



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
Online www.asa.org.uk

John Costyn
Head of Environmental Issues
Ofgem
9 Millbank
London SW1P 3GE

30 June 2005

Dear Mr Costyn,

REVISION OF GUIDELINES ON GREEN SUPPLY OFFERINGS

1. Introduction

- 1.1 The Advertising Standards Authority (ASA) is grateful for the opportunity to respond to this consultation.
- 1.2 The ASA is responsible for supervising the self-regulatory system for advertising standards in both broadcast and non-broadcast media. The ASA assumed responsibility for TV and radio advertising standards on 1 November 2004.
- 1.3 The ASA has no comments to make about the actual content of the guidelines, which are consistent with the advertising requirements of a duty not to mislead and for substantive evidence to be held to support any marketing claims.
- 1.4 The majority of the ASA's comments relate to the Appendix, in particular on the description of the ASA and the self-regulatory system. Since the system changed in November 2004, we do appreciate that it is not a simple task to describe accurately and clearly the different roles that we undertake for broadcast and non-broadcast advertising, therefore I do hope that you find the following comments useful.
- 1.5 We have just two minor comment related to the guidelines themselves and will address these first.

2. Comments related to the main Guidelines

- 2.1 The document introduces the abbreviation 'ROC' on page 7 of the guidelines, but does not provide a meaning (or an indication of where to find the meaning) until page 13.

Chairman Lord Borne QC • Director General Christopher Graham
ASA Council Chitra Bharucha • Jean Cousins • Christine Farnham • Sunil Gadhia • Alison Goodman • Mike Ironside • Colin Philipott • David McNair
• Susan Murray • Dan O'Donoghue • Martyn Percy • Diana Whitworth • Donald Trekerd • Nigel Wainman • Neil Watts

The Advertising Standards Authority Limited, registered in England No 733214, Mid City Place, 71 High Holborn, London WC1V 6QT.
The Advertising Standards Authority (Broadcast) Limited, registered in England No 05130881, Mid City Place, 71 High Holborn, London WC1V 6QT.

2.2 It would be helpful if the main guidelines could include a prominent reference to the requirement for advertisers and marketers to comply with the Advertising Codes.

3. Comments related to the Appendix

Overall Comments (Appendix 1 & 2)

3.1 The organisation of the appendix is quite confusing. The headings do not accurately reflect the content of the sections. This has led to the repetition in Appendix 2 of some of the information already stated in Appendix 1. For example there is a description of the role of the ASA in both Appendix 1 and 2.

3.2 We would suggest that it might be simpler to structure Appendix 1 to provide a description of all of the relevant pieces of legislation, codes and guidance, with a brief reference to the bodies that produce or administer the guidance; whilst Appendix 2 could be used to provide a fuller description of the relevant bodies and how they work.

3.3 Despite this suggestion the comments made below are based on the current structure of the Appendix.

Appendix 1

3.4 A1.3 refers to the Medicines Control Agency. This body is now known as the Medicines and Healthcare products Regulatory Agency (MHRA).

3.5 Regarding A1.6, CAP and BCAP operate as two entirely separate bodies. The Advertising Advisory Committee (AAC) only advises the Broadcast Committee of Advertising Practice (BCAP). Although the consultation paper does allude to this fact, it might be clearer to state: *'BCAP (CAP (Broadcast) is advised by the Advertising Advisory Committee, a body whose non-advertising members bring a consumer's view to BCAP's work.'*

3.6 In light of the description of the ASA's role and its relationship with Ofcom in A1.7, the first sentence of section A1.8 is unnecessary.

3.7 The second sentence of A1.8 should read *'Ofcom retains overall statutory responsibility for broadcast advertising regulation and the ASA reports back to Ofcom periodically on the effectiveness of the new system.'*

3.8 It would be useful if it could be noted under A1.9 that *'The ASA is the established means for enforcing the Control of Misleading Advertisements Regulations 1988.'*

3.9 Section A1.9

3.9.1 This section currently states that the ASA can refer the few who contravene the rules to Ofcom or the OFT. The ASA actually uses its own sanctions to resolve the vast majority of breaches of the Advertising Codes.

3.9.2 Furthermore, it should be noted that the ASA can not refer advertisers to the OFT for simply breaching the Code. The Code goes further than the law (to cover offence, taste and decency etc), therefore, referrals to the OFT must be made under the Control of Misleading Advertisements Regulations.

3.9.3 Finally, it should also be noted that the ASA would only refer advertisers and media owners to the OFT. We can not envisage a circumstance under which we would refer an advertising agency, as they would not ultimately be responsible for 'signing off' the advertising or publishing the ad; those decisions would be taken by the advertiser and the media owner.

