

Memorandum of Understanding between ASA and Defra

Introduction

Under Directive (EC) No 2010/30/EU Member States are required to implement provisions for the labelling of and product information for specific energy-related products. It repeals Directive (EC) 92/75 and includes specific provisions for the information that should be included in advertising. The Advertising Standards Authority (ASA) and Advertising Standards Authority (Broadcast) Ltd (collectively the ASA), the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) (together B/CAP), and the Department for Environment, Food and Rural Affairs (Defra) have agreed that the ASA should be the "established means" in the UK by which industry will self regulate energy labelling requirements in advertisements and agree to the case handling principles within this document to ensure marketers comply with the Directive regulations made under it, through self-regulatory means.

General role and function of the ASA

The ASA's role is to ensure ads are legal, decent, honest and truthful by applying the UK Code of Broadcast Advertising (the BCAP Code) and the UK Code of Non-Broadcasting Sales Promotion and Direct Marketing (the CAP Code), together 'the B/CAP Codes', in order to protect consumers and create a level playing field for marketers. The ASA is an independent body which investigates complaints about marketing communications and assesses them against the B/CAP Codes. The ASA Council, containing industry and majority lay members, makes the final decisions and adjudicates upon complaints.

The ASA's remit covers marketing communications which is non-broadcast, broadcast and on advertisers' own websites. The ASA's authority is recognised by the Government, the courts, other regulators such as the Office of Fair Trading (OFT) and the Office of Communications (Ofcom) and is the established means for consumer protection from misleading advertising (including under the Consumer Protection from Unfair Trading Regulations 2008).

The B/CAP Codes are written and maintained by the B/CAP industry committees, with input from the Advertising Advisory Committee (AAC) for broadcast advertising. In the event that an advertiser fails to comply with the Codes, B/CAP's Compliance teams apply self-regulatory sanctions (see Annex A) to ensure the Codes are adhered to. In rare circumstances where self-regulatory means have been exhausted, the ASA may refer an advertiser to the OFT, a broadcaster to OFCOM for statutory action or for breaches of energy labelling requirements, Defra.

The Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof) collect a 0.1% levy on advertising space spend in order to fund the self-regulatory system.

Role and function of the NMO and the Department for Environment, Food and Rural Affairs (Defra), as regards Energy Labelling.

The Secretary of State for Environment Food and Rural Affairs is responsible for enforcing the requirements of the Energy Information Regulations 2011 (which transpose the Energy Labelling Framework Directive). The Secretary of State has nominated the National Measurement Office (NMO) to enforce on her behalf.

The NMO will, where appropriate, investigate significant issues referred to them by ASA and, if appropriate, undertake enforcement action. The NMO and Defra will agree how this activity will be resourced, as and when cases arise.

Complaints Handling

B/CAP have agreed to include rules in their Codes to require distance selling marketing communications for energy-related products that include energy related information or disclose price information to include an indication of energy efficiency class, as indicated in the relevant Delegated Act under the Energy Labelling Directive, and make a product fiche available before commitment and require all other marketing communications for energy-related products that include energy-related information or disclose price information to state the energy efficiency class of the product. The rules will be subject to relevant regulations made under the Directive.

- All complaints received by the ASA relating to the presence of a product's energy efficiency class rating or fiche in an advertisement will be dealt with in accordance with the ASA's published complaints handling procedures.¹ NMO, Defra and trading standards will, if appropriate, pass all such complaints which they receive to the ASA.
- The ASA will consider complaints about whether an ad contains an energy efficiency class rating or includes a reference to where fiche information can be obtained. All technical aspects, such as whether or not a rating or fiche information is accurate, will be referred by the ASA to the NMO.
- B/CAP will use self-regulatory means to enforce its rules and the ASA's decisions to ensure compliance. These may include ad alerts, trade body pressure, mail sort contract discounts and compulsory pre-vetting of non-broadcast advertising by CAP's Copy Advice team.

