers and their agencies.

#### 7 Ofcom review of TV advertising of food to children

In December 2008, Ofcom published a review of the effects of the television advertising restrictions introduced in 2007 for foods high in fat, salt and sugar (HFSS). The report, entitled *Changes in the Nature and Balance of Television Food Advertising to Children* showed that the amount of HFSS advertising seen by children fell by an estimated 34% over the review period. The scheduling restrictions are contributing to a significant reduction in the number of HFSS impacts for 4 to 15-year-olds. The content restrictions implemented by BCAP have helped markedly to reduce the use of a number of the techniques calculated to appeal to children such as the use of licensed characters or celebrities popular with children. The final part of the Ofcom review is due to be carried out in 2010.

#### 8 Compliance surveys

As well as acting on complaints, the ASA also actively monitors advertisements in sensitive sectors to anticipate trends, identify potential breaches and resolve them. In 2008, alongside its routine monitoring work, the Compliance team undertook eight surveys, looking at a total of 3,856 ads across media, for video games, sales promotions, food and soft drink, digital media, environmental claims, cosmetics, alcohol and gambling advertising. Thanks to the work of the ASA and the commitment of industry to advertise responsibly, our surveys show that the overwhelming majority of ads, more than 97% on average, are compliant with the rules. Full copies of the surveys are available at [www.asa.org.uk](http://www.asa.org.uk).

**“I have been impressed by the efforts that have been made to deliver responsible advertising to children through the ASA and the wider self-regulatory approaches.”**

Dr Tanya Byron  
Safer Children in a Digital World



# Taking action in sensitive sectors

Advertising plays an essential role in today's world. It informs, entertains and promotes healthy competition. Our aim at the ASA is to ensure that consumers do not just enjoy the ads they see, but they can trust them too. We build that trust by enforcing the advertising Codes and acting swiftly when marketing communications break the rules. Week by week, ASA adjudications demonstrate the self-regulatory system in action. This is particularly important in the sensitive sectors and when protecting children from unsuitable material. In 2008, the ASA took decisive action in a wide range of sectors, changing or withdrawing some 2,475 ads and sending out clear signals on what is and is not acceptable advertising.



## 1 Financial services

The economic downturn makes it even more important to protect consumers from being misled. We acted swiftly against some financial ads that trivialised the process of applying for credit or insurance. Churchill claimed that viewers could take out an insurance policy without filling in forms but this was shown to be untrue. Ads by Instant Cash Loans were deemed to be irresponsible because they trivialised the decision to take out a loan and encouraged irresponsible spending. An ad for Loans.co.uk was found to be misleading because it did not reference the extended loan period required to enable the level of reduced repayments advertised. Complaints were also upheld against a TV ad for Picture Financial Services showing a man playing with a football whilst applying for a loan over the phone, interjecting the conversation with comments about sports and questions to his wife who was filming him. The ASA Council found the ad to be misleading for implying that consolidating unsecured loans was a decision that could be taken lightly.

## 2 Environment

Complaints about environmental claims reached an all time high in 2007 and the ASA took steps to improve awareness of the rules. Whilst it is encouraging that complaint levels have gone down in 2008, the number of upheld rulings went up, particularly in the motoring, energy and utilities sectors. A TV ad for British Gas implied its dual fuel package "with zero carbon" was its "greenest" tariff. The ASA ruled that the claims and the images were likely to be interpreted by viewers to mean that the energy supplied produced no carbon emissions. The purpose of carbon offsetting schemes is to neutralise the effect of emissions by making an equivalent CO<sub>2</sub> saving, but not to imply that the product is carbon free. The ASA concluded that the superimposed text "Relates to offsetting schemes" contradicted the overall impression of the ad and could mislead consumers. Saab breached the Code with the claim "bioethanol consumption does not significantly raise atmospheric levels of CO<sub>2</sub>". A TV ad for ExxonMobil was found to be misleading in its implication that natural gas was one of the cleanest sources of energy and that liquefied natural gas was environmentally friendly.



### 3 Food

Concern about childhood obesity has led to a tightening of the rules for food advertising in general, as well as specific restrictions for TV ads for foods high in fat, salt or sugar. The new rules, brought in during 2007, place significant restrictions on the content of ads and on the scheduling of TV ads. The ASA upheld its first case under the new rules in 2008: a TV ad for Oasis, a Coca-Cola brand. The ad suggested that Oasis, a soft drink that contained sugar, could be a replacement for water. We concluded that the ad was irresponsible and could discourage good dietary practice.

### 4 Alcohol

With increasing concern about binge drinking and antisocial behaviour, alcohol advertising continues to come under intense scrutiny. The special rules on alcohol demand that ads must be socially responsible and avoid links to sexual or social success and youth culture. Our investigations in 2008 included a TV ad for Southern Comfort which was found in breach of the rules by suggesting that the success of the social occasion depended on the presence and consumption of alcohol and for encouraging irresponsible consumption.

### 5 Gambling

The new advertising rules for gambling products and services which came into force in 2007 state that ads must be socially responsible and not encourage gambling in ways that can harm or exploit children, young people or vulnerable adults. While sector compliance remains high, some of the ads that breached the rules in 2008 implied that gambling could increase wealth, confidence or attractiveness, provide an escape from personal problems or appealed to children. A national press ad for a spread betting product by Paddy Power showed a short man in the back of a stretch limousine, holding a glass of champagne and flanked by two glamorous-looking women, with the question "Who says you can't make money being short?". We concluded that the ad irresponsibly linked gambling with success and enhanced attractiveness. The ASA monitoring team identified and challenged a series of TV ads for Intercasino's online casino and poker for using slapstick and juvenile humour. The ASA Council ruled that the tone and style of the ads had particular appeal to children and young people and the campaign was withdrawn.

### 6 Video games

The protection of children from exposure to violent or inappropriate imagery in video games is an important priority and the ASA plays its part by ensuring ads continue to adhere to the rules. Our 2008 *Video Games Advertising Survey*, conducted in response to concerns raised by Dr Tanya Byron in her report *Safer Children in a Digital World*, revealed a compliance rate of over 99%. This demonstrates that the overwhelming majority of video games are being promoted responsibly and targeted in line with their age restrictions. However, as reports about gun and knife crime continue to hit the headlines, images of weapons or violent scenes in ads are becoming increasingly unacceptable to consumers.

Two TV ads for a Sega computer game, *Condemned 2*, were found to be offensive and condoning violence and cruelty. The scenes of graphic and brutal violence, including those of a man punching another on the floor, were realistic in appearance with blood splattering on the screen as he was beaten with a club. Regardless of the timing restrictions applied to the ads, the ASA Council considered they were likely to offend or distress viewers and ruled that both ads should be withdrawn.

Similarly, we received 26 complaints about a multimedia campaign for a computer game, *Kane & Lynch*, by Eidos Interactive Ltd. These were upheld on five counts, including condoning violence, particularly towards women, being irresponsible and likely to cause serious or widespread offence. The images of a gagged woman being brutally handled by two intimidating looking men, one of whom held a rifle, were particularly unsuitable for a poster, an untargeted medium that would be seen by children.



Games for Windows LIVE

XBOX 360 LIVE



### **In focus: alcohol**

A national debate is underway about the promotion, availability and consumption of alcohol as the negative effects of excessive drinking continue to make headlines. As some call for tougher controls, all possible contributing factors are under scrutiny – including advertising. Against this backdrop it is perhaps not surprising that the number of complaints to the ASA about alcohol ads went up by 44% in 2008.

As the independent regulator, the ASA not only acts on complaints, but is also responsible for monitoring ads to ensure alcohol is promoted in a socially responsible way.

### **The rules**

The already strict rules for alcohol advertising were further strengthened in 2005 when tough new provisions were introduced for TV and all non-broadcast media. They require that alcohol is promoted in a socially responsible way, including not linking alcohol with sex or social success and preventing ads from having strong appeal to under-18s by restricting association with youth culture or juvenile behaviour.

The new rules also built on the existing scheduling requirements in the Codes by banning alcohol ads from appearing in or around children's TV programmes or those likely to have a particular appeal to children. Also, alcohol ads are not allowed in media targeted at those under 18 or where more than 25% of the audience is under 18.

The ASA applies the rules to TV ads, whether they appear after the 9pm watershed or earlier in the day.

**“It is encouraging that the new, tighter rules are being followed – as shown by the ASA’s monitoring action in this sensitive sector. 97% of all alcohol ads surveyed in 2008 were compliant with the Codes, up from 95% in the previous year.”**

Christopher Graham  
ASA Director General





### Effective regulation

Self-regulation works effectively in the public interest when it is driven by a sense of social responsibility, and this is certainly evident in the improvements in alcohol advertising.

The ASA's monitoring surveys reveal an annual increase in compliance rates of alcohol advertisements. The *2008 Alcohol Advertising Compliance Survey*, published in July, revealed that 97% of ads were in line with the Codes (up from 95% in the previous year). Our compliance team assessed 463 ads across all media during the survey period and found 12 ads in breach of the alcohol advertising rules.

But there is no room for complacency. As well as showing a decline in the proportion of young people feeling that alcohol ads are aimed at them, the joint ASA/Ofcom research conducted last year also revealed that young people believed some of the edgier ads made drinks look more appealing and would encourage people to drink.

This is why we aim routinely to engage with all key stakeholders and gauge opinion on the effectiveness of the rules and the way we perform our core function of keeping advertising standards high.

### Alcohol and Scotland

The Scottish Executive's wide-reaching consultation *Changing Scotland's Relationship with Alcohol*, highlighted concerns about the part advertising plays in the overall debate, with proposals to restrict TV ads for alcoholic products with a 9pm watershed.

As well as responding to the consultation, the ASA, in November, held a stakeholder seminar in Edinburgh on alcohol advertising. The event brought together 66 representatives from business, policy, NGO, public health, academic and media organisations, as well as members of the public. ASA Chairman Lord Smith was joined on the panel by Jack Law of Alcohol Focus Scotland, Philip Almond of Diageo and Christopher Graham, Director General of the ASA. The seminar presented a unique opportunity for all key stakeholders in the debate to discuss the effectiveness of the current regulation of alcohol advertising and look at what the future might hold.

Following the event, the ASA and CAP jointly held a training seminar for advertisers and agencies based in Scotland to raise awareness and understanding of the special rules on alcohol advertising.