3.9.4 In light of these comments, we would suggest the following alternative wording for A1.9:

'The majority of UK advertising is compliant with the Advertising Codes and nearly all breaches can be resolved by the ASA. However, for particularly serious cases, the ASA is able to refer broadcasters to Ofcom if a licensee is not adhering to the Codes, or refer an advertiser or media owner to the OFT under the Control of Misleading Advertisement Regulations 1988.'

Appendix 2

3.10 Sections A2.1 to A2.4 are slightly confusing. The heading of Appendix 2 is 'Self-regulatory Codes of Conduct for Green Claims' and the sub-heading is the 'Advertising Standards Authority'. The ASA administers the advertising codes, but is not a Code of Conduct and it does not draft the Codes. The relevant advertising Codes are: The British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code); the Radio Advertising Standards Code and the TV Advertising Standards Code (the BCAP Codes). These Codes are drafted and owned by the Committee

of Advertising Practice (for non-broadcast advertising) and the Broadcast Committee of Advertising Practice.

3.11 In light of the above comments, it might be simpler to use this Appendix only to outline which Codes and Code clauses are relevant for green claims and make only a brief reference to the fact that the Codes are administered by the ASA. The information in A2.1 could then be transferred to the sections on the ASA in Appendix 1.

3.12 Section A2.2

3.12.1 Further to the comments above, Section A2.2 is probably not necessary, as the information about the ASA's role has already been explained in Appendix 1.

3.12.2 If Ofgem wishes to transfer this information to elsewhere in the document, it is worth noting that the description of the 'one-stop shop' is inaccurate. The ASA is not a one-stop shop because it conducts research; the ASA has always conducted research. The ASA is known as a one-stop shop because it now handles all advertising complaints (both broadcast and non-broadcast).

3.13 A2.3

3.13.1 The information in A2.3 would be best placed under Appendix 1.

3.13.2 It might also be worth noting under this section, that the ASA is funded by a block levy on all advertising.

3.13.3 Furthermore, the description of the ASA's remit in this section has omitted our role covering broadcast (TV and radio) advertising.

3.14 The information in Section A2.4 has already been stated in Appendix 1. Please also refer to our comments in 3.8 above.

3.15 A2.6 – Sanctions

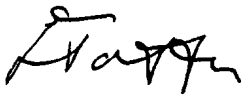
3.15.1 Line 2/3 - The ASA cannot require advertisers to have all of their marketing materials pre-vetted before publication. However, we can ask advertisers that have breached the Codes to consult CAP's copy advice service. We can also ask media owners not to accept advertising that has not been seen by CAP copy advice. CAP copy advice provides advice on ads' compatibility with the non-broadcast code. The service is fast, free and confidential from competitors and we encourage all

advertisers to use the service, regardless of whether they have had an ASA ruling against them.

- 3.15.2 The ASA does not provide a copy advice service for broadcast ads. This is because almost all radio and TV ads are pre-cleared by the Broadcast Advertising Clearance Centre and the Radio Advertising Clearance Centre.
- 3.15.3 The only circumstance in which the ASA is able to require pre-vetting of advertising material is for billboard posters. This has come about via a special arrangement with the Outdoor Advertising Association and is a sanction reserved for those who have displayed a particular disregard for the Code. Pre-vetting normally applies for about two years.
- 3.15.4 All pre-clearance is without prejudice to the ASA complaints system.
- 3.16 It might be useful to note under section A2.7 that ASA adjudications can be accessed online at www.asa.org.uk. CAP has also produced a help note on 'green claims' which can be found at: http://www.cap.org.uk/cap/advice_online/
- 3.17 In section A2.9, it should be noted that the BACC examines *almost* all TV commercials ie. some regional ads are pre-cleared by the station itself. Furthermore, the BACC examines ads for compatibility with the TV Advertising Code (rather than just for legality and to pass judgment on taste).
- 3.18 A2.10 'states' is missing an 's' in line 1.
- 3.19 Following the section on the Radio Advertising Standards Code, there is no mention of the Radio Advertising Clearance Centre (RACC – <http://www.racc.co.uk/>). The RACC is the radio equivalent to the BACC.
- 3.20 In A2.11 we would suggest amending the wording so that it is slightly easier to understand '*...broadcasters risk referral by the ASA to Ofcom. Ofcom is able to impose fines and even withdraw broadcast licences.*'
- 3.21 Appendix 3 - Key contacts. We would be grateful if you could include the contact details for CAP Copy Advice:
Tel: 020 7492 2100
Email copyadvice@cap.org.uk
Fax: 020 7404 3404

I do hope that you will find the above comments useful. Please do not hesitate to contact me if you have any queries about the ASA's comments or should you require any further information about any aspect of the work of the ASA and CAP.

Yours sincerely,



Lynsay Taffe
Policy and Public Affairs Advisor
lynsayt@asa.org.uk
ddi 020 7492 2246