In the event that B/CAP is unable to secure advertiser compliance through its self-regulatory sanctions it will refer the matter to the NMO for further consideration and possible action, which may include statutory sanctions

Industry Awareness

- B/CAP agrees to consider the need for guidance on the energy labelling rules.
- At the earliest opportunity B/CAP and the ASA will announce that they intend to include rules about energy labelling requirements in the Codes and that the ASA will administer those rules to ensure industry stakeholders are informed about the regulatory regime they will need to comply with when delegated regulations come into force.
- B/CAP and the ASA will update advertisers, consumers and press contacts on its mailing lists of the rules when they come into force. Defra will update retailers and manufacturers, using the communications information from B/CAP and ASA

¹ <http://www.asa.org.uk/Complaints/Complaints-Procedure.aspx>


- The CAP Copy Advice team will offer pre-publication guidance to advertisers, free of charge, on whether their advertisements comply with the CAP non-broadcast energy labelling rules.

Monitoring and Reporting


- The ASA will maintain records of how many complaints it receives about energy labelling and the resolution of those complaints and make that information available to Defra or the NMO on an annual basis and on request.
- As part of its regular monitoring function, the B/CAP Compliance team may monitor advertisements for their compliance with the energy labelling rules in the Codes.
- B/CAP understands that the Commission will review the effectiveness of the specific provision of labels in advertising by 31 December 2014. In order to facilitate Defra's assessment of the effectiveness of the Directive in the UK, B/CAP agrees to consider conducting a compliance survey by July 2014.

Approved by:


On behalf of Defra:

Name	Job Title
Sara Eppel	Head of Sustainable Products and Consumers, Defra
Signature 	Date 1/7/2011.

On behalf of ASA:

Name	Job Title
Guy Parker	Chief Executive, ASA
Signature 	Date 20/7/11

On behalf of CAP and BCAP

Name	Job Title
James Best	Chairman, CAP and BCAP
Signature 	Date 13/7/11

Annex A

ASA and B/CAP sanctions:

- Ad alerts

Ad Alerts ask the media to consult the Copy Advice team before accepting ads about advertisers named in an alert or about ads relevant for a general Alert.

Ad Alerts are a quick and easy way of drawing the media's attention to a problem advertiser. We circulate them, in confidence, to CAP members and to individuals responsible for accepting ads for publication. Ad Alerts can be either general or specific. Specific Ad Alerts relate to individual advertisers. General Ad Alerts relate to a general subject or a code policy change that results from an ASA adjudication and that the media knows about.

- Referral to a legal backstop

The ASA is recognised by the Office of Fair Trading (OFT) as the established means for regulating misleading and comparative ads in non-broadcast media in the UK. If, having failed to secure an advertiser's agreement to co-operate with the self-regulatory system, B/CAP can ask the OFT to consider taking action under the Consumer Protection Regulations (CPRs) or the Business Protection Regulations (BPRs). The OFT can seek undertakings from a company that it will change its ads; it can also seek injunctions from the Court to prevent companies from making misleading claims in their ads. By referring them to the OFT, the ASA and CAP have successfully stopped advertisers misleading the public. In the event of repeated breached of energy labelling requirements, B/CAP may refer an advertiser to Defra.

- CAP member intervention

The compliance team can ask CAP member bodies to intervene when one of their members is not playing by the rules. Usually an informal intervention is enough to secure future compliance but if that's not successful the relevant CAP member body could threaten the withdrawal of membership privileges or recognition.

- Poster pre-vetting

CAP's poster industry members can invoke mandatory pre-vetting for advertisers who have broken the CAP Code on taste and decency or social responsibility grounds – the pre-vetting usually lasts for two years.

- Sanctions in the digital space

In addition to the above-mentioned options CAP has two further sanctions that can be invoked to help ensure marketers' claims on their own websites, or in other non-paid-for space under their control, comply with the Codes.

CAP can ask internet search websites to remove a marketer's paid-for search advertisements when those advertisements link directly to a page on the marketer's own website that hosts non-compliant marketing communications.

Marketers may face adverse publicity if they cannot or will not amend their own non-compliant marketing communication on their own website or in other non-paid-for space online under their control. Their name and their non-compliance may be featured on a dedicated section of the ASA website and, if necessary, in an ASA advertisement appearing on an appropriate page of an internet search website.