### ASA action

Evidence to date suggests that the current rules are a proportionate response to concerns about under-age drinking and they are being applied effectively. However, there is still work to do to limit the appeal of some alcohol ads to young people and the ASA continues to take these factors into account when assessing complaints.

A TV ad for Southern Comfort, by Brown-Forman Beverages, was one of the highest profile brands to fall foul of the strict alcohol rules. It was found that the ad suggested alcohol is essential to the success of a social occasion and it encouraged irresponsible drinking.

Following a fast-track investigation, the ASA also had cause to order down a poster advertising SKYY Vodka for blatantly linking alcohol with seduction and sexual success and for implying that alcohol could enhance masculinity and attractiveness.

A TV ad for Coors Light beer was considered problematic because it used a style that was likely to appeal strongly to young people. The ASA challenged whether the singing and exaggerated dance moves in the ad were likely to appeal strongly to under 18-year-olds by reflecting or being associated with youth culture.



# Top 10 most complained about ads

Most advertisements brought to the ASA's attention attract only one complaint. However, some ads generate high numbers of objections especially those which relate to issues of offensiveness or taste and decency. Here we list the most complained about ads of 2008 and the ASA's response.

It is ironic that in a year when our formal upheld adjudications increased by 27%, we did not rule against any of the most complained about ads.

The number of complaints we receive is not the deciding factor in whether or not we investigate or uphold complaints. Some ads clearly provoke a strong reaction but do not necessarily break the rules. On the other hand, one well targeted complaint can identify a breach of the Codes.

Where complaints were formally investigated, the ASA's full ruling can be found on our website [www.asa.org.uk](http://www.asa.org.uk).

## 1 Barnardo's 840 complaints Not upheld

These powerful TV ads were designed to raise awareness of domestic child abuse. Many people found the repeated scenes of violence and drug-taking upsetting and challenged whether the ads caused serious or widespread offence.

Some challenged whether the ads were suitable for transmission at times when large numbers of children were likely to be watching. Other viewers, some of whom reported being abused as children, challenged whether the ads were likely to cause serious distress to those who saw them.

We did not doubt that the distress or offence described by many of the complainants was deeply felt. However, we considered the ads were scheduled appropriately and their aim justified the use of strong imagery.

## 2 Volkswagen Group UK Ltd 743 complaints Not investigated after Council decision

The ad portrayed a dog singing confidently while sitting in the front passenger seat of a car – but shaking and looking cowed once outside. Some complainants were concerned about the welfare of the dog during filming. Others claimed the ads condoned animal cruelty or broke the Highway Code.

While we acknowledged that not everybody was comfortable with the idea of trained performing animals being used in advertising, we noted a vet had been present during filming and had certified that the dogs used had not been harmed. We also felt that a singing dog was fantastical and unlikely to encourage people to either harm their pets or put them at risk.

## 3 AG Barr plc 286 complaints Not investigated after Council decision

Viewers complained that this TV ad for a soft drink was offensive. It showed a woodland scene full of dancing cartoon bears, deers, zebras and peacocks. The voice-over stated "Orangina ... Life is juicy".

The majority of complainants found the ad overtly sexual and explicit. Others thought it demeaned and objectified women and implied that dancing provocatively for a man's pleasure was acceptable. Some were concerned about the effect it could have on children and young people.

The ad had a post 9pm restriction. We recognised that some adults might find the content distasteful but most viewers would be aware that advertising might have adult themes after 9pm. Given the timing restriction we felt the ad was unlikely to cause serious or widespread offence.

## 4 HJ Heinz Company Ltd 215 complaints Not investigated after Council decision

This TV ad for Heinz Deli Mayo showed children being made sandwiches by their 'Mum', a burly Italian-American man with a five o'clock shadow. At the end of the ad, 'Mum' was kissed goodbye by 'Dad'. All of the complainants objected to two men kissing and almost all objected to it being scheduled during the day and early evening when children might see it. The ASA considered, while some viewers might have personal objections to any portrayal of same-sex kissing, there was nothing in the kiss shown in this ad that would constitute a breach of the Code. We considered most people would view it as humorous, surreal or daft but it was unlikely to cause harm to children or any other section of the audience.



## 5 Department of Health 205 complaints Not upheld

Hard hitting ads promoting better health have proven extremely effective over the years. But hard hitting images often draw hundreds of complaints. In these cinema and TV ads, children were shown copying their parents in activities such as baking, DIY and exercising. They also showed children imitating their parents smoking by putting a crayon to their lips. In one ad, the voice-over said "If you smoke, your children are more likely to smoke. Smoking. Don't keep it in the family". Viewers challenged whether the TV ads were harmful because they believed young children would not understand the message and the depiction of children smoking could encourage other children to smoke.

Because the TV ads conveyed an important health message which was particularly relevant to parents who smoked, we did not consider the ads were harmful or likely to encourage children to smoke.

## 6 Tiscali UK Ltd 159 complaints Not investigated after Council decision

Sleeping with the next-door neighbour was the theme of this TV ad. Some objected to the adult content at a time of day when children would see it. Others thought it trivialised adultery and suggested that the advertisers condoned it.

Although the ad might not suit all tastes, there was no evidence of widespread offence. We considered the theme was a familiar one and inherently farcical and unrealistic. It was not sexually explicit and was unlikely to be seen as condoning infidelity in real life. Children would interpret the advertisement innocently, and Clearcast applied an ex-kids scheduling restriction to keep the ad away from those programmes which the youngest children were most likely to view alone.

## 7 Entertainment Film Distributors Ltd 157 complaints Not investigated after Council decision

The word "Porno" caused a stir after appearing in a poster on the side of buses. Advertising the film "Zak and Miri Make a Porno", the ad featured the title of the film and head shots of the two main characters.

Most complainants believed the word inappropriate for public display on buses, particularly as young children might see it and ask their parents what the word meant.

While the word "porno" might be distasteful to some, the ad itself contained nothing explicit. Although parents might find their children's questions uncomfortable to answer, we did not consider that the ad would cause widespread or serious offence or harm to children.

## 8 Walkers Snack Foods Ltd 130 complaints Withdrawn

A TV ad for Walkers crisps featuring Gary Lineker was deemed offensive and distressing by viewers. In the ad a bus drives under a low bridge and the top deck is ripped off. Complainants believed it would upset people who had experienced similar accidents or lost friends or relatives because of them.

On hearing of the complaints, Walkers removed the scene and said it would be showing an amended ad in future so no action was necessary by the ASA.

## 9 Specsavers Optical Group Ltd 123 complaints Not investigated after Council decision

Edith Piaf singing 'Je ne regrette rien' in an ad for spectacles was too much for some viewers. They claimed the ad was derogatory and demeaning to the memory of someone who had as tragic a life as the French singer.

We considered the ad was unlikely to cause serious or widespread offence.

## 10 Cargiant Ltd 96 complaints Not investigated after Council decision

Adultery was again the theme in two posters for a car retailer. The ads showed a man who was so happy about saving money on a used car that he intended to take his mistress to Paris.

Complainants claimed the ads were offensive because they condoned or even encouraged adultery, were chauvinistic and set a bad example to children who might see them.

We considered the ads were likely to be seen as lighthearted. They were unlikely to be seen as promoting the kind of infidelity mentioned or to be seen as sexist. We also judged that the ads were unlikely to cause harm to children.



# Resolving complaints

We act to resolve complaints about advertisements in UK media, including television, radio, press, posters, direct marketing and some online advertising. In 2008, the ASA received a record total of 26,433 complaints which resulted in 2,475 ads being changed or withdrawn. Where possible we aim to resolve complaints through dialogue with advertisers and most problem ads are dealt with in this way.

## Complaints received

In 2008, the ASA received a record 26,433 complaints about 15,556 ads – an increase of 9.3% compared with 2007. This is largely due to the significant increase in broadcast complaints which totalled 12,899, representing a growth of 21% year-on-year. The total number of broadcast ads complained about was 5,028\*, with just 707 of those complaints about radio ads. The number of non-broadcast complaints remained steady at 13,534 complaints about 10,528 ads.

## Complaints resolved

During the year the ASA resolved 24,988 complaints about 15,239 ads. The fact that the level of complaints resolved was less than the level of complaints received was primarily due to the fact that some complaints for two cases which attracted a large number of complaints (Barnardo's and Volkswagen, see pages 10–11) were resolved in the first week of January 2009 rather than in 2008.

Complaints resolved in broadcast media amounted to 11,830 and those in non-broadcast were 13,158, being 47% and 53% of the total respectively.

Of the total number of complaints resolved, 20,068 (80%) were not investigated. The remaining 4,920 (20%) were subject to further action or investigation with 3,343 being formally investigated (14%) and 1,577 (6%) being subject to informal investigation.

## Formal investigations

In 2008, a significantly higher proportion of our formal investigations resulted in upheld adjudications. Of the 772 ads which were formally investigated, 493 resulted in an upheld ruling (64%) which represents an increase of 27% on the 2007 figure of 389. Complaints were upheld for 106 (49%) of 215 broadcast ads that had been formally investigated, this is an increase on the 89 ads in 2007. Of the 557 non-broadcast ads which were formally investigated, 387 were upheld (69%), up from 300 in 2007.

\* This represents a large increase on 2007 figures but it is principally attributable to a new grouping arrangement for reporting 'Not investigated' complaints that has been adopted since January 2008.

