

THE
ADVERTISING
STANDARDS
AUTHORITY
Ninth Report

1 APRIL 1971 — 31 MARCH 1972

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THE ADVERTISING STANDARDS AUTHORITY LTD

Chairman

THE RT. HON. LORD TWEEDSMUIR, C.B.E., C.D., LL.D.

Members

R. CRAIG-WOOD

MRS. J. FORT

SIR JOHN HAWTON, K.C.B.

LIONEL MURRAY

MRS. G. L. S. PIKE, C.B.E., J.P.

R. M. SHIELDS

HOWARD THOMAS, C.B.E.

THE HON. C. M. WOODHOUSE, D.S.O., O.B.E., M.P.

All members serve as individuals and not as representatives of any
industry or trade or professional association

Secretary and Registered Office:

JOHN C. BRAUN

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Telephone: 01-242 4111

COMPLAINTS

Any member of the public may complain to the Authority about any particular advertisement.

There are no forms to be completed and no set rules of procedure. All that is required is a letter of explanation, together with a copy of the advertisement to which exception is taken.

Complaints by telephone will not be acted upon unless they are subsequently confirmed in writing.

Anonymous letters are ignored.

Complaints should be sent to the above address.

The Ninth Report of THE ADVERTISING STANDARDS AUTHORITY

1 APRIL 1971-31 MARCH 1972

CHAIRMAN'S REPORT

The role of the Authority

1 In a year when trends and ideas have called for a sharper definition of attitude than for some time past, two aspects of the role of the Advertising Standards Authority, upon which views or action have been looked for by the public, call for some elaboration. These particular aspects are the supervisory role of the Authority in relation to the British Code of Advertising Practice and its role in relation to moral attitudes.

The British Code of Advertising Practice

2 The essence of a self-disciplinary system is that each component part is responsible for its own conduct, and that of its own members. Discipline must come from within and from beneath. It is the task of the Authority to see that compliance with the Code is achieved by guidance and counsel through the Code of Advertising Practice Committee. It does not normally seek to impose discipline from above, but where in any field the Authority sees a weakness, a trend, or a need of any kind to strengthen the Code, it may originate action or call for action on the part of the Committee.

3 It is important to remember that the Code applies to the advertising of products and services, and not to products and services themselves or the sales methods of those who provide them. From time to time products and services and sales methods may be called into question, and steps taken to deal with abuses through the control of advertising, but that is as far as things can go in a practical way. The Authority is not a testing organisation and does not engage in the actual analysis or evaluation of products and services. It does require substantiation that a product lives up to its advertising claims.

World trends

4 The attitude to advertising follows, to a marked extent, a geographical pattern which itself is related to levels of industrial development. In Canada and the U.S.A. the workings of the mass market and mass media have brought about a reaction against the advertising industry, on which a heavy hand has been laid. In Canada there is a Federal Department of Consumer and Corporate Affairs with its own Minister, and in America an increased emphasis on consumer legislation has been accompanied by the activities of various activist groups.

5 In the Russian Encyclopaedia of 1941, advertising was defined as:

"Hullabaloo, a means of swindling the people and foisting upon them goods frequently useless or of dubious value."

But Russia's thinking has changed with the times. She spends large sums on advertising her tourist attractions, and other Iron Curtain countries have found that their State trading operations cannot prosper even moderately without it. The 1972 Great Soviet Encyclopaedia now defines advertising as:

"The popularisation of goods with the aim of selling them, the creation of demand for these goods, the acquaintance of consumers with their quality, particular features and the location of their sales, and explanation of the methods of their use."

Very fairly stated.

6 It is beginning to dawn on a growing number of countries that if you pile law upon law, and restriction upon restriction, in the interests of helping the consumer, you will end up by doing him a disservice through hardening the arteries of industry. That a reaction is setting in reflects a growing interest in the concept of the voluntary system of regulation. As Chairman of the Authority, I have spoken on the voluntary system in both Ottawa and Toronto. The Secretary spoke at a marketing conference in South Africa, the subject of which was "Consumer revolt, the challenge of change", as well as in France, Austria, Switzerland, Finland and Belgium. Visitors to the offices of the Authority have included the Consumer Ombudsman from Sweden.

7 This reaction, as far as it goes, does not seem to imply any relaxation on the part of Governments of their vigilant surveillance of the advertising industry, but rather it indicates that process of law alone is beginning to be seen as a very blunt, and slow-moving, instrument which, by its nature, is ill-suited to the control of an industry so continuously changing as is advertising. The far more flexible system of voluntary self-regulation is proving an interesting study to them.

Consumerism

8 It is part of our general policy to take note of developments in the consumer field and to consider how far trends of consumer interest are reflected in guidance given to the advertising world. It is our view that any antagonism between advertising and consumer interests is highly regrettable. It is an obvious fact that the former are dependent upon the latter and it is in the interest of both to have a harmonious relationship. Insofar as there is an imbalance of power between large scale commerce and the individual consumer, the latter is often in need of some assistance to obtain a fair deal. So far as advertising is concerned, the Authority sees to it that this is done.

