

## ASA submission to BEIS Consumer Green Paper Modernising Consumer Markets

### 1. Background and Introduction

- 1.1. This submission is provided by the Advertising Standards Authority (ASA), the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) – the ‘ASA system.’
- 1.2. The ASA is the UK’s independent advertising regulator. We have been administering the non-broadcast Advertising Code (written and maintained by CAP) for 56 years and the broadcast Advertising Code (written and maintained by BCAP) for 14, with our remit further extended in 2011 to include companies’ advertising claims on their own websites and in social media spaces under their control.
- 1.3. We are responsible for ensuring that advertising is legal, decent, honest and truthful and our work includes undertaking proactive projects and acting on complaints to take action against misleading, harmful or offensive advertisements. We are committed to evidence-based regulation and we continually review new evidence to ensure the rules remain fit-for-purpose.
- 1.4. In addition to investigating ads, we also provide a wealth of training and advice services (most of which are free) for advertisers, agencies and media to help them understand their responsibilities under the Codes and to ensure that fewer problem ads appear in the first place. CAP and BCAP provided over 389,000 pieces of advice and training in 2017.
- 1.5. The ASA is providing this written submission in response to BEIS’s Consumer Green Paper on Modernising Consumer Markets.

### 2. Consumer protection

- 2.1. Protecting consumers is at the heart of what we do as a regulator and we so we welcome the Government’s Green Paper which we believe will contribute towards a more cohesive consumer environment.
- 2.2. As active members of the Consumer Protection Partnership, we see great value in bringing together consumer, advocacy and enforcement bodies to co-ordinate priorities, minimise duplication, and share information on what respective bodies are doing in the consumer protection landscape. We are also members of the Wales CPP and the Scottish Government Ministerial Taskforce on Consumers and Markets, and we’ve built strong links in Northern Ireland with the Consumer Council for Northern Ireland, Trading Standards and the Department for Economy, providing us with an opportunity to engage in UK-wide consumer issues and those that are specific to Scotland, Wales and Northern Ireland.
- 2.3. Through the CPP we have worked collaboratively on and contributed towards priorities on a range of issues. For example, our work on parcel delivery surcharges was informed by intelligence shared with us by CPP members. Consumers resident in some parts of the UK, particularly Scotland and Northern Ireland, are often subject to additional charges to have goods delivered. We are aware that some online retailers are not making these surcharges clear and upfront and we have seen misleading absolute (i.e. definitive and unconditional) “UK delivery” claims when the charge or service stated does not apply across the UK. Our work culminated in our [Enforcement Notice: Advertised Delivery Restrictions and Surcharges](#) and we’ve been doing follow-up monitoring and enforcement work to ensure compliance.

- 2.4. Another example of our joint working with the CPP is our contribution to the subscriptions trap workstream. During National Consumer Week 2017 we launched new standards on ["Free trial" or other promotional offer subscription models](#). They provide clear examples of the dos and don'ts when advertising offers that invite consumers to take advantage of a "free trial" product offer, test subscription, or other promotional benefit before enrolling them into making ongoing payments.
- 2.5. We also contributed towards the CPP's work on pricing through research we commissioned on [consumer understanding of reference pricing](#). Because of the role reference prices can play in influencing consumers' purchasing decisions, it is essential that consumers can have confidence in them, and that those prices are based on consumers' reasonable assumptions about them. The research explored the risk of consumers being misled by reference prices in ads if those expectations are not met and found that our work on this is in the right place in tackling these types of misleading ads.

### **3. Consumer Forum**

- 3.1. We welcome the Green Paper's proposals to create a joint government-regulator Consumer Forum chaired by the Minister for Consumer Affairs, with a particular focus on vulnerability and acting on the NAO recommendations. We would be happy to be involved in this forum as and when appropriate.
- 3.2. We would also appreciate some clarity on the difference between the Forum and the CPP. While we appreciate that the CPP membership goes beyond Government and regulators whereas the Forum is just Government and regulators, we would be concerned if the role and value of the CPP is undermined over time.