## Turnaround performance (% in target for different case types)

Non-broadcast	2007 %	2008 %
No investigation in 5 days:	89	<b>88</b>
No investigation after preliminary work in 10 days:	77	<b>80</b>
No investigation after Council decision in 25 days:	90	<b>93</b>
Informal investigation in 35 days:	90	<b>90</b>
Standard investigation in 85 days:	74	<b>82</b>
Complex investigation in 140 days:	86	<b>78</b>

Target = 80%

Broadcast	2007 %	2008 %
No investigation in 5 days:	91	<b>88</b>
No investigation after preliminary work in 10 days:	87	<b>86</b>
No investigation after Council decision in 25 days:	97	<b>98</b>
Informal investigation in 35 days:	86	<b>93</b>
Standard investigation in 85 days:	59†	<b>91</b>
Complex investigation in 140 days:	70†	<b>83</b>

Target = 80%

†2007 targets: Standard investigation = 50 days and Complex investigation = 85

## Complaints resolved during 2008

Non-broadcast		
	Complaints	Ads
No investigation	4,125	3,758
No investigation after preliminary work	5,340	4,695
No investigation after Council decision	1,093	187
<b>Total not investigated</b>	<b>10,558</b>	<b>8,640</b>
Informal investigation	1,403	1,224
Formal investigation	1,197	557
Of which:		
Upheld	738	387
Not upheld	412	149
Other	47	21
<b>Total investigated</b>	<b>2,600</b>	<b>1,781</b>
<b>Totals</b>	<b>13,158</b>	<b>10,421</b>

Broadcast		
	Complaints	Ads
No investigation	2,917	1,907
No investigation after preliminary work	3,676	2,364
No investigation after Council decision	2,917	186
<b>Total not investigated</b>	<b>9,510</b>	<b>4,457</b>
Informal investigation	174	146
Formal investigation	2,146	215
Of which:		
Upheld	558	106
Not upheld	1,544	101
Other	44	8
<b>Total investigated</b>	<b>2,320</b>	<b>361</b>
<b>Totals</b>	<b>11,830</b>	<b>4,818</b>

## Complaints and investigations

**Most complaints to the ASA do not result in a published formal adjudication. The table (left) outlines the different types of action taken by the ASA in response to complaints.**

### No investigation

If the issues raised in a complaint are not breaches of the advertising Codes the complaint is not investigated. This includes complaints that are outside of the ASA's remit, for example complaints about packaging, company websites or contractual disputes. On other complaints the ASA may undertake some preliminary work before deciding there is no case to investigate.

### No investigation after Council decision

Some complaints are put before the ASA Council for a decision about whether or not the complaint should be pursued. These are often complaints about offensiveness or harm. Just one Council member can ask for such a complaint to be taken forward for formal investigation.

### Informal investigation

The ASA prefers to work by persuasion and consensus and, wherever issues are minor and clear cut, we aim to resolve them informally with advertisers. This means asking advertisers to withdraw or amend their ads voluntarily if we think there is a problem. Informal investigations are not put before the ASA Council and no adjudication is published. If an advertiser chooses not to resolve the issue informally, it will go forward for formal investigation.

### Formal investigation

A thorough investigation in which all sides are given opportunities to comment and a recommendation is put to the ASA Council. Adjudications resulting from formal investigations are published on the ASA website and made available to the media.

# 27%

**increase in formal upheld rulings**

# Trends in complaints

45%

of complaints resolved cited misleading claims

## Reason for complaint

Overall, the issue of misleading claims was the major reason for complaint, with 12,942 mentions accounting for 45.4% of the total number of complaints resolved during 2008. This was followed by offensiveness with 8,831 (31.0%) and harmfulness with 2,926 mentions (10.3%). Miscellaneous reasons such as complaints about database inclusions and mail order fulfilment issues were cited in 3,731 complaints (13.1%). This follows a very similar pattern to 2007.

In terms of the nature of complaints by media type, offensiveness was the biggest reason in broadcast (45.3%) and misleading claims in non-broadcast media (55.5%).

In contrast to the internet growth, 2008 marked a dramatic fall in complaints involving traditional media – national press down 14%, posters down 25%, magazines down 26% and direct mail down 17% on 2007. National press, posters and direct mail remain the third, fourth and fifth most complained about media respectively.

## Source of complaint

In 2008, complaints from the public amounted to 23,747 and represented 95% of the complaints resolved. Those from the industry accounted for 1,241 complaints, 5% of the total. This is very similar to previous years, although industry complaints were slightly down on 2007 figures.

25%

increase in complaints about internet ads

## Media

Television advertising continues to be the most complained about advertising medium, with 11,180 complaints for TV ads resolved in the year, an increase of 12.8% on 2007.

Internet is the second largest category (after TV) with complaints in this medium representing 14% of total complaints and a growth of over 300% in five years. This growth is perhaps not surprising given the rapid growth of ad spend in this sector.

Complaints about advertising on the internet rose by nearly a quarter in 2008. However, over 65% of the total 3,571 complaints in this area fell outside the ASA's current remit as they related to the content of companies' own websites. Of the 1,244 complaints we were able to accept, the activities that prompted the most complaints were sales promotions (488 complaints), display ads (467 complaints) and sponsored search (170 complaints).

## Sector

The top five most complained about sectors remain the same as in 2007, which collectively continue to be responsible for around 60% of the total complaints resolved. Leisure remains the most complained about sector with 4,571 complaints (accounting for 18.3% of total complaints). This is followed by food and drink (2,785 complaints), computers and telecoms (2,450 complaints), non-commercial (2,438 complaints) and health and beauty (1,994 complaints).

Key changes to note are: complaints about alcohol ads increased by 43.6%, business services by 23.5%, and health and beauty complaints by 12.8% on 2007. Motoring complaints showed the most dramatic increase by 80.3% to take sixth place. However, it is also worth noting that almost half of those complaints related to one single ad (see pages 10–11).

80%

increase in complaints about motoring ads

**“The number of complaints to the ASA must be viewed in the context of the many millions of ads and billions of direct marketing and digital communications that people see each year. But our job is to assess thoroughly every one of those concerns, investigating the ads that seem to breach the rules.”**

Guy Parker  
ASA Director of Complaints and Investigations and Deputy Director General

### Complaints resolved by media

Media	2007	2008	% +/-
Television	9,915	<b>11,180</b>	12.8
Internet	2,867	<b>3,571</b>	24.6
National press	2,165	<b>1,870</b>	-13.6
Poster	1,835	<b>1,376</b>	-25.0
Direct mail	1,623	<b>1,343</b>	-17.3
Regional press	870	<b>957</b>	10.0
Magazine	1,134	<b>845</b>	-25.5
Radio	658	<b>707</b>	7.4
E-mail	501	<b>682</b>	36.1
Leaflet	592	<b>577</b>	-2.5
Transport	291	<b>446</b>	53.3
Point of sale	296	<b>382</b>	29.1
Brochure	356	<b>337</b>	-5.3
Packaging	218	<b>241</b>	10.6
Text message	257	<b>214</b>	-16.7
Circular	133	<b>196</b>	47.4
Press general	158	<b>187</b>	18.4
Catalogue	158	<b>174</b>	10.1
Insert	117	<b>173</b>	47.9
Mailing	111	<b>172</b>	55.0
Cinema	122	<b>132</b>	8.2
Other	169	<b>124</b>	-26.6
Directory	139	<b>77</b>	-44.6
Ambient	23	<b>54</b>	134.8
Facsimile	18	<b>7</b>	-61.1
Mobile	-	<b>4</b>	-
Video	3	<b>2</b>	-33.3
In-game advertising	-	<b>2</b>	-
Voicemail	2	<b>1</b>	-50.0
Electronic	-	<b>1</b>	-

### Complaints resolved by sector

Sector	2007	2008	% +/-
Leisure	4,381	<b>4,571</b>	4.3
Food and drink	3,623	<b>2,785</b>	-14.6
Computers and telecommunications	2,249	<b>2,450</b>	8.9
Non-commercial	2,388	<b>2,438</b>	2.1
Health and beauty	1,768	<b>1,994</b>	12.8
Motoring	968	<b>1,745</b>	80.3
Retail	1,618	<b>1,607</b>	-0.7
Holidays and travel	1,355	<b>1,462</b>	7.9
Financial	1,505	<b>1,326</b>	-11.9
Business	860	<b>1,062</b>	23.5
Household	1,009	<b>881</b>	-12.7
Publishing	872	<b>751</b>	-13.9
Utilities	323	<b>428</b>	32.5
Property	310	<b>412</b>	32.9
Alcohol	273	<b>392</b>	43.6
Employment	246	<b>240</b>	-2.4
Education	139	<b>156</b>	12.2
Clothing	161	<b>120</b>	-25.5
Industrial engineering	23	<b>51</b>	121.7
Tobacco	22	<b>11</b>	-50.0
Electrical appliances	11	<b>11</b>	0.0
Agricultural	25	<b>10</b>	-60.0

### Reason for complaint (total complaints resolved)

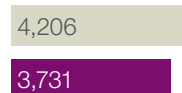
#### Misleadingness



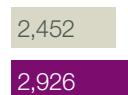
#### Offensiveness



#### Miscellaneous



#### Harm



2007 2008

Some complaints fall into more than one category.





### **In focus: environment**

In 2008, consumers, campaigners and policy makers continued to show concern about environmental issues and advertisers increasingly led on their 'green' credentials.

However, emerging technologies and differing scientific opinions mean there is a lack of official consensus on definitions and what can be called 'green'. Set against this, ASA research last year revealed little basic understanding of environmental claims.

It is not surprising, therefore, that complaints about environmental claims increased significantly over the last few years, reaching an all time high in 2007. The ASA launched several initiatives in 2008 to help advertisers and the public understand what claims such as 'environmentally friendly', 'renewable', 'carbon neutral' and 'sustainable' mean in the context of an ad.

### **Engaging with stakeholders**

In June we invited industry, NGOs and government departments to a consultative seminar in London. Led by the ASA Chairman, the seminar successfully established the concerns of key stakeholders about the use of green claims in advertising and provided feedback on our regulatory response to date. We were helped in this by our guest speakers – John Grant, the author of *The Green Marketing Manifesto*, and Ed Mayo, Chief Executive of Consumer Focus (formerly NCC) – who provided different perspectives on the subject. You can read the event report at [www.asa.org.uk](http://www.asa.org.uk).

**“Companies should be aware of the rise in consumer awareness of environmental and ethical issues alongside confusion and scepticism. The ASA does not want to discourage companies from communicating their initiatives but to help them to do so in a credible and responsible way.”**

Lord (Chris) Smith  
ASA Chairman





### Training and guidance for advertisers

Throughout the year, the ASA and CAP worked together to raise awareness of the Codes amongst businesses, helping them to get their environmental messages right.

- We organised an advice and training seminar, which was attended by 120 industry practitioners.
- We dedicated specialist members of the team to give expert copy advice to advertisers.
- We published new guidance online.
- We held bespoke seminars for individual companies.

### Monitoring sector compliance

In 2008, we carried out our first dedicated *Environmental Claims Survey* and found that 94% of ads with environmental claims were compliant with the advertising Codes. This pointed to a high awareness among businesses of the rules around green claims in advertising. Of the 195 ads assessed across all media (TV, radio and non-broadcast) during the survey period, just 12 (6%) seemed to breach the advertising Codes, all in non-broadcast media.

The compliance survey demonstrates that the ASA is making real progress in ensuring environmental claims do not mislead including through exaggeration, ambiguity or omission.