9 Too much has been claimed in the name of "consumer protection". The very idea of protection pre-supposes that there is a danger to which people are exposed and that measures are in train to ensure complete protection against it. This may well be true in matters of health and safety, and the Consumer Protection Act 1961 precisely covers this situation. Other measures, such as the Food & Drugs Act 1955, together with the regulations made thereunder, and statutes concerning medicines and health are in the same category. The Trade Descriptions Act aims at eliminating practices which are unfair to honest traders, as much as to consumers, and in the same way the British Code of Advertising Practice is an instrument of fair practice in advertising, towards both consumers and competitors. When complaints are made by members of the public against specific advertisements, the Authority must be strictly fair to fulfil its function. Consumer organisations tend to criticise us for being too judicial, suggesting that we should lean more heavily in favour of complaining consumers. But we cannot assume that a complaint is justified until we have heard both sides of the case. The visit of Mr. Ralph Nader to this country was given a fair amount of publicity in all media. A man of obvious sincerity, he was more concerned with the safety and behaviour of products and specific problems in the U.S.A. than shortcomings in advertising. We anticipate that he will have his followers in this country; we are ready at any time to meet them to discuss problems regarding advertising, as we are to meet any consumers' representatives.

Entry into Europe

10 The negotiations for the entry of Great Britain into the European Communities have alerted the Authority, no less than the advertising industry as a whole, to the likely impact of Community law and secondary legislation upon advertising and the practices connected with it. The Secretary of the Authority, being an international lawyer, has studied the implications of the Treaty of Rome and the Regulations, Directives and Decisions made under it, as well as the implications of the national laws of the Community member countries. Of particular interest is the relationship between self-disciplinary systems of advertising control and the statutory structure of the six E.E.C. countries. There is a body of academic legal opinion in this country which considers that Great Britain should have a general law of unfair competition such as exists in most European countries. This view fails to take account of the effectiveness of the self-disciplinary principle as applied to advertising. The national laws of unfair competition are administered through civil courts but close attention will need to be given to any community secondary legislation, with criminal sanctions, which may have an effect on national laws.

Local Government changes

11 The Local Government Bill, which was in its Committee stage at the time of writing of this report, has been designed to make sweeping changes

in the entire pattern of local government in the United Kingdom. The administration and enforcement of those statutes which affect advertising and marketing, particularly the Trade Descriptions Act 1968, the Food & Drugs Act 1955, the Weights and Measures Act 1963, and the various regulations made under them are matters of concern both to consumers and to trade and industry. The Institute of Weights and Measures Administration, with which the Authority is in regular contact regarding advertising matters dealt with under the various statutes mentioned above, may change its name to the Institute of Trading Standards Administration to reflect more accurately its range of functions. It is the belief of the Institute that the administrative functions carried out by its members would be more efficiently, and effectively, performed if those functions were to be allocated in England to the County Councils, or top tier of the proposed new structure, as provided in the Bill, with slightly different provisions for Scotland and Wales.

12 To give trade associations the opportunity to question spokesmen of the Institute on the proposals, the Authority arranged a meeting which was attended by some 20 organisations.

13 The Associations representing municipal corporations, rural district and urban district councils not unnaturally have made the case that the more localised administration and enforcement at lower tier level would be of greater advantage to the public as a whole and to traders. It is not for this Authority to do more than express its belief that, whatever the outcome, harmonious co-operation between the statutory and self-disciplinary systems will make for fairer trading conditions and a better deal for the consumer.

Commercial radio

14 When the proposals were announced regarding commercial radio, the Authority thought it proper to lay before the Minister for Posts and Telecommunications reasoned proposals for the control of the advertising content of local programmes, based upon the structure of the voluntary control system. Representatives of the Authority and the C A P Committee were given a courteous and attentive hearing but it was made clear that the major responsibility for the proper running of the commercial radio operation would fall upon an Independent Broadcasting Authority which would embrace both television and radio. The reasons for this were made clear and have since emerged during Parliamentary consideration of the Sound Broadcasting Bill. We are confident that our harmonious relations with the Independent Television Authority will continue with the new body when it is set up. We would hope, too, that when the local broadcasting companies are given their franchise for operation they will form a trade association, analogous to the Independent Television Companies Association, and join the C A P Committee as a sponsoring body of the British Code of Advertising Practice.

Matters of taste and decency

15 The role of the Authority in relation to matters of taste and decency in advertising is not that of censor. Complaints are addressed to us in the expectation that we should pronounce a moral judgment on this or that particular advertisement. The Code itself does not, any more than any code or law could, give any indication as to what is, or is not, to be regarded as decent. Its preamble states that advertising should be legal, decent, honest and truthful. We set out very clearly in our report last year how we interpreted our responsibilities. Since then, the activities of Lord Longford's Committee, with which we have co-operated, and public controversy on pornography and obscenity have prompted us to return to this field once again, to clarify some points for the benefit of advertisers, agencies and media. This, we feel, may help the public in its own assessment of particular advertisements.

