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By email:
es&smarkets@ofgem.gov.uk

ASA Response to Ofgem's consultation 'Cutting the Green Customer Confusion – next steps'

Dear Ms Hogg

Please find below a response from the Advertising Standards Authority (ASA) to Ofgem's consultation on 'Cutting the Green Customer Confusion.' The ASA is happy for Ofgem to publish this response.

1 Introduction

1.1 The ASA welcomes Ofgem's updated guidelines and the work that Ofgem has undertaken in trying to reduce consumer confusion in this area.

1.2 Ofgem's guidelines are extremely timely given that there is growing public interest in the environmental claims made by companies. This can be seen in the increase of complaints about environmental claims received by the ASA. During 2007 the ASA received 561 complaints about 410 advertisements, while in 2006 the ASA received approximately 117 complaints about 83 advertisements.

1.3 The ASA supports Ofgem's proposal to develop separate guidelines for renewable and low carbon tariffs that will apply to both domestic and business customers.

1.4 In our response we will cover the following issues:

- About the ASA
- Advertising Codes
- How the ASA will use Ofgem's Guidance
- Renewable and Low Carbon Tariffs

Chairman Rt Hon Lord Smith of Finsbury • **Director General** Christopher Graham
ASA Council James Best • Sally Cartwright • Jean Coussins • Elizabeth Fagan • Christine Farnish • Sunil Gadhia • Alison Goodman • David Harker
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1.5 It is important that Ofgem's guidance works in conjunction with the Advertising Codes in relation to environmental claims in advertising and marketing material.

2 About the ASA

2.1 The ASA is the UK self-regulatory body for ensuring that all ads, wherever they appear, are legal, decent, honest and truthful.

2.2 The self-regulatory system is based on a concordat between advertisers, agencies and the media that each will act in support of the highest standards in advertising. Compliance with the Advertising Codes and ASA rulings is not voluntary.

2.3 The ASA has been successfully administering the self-regulation of non-broadcast advertising for more than 40 years. In 2004, in recognition of that success, the ASA was entrusted with the responsibility for regulating broadcast advertising by the Office of Communications (Ofcom).

2.4 The ASA is responsible for policing three advertising Codes. These are owned by the Committee of Advertising Practice (CAP), which writes and updates the British Code of Advertising, Sales Promotion and Direct Marketing (the non-broadcast CAP Code), and the Broadcast Committee of Advertising Practice (BCAP) which writes and updates the TV and Radio Advertising Codes (the BCAP Codes)¹.

2.5 The ASA deals with more than 22,000 per annum and upheld adjudications against companies making environmental claims more than doubled from 2006 (10) to 2007 (24).

2.6 Further information about the ASA, CAP and BCAP can be found at www.asa.org.uk and www.cap.org.uk.

3 Advertising Codes

3.1 All advertising must comply with the Advertising Codes. This ensures that all advertising is prepared with a sense of responsibility to consumers and

¹ The Advertising Codes can be accessed at www.bcap.org.uk/cap/codes.

society and should respect the principles of fair competition generally accepted in business.

3.2 In particular the Codes require that all claims made within advertising and marketing material are substantiated. Marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation.

3.3 The Codes which relate to claims states that the basis of any claim should be explained clearly and should be qualified where necessary. It is encouraging that Ofgem also urges the substantiation of environmental claims.

3.4 CAP advises advertisers to avoid using absolute terms such as 'green' and 'environmentally friendly' in marketing communications to consumers². The term 'green' is used often in the consultation document, it would be useful if the final guidance could make clear that the use of such shorthand terms are highly unlikely to be found acceptable by the ASA if used in marketing communications.

3.5 Specific rules with regard to environmental claims are stated in the codes. These include:

- Clearly explaining the basis of any claim and including qualifications where necessary.
- Requiring claims such as "environmentally friendly" or "wholly biodegradable" not to be made without qualification unless advertisers can provide convincing evidence that a product will cause no environmental damage in the full life cycle of the product.
- Avoiding the suggestion that claims command universal acceptance where there is a significant division of scientific opinion or evidence is inconclusive.
- Avoiding the use of extravagant language as well as bogus and confusing scientific terms. If it is necessary to use a scientific expression, its meaning should be made clear.

3.6 We note that Ofgem will be addressing the issue of 'additionality' through this consultation. The ASA would find guidance on how to calculate

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http://www.cap.org.uk/cap/advice_online/advice_online_database/Show+Entry.htm?advice_online_id=472

additionality very useful. The ASA considers it extremely important that green claims are made only on the basis of the additional benefit to the environment rather than on companies simply meeting their legal obligations. Under the Advertising Codes (and the Unfair Commercial Practices Directive) to claim that a standard tariff is 'green' is likely to be considering a misleading exaggeration.

3.7 It is important that consumers are not confused about the source of their energy. Where a company has advertised that consumers can receive renewable energy, it should be made clear that the consumer is paying for renewable energy to enter the national grid, rather than their home.

3.8 Ofgem may be interested to learn that CAP and BCAP are currently reviewing all of the Advertising Codes. CAP and BCAP currently intend to consult publicly on these Codes later in 2008 with the intention that the new Codes will come into force in late 2009.

4 How the ASA will use the Guidance

4.1 When the ASA investigates a complaint it will seek independent verification of the claims made within the advertising material, as well as information from the company or organisation subject to the complaint. The ASA may use the Ofgem's guidance to support its findings, although it will not rely solely on it.

4.2 CAP has produced Advice on Green Supply Offerings^{3 4} for advertisers. This advice currently refers advertisers to Ofgem's 2002 Guidelines on Green Supply Offerings and is likely to take into account other guidance produced by Ofgem. Although the ASA Council is not bound by CAP or Ofgem guidelines, they may prove influential when adjudicating.

5 Renewable and Low Carbon Tariffs

5.1 The ASA welcomes and supports Ofgem's proposal to develop separate guidelines for renewable and low carbon tariffs that will apply to both

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http://www.cap.org.uk/cap/advice_online/advice_online_database/Show+Entry.htm?advice_online_id=103

⁴ http://www.cap.org.uk/cap/advice_online/

domestic and business customers. This will help to cut customer confusion when dealing with environmental claims made in advertising.


6 Conclusion

6.1 The Advertising Codes cover claims made within advertising and marketing materials. The ASA welcomes the updated guidance from Ofgem on renewable tariffs and low carbon supply tariffs as this may be useful in adjudicating on complaints about energy supply.

6.2 The ASA looks forward to continuing to work with Ofgem on the issues surrounding renewable tariffs and low carbon supply tariffs.

6.3 If Ofgem requires any further information or guidance about the work of the ASA in relation to environmental claims within advertising please do not hesitate to contact me.

Yours sincerely,



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