### **4. Supporting consumers to pursue their complaints**

- 4.1. We welcome the Green Paper's proposals to make it easier and quicker for consumers to obtain redress when things go wrong across all sectors and that you are looking into how to make alternative dispute resolution more accessible and simpler for consumers.
- 4.2. Although we cannot provide financial redress, the work we do in dealing with complaints about ads puts us in the front line to resolve issues as early as possible. Last year we resolved over 27,000 complaints about 19,398 ads - a 14% increase in cases - and 7,099 ads amended or withdrawn following ASA action which was a record number for us.
- 4.3. The ASA is recognised by government, the courts and Trading Standards as the 'established means' for the tackling misleading advertising. Government favours self-regulation and sees law enforcement as a last resort. This is set out in law with the Consumer Protection from Unfair Trading Regulations 2008 including the requirement for law enforcement bodies to use 'established means' before taking any action.
- 4.4. We also have a legal backstop arrangement with Trading Standards. National Trading Standards has contracted Camden Trading Standards to perform this role since 2013 and this has been very effective. Where an advertiser is unwilling or unable to comply with our rulings they can be referred to our backstop. Over the last four years the ASA has made 53 referrals to Camden. The vast majority of these very quickly came into compliance following

speedy, resource-light action taken by Camden TS. Only in four cases was more punitive statutory enforcement necessary.

- 4.5. The 53 referrals emerged from a pool of 25,744 complaints about potentially misleading online ads resolved by the ASA across that period e.g. misleading pricing, product description or availability. Any one of these cases might have brought the backstop into play if complaints were upheld, the advertiser chose not to comply and self-regulatory sanctions were ultimately ineffective. The fact that so few referrals are made demonstrates the effectiveness of self-regulatory sanctions and the deterrent effect of the legal backstop, including online.
- 4.6. Given our success rate in dealing with complaints and getting advertisers to comply, we would be concerned if, by improving consumers' awareness of and access to consumer ADR, leads to the ASA being by-passed or undermined or used as a stalking horse before accessing ADR.
- 4.7. In relation to 'scams' we have been actively working with enforcement partners to spot these earlier and to provide consumers with faster access to the most appropriate channels for dealing with those. This will hopefully mean that significant consumer issues, such as subscriptions traps, can be dealt with more quickly and effectively.

## 5. Simpler terms and conditions

- 5.1. We welcome the proposals to make T&Cs shorter and simpler. Our rules have always been clear that all significant T&Cs should be made clear and upfront in ads. Rule 8.17 of the CAP Code states: *'All marketing communications or other material referring to promotions must communicate all applicable significant conditions or information where the omission of such conditions or information is likely to mislead'*.
- 5.2. For example, new standards we published earlier this year on [free bets and bonuses](#) in the gambling sector made clear that significant conditions are those which are likely to affect a consumer's understanding of the promotion, and include any requirements for a consumer to deposit their own funds, together with details of play-through or wagering requirements. More specifically, these could include, but are not limited to: restricted odds; eligibility; deposit, wagering and withdrawal requirements - whether limitations or for different games.
- 5.3. When it comes to [promotional marketing](#), Rule 8.28 makes clear that conditions which should be stated before or at the time of entry in relation to prize draws, and should remain accessible throughout the promotion. Whilst significant conditions may differ between promotions, there are conditions that are likely to apply to all promotions, e.g.: how to participate, including any costs or factors likely to influence consumers' understanding of the promotion; any free entry route explanation; start date (if applicable) and closing date; any proof of purchase requirements; and the nature and number of any prizes or gifts, or a reasonable estimate if the number cannot be determined.

## 6. Online platforms

- 6.1. We are unable to comment on the Green Paper's exploration of the small number of online platforms in terms of competition and consumer protection; however where we regularly interact with platforms is in relation to our regulation of advertising online. Platforms such as Google, Bing and Facebook are important enforcement partners, helping us to ensure

compliance with our rulings if an online advertiser fails to amend or withdraw an irresponsible ad on their platform after we have asked them to.

- 6.2. Recent high profile examples include; our work with Google and Bing to enforce our rulings banning misleading pricing information on the secondary ticketing website viagogo; and our work with Facebook in relation to cosmetic providers illegally promoting Botox, a prescription-only medicine.

## **Contact**

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