### Keeping up with the pace of change

When making environmental claims, advertisers should always ensure their factual claims are backed up by supporting evidence. However, we recognise that divisions of scientific opinion and fast emerging technologies pose a challenge for advertisers trying to avoid the pitfalls of green claims.

The ASA's rulings set parameters for a range of environmental claims such as carbon emissions, offsetting, environmental impact and renewable energy. However, the ASA alone cannot define what green is. This is why we always evaluate claims with the help of independent experts, keeping an open dialogue with relevant government departments and other regulatory organisations to ensure our rulings reflect the latest thinking in this area. To this end, we are pleased to be working closely with Defra in its review of the *Green Claims Code*.

### ASA action

Whilst it is encouraging that complaints have gone down in 2008, a higher proportion of ASA investigations resulted in upheld rulings, mainly from the motoring, utilities and energy sectors.

A press ad for Lexus claimed that the RX400h is "perfect for today's climate and tomorrow's" and that it "makes environmental and economic sense". The ASA ruled that the ad was likely to mislead by implying that the car caused little or no harm to the environment and had low emissions in comparison with all cars, which was not the case.

A national press ad for Shell stated "a growing world needs more energy, but at the same time we need to find new ways of managing carbon emissions to limit climate change." It mentioned how the company aimed to meet this challenge in "not only profitable but sustainable" ways, for example, by harnessing the potential of Canadian oil sands deposits. WWF challenged whether these were environmentally sustainable ways of producing energy. The ASA Council ruled the ad was likely to mislead its audience because 'sustainable' was an ambiguous term and had been used without evidence to demonstrate how the company was effectively managing the environmental impact of its emissions.



# ASA Council and senior management team

**The ASA Council is the jury that decides if advertisements breach the advertising Codes. Two-thirds of the members are independent of the advertising industry. Two panels operate in parallel within the Council, judging broadcast and non-broadcast ads separately.**

Two lay members of Council, Donald Trelford and Christine Farnish, retired from the Council in April, having completed the maximum service of two three-year terms. They were succeeded by Andrew Motion (non-broadcast council) and Louisa Bolch (both councils) respectively.

Biographies of all Council members can be found on the ASA website [www.asa.org.uk](http://www.asa.org.uk).

## ASA Council members:

**1 Rt Hon Lord Smith of Finsbury**  
Chairman

**2 Sally Cartwright**  
Director at Large, Hello Ltd

**3 Elizabeth Fagan**  
Marketing Director, Boots UK Ltd

**4 James Best**  
Former Director, DDB Worldwide,  
ex-Chairman UK Advertising Association

**5 Susan Murray**  
Non-executive Director and Chairman  
Remuneration Committee at Wm. Morrison  
Supermarkets Plc and Enterprise Inns Plc;  
Non-executive Director and Chairman of  
Corporate Social Responsibility Compass  
Group Plc; Chairman Farrow & Ball Ltd;  
Non-executive Director of Imperial Tobacco  
Group plc

**6 Nigel Walmsley**  
Chairman, Broadcasters' Audience  
Research Board

**7 Andrew Motion**  
Poet Laureate 1999–2009, Chair MLA and  
Professor of Creative Writing, Royal  
Holloway College University of London

**8 Colin Philpott**  
Director, National Media Museum

**9 Gareth Jones**  
Professor of Christian Theology, Canterbury  
Christ Church University

**10 Baroness Coussins**  
Independent Crossbench Peer and  
Consultant on Corporate Responsibility

**11 David Harker**  
Chief Executive, Citizens Advice



Council members are appointed for a maximum of two three-year terms and receive an honorarium of £15,000 p.a. A Register of Members' Interests may be inspected on application to the Company Secretary.

Non-broadcast council

Broadcast council

**12 Sunil Gadhia**  
Chief Executive, Stephenson Harwood

**13 Neil Watts**  
Headteacher, Northgate High School

**14 Diana Whitworth**  
Big Lottery Fund Board

**15 Louisa Bolch**  
Wellcome Trust Fellow 2007–09,  
Clare Leadership Programme  
and Non-executive Director for  
NHS Islington and the British  
Antarctic Survey

**16 Alison Goodman**  
Major Donor Development  
Executive, Terrence Higgins Trust

#### Senior management team:

**17 Christopher Graham**  
Director General

**18 Alan Chant**  
Director of Development

**19 Esra Erkal-Paler**  
Director of Communications and Marketing

**20 Phil Griffiths**  
Director of Finance and Support Services

**21 Guy Parker**  
Director of Complaints and Investigations  
and Deputy Director General

**22 Roger Wisbey**  
Director of Advertising Policy and Practice  
and CAP Secretary



# Independent Reviewer



**Sir John Caines KCB**

The review process reinforces the self-regulatory system. Quite rightly the Reviewer is not able to override the decisions of the ASA Council members. But he is able to get them to think again if he judges their decisions to have been unreasonable or to have been based on inadequate information about the issues or the result of a flaw in the investigation.

In 2008 I received 49 requests for review, a 30% increase over 2007. This was a rather unexpected return to a level of casework not experienced since 2003. Only seven of these requests proved on examination to have been ineligible. I am pleased to note that this was a much smaller proportion than in 2007, when as many as a third were ineligible. It would seem that those making requests have heeded my words about being more diligent in checking the Codes to make sure that they pass the basic tests of eligibility before making an approach to me.

I received 39 requests to review adjudications about complaints against non-broadcast advertising. Five of these were ineligible so I reviewed 34 cases – more than double the number in the previous year and the largest number since 2003. In 10 of these cases I concluded that the person making the request had raised issues which justified my asking the Council to think again. As has been the case in each of the past five years, the Council decided to reverse or to revise each of the adjudications which it reconsidered.

I received 10 requests for a review of adjudications about complaints against broadcast advertising, the largest number since I began to handle such cases in 2005. Two of these were ineligible. However, none of the eight requests which I actually reviewed made out a case to justify my asking the Council to reconsider the published adjudication.

**“The number of requests for review has increased by 30% over 2007.”**

I often find that advertisers and members of the public who ask me to review a decision by the Council base their case on no more than a disagreement with the Council's verdict. Unfortunately mere disagreement does not prove the existence of a substantial flaw and so I have no reasonable grounds for asking the Council to reconsider its verdict. Many of those verdicts inevitably are the result of a subjective judgment by the Council. Unless my review of a case can satisfy me that the Council has acted unfairly or unreasonably, that the ASA has failed to act in accordance with its publicly stated procedures or that the Council has not been made properly aware of all the relevant and allowable evidence, I have no option but to conclude against asking the Council to think again.

Finally a word about the time it takes me to deal with requests. For reviews not involving reference back to the Council I have been unable to maintain in 2008 the record average speed of turnaround of 27 calendar days which I achieved in 2007. However, the 2008 figure of 31 calendar days compares favourably with the 33 days achieved in 2006 when the case load was considerably lighter. There are of course limits to the scope for further increases in the speed of turnaround if thoroughness is not to be impaired. For reviews in which I judged that the Council needed to revisit adjudication, I was able to maintain the average of about 85 days achieved in both 2006 and 2007 which represented a considerable improvement over the average of 97 days in 2005.

**Sir John Caines KCB**  
Independent Reviewer

#### Review cases 2005-2008

Non-broadcast	2005	2006	2007	2008
<b>Total cases received</b>	<b>28</b>	<b>24</b>	<b>24</b>	<b>39</b>
Of which				
Ineligible/withdrawn	6	5	9	5
Not referred to Council	14	11	11	24
Referred to Council	8	8	4	10
Of which				
Reopened	–	–	–	2
Unchanged	0	0	0	0
Decision reversed	6	1	3	5
Wording changed	2	7	1	3

Broadcast	2005	2006	2007	2008
<b>Total cases received</b>	<b>9</b>	<b>6</b>	<b>6</b>	<b>10</b>
Of which				
Ineligible/withdrawn	0	0	2	2
Not referred to Council	8	4	4	8
Referred to Council	1	2	0	0
Of which				
Unchanged	0	0	0	0
Decision reversed	0	1	0	0
Wording changed	1	1	0	0

**49**  
requests for  
review

**8**  
cases resulted  
in ASA decision  
reversal or  
wording change





### **In focus: price comparisons**

One very noticeable effect of the economic downturn has been to bring value to the fore in advertising. With companies promoting themselves in a fiercely competitive marketplace, price comparisons are playing an increasingly prominent part in the battle for market share and customer loyalty.

All this has led to a steady rise in the number of complaints to the ASA about comparative ads, particularly by supermarkets, other retailers, telecoms and utilities companies. Consumers are confronted with a plethora of claims including the price of baskets of goods, utility tariffs and broadband packages to entice them to switch.

Our priority here is to ensure that ads do not mislead consumers and to help provide a level playing field where companies can make legitimate claims about their products and services.

### **Rising trend**

In 2008, the ASA saw an increase of 14% in the number of price comparison complaints that warranted investigation and that trend looks set to continue in 2009.

These types of complaints, which come from industry and consumer organisations as well as individual consumers, tend to involve a great deal of detailed scrutiny, which can take time and be costly for advertisers. To set it in context, half of all the complaints about comparative advertising that warranted investigation in 2008 were upheld by the ASA Council.

### **Keeping comparative ads effective**

Comparative ads are a powerful competitive tool, particularly when highlighting price to drive consumer choice. But they can lead to exaggerated or unclear price comparisons that cause consumers to be misled, the market to become unfair and the reputation of individual companies, or indeed whole sectors, to suffer damage. At the heart of the self-regulatory system is the commitment to provide an effective framework that will enable advertisers to stay on the right side of the rules and maintain public trust in advertisements.

**In 2008, the ASA saw an increase of 14% in the number of price comparison complaints that warranted investigation and that trend looks set to continue in 2009.**



The ASA works hard to ensure that its decisions on price comparisons in ads are consistent, proportionate and fair and that they set a reasonable precedent for others to follow. By monitoring sectors and complaints, we strive to act on emerging trends or problems in advertising.

For its part, CAP provides guidance and training so businesses can continue to make justified value claims with confidence. The pitfalls of comparative ads can be avoided by making full use of the resources available to advertisers to help them interpret the specific provisions in the Codes. They include consulting Copy Advice and observing the guidance set out in Help Notes (for example, those on Retailers' Price Comparisons and Lowest Price Claims and Price Promises).