16 Where a form of advertising copy or illustration can bring the whole advertising industry into disrepute, it clearly becomes a matter of concern to the Authority. And that point is reached when a majority of citizens come to regard any advertising as grossly offensive, whether directly or by innuendo. The danger of relying on a single opinion was underlined in a recent case where the Judge ruled that the decision was one for the jury, and not for himself, to decide whether subject matter was obscene. As to corruption, in another case the Court decided that a shop selling indecent books was not guilty of corrupting others because they were not displayed, and sold only to elderly customers, who were no further corruptible.

17 There are degrees of acceptability according to the medium. The Independent Television Companies Association has gone on record, in one of its publications, as saying that "90% of scripts submitted to us cause little or no problem. Some 5% are clearly objectionable, and unarguably so. It is the remainder, clustering on the border line, which require the judgment of Solomon." The deliberate grouping of certain types of advertisement with the theme of sex or violence can create an impact that goes far further than any of those advertisements taken in isolation.

Cinema film advertisements

18 This problem of grouping has given rise to complaint, particularly in connection with cinema advertisements. We have in past reports drawn attention to this as an area of advertising which seems to lend itself particularly to controversy. Complaint is made on grounds of sex, depravity, pornography and general sleaziness. One of the difficulties in matters of this kind, is that as often as not offence is given by the mere titles of the films which, to say the least of it, vary from the bizarre to the incredible. If films of this kind passed either by the British Board of Film Censors and/or by local

authorities can be freely shown, then we find it difficult to see how they can be advertised in any other way than by giving their titles, however strange and even offensive they may seem. It is a matter for consideration by all appropriate media as to how far they are prepared to go in their acceptance of advertisements.

19 Another aspect of film advertisements which seems to us to call for closer attention by those responsible for producing them is the distortion and misuse of critical reviews. The more biting the critical attack, usually on grounds of outraged propriety or sheer lack of taste, the greater seems to be the keenness of the advertiser to make capital out of it, and advertise the most condemnatory extract as if it were a recommendation. This practice undermines credibility and is being given further study by the Authority.

20 Finally, in this field, we would express some concern at the increasing depiction of violence in film advertisements. Again, the difficulty is that if the films themselves have as their subject matter violence, rape, sadism and the like—and some advertisements proudly claim these as attractions—the advertising is merely reflecting extracts from what is to be seen on the screen. But in our view, advertisers, agencies and media have in some cases given insufficient thought to the effect of showing in the general press and on posters in the London Underground and elsewhere scenes of raw violence which confront the sensitive and insensitive alike.

Slimming

21 The word "slimming" can lead to wide generalisation. This is given force by account of the action taken by the Authority in regard to so-called "slimming garment" advertisements. Some think of slimming as a reduction in weight, others think of it as a reduction of girth. There are various different forms of measurement. Advertisements claimed that the users of certain garments would lose "Up to so many inches" and added a guarantee of the return of the users' money if they were not satisfied. It was not clear whether the reduction of inches was the sum total of inches from different limbs or reduction of girth. Some people thought the latter and many read the guarantee as being one of performance.

22 When the Authority began investigating the matter it was discovered that an important action had taken place where the United States Post Office had prosecuted the manufacturers and distributors of these "slimming garments" on the grounds that their performance did not justify the claims made for them. The U.S. Post Office lost their action, and lost again on appeal.

23 In August 1971 considerable publicity about "slimming garments" appeared in Britain and some criticism of the Authority for not taking speedier action. In view of the need for careful scrutiny of these goods and the proceedings in the U.S., and taking into account that media had been provided with sufficient *prima facie* evidence of effectiveness, the Authority did not feel justified in acting until it had had an opportunity of studying a transcript of the case.

24 It did not feel, and never will feel, that fairness should be sacrificed to speed. In view, however, of the exaggerated nature of some of the claims, recommendations were made by the C A P Committee requiring all advertisements for this category of goods to be submitted for scrutiny before publication. The measures taken were immediately effective. Guidance has also been given as a result of which claims for spectacular reduction and speed of action in a slimming advertisement will require specific substantiation and the word "guarantee" may not be used in the sense of a money back undertaking.

Mail order

25 The disquiet expressed by the Authority last year at the level of complaints in one sector of the mail order business—bargain space trading—led to a far-reaching enquiry which had not been concluded at the year's end. The Authority has been particularly concerned at the failure to establish an adequate early warning system, in respect of liquidations which result in hundreds of customers losing their money. Although for the most part the sums are relatively small per head, they come from people least able to afford any loss at all, frequently old age pensioners. The media organisations whose members carry the advertising for this type of mail order business call for undertakings, have checking procedures and recommend non-acceptance of advertisements whenever appropriate, but the failures continue.

