

The advertising standards authority economics essay



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Advertising is designed to provoke a response; advertisers therefore need to stand out and break through the clutter of advertisements in order to be noticed (Pieters et al, 2002). As a result a minority of advertisements can be or are perceived to be misleading, socially irresponsible and deceitful.

Advertising in the UK is regulated through the Advertising Standards Authority (ASA) who supervises the self-regulatory system to ensure advertisements do not fall into the above categories. The ASA was formed in response to consumer criticism and government investigation as a way to maintain consumer confidence in the advertising industry (Boddewyn, 1983). The Molony Committee rejected the case to regulate advertising by statute with the condition that the voluntary controls in place through continued to deliver a quality service to society and that independence from the industry remained.

As the UK's independent regulator of advertisements the ASA is responsible for investigating potential breaches of advertising codes as well as monitoring compliance with advertising standards. The purpose of the ASA is reflected in their mission statement; to ensure all advertising in all media is legal, decent, honest and truthful to the benefit of consumers, business and society (ASA, 2013 a). The ASA regulates according to a ' Code of practice' (COP) that has been drawn up by the Committee of Advertising Practice (CAP). The code applies to all non- broadcast media; the cardinal requirement is that advertisers are not allowed to mislead the consumer and obligates advertisers to substantiate claims made about their services or products (CAP, 2013 a). If a complaint is received the ASA will investigate how the advert may be in breach of the CAP code. In 2004 the ASA also

assumed responsibility for broadcast advertising where previously responsibility was not held (ASA, 2013 b). The success of CAP's regulation of non-broadcast advertisements encouraged the Office of Communications (Ofcom) to contract out the regulation of broadcast advertising to the ASA resulting in a system that self-regulates across all media. The broadcast committee of advertising practice (BCAP) was thus formed and now have the responsibility of writing the UK codes for broadcast advertising. This has allowed the ASA to cover more area of advertising increasing its scope. This has broadened the scope of the ASA as it has allowed more areas to be covered.

The ASA investigates and adjudicates on potential discordance of advertising codes and acts on complaints whilst proactively checking media taking action against misleading, harmful or offensive advertisements (ASA, 2013 c). If an advertisement is determined to be in breach of advertising codes it must be withdrawn or amended and the advertiser must not use that approach again (CAP, 2013 b). Each complaint is investigated by the ASA and each case is subject to scrutiny under the same code. This judgement is made by the ASA council where a substantial proportion of the committee are independent of the industry whilst the remaining members have current or recent knowledge of the industry cementing their independence from outside controls. A number of sanctions are at the ASAs disposal for those advertisers who have not complied with the code. Boddewyn (1983) outlines the sanctions as the media denying access to the offender in terms of advertising in addition to the withdrawal of professional privileges of the advertising agency at fault. The ASA also has the option of making the

violation and the subsequent offence public. Sanctions act as deterrents with bad publicity being the most effective (Brown, 2006).

Self-regulation in the UK has a legal backstop that ensures the success of the ASA. The legal framework makes reference to the laws and regulations in place to protect society against advertising that is unacceptable and to the bodies that are in charge of their implementation (Harker, 2008). Although UK advertising is regulated through self-regulation the ASA can also refer the offender to the Office of Fair Trade (OFT) if no agreement to cooperate is reached. The OFT can consider whether or not legal action can be considered under the consumer protection from unfair trading regulations 2008 (CPRs) or the Business protection from misleading marketing practices, 2008 (BPRs). The CPRs govern how businesses should treat consumers. The legislation prevents firms from deceiving the public with advertising campaigns or subjecting the consumer to excessive pressure. The ASA is considered the established means for gaining compliance with both these pieces of legislation (Graham, 2005). This means that the law itself is not usually enforced formally through the courts instead the ASA is first allowed to tackle any problems under the Advertising Codes. This approach works well in an overwhelming majority of cases where the ASA is able to take action quickly against offenders than if it were to go through the courts. Further action can be sought through legislation if sanctions are ignored in the form of injunctions from the court to prevent the offender making misleading claims in advertisements (CAP, 2013 b).