The basic principles to follow when developing ads with price comparisons include:

- Always hold documentary evidence to back up any comparative claims and ensure the basis for the claim is clear.
- Compare products of the same or very similar quality.
- Always seek legal or Trading Standards advice to ensure claims comply with the law.
- Explain how consumers can verify the comparison by either giving enough information about the products or services included in the comparison or by directing them to another source that lists that information.
- Avoid exaggerating the length of time that prices have been lower.
- Compare like with like, for example, if using promotional prices, an ad must compare them with competitor promotional prices.

### ASA action

The ASA upheld a complaint against two TV and national press ads for Asda that compared prices between its stores and Morrison's supermarkets on branded products. The ads stated the prices were "Checked independently by sources including mySupermarket.co.uk. Prices checked 18/02/08" and claimed "ASDA 2,955 branded products cheaper. Why pay more?" But the ASA found that it was not possible for consumers to check Morrison's products and prices used in the comparison at mySupermarket.co.uk and the ads did not offer an alternative method for doing so. On that point, the ASA considered a precedent, that had been set by the European Court of Justice in 2006, which established the legal criteria for general price comparisons to be verifiable. The ASA Council concluded that the ads did not satisfy that requirement of verifiability and were in breach of the Codes. To encourage future compliance, the CAP Compliance team alerted the sector to the ramifications of the adjudication.

A press ad for an Orange Home Max package was unacceptable for claiming that consumers could "save over £190 when you switch from BT" but did not refer to the differences between the packages on offer that could potentially lead to additional expense. The CAP Help Note on Price Claims in Telecommunications Marketing advises that marketers should state differences between services undergoing comparison that are likely to influence consumers' evaluation of that comparison. The ad was found in breach of the Codes for not clarifying those differences prominently enough to allow BT customers to make a fair comparison of the packages before deciding whether to switch.

A national press ad for B&Q was headed "Why pay more? Compare our prices and you'll be amazed" and featured a price promise that claimed B&Q would match the price and apply a 10% discount if a product was found cheaper elsewhere.

The ad contained pictures of household products and gave the B&Q price and the price the item was available for in other stores. One of the products shown was a light, with accompanying text stating "Jena 3 light round ceiling spotlight. Brushed Chrome. John Lewis price £95, B&Q price £41.98. B&Q save you £53.02". The ASA considered that the price promise, coupled with the price comparison against the Jena spotlight, implied that B&Q had compared the price against the same product as opposed to a similar product. In investigating the complaint, the ASA found that there were material differences, with the John Lewis product being of a superior quality. Because of that, the ASA Council ruled that the B&Q ad misleadingly implied that John Lewis sold the same Jena spotlight as B&Q.

---

The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) have three main functions: maintaining the advertising Codes; providing advice and guidance to the industry and ensuring compliance with the rules and ASA adjudications. On all three fronts, it has been a busy and productive 2008, placing the advertising self-regulatory system in a good position to take on future challenges.

# CAP Chairman's introduction

## **At the heart of CAP and BCAP's work during 2008 has been the review of the Codes, both broadcast and non-broadcast.**

As far as broadcast is concerned, this is BCAP's first Code review since it assumed responsibility for the Codes in 2004. There have been code changes in the interim in the sensitive areas of food and children, and gambling and alcohol advertising; but those were unfinished business at the time of contracting out responsibility from Ofcom.

The current Code review is the first time that the advertising business, through CAP and BCAP, has undertaken a major review of the Codes in their entirety and the first major review of the non-broadcast Code since the mid-nineties.

The process has been guided by Andrew Marsden, former Marketing Director of Britvic, who has chaired the broadcast and non-broadcast working groups. Working with key practitioners and the Code Policy team, ably led by Shahriar Coupal, this has involved a massive workload and time commitment from all concerned.

CAP and BCAP have had to schedule a significant number of additional meetings to consider and debate the recommendations of the working groups. This extra workload has extended, in the case of broadcast, to the Advertising Advisory Committee (AAC) that has considered and made recommendations to BCAP on all the proposed changes. This relationship has proved to be very productive and professional and, as Chairman of BCAP, I would like to record my thanks to all on the AAC and particularly its Chairman, Elizabeth Filkin, for their very sound and constructive advice.

Thanks are due to all involved in this process for their level of commitment and contribution to a complex process that would have been much more difficult without such positive attitudes.

This internal process has now been completed and the recommendations are subject to a full public consultation in 2009 with implementation planned for early in 2010.

This review process has taken place within the existing remits of the Codes but, during 2008 significant work has been undertaken in the wider industry, under the aegis of the Advertising Association, considering possible extensions of remit to take account of the dramatically changing media landscape. This is a complex area that involves not only remit but also effective enforcement and funding models, and CAP and BCAP await the recommendations from the industry.

Similarly, discussions have been taking place between Ofcom and BCAP on Participation TV and these are likely to be finalised during 2009.

As far as the existing advertising landscape is concerned, monitoring has revealed very high levels of compliance with the revised Codes dealing with food and children, and gambling and alcohol advertising. Almost every major advertiser in the latter category has produced new advertising campaigns to ensure compliance with the revised Codes.

Finally, I would like to thank those individuals who have agreed to serve on the General Media Panel and the Sales Promotion and Direct Response Panel, both of which continued to provide valuable advice and expertise, as has CAP Copy Advice, throughout what has been a very challenging year.

The staff, wisely led by Roger Wisbey, have managed this year with great professionalism and good humour – the industry is indebted to them all.



**Andrew Brown**  
CAP and BCAP Chairman

A handwritten signature in black ink, appearing to read 'Andrew Brown', with a stylized flourish at the end.



# CAP review of the year

CAP and BCAP have had a busy year. Our teams interpreted and reflected new legislation in the Codes, took compliance action against problem ads, supported advertisers in getting their ads right and undertook an unprecedented review of the entirety of the Codes. Here we review some of the main events of the Committees' work during 2008.

## 1 Consumer Protection from Unfair Trading Regulations

In November, BCAP revised its TV and Radio Advertising Standards Codes to reflect the legal requirements of the Consumer Protection from Unfair Trading Regulations (CPRs). Those introduced legal definitions of unfair, misleading and aggressive trading practices and set out a framework for the assessment of such commercial practices. Also, the CPRs prohibit specific practices on the grounds that they are always unfair.

In revising its Codes, BCAP took advice from the Office of Fair Trading and considered responses to its public consultation. Because they reflect the law, the changes to the Codes came into force with immediate effect.

As it is not required to consult, CAP was able to update the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code) in June to help non-broadcast advertisers comply with the new provisions. CAP subsequently took into account changes that BCAP made as a result of its consultation. To help the industry get up to speed with these important changes, CAP ran dedicated training sessions, highlighting the implications of CPRs for marketing communications and covering specific subjects such as the use of "free", prize promotions and advertising to children. In addition, CAP kept the industry up-to-date with changes and implications through its regular e-newsletters *Update@CAP* and *Insight*.

## 2 EU legislation on nutrition and health claims

(EC) Regulation 1924/2006 on Nutrition and Health Claims Made on Foods (NHCR) is the first piece of specific legislation to deal with nutrition and health claims made for foods and seeks to protect consumers from misleading or false claims. CAP reviewed and published the changes to its Code to bring it into line with the regulation. Because the changes reflect the law, they became enforceable immediately.

BCAP launched a consultation on the proposed changes to its TV and Radio Codes to reflect the NHCR. BCAP proposed the minimum number of changes necessary to ensure that the present Codes do not allow practices that are explicitly prohibited by the Regulation and do not unduly restrict the use of nutrition or health claims that are permitted by the Regulation. CAP will take into account any changes that BCAP makes as a result of its consultation.

**1** **Free Car Hire**  
**@easyCar.com**  
**Book before 31<sup>st</sup> July and you**  
**could win your money back**





### 3 Sound levels

Few things annoy viewers more than ad breaks sounding louder than TV programmes. In recent years, the ASA has received hundreds of complaints from viewers objecting to what they consider to be “noisy ads”.

In July, BCAP introduced changes to its TV sound levels rule with immediate effect.

The new rule seeks to minimise the annoyance that can be caused to viewers by TV ads either exceeding an upper sound limit or by being generally perceived as too loud. Also, it means broadcasters are now better able to match the sound levels of ads with the sound output of the whole channel.

### 4 Expert support for the Code Review

A highly respected member of the advertising industry was appointed to help steer CAP and BCAP through their unprecedented review of the Codes. The former marketing director of Britvic, Andrew Marsden, was appointed Chairman of the Code Review Working Groups. Andrew’s experience and understanding of advertising and business made him the ideal candidate to steer the Code Review Working Groups. He is a former Chairman of the Institute of Sales Promotion and a member of the ISBA Council and the Government Advisory Committee on Advertising.

Elizabeth Filkin agreed to continue chairing BCAP’s Advertising Advisory Committee (AAC) for another three years. Elizabeth has chaired the AAC since it was set up in January 2005. The Committee’s role is to provide independent, third-party advice to BCAP.



### 5 Industry action

CAP members and the organisations they represent are central to the effective running of the self-regulatory system. That was demonstrated when the industry pulled together to stop a controversial poster ad by Advanced Medical Institute for an erectile dysfunction treatment. At the end of the year, the ASA received hundreds of complaints on grounds of offensiveness about posters featuring the slogan “Want longer lasting sex?” with “sex” written in giant red letters.

The ASA asked for the ads to be taken down pending the outcome of its investigation because the ad was promoting an unlicensed medicine to the public, which is prohibited under the CAP Code. Although the advertiser issued a public statement saying it would not comply with the ASA’s request, the media owner, Titan, took immediate action to remove the ads.



# Code Review

Keeping the Codes up to date is a key concern for us. Both society and the world of advertising are constantly changing and we must ensure our rules reflect new laws, keep up with trends, technologies and increased levels of media literacy.

In 2008, CAP and BCAP embarked on an unprecedented overhaul of the rules for TV, radio and non-broadcast advertising. This is, in some ways, a Code Review of 'firsts'. It is the first time, in almost 50 years of their history, that the UK's advertising Codes have been reviewed at the same time and it is the first time that a review of the broadcast Codes will be administered by a body other than a Government agency.

## What are our objectives?

It is important to CAP and BCAP that the Codes continue to be based on the enduring principles that advertising must not mislead or cause serious or widespread offence or harm, especially to children or the vulnerable, while retaining an environment in which responsible advertising can flourish. In those respects, we are not expecting to make major changes. But we do want to make sure that the Codes are clear, more accessible, unambiguous and simple to use and, just as important, in good shape for regulating advertising into the future, particularly in an ever more convergent media environment. Accordingly, changes that reflect social, technological or legal developments and plans to change the structure of the Codes are likely.