26 This is not the kind of business where a trade association with a code of conduct and a compensation fund is likely to be the answer, nor would legislation necessarily provide a mesh fine enough to catch the inefficient or the fraudulent. The Authority is hopeful that the studies now being made will result in recommendations which will lead to a tighter control and a way of avoiding loss to those who order postal bargains in good faith.

Holiday advertising

27 Although the Authority has not received many complaints regarding the advertising of holidays, those that have come in are of the kind which have been the subject of recent prosecution under section 14 of the Trade Descriptions Act, namely false or misleading statements in brochures or advertisements for holidays abroad. We had thought that earlier publicity, added to the reporting of proven cases under the Act, would have been warning enough

to those tour operators whose optimism or trust outran events, particularly with regard to the building of hotels or the provision of amenities. Too often have operators relied on information, given by local agents or contractors abroad, which has been based on forecast rather than fact and has not been checked carefully enough before inclusion in brochures which have to be prepared for publication months in advance of the times when the holidays are taken. The Authority cannot stress too strongly the need for great care in checking all statements and the dangers of relying on artists' impressions to depict hotels which are not completed at the time the brochures go to press.

28 Another aspect of the holiday tour which, while not directly a matter of advertising, nevertheless does sometimes arise out of it is the way in which operators handle complaints. As in other fields, it is the Authority's experience that more anger is aroused by failure to deal promptly and effectively (whether by explanation or compensation) with complaints than by the original cause for complaint. Because of its expertise in these matters, the Authority offered its help to one leading tour operator with a view to assisting the industry to set up an effective complaints procedure. Since then the Association of British Travel Agents has announced its own arbitration scheme, the development of which will be watched with interest.

Competitions

29 In our last report we said that we would issue a guidance paper on competitions, amplifying and bringing up to date the advice given in an earlier paper "Mail-ins and Competitions". Because of the need for study of the legal cases which had gone to appeal, and further consultations with the Home Office and other interested bodies, this paper took longer than was expected and was published as "Guidance on Competitions and related consumer promotions" only shortly before this report was ready for printing. The guidance shows a change of emphasis in favour of the contestants insofar as the advice on rules and administration is concerned. There has long been a tendency for competition promoters to follow an accepted pattern of rule making without challenging the principles on which they were based. It is hoped that the suggestions contained in the paper will help advertisers and their agencies in rule-making and running competitions so far as these aspects are reflected in advertising.

30 We have not attempted to advise on the law relating to competitions, which we regard to be outside our remit. We have welcomed the initiative of the Home Office in setting up an inter-departmental enquiry into the whole law and look forward to comprehensive and clear legislation in this very untidy field. We commend to all those concerned in the promotion of competitions the guidance given by the Sales Promotion Executives Association to its members.

Acknowledgments

31 I have just finished my first year as Chairman of the Authority and I would like to express the gratitude that my colleagues and I owe to our staff. As this country draws closer and closer to Continental Europe, so we in the Authority realise our good fortune in having as our Secretary Mr. John Braun, with his wide knowledge of international law. I should like to thank not only all our staff but those with whom we work closely. To Mr. Allan E. Hickman, M.B.E., who is retiring after nearly ten years with the Advertising Investigation Department of the Advertising Association, a special word of thanks for all he has done to help us. We are happy to learn that he has accepted an invitation from the Advertising Association to continue to act for it and for the voluntary control system in a consultative capacity. Thus his considerable experience will continue to be available to us. To Mr. J. S. Williams, O.B.E., the Director-General of the Advertising Association, our thanks for a great deal of assistance.

ACTIVITIES OF THE AUTHORITY

1 APRIL 1971-31 MARCH 1972

Chairman

The Rt. Hon. Lord Tweedsmuir, C.B.E., C.D., LL.D., assumed the Chairmanship of the Authority on 1 April 1971, in succession to The Rt. Hon. Lord Drumalbyn, P.C., who had resigned upon his appointment to the office of Minister without Portfolio in the Government.

Membership

Mr. A. Charles Buck and Mr. Brian F. MacCabe retired from the Authority at the end of the year 1971-1972 and the Council wishes to express to them its warm appreciation of their services. Mr. Buck joined the Authority at its inception, and a special word of thanks is due to him for his help and good counsel over the years.

The two vacancies on the Council were unfilled at the time of writing.

Meetings

The Council of Management, consisting of all members of the Authority, has met nine times during the year.

Activities of the Authority

The activities of the Authority are reviewed under the following headings:

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A. CHANGES IN AND INTERPRETATIONS OF THE BRITISH CODE OF ADVERTISING PRACTICE

Membership of Code of Advertising Practice Committee

32 In October 1971 the Association of Mail Order Publishers became a constituent member of the Code of Advertising Practice Committee.