The proposals are open to a full 12-week public consultation from 26 March 2009. The Code Review process has been underway for around 18 months and involved nearly 50 Working Group and Committee meetings. The consultation is the next step in a systematic, rigorous, principled and inclusive process. We consulted with trade bodies, Departments of State, Executive Agencies and other regulatory bodies, as well as charities and expert groups. The public consultation will be the opportunity for everyone, especially consumers, to get involved and tell us what they think of the current rules as well as the proposed changes. Information about the public consultation is posted on [www.cap.org.uk](http://www.cap.org.uk).

## What are we proposing?

- Rules that are easily understood, easy to implement and easy to enforce.
- To reflect key legal provisions relating to new domestic and European legislations.
- To include, for the first time, over-arching principles at the beginning of key sections of the Codes that will inform the subsequent rules.
- To create a single broadcast Code from the existing four Codes.
- To consolidate and augment the protection the Codes afford to children.
- To include a new broadcast section on environmental claims that reflects the present requirements of the non-broadcast Code.
- To introduce a new principles-based approach to the recognition and scheduling of TV ads.

# 16,000

**man hours to prepare  
for consultation**

# 400

**pieces of legislation  
considered**



Andrew Marsden

#### What will happen after the public consultation?

That will depend to some extent on the responses to the consultation. CAP and BCAP will spend the summer evaluating all the responses they receive and intend to publish a response to all significant comments. Final sign-off will be required from Ofcom for the broadcast rules but we anticipate publishing new Codes in the final quarter of 2009.

From that point, our attention will turn to training for the industry. The new Codes are expected to come into force in early 2010, so the winter months will be spent running training seminars to bring advertisers, agencies and media owners up to speed with the new rules. Please sign up at [update@cap.org.uk](mailto:update@cap.org.uk) so we can keep you informed of developments.



Code Review  
CAP and BCAP

**“Both society and the world of advertising are constantly changing so we must ensure our rules reflect those changes and are easy-to-follow. Industry should be proud of its active commitment to self-regulation which is a great example of corporate social responsibility in action.”**



### **In focus: digital media**

From the internet and e-mail to podcasts and texts, digital is an increasingly important advertising channel. Digital is also reported to be more resilient to the economic downturn than traditional media, with the internet enjoying double-digit growth in ad-spend year on year.

Reflecting this growth in 'new media', if we can still use the term, the ASA has seen a significant rise in complaints about digital marketing in recent years. In fact, the internet is now the second most complained about medium after TV, with 14% of total complaints – a figure that has grown more than three-fold in five years. In 2008, the ASA received 3,571 complaints about marketing communications on the internet, an increase of nearly 25% from the previous year.

**Complaints to the ASA about internet activity increased by nearly a quarter in 2008. 65% of these were about companies' own websites and therefore fell outside of our remit to resolve them. But where the self-regulatory rules do apply in digital media, there is a high compliance rate.**

### **Self-regulation online**

The ASA's remit covers many digital marketing communications, including pop-up and banner ads, e-mails, sponsored search, sales promotions and virals, but so far not companies' marketing claims on their own websites. Website content constituted 65% of the complaints received about online ads in 2008 and therefore fell outside of our remit.

In December, we published the findings of our *Digital Media Survey 2008*. The report revealed that where the self-regulatory rules apply in digital media, there is a compliance rate of 97%.

Of the 551 ads surveyed, only 16 seemed to breach the non-broadcast advertising Code, with 10 breaches occurring in the health and beauty sector. The Compliance team was concerned by the comparatively low compliance rate (72%) of digital ads in this sector and will be scrutinising health and beauty ads when monitoring online ads in future. The majority of breaches were in sponsored search ads and e-mails. Of the ads surveyed, virals, podcasts and mobile messaging were all found to comply with the Code.

The survey findings should go some way to dispelling the perception that digital is the 'wild west' of media. Self-regulation clearly works in digital media and, where marketing activity is subject to the ASA's scrutiny, there is a high compliance rate with the rules. The ASA will continue to respond to public concerns and proactively monitor ads to ensure that standards in digital advertising remain high.





### Future-proofing advertising regulation

In the UK, there is a clear expectation among consumers and policy makers that self-regulation could and should have an effective role in the ever-growing digital environment. The ASA is aware of the industry discussions on this, led by the Advertising Association, and stands ready to play its part in the next phase of this work.

At an international level, in December 2008 the European Advertising Standards Alliance (EASA) published its *Digital Marketing Communications Best Practice*. The result of extensive discussions between self-regulatory organisations (SROs), advertisers, the media and agencies, as well as a process of informal stakeholder consultation, the document outlines EASA's current thinking about the remit and application of self-regulation in digital space.

### The EASA guidance

- Confirms the European advertising industry's commitment to apply effective self-regulation to all media platforms, including digital marketing communications.
- Recognises the global nature of digital media and the need to develop a coordinated response across EASA's membership.
- Identifies digital marketing communication practices that fall within the remit of SROs.
- Identifies forms of digital content that lie outside the remit of SROs.
- Provides an additional set of rules that allow SROs to determine whether or not marketer-owned website content constitutes a marketing communication.
- Encourages local SRO and advertising industry representatives to ensure that remit at national level fits with current thinking and guidelines on behavioural marketing and encourages the industry to develop further existing privacy initiatives.

### ASA and CAP action

In August, the ASA published a ruling against Littlewoods Gaming for using an image of Spiderman on their internet banner ad, which stated "The Amazing Spiderman 25 Line Jackpot Slot £50 SIGN UP BONUS ... ALL AT onlinegamblerweb.com". This ad received a complaint that the use of Spiderman was appealing to children. Although the ad was placed on a website that had an average user age of 41 years, the ASA considered that the ad breached the Code by reflecting or being associated with youth culture.

In October, the ASA upheld complaints against online gambling site Partouche Betting for internet banner ads. One ad stated "BET TO FORGET" and another one, which included a photograph of Eric Cantona, had the text "CLICK OR REGRET". The ASA considered that these ads suggested that gambling could provide an escape from personal problems and were concerned that Partouche Betting had ignored earlier advice from the CAP Copy Advice team not to use the claim "BET TO FORGET". The ASA upheld that both statements suggested that gambling was indispensable or that it took priority in life.

Which? made a complaint to the ASA about several online advertisers for promoting prescription only medicines, such as Botox, which was passed onto CAP for compliance action with the advertisers. CAP secured the co-operation of media owners in establishing clearer guidelines for the sale and promotion of these medicines.

# Prevention through advice and training

Effective self-regulation works because it is powered by a sense of corporate social responsibility among advertising stakeholders. The industry has a strong interest in nurturing the system that helps maintain consumer trust in advertising, while retaining an environment for responsible advertising to flourish.

CAP supports the industry's commitment and boosts compliance by educating practitioners and adding value to the UK industry, often in cooperation with the ASA.

Thanks to a large number of different programmes and resources on offer, the UK advertising self-regulatory system provided direct support and advice to industry contacts on over 48,000 occasions in 2008. Given the popularity of the ASA and CAP websites, our reach goes far beyond those direct contacts.

## Copy Advice

Copy Advice is an essential service for advertisers, agencies and media owners who want to check how their prospective non-broadcast ads or multi-media concepts measure up against the CAP Code. Provided by the people who write the rules with guidance from those who enforce them, this unique service is fast, free and confidential.

During the year, the six-strong team of specialists dealt with more than 8,000 enquiries, helping practitioners to comply with the Codes within a 24-hour turnaround commitment. Copy Advice is highly praised by its users with a satisfaction score of 93%. Advertisers are urged to make Copy Advice an early part of their creative process to avoid potentially costly mistakes later and get campaigns right the first time. For bespoke advice from an adviser, call us on 020 7492 2100 or send concepts or artwork to [advice@cap.org.uk](mailto:advice@cap.org.uk).

# 93%

of users satisfied with Copy Advice

# 48,000

industry contacts for advice and training



### Self-help tools

As well as responding to phone and e-mail enquiries, the Copy Advice team write and update the information and guidance available to marketers on [www.cap.org.uk](http://www.cap.org.uk).

AdviceOnline is a comprehensive searchable database to help marketers, agencies and media owners ensure their ads, sales promotions and direct marketing campaigns meet the requirements of the CAP Code. AdviceOnline had 23,000 visits in 2008.

Help Notes provide detailed guidance on the application of the broadcast and non-broadcast Codes in specific sectors and on specific subjects. The Help Notes section of our website had 6,000 visits during the year.

In 2009, CAP aims to launch a dedicated new website to bring together all essential news, help and guidance under one roof at [www.copyadvice.org.uk](http://www.copyadvice.org.uk). The site will offer enhanced search functionality and interactive features such as case studies, frequently asked questions and helpful checklists. We want to give practitioners convenient and efficient access to one of the most comprehensive sets of available guidance on the interpretation of the CAP and BCAP Codes.



### Advice:am

CAP and the ASA jointly run these popular masterclasses designed to provide an inside track to the regulatory system and the relevant rules of the CAP and BCAP Codes to help companies get the most out of their campaigns. Advice:am industry training seminars consist of two types of events. Insider's Guide sessions provide a general introduction to the advertising regulatory system, the general principles of the Codes and the resources at the industry's disposal. Specialist Advice:am seminars go into detail about specific sectors, the rules and case studies as well as the general information about the system and how advertisers can work with CAP and the ASA. This year, we organised eight events that involved 762 practitioners, with 10 seminars scheduled in 2009.

### Bespoke seminars

The ASA and CAP invest time in bespoke seminars for those companies wishing to improve their understanding of the Codes and how the rules are interpreted in more detail and in a non-competitive environment. We bring together executives from every part of the system, making the seminars resource-intensive but we welcome the initiative of businesses that are keen to improve their compliance and train their staff, agencies and advisors through a dedicated session. For information on how we can work with you, please contact [events@asa.org.uk](mailto:events@asa.org.uk).

### Industry presentations

Our executive teams regularly take part in external conferences and visit companies to increase the awareness of the Codes and how the rules are applied. In May, we took part in the International Direct Marketing Fair (IDMF), where our stand was visited by many specialists in the sector. During the year, CAP and ASA reached an industry audience of over 2,500 marketers, compliance and legal advisors and agency staff.

### Training agency recruits

Through our partnership with the Institute of Practitioners in Advertising (IPA), ASA and CAP provide training for the graduate intake of agencies. This annual commitment led to two seminars in October, attended by 78 employees embarking on a career in advertising.

### Keeping informed

Knowing the rules can help advertisers avoid consumer or competitor complaints and unwanted ASA scrutiny. CAP's regular e-newsletters are a convenient and timely reminder of the need-to-know and developments affecting advertising regulation.

### Insight

Launched early in 2008, this popular monthly e-newsletter is full of practical tips and advice from the Copy Advice team. Insight already has a fast-growing subscriber base of nearly 2,000 practitioners.

### Update@CAP

A quarterly e-newsletter, Update@CAP informs industry members of important developments in ad regulation, groundbreaking adjudications that set a precedent and key external factors that impact on the rules. With nearly 7,000 subscribers, it is essential reading for a wide cross-section of stakeholders in advertising.



# Industry commitment

Ad industry engagement is central to the success of the self-regulatory system. In addition to the organisations that make up CAP and BCAP, the Executive receives invaluable support from two industry panels – the Sales Promotion and Direct Response Panel (SPDRP) and the General Media Panel (GMP).

## Broadcast Committee of Advertising Practice

Advertising Association  
British Sky Broadcasting Limited  
Channel 4 Television Corporation  
Channel 5 Broadcasting Limited  
Direct Marketing Association  
Electronic Retailing Association UK  
GMTV Limited  
Incorporated Society of British Advertisers  
Institute of Practitioners in Advertising  
ITV plc  
RadioCentre  
S4C  
Satellite & Cable Broadcasters' Group  
Teletext Limited  
Virgin Media TV

Clearcast  
Radio Advertising Clearance Centre

## Committee of Advertising Practice

Advertising Association  
Cinema Advertising Association  
Direct Marketing Association  
Direct Selling Association  
Directory & Database Publishers Association  
Incorporated Society of British Advertisers  
Institute of Practitioners in Advertising  
Institute of Sales Promotion  
Internet Advertising Bureau  
Mail Order Traders Association  
Mobile Broadband Group  
Mobile Marketing Association  
Newspaper Publishers Association  
Newspaper Society  
Outdoor Advertising Association  
Periodical Publishers Association  
Proprietary Association of Great Britain  
Royal Mail  
Scottish Daily Newspaper Society  
Scottish Newspaper Publishers Association

Clearcast  
Radio Advertising Clearance Centre

## CAP Panels

As the name suggests, the Sales Promotion and Direct Response Panel (SPDRP) concerns itself with sales promotions and direct marketing. The General Media Panel (GMP) deals with all other matters. The SPDRP deals only with non-broadcast but the composition of the GMP means it can consider both broadcast and non-broadcast matters.

In 2008, the Panels debated a wide range of subjects including social responsibility in alcohol and gambling ads, the independent judging and observing of prize draws and competitions, nutritional claims in food ads, RRP's, online remit for promotions and remit related to affiliate marketing, the Code Review and the application of the new Consumer Protection from Unfair Trading Regulations.

The role of the Panels is to provide an objective opinion from an industry perspective and a forum for information exchange between the industry and the ASA and CAP Executive. It is often an opportunity for marketers to have industry representatives review an aspect of an investigation and to feed into the decision-making process. Although consideration is given to its recommendations and the Minutes of the meeting are given to the ASA Council if relevant, the Panel's opinion is not binding on either the Executive or the ASA Council.

The Panels may be asked to discuss a recommendation before the ASA Executive gives it to Council, specific copy advice, the application of a Code clause, the interpretation of a claim, common industry practice or other general regulatory subjects. The Executive may use the Panels to draft or help draft Help Notes or revisions to the Codes. The Panels will almost never consider scientific or highly specialised evidence: it leaves those matters to the experts.

## General Media Panel

Farah Ramzan Golant (Chair)  
Stephen Allan  
Tess Alps  
Teresa Brookes  
Carol Fisher  
Peter Gatward  
Steve Goodman  
Gareth Jones (ASA Council)  
John Laidlaw  
Caroline McDevitt  
Andrew Melsom  
Mike Moran  
Steve O'Meara  
Daniel Owen  
Simon Rhodes  
Claire Serle (CAP)  
Gillian Wilmot  
Roger Wisbey (CAP)

## Sales Promotion and Direct Response Panel

Philip Circus (Chairman)  
Peter Batchelor  
Mark Challinor  
Daphne DeSouza  
Mark Dugdale  
Michael Halstead  
Oliver Hickson  
Caroline Roberts  
Bruno Sheldon (CAP)  
Nigel Walmsley (ASA Council)  
Paul Whiteing  
Roger Wisbey (CAP)



# Advertising Advisory Committee

**The Advertising Advisory Committee (AAC), which provides a consumer perspective to BCAP's code policy work, has had a busy year. We have met seven times and, as well as advising BCAP on its proposed Broadcast Code, have considered the Audiovisual Media Services Directive, the Consumer Protection Regulations (CPRs), the Nutrition and Health Claims Regulation, Participation TV, non-broadcast interactive on-screen ads and the application of the scheduling restrictions to ads for HFSS foods.**

The bulk of our work, however, has been concentrated on the review of the existing BCAP Codes and the proposed single Code for all broadcast advertisements. Throughout the year, my colleagues and I have been impressed with the Executive's analysis of the policy behind each section of the BCAP Codes and of whether circumstances now warrant a change to the rules. We advised changes to clarify text or to ensure public protection. We believe the Code now proposed by BCAP, which is subject to full public consultation in the Spring of 2009, now strikes the right balance in protecting the consumer. BCAP did not, of course, accept all our recommendations. But, in our view, BCAP considered them all carefully and fairly, explained its consideration to us and adopted the vast majority of our advice.

This report is not the place to comment on the proposed changes to the BCAP Codes: the BCAP consultation document examines them in great detail. But I should like to comment on one new addition to the requirements for all broadcast advertisements. For the first time, those ads have to comply with a specific social responsibility clause, bringing the broadcast regime into line with the CAP Code, which has long had a similar clause. That initiative came from BCAP and, as you might imagine, all members of the AAC welcomed it. My colleagues and I look forward to evaluating the responses to the consultation in mid-2009. Despite our detailed work, I expect the consultation will raise some important points that we should consider.

At the end of 2008, Jacqueline Hughes-Lundy and Jenny Watson stood down from the AAC. I should like to thank them for their valued contribution to our work throughout the last three years. Our advertisement for new members to replace them generated plenty of good candidates. We have appointed Nicola Williams and Colin Cameron as new members from the beginning of 2009 and we have selected two others to start in 2010 after two more of our existing members come to the end of their terms of office at the end of 2009.

I should like to congratulate all my colleagues on the AAC and the staff for their hard work and wise counsel throughout the year. I look forward to working with them and with BCAP throughout 2009.

**Elizabeth Filkin**  
Chairman



**Elizabeth Filkin**

## **AAC Members**

Elizabeth Filkin (Chairman)  
Andrew Brown  
Jacqueline Hughes-Lundy  
David Jessel  
Stephen Locke  
Colin Munro  
Laura Simons  
Jenny Watson  
Dr Michael Wilks

The AAC is a consumer panel established by BCAP to advise on the drafting and interpretation of BCAP's Codes. Committee members are independent of the advertising industry and appointed after public advertisement.





### **In focus: food**

In the UK, concerns about rising levels of obesity, particularly among children, have led to a tightening of the rules applied to food and soft drink ads targeted at children. Since 2007, the new rules have placed significant restrictions on the content of all ads and on the scheduling of TV ads.

**“Compliance levels for food and soft drink ads remain high and the strict rules are being followed. However, the sector is under close scrutiny in many quarters, and the ASA will continue to work hard to maintain standards.”**

Christopher Graham  
ASA Director General





### What do the rules say?

In general, advertisements for food and soft drinks must not:

- Encourage poor nutritional habits or excessive consumption of less healthy food or drink products.
- Use promotional offers in an irresponsible way or 'hard sell'.
- Use licensed characters or celebrities popular with children.
- Give a misleading impression of the nutritional benefit of products.

As well as rules governing the content, there are also restrictions on where and when ads can appear. Ads for HFSS foods and drinks must not appear around TV programmes that are commissioned for or are likely to be of particular appeal to children up to 16 years old or on dedicated children's channels.

In non-broadcast media and on radio, the rules apply to all foods except fresh fruit and vegetables and are applicable to advertisements targeted at under-16s. Extra rules, for example those relating to the responsible use of celebrities and licensed characters, particularly protect children under 12.

### Are the rules effective?

In December, we published the *ASA 2008 Food and Soft Drink Advertising Survey* that assessed 927 ads across all media in a given period and found that 99% were compliant with the tougher regulations. This is the second survey of its kind in two years and we were encouraged to see compliance levels for food and soft drink advertisements remain high.

In the same month, Ofcom published its review of the HFSS food restrictions for TV advertising, revealing that the amount of HFSS advertising seen by children fell by an estimated 34%.

Evidence to date suggests that the current rules are a proportionate and reasonable response to concerns about food and soft drinks advertising. The ASA will continue to monitor ads to ensure compliance rates remain high.

### ASA action

Advertisers are clearly mindful of the rules and that is evident in the significant decrease in the number of complaints to the ASA about food and drink ads. Those fell by 15% in 2008, and the proportion of complaints relating to advertising to children remains relatively small. We continue to work hard to ensure that standards are maintained.

In February, the ASA Council found a Ferrero UK ad for Nutella in breach of the TV Code. The ad claimed that the product was healthy because it contained hazelnuts, cocoa powder and skimmed milk but did not mention the high sugar and fat content of the chocolate spread.

In October, the ASA upheld complaints about a TV ad for Maltesers chocolate by Mars UK on the grounds that the words "less than 11 calories each" gave the misleading impression that Maltesers were a low calorie food.

Similarly, the ASA challenged whether the claim "only one gram of fat" misleadingly suggested McVitie's Jaffa Cakes were low in fat.



# Financial report

The Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof) fund the advertising regulatory system by collecting a levy on media expenditure.

## Year to 31 December 2008

Audited income and expenditure figures for the combined non-broadcast and broadcast activity in 2008 are given on the opposite page and are the total of the amounts recorded in the Report and Financial Statements of the two companies that were adopted by the Non-Broadcast and Broadcast Councils at their respective Annual General Meetings held on 3 April 2009.