CAP Bulletin

33 One CAP Bulletin was published during the year, in July 1971. In addition to the items mentioned below, the bulletin informed recipients of the appointment of the new Chairman, and of the Authority's change of address.

Testimonials

34 Concern had been growing for some time over the use made of testimonials in advertisements. It was clear that in some cases the efficacy of the advertised products was being exaggerated, in part by the selection for publicity purposes of completely untypical case histories, and in part by too uncritical an acceptance by advertisers of the results claimed by users. The use of testimonials from persons living abroad whose claims were hard to verify, and misleading visual presentations of the beneficial results claimed for products were also the subjects of complaint. A considerable improvement in each of these areas has been achieved through the new rules.

Hearing aids

35 The Code of Trade Practice of the Hearing Aid Council, which affects the advertising of hearing aids, was drawn to the attention of readers of the C A P Bulletins at the request of the Council. Under the Hearing Aid Council Act 1968, persons who wish to dispense hearing aids must be registered by the Council and the Code of Practice requires such persons to conform to high standards in the discharge of their functions.

Vitamin preparations containing folic acid

36 It was learned that the Committee on the Safety of Drugs was not now approving for sale to the general public any vitamin preparation containing folic acid for the reason that folic acid has the effect of masking the symptoms of pernicious anaemia. It was therefore decided that it would be inappropriate to continue to regard as acceptable advertisements such as hitherto had been allowed to appear because the folic acid content of the product advertised was small.

Cigarette labelling and advertising

37 Following consultations with the Government, the cigarette manufacturers represented on the Tobacco Advisory Committee agreed that all packs and advertisements in the United Kingdom should carry a Government health warning. The C A P Committee drew this requirement to the attention of all its members.

B. INVESTIGATION OF ADVERTISEMENTS AND ACTION RELATING TO ALLEGED BREACHES OF THE CODE

Investigation

38 The investigation of specific advertisements, whether as a result of complaint or arising from the normal course of their work, has once again absorbed much of the time of the Authority's secretariat and of that of the Advertising Investigation Department of the Advertising Association. The breakdown of cases arising from external complaint appears in the following paragraph.

39 Cases during period 1 January to 31 December 1971

Advertisements amended or withdrawn	20
Advertisements suspended	5
Complaints not substantiated	22
Complaints withdrawn or not proceeded with	1
Complaints satisfied with delivery of goods or refund of money	64
Mistakes by advertiser; corrective action taken	5
Satisfactory explanation given by advertiser	1
Outside purview of the Authority	2
No trace of advertiser	1
Advertiser no longer trading; complaints referred to liquidator	56*
Warnings	13
	<hr/> 190 <hr/>

Misleading claims, offers or descriptions	29
Inaccurate price claims or comparisons	1
Unsatisfactory guarantee or operation of guarantee	5
Mail order infringements	118*
Advertisement in editorial style	1
Premium offers	6
Matters of taste	20
Competitions	1
Faulty administration	2
Faulty goods or services	2
Miscellaneous breaches of other paragraphs of the Code	5
	<hr/> 190 <hr/>

*41 relate to one company

40 It will be seen that the total number of complaints has fallen slightly from the 221 recorded in 1970. No importance is attached to this fluctuation, part of the drop being clearly due to the postal strike. Over the nine years of the Authority's existence the number of complaints has risen and fallen from year to year and no discernible pattern has yet emerged or is thought likely to in the future. What are important are shifts in the relative proportions of the subjects of complaint.

Mail order advertising—paragraph 14 of the Code

41 In 1971 as in 1970, more than half of all complaints arose from the failure of mail order advertisers either to supply goods or to refund money. This unfortunate tendency was the subject of comment in last year's report and paragraphs 25 and 26 of the Chairman's report above revert to the subject.

42 The figures for 1971 are swollen by 41 complaints arising from the collapse of a single company which had seriously overtraded. Five other mail order companies about which complaints had been received went into liquidation during the year. Together these six companies account for the great increase in the number of cases in which the Authority was unable to obtain either a refund or goods for complainants, who could only be referred to the liquidators. In terms of business done, as opposed to complaints provoked, however, these advertisers represented only a tiny proportion of the mail order trade; nor were they, with one exception, large scale advertisers. The task remains to find the best means to deal with that small minority which casts doubt upon the integrity of the mail order business as a whole.

Matters of taste and decency

43 Complaints on grounds of taste account for what must regrettably be called the other growth area in the Authority's investigative work. The broad issues raised by offensive advertising are dealt with above (paras. 15 and 16). Here it is proposed only to add a factual footnote to the Chairman's remarks.