## Income

Compared with 2007, income received from the Advertising Standards Board of Finance Ltd fell by £40,000 (0.87%) to £4,910,000. Income received from the Broadcast Advertising Standards Board of Finance Ltd fell by £150,000 (4.86%) to £2,936,000. The total income was £7,846,000; a reduction of £190,000 (2.36%) compared with 2007. However, interest received rose by £8,632 (11.91%) and produced additional income of £81,116.

## Expenditure

The budget-setting and forecasting of expenditure for the combined non-broadcast and broadcast operation continued to be prepared and managed on a cash basis. The budget agreed for 2008, net of interest receivable, was £8,177,200. At the end of quarter three the forecast of expenditure for the year was £7,989,788; a saving of £187,412 (2.29%). At the year-end audited expenditure was £7,935,668; an underspend of £241,532 (2.95%) against the budget. Savings of £131,700 were made on research projects; £118,500 on staff costs; and some £75,400 on office costs – more than offsetting unplanned increases in expenditure elsewhere.

The Report and Financial Statements for ASA and ASA (Broadcast) reflect a split of costs, determined by Asbof/Basbof to reflect the workload between non-broadcast and broadcast activities, of 63% and 37% respectively and applying them to the non-specific costs – overheads, general office costs and the like. Specifically identifiable costs were allocated in full to the relevant function.

## Profit/Loss

On the Profit and Loss basis, the audit confirmed expenditure of £7,581,197; a decrease of £220,282 (2.82%) compared with 2007.

The combined profit before tax of both non-broadcast and broadcast activity was £361,440 (2007 – £310,394).

**The advertising standards system is wholly funded by advertisers – but through an arm's-length arrangement that guarantees the ASA's independence. The 0.1% levy on the cost of buying advertising space ensures the ASA's effectiveness.**



**Non-broadcast and broadcast combined  
for the year ended 31 December 2008**

	<b>2008 £</b>	<b>2007 £</b>
<b>Income</b>		
Cash received from the Advertising Standards Board of Finance Ltd	4,910,000	4,950,000
Cash received from the Broadcast Advertising Standards Board of Finance Ltd	2,936,000	3,086,000
	<b>7,846,000</b>	<b>8,036,000</b>
<b>Expenditure</b>		
Salaries and staff costs	4,665,693	4,631,332
Other staff costs	402,637	445,256
Rent and accommodation costs	693,724	694,665
Travel, subsistence and entertaining	50,949	60,247
Consultancy and professional fees	533,191	536,677
CRM project costs	150,833	145,456
Depreciation	240,159	289,598
Telephone, postage, printing, stationery and other general expenses	509,416	497,435
Advertising and promotion	334,595	500,813
<b>Total</b>	<b>7,581,197</b>	<b>7,801,479</b>
<b>Operating Profit</b>	<b>264,803</b>	<b>234,521</b>
Profit on sale of tangible fixed assets	7,500	1,646
Interest receivable	81,116	72,484
Finance charges payable under finance leases	(4,979)	(18,257)
Pension finance	13,000	20,000
<b>Profit on ordinary activities before tax</b>	<b>361,440</b>	<b>310,394</b>

**Registered offices:**

The Advertising Standards Authority Ltd  
Mid City Place 71 High Holborn  
London WC1V 6QT  
Registered in England: No 733214

The Advertising Standards Authority (Broadcast) Ltd  
Mid City Place 71 High Holborn  
London WC1V 6QT  
Registered in England: No 5130991

# Meeting our standards of service

## Being accessible

We aim to be accessible to members of the public and the advertising industry. We shall publish our contact details (website, address and telephone) on all our literature and ensure that our switchboard is staffed during normal office hours (9am – 5.30pm).

Customer satisfaction with our accessibility is measured by a twice yearly survey. In 2008, 84% of complainants agreed that the ASA is accessible to the public. We aim to ensure that members of the public are aware of our existence and role, and recognise our name and logo. In 2007, 17% of the public could spontaneously name the ASA as the advertising regulator, and 15% recognised our logo.

An independent survey also found that the ASA was the best known media regulator in 2008 with 93% awareness amongst those questioned\*.

## Responsiveness

We aim to resolve complaints without undue delay, but complaints that require investigation can take longer than the average. Our aim is to acknowledge complaints within five working days of receipt, reply to all other correspondence within 10 working days, and keep complainants advised of progress on a regular basis.

In 2008, 86% of complainants surveyed were satisfied with the time it took to respond to their complaint and 65% were satisfied that they were kept informed throughout the complaint process.

We aim to turn around complaints promptly, with at least 80% being within their individual targets (see pages 12–13).

We aim to respond to e-mail enquiries within 48 hours during the working week.

Customer satisfaction with our timeliness is measured by a biannual survey. Overall in 2008, complaints were resolved within an average of 13 working days, with 84% within the 12-day target. Those requiring investigation were resolved within an average of 66 days, with 88% within target.

If a complaint is outside our remit we will advise within 10 working days and provide information on who should be contacted. In 2008, overall customer satisfaction for complaints held to be outside remit was 56%.

## Effectiveness

We aim to meet the needs of our customers, whether members of the public or industry.

While recognising that we operate in circumstances where some 80% of complaints result in a “not upheld” decision, we aim to achieve the highest possible scores in our Customer Satisfaction surveys and from the advertisers and agencies with whom we deal in resolving complaints. In 2008, overall complainant satisfaction was 61% and the score from advertisers was 80%.

## Quality

We aim to deliver a high quality and professional service.

If a complainant or advertiser believes that the ASA's handling of a complaint is not complying with these standards, they can write to the Director General outlining their concerns and he will respond within 10 working days. In 2008, 50% of such correspondence was replied to within 10 working days. The average time taken was 10.1 working days.

If a complainant or advertiser believes that there is a substantial flaw in a Council adjudication, they may be able to secure an independent review by the Independent Reviewer of ASA Adjudications. Details of the review process are set out in the Codes and the Independent Reviewer's report for 2008 may be found on pages 20–21.

## Transparency

We aim to be open about our procedures and our decision making, and accountable for our performance.

We shall publish our adjudications each week on our website [www.asa.org.uk](http://www.asa.org.uk). Our website provides full information on who we are, how we operate and our consumer research. The usefulness of the information on our website achieved an 81% satisfaction rating in 2008.

We shall publish our performance statistics on the website on a quarterly basis and an Annual Report in April/May each year reviewing our activities throughout the previous calendar year. We publish an Annual Statement in October each year updating our performance reporting (January – June) and setting out our objectives for the coming year.

\*Ipsos MORI research commissioned by the Press Complaints Commission, March 2008.

### What happens when we receive a complaint?

- 1** When we receive a complaint, it is assessed against the Codes. If there appears to be a problem we will tell you we are taking up your complaint. If there is no case to answer under the Codes we will tell you; in some cases, we may be able to suggest another body that can help.
- 2** We try to resolve complaints as quickly as possible. For instance we can have an ad changed if it is a minor mistake, get your name taken off a mailing list or chase up undelivered mail order goods on your behalf. If a serious breach of the Codes is involved, then a formal investigation might be required.
- 3** In a formal investigation, the advertiser must submit evidence in writing. The ASA Executive then writes a recommendation that goes to the ASA Council. Where needed, expert advice is sought. The Council then decides if there has been a breach of the Codes.
- 4** If the Codes have been breached, the ad, promotion or direct marketing must be changed or withdrawn. Where the complaint is 'not upheld' no further action is taken. The adjudications are published on our website and are made available to the media. Advertisers and complainants are told in advance when the case will be published.

- 5** In certain circumstances, advertisers or complainants can request a review of an adjudication. Both sides have 21 days to ask the Independent Reviewer of ASA Adjudications to review the case. If the Reviewer accepts a request for a review he can ask the Council to reconsider its ruling.
- 6** We will check to see that our rulings are complied with. The ASA staff also monitor the media to make sure the Codes are being adhered to.
- 7** The vast majority of advertisers comply with our rulings. We work closely with the advertising industry to act against the few who do not. Broadcasters cannot air ads that break the Codes and we can ask publishers not to print ads that do not meet the rules.
- 8** Ultimately, we can refer non-broadcast advertisers who persistently break the Codes to the Office of Fair Trading for legal action under the Consumer Protection from Unfair Trading Regulations. A similar safeguard exists for TV and radio ads where a broadcaster who continually airs ads that break the Codes can be referred to Ofcom.

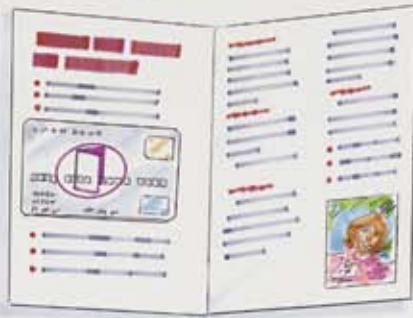
### Getting in touch

The ASA resolves thousands of complaints about advertisements each year. You can complain to us if you:

- think there is something wrong with an advertisement you have seen or heard;
- have difficulty getting goods or a refund for items bought by mail order or through television shopping channels;
- want to stop direct marketing from companies sent either by post, fax, text message or e-mail.

You can contact us by letter, telephone, fax, e-mail or via our website. If you would like to be kept informed about news and events from the ASA, contact our Communications team at the address below, or sign up via our website at [www.asa.org.uk](http://www.asa.org.uk).

Advertising Standards Authority  
Mid City Place  
71 High Holborn  
London  
WC1V 6QT  
Telephone 020 7492 2222  
Fax 020 7242 3696  
Textphone 020 7242 8159  
E-mail [enquiries@asa.org.uk](mailto:enquiries@asa.org.uk)  
Online [www.asa.org.uk](http://www.asa.org.uk)



*Open Door' Direct Mail Campaign*



*MX 5000 Press Campaign Options*

FOR A  
HAPPIER  
DOG



*'Woof's' Online C*

#### **Advertising Standards Authority**

Mid City Place  
71 High Holborn  
London WC1V 6QT

T 020 7492 2222  
E [enquiries@asa.org.uk](mailto:enquiries@asa.org.uk)  
[www.asa.org.uk](http://www.asa.org.uk)

#### **Committee of Advertising Practice**

Mid City Place  
71 High Holborn  
London WC1V 6QT

T 020 7492 2200  
E [enquiries@cap.org.uk](mailto:enquiries@cap.org.uk)  
[www.cap.org.uk](http://www.cap.org.uk)