44 The advertising of sexually orientated literature by means of an indiscriminate direct mail campaign accounted for less than one third of complaints under this head in 1971. This was no doubt due in part to the deterrent effect of section 4 of the Unsolicited Goods and Services Act the purpose of which, although it did not come into effect until August of last year, was the subject of considerable publicity at the time the Bill was passing through Parliament. One of the principal offenders in previous years was moved to announce to Members of Parliament, even before the Act received the Royal Assent, that he was proposing as a matter of principle to cease indiscriminate mailings; another who had used this objectionable technique went into liquidation, while a third was heavily fined for sending indecent material through the post.

45 To show that questions of taste and decency do not always involve nudity, sexual innuendo and the like, one may instance two advertisements which called for the Authority's consideration during the year. One consisted of a whole page photograph of a man apparently committing suicide having flung himself from a high building. The advertisement's message was that finance was not *that* difficult to find. The Authority found this distasteful, but not to such a degree as to breach the Code. Another advertiser proposed to use the photograph of a notorious criminal with six different hairstyles to illustrate his hair dryer. The Authority endorsed the attitude taken towards this proposal by the C A P Committee who felt that the fact the man was a criminal did not warrant a relaxation of the rule requiring his permission before he could be portrayed in an advertisement. There was a clear distinction between a wanted man poster and the adventitious use of a criminal's photograph to promote a commercial product. The Authority's view was that to permit the advertisement would be to prejudice the reputation of advertising in general.

46 Drugs are a major social problem which the Authority in no sense treats lightly, but an advertisement for a café which invited readers to a pot party—against the background of a teapot—did not seem likely to exacerbate the problem and was merely one example of the way in which the colloquial speech even of law-abiding citizens will tend to adopt the current jargon of a minority.

Misleading claims, offers and descriptions—paragraph 2 of the Code

47 The steady fall in the proportion of complaints under these heads, which has been noticeable since the Authority's inception, was resumed in 1971 after a temporary check in the preceding two years. Again the matters raised with the Authority covered a wide range. In two cases the inaccuracy complained of related to shop opening hours and had resulted in fruitless journeys. It is right to record that in both cases the advertisers immediately reimbursed the travelling expenses of the complainants. Ambiguity in the expression of a promotional offer led to another complaint. The cover of a magazine bore the words "Free cheeseboard offer—details inside". This was taken by the complainant as implying that the magazine itself was making the offer to its readers and that the only qualification for claiming the goods would be purchase of a copy. It turned out however that the offer—though exclusive to readers of the magazine—was made by an advertiser who required claimants to prove purchase of his products on a fairly substantial scale. The magazine undertook, on the matter being raised with them, to draft such eye-catching appeals more carefully in future.

48 The vexed question of comparative central heating running costs was raised during the year. So careful are the rival fuel interests in their scrutiny of each others' advertisements that there is seldom cause for objection over the factual accuracy of advertisement claims. Such complaints as do come forward are more usually concerned with alleged denigration. This year, however, one of the smaller manufacturers was shown to be making claims wholly inconsistent with what is regarded, by all major fuel interests, as the established pattern of costs for various fuels. Upon challenge, the offending "statistics" were immediately dropped.

49 Holiday advertising is among the topics dealt with in the Chairman's report (paras. 27 and 28 above). One case to which we may refer here illustrates those aspects of brochure claims which quite properly are the subject of complaint; a second case indicates how a holidaymaker's expectations may cause him to read into a brochure things which are not there. The first case concerned the description "5 day holiday". The complainant alleged that the truth of the matter was that he left England in the afternoon of day one, arriving at his destination in time for dinner. He returned immediately after breakfast on day five and arrived in England at mid-day. Traditionally the holiday trade counts all days affected by the holiday in assessing its length and by this test our complainant had indeed had a "five-day" holiday. He pointed out however that the period from departure to return embraced barely four 24 hour units, and that the period spent "on holiday" at the destination amounted to a mere $3\frac{1}{2}$ days as commonly understood. The advertiser in this case replied that the brochure, while indeed using the phrase "5 day holiday" was quite explicit as to times of departure and return, and argued that no-one could therefore be misled. He agreed however to give greater prominence to these detailed travel plans in future. It is clear that this is a problem which arises most acutely with the increasingly popular long weekend holiday. The Authority is considering issuing guidance to advertisers in this area as to the most appropriate ways of expressing their offers.

50 The second case also arose from a brochure description. Here, a holiday resort was described as being "within easy reach" of a large city and on the strength of this the complainant, who wished to attend a series of concerts in the city, booked his holiday at the resort. On arrival he found that public transport by the most convenient route ceased early in the evening and that all public transport had ceased before he emerged from his concerts. He complained that the resort was not "within easy reach" of the city. The Authority took the view that he had failed to make out his complaint. The two places, even by the longest route, were only thirty miles or so apart and public transport until well into the evening was quick and frequent. Even after public transport had ceased, taxis were available or cars could be hired. The

complainant bore the responsibility for having failed adequately to check that his far from average requirements could be adequately met without considerable expense.

Financial advertising

51 There has been a sudden growth in what we may, for convenience, call "consumer financial advertising". Property bonds and other insurance based bonds with more widely spread investments are perhaps the most noticeable advertisers, but never has the ordinary investing public been confronted by such a bewildering range of opportunities. At the same time, particularly with the development of the concept of the second mortgage, a great increase has been noticeable of offers to lend money, as there has of offers to provide credit by means of credit cards. In these circumstances, there has been a call from media and agencies for a code of practice dealing both with the broad policy question raised by all kinds of financial advertising, and with the particular requirements of specific types of advertisement. This need for such a code is felt especially because of the curiously patchy state of the law. At the one extreme this restricts moneylenders' advertisements to little more than visiting card particulars; it places a measure of restriction upon advertisements for deposit by banks, building societies and limited companies; and yet it appears not to impose any control whatever upon invitations to invest in other ventures, or upon offers of loans by anybody other than moneylenders.

52 A preliminary review of the subject has been undertaken and existing codes of practice in various fields have been collated, but, so far as the question of loans of all kinds is concerned, the prospect of legislation based upon the Crowther Committee's report necessarily inhibits fundamental rethinking. Proposals for extending and tightening the existing ruling on mortgage brokers are however well advanced. The Authority has submitted a memorandum to the Department of Trade and Industry on the Crowther proposals; these, if enacted as they stand, will still leave a considerable, if rationalized, burden upon the voluntary system.

Pregnancy testing and advisory services

53 The Authority has kept in close touch with developments in the complex and sensitive field of pregnancy testing and advisory service. While the system of control over advertising for the former, devised six years ago, has been working satisfactorily, some of the evidence submitted to the Lane Committee has shown the need for further study. The Authority has accepted an invitation to give evidence before one of the sub-committees.

Guarantees

54 A manufacturer who issues a guarantee is seen by the public as being confident that his goods will prove satisfactory throughout their anticipated lifespan; he gives tangible expression to his confidence by voluntarily assum-

ing responsibilities, in respect of his goods, which are greater in extent than those imposed upon him by the law. In consequence, the public is inclined to expect goods described as "guaranteed" to possess characteristics of quality, performance, longevity and the like which exceed those commonly expected from goods which are not so guaranteed.

55 For these reasons the Authority thinks it important that words such as "guarantee" and "warranty" are not devalued by inappropriate use. In particular they should not be used where the guarantor's undertakings involve a diminution of the purchaser's rights. Nor should they be used to describe undertakings of other kinds given with different motives and of more restricted scope. During the year it has become clear that a measure of confusion still exists as to the proper interpretation of paragraph 13 of the Code which deals with the subject of guarantees. At the time of writing detailed advice is in preparation on guarantees in the context of mail order advertising. This advice is being published as a C A P Bulletin item, but it seems worthwhile for some notes on the general status of guarantees to be given here.

56 The question is often raised whether a "guarantee" or "warranty", offered with goods, provides less protection for a purchaser than he would have if he were to rely on his statutory and common law rights. If it does, then by virtue of paragraph 13 of the Code, no reference may be made to it in an advertisement.

57 Generally speaking, the legal rights of a purchaser of goods lie against the seller who is, for instance, liable if the goods turn out to be defective, or unsuitable, or do not correspond to the way in which they have been described. Any expense which may be involved in repairing or replacing such goods must be borne by the seller, or he may be obliged to refund the purchase price. Except where he is also the seller, a manufacturer is not normally responsible to the buyer for his goods unless harm is caused by them. To the extent therefore that a manufacturer, by means of a guarantee, undertakes responsibility for the general quality or conformity to description of goods, he is in principle adding to the sources from which a dissatisfied purchaser may seek a remedy.

58 Very often, however, the rights conferred upon a purchaser by a guarantee are given in substitution for his existing legal rights, and not in addition to them. The purchaser thus may find that the guarantee seeks to extinguish his existing rights against the seller and replace them by alternative rights against the manufacturer. Experience shows that in many cases the responsibilities undertaken in this way by the manufacturer are not as extensive as those the law implies in the buyer's favour against the seller. Where this is the case the buyer's rights are infringed and the "guarantee" or "warranty" is unacceptable under the Code.

59 In particular, to be acceptable, a guarantee

- (a) should not be unreasonably limited in its period of validity, bearing in mind the cost and nature of the goods and the way in which they may be expected to be used.
- (b) should not require the buyer to meet any costs involved in repairs, which are the guarantor's responsibility for so long as the goods are covered by the guarantee.
- (c) should not exclude certain parts of the goods from protection (whether or not they are manufactured by the guarantor) unless adequate protection is available elsewhere for the parts so excluded.
- (d) should not exclude liability to pay compensation for loss or damage caused by defective goods.
- (e) should not seek to reserve to the guarantor the sole right to resolve disputes over interpretation or to exclude the jurisdiction of the Courts over the guarantee.

60 Retailers, other than those who manufacture the goods they sell, seldom issue their own guarantees with new goods (presumably because the law already imposes upon them the responsibilities which, when voluntarily undertaken by the manufacturer, form the substance of the normal guarantee). It is quite common, however, for the more expensive secondhand or reconditioned goods to be sold with the benefit of some kind of retailer guarantee. The tests of acceptability for such guarantees are no different from those which apply to manufacturers' guarantees of new goods, with the proviso that it is not unreasonable for the seller of second-hand goods to exclude his responsibility for defects which he has pointed out to the purchaser before sale, or which would have been apparent to the buyer upon examination of the goods. In the case of reconditioned goods it should be made clear to a purchaser whether what is being guaranteed is the quality of the repair work, or the goods themselves.

61 The criteria to be used in assessing the acceptability of guarantees given in respect of services are broadly the same as those discussed above in connection with goods.

Franchise schemes

62 The pre-publication checking system operated by media and the Advertising Investigation Department in respect of franchise schemes has continued to work successfully throughout the year. It has thus been able to prevent a number of dubious enterprises from advertising for would-be holders of franchises who, but for the control, might otherwise have been induced to part with their money on so-called franchises of no value.

63 Recently the operation of multi-level selling has called for special attention and an amendment to the definition of a franchise, which tied it to a geographical area. A multi-level selling plan, also known as a "chain distributor scheme" or "pyramid selling", is often a sales device through which a person, after he makes an investment, is granted the right to recruit for profit additional persons who also are granted the same recruitment right if they invest. Investors may be promised high profits in the short run and financial security over the long run in return for an initial cash investment. Participants usually have a small amount of capital to invest, little knowledge of the products involved, and often little sales or even business experience.

64 While some of these schemes may well be viable, others have been found by the Department of Trade and Industry to be open to doubt and appropriate action has been taken. A Private Member's Bill to provide for the regulation of the practice of multi-level marketing was introduced into Parliament in February 1972 but had not had its Second Reading when this report went to press.

C. INTERNATIONAL

65 As the Chairman said in para. 6 of his report, the working of the British advertising self-disciplinary control system is being increasingly studied both by governments and various sectors of the advertising industry in all parts of the world. Circumstances differ so much country by country that there are very few states who see the feasibility of introducing an exact copy of the British system, but the principle of self-discipline is being tested in areas where hitherto it has had no support.

66 Thus, in the United States, because the anti-trust legislation will not allow organisations to combine as a self-disciplinary body with sanctions, a corporation known as the National Advertising Review Council Inc. has been brought into being. This Council is divided into two operational arms for self-regulation, one being the National Advertising Division of the Council of Better Business Bureaus (N.A.D.), and the other the National Advertising Review Board (N.A.R.B.). N.A.D. receives complaints relating to the truthfulness of national advertising and endeavours to reach agreement with the advertiser concerned to modify or withdraw any specific advertisement. If no agreement can be reached, N.A.D. submits the case to N.A.R.B. for further persuasion, adjudication and final determination. If, after this procedure is exhausted, the advertiser remains adamant, the Chairman of N.A.R.B. will notify the appropriate governmental regulatory agency and make public this action. This final sanction contrasts with the British sanction

of non-publication by media but the fact that it has been found possible to create a self-regulatory system at all is much to the credit of the American advertising industry. The Authority wishes the system well and will watch its progress with interest.

67 Close contact has been maintained with the Canadian Advertising Advisory Board and the Advertising Standards Council, our links having been strengthened by our Chairman's long connection with Canada and regular visits there.

68 The new Code of the South African Advertising Standards Association reflects the information and advice we have been able to give both by correspondence and by the Secretary personally to the officers of the Association during his visit to their country. While in Pretoria he addressed a meeting organised by the South African Co-ordinating Consumer Council, and discussed matters of mutual interest with the Chairman, Professor F. E. Rädcl. We have been kept informed of the activities of the Newspaper Advertising Review Council of Japan and look forward to welcoming members of that body when they visit the United Kingdom this year.

69 In Europe, growing acceptance of the value of the International Code of Advertising Practice of the International Chamber of Commerce has been reflected in the re-structuring and strengthening of self-disciplinary bodies in several countries. The Secretary is joint rapporteur with Mr. Sten Tengelin (Sweden) to the I.C.C. Working Party set up to revise the International Code and bring up to date the 1966 Edition. A working arrangement has been set up between the Authority and the Bureau de Verification de Publicité in France, the two secretariats having arranged reciprocal office use when occasion arises. These growing contacts serve to stress our readiness and willingness to make available internationally the information, knowledge and expertise which have been built up over the ten years of the Authority's existence.

On behalf of the Council of the Advertising Standards Authority,

TWEEDSMUIR,
Chairman.

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Printed by S. Glossop & Sons Ltd., Ipswich Road, Roath, Cardiff CF3 7XX

PRICE — 25p