The CPRs are regulations that were formed to comply with the 'EU unfair practices directive.' Across the European Union (EU) there is a unified piece <https://assignbuster.com/the-advertising-standards-authority-economics-essay/>

of consumer protection legislation to prevent the use of misleading or unfair trading practices; 'The Unfair Commercial Practices Directive,' and has been translated into UK law to ensure the continuity of regulations across Europe (Graham, 2005). They instil a general prohibition against unfair commercial practices, specifically against misleading and aggressive practices where they a blacklist is included of conduct that are considered unfair in all circumstances.

Using the ASA as an independent regulator avoids industry representatives being self-centred and narrow minded when processing consumer complaints (Boddewyn 1983). This is of benefit to the public as the ASA acts upon a complaint even if only one is filed. This allows every consumer to have a voice and the right to object to an advertisement if they believe it to be misleading, inappropriate or offensive in any way. The ASAs only concern is if the advertisement is in breach of the code which in maintains consumer confidence as every consumer is listened to. The ASA system has also been able update codes to agree with public opinion. Boddewyn (1991) supported the fact that the ASA are able to work towards social norms and understands what is socially acceptable; an example is the British views on sexism and exploitation of woman. A recent case brought to the attention of ASA involving an advert placed online showing a topless woman next to the text 'you know you're not the first, but who cares' (ASA, 2011). Really Good Domains Ltd believed the advert to be cheeky rather than offensive and believed they had not crossed the fine line of sexual innuendo. 3 complaints were filed against the advert as the complainants believed the advert was sexist and objectified women. The ASA upheld the complaint as the advert

had the intention of being seen as a sexual innuendo being interpreted by its audience as a woman having more than one sexual partner and having no relation to selling cars. It breached the CAP code rule 4.1 where it states that marketing communications cannot cause serious or widespread offence regarding the prevailing standards of society (CAP, 2011). The Self-regulatory system is flexible to changes in public opinion as they do not have to go through normal parliamentary processes if alteration is needed allowing a certain degree of flexibility which allows the ASA to coincide with societal norms (Baggott 1986). This supports the ASAs independence from the industry as public interest is at the forefront of the organisation.

Advertising is visible and is easily associated with the brand or company; any failings of the advertisement are therefore quickly identified unlike other business failings such as price fixing (Miracle and Rijkens, 1986). A consumer can therefore determine and react to discrepancies within the advertisement and make a complaint to the ASA. Complaints can be made through a single system that is easy to navigate and in turn speeds up the process of identifying those adverts that fall short of the regulations. Cooperation within British advertising circles has been encouraged through the ASA system as the industry is given the opportunity to not only protect themselves as advertisers but also the opportunity to contribute to a more comprehensive system of advertising self-regulation (Miracle and Nevett).

However, some failings can be found by the ASAs system of self-regulation.

Although advertisements are clearly visible to the public and open to

scrutiny the screening processes can be imperfect. Advertising self-

regulation systems are often presented as evidence of the decreasing need
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for government involvement (Herbet,) The issue is whether the consumer can identify an advertisement that is misleading independently or whether government involvement is needed to make the screening process more accurate. For instance; a complaint filed against Nintendo of Europe GmbH, UK branch only had one complaint. The television advert was accused of being misleading as the advert claimed that the player of the console had the option to switch to the GamePad mid play would not be available on all games. Sections 3. 1 and 3. 2 of the BCAP code state advertisements must not materially mislead or be likely to do so and that advertisements must not mislead by omitting material information, by hiding material information or presenting it in an unclear manner (BCAP, 2013). The complaint was upheld by the ASA and it was ruled that the advert must not appear in its current form (ASA, 2013). This case could have been avoided if government intervention was in place. If only one complaint was submitted then it is possible that other consumers were misguided by the advert. Although the benefit of the ASA is to take every complaint seriously the limitation is that misleading advertisements are still broadcast to the public.

The ASA can be criticised for their ability to cope with consumer protection online as their ability to offer comprehensive protection to the consumer can be doubted. There are cases where the ASA have found advertisements to be misleading online but the offender has not removed or amended the advert. In June 2011 Betting Scalper was found guilty of making unsubstantiated claims about the profits that could be made through buying information about a betting system. The website breached rules 3. 1 (engaged in misleading advertising,) 3. 7 (unsubstantiated evidence,) 3. 11

(they made exaggerated claims) and 16. 1 (gambling) in the CAP code (CAP, 2010). Betting Scalper have not made amendments to the website or have not taken down the misleading claims, they are now listed as non-compliant advertisers on the ASA website (ASA, 2013). However this issue is being overcome with alterations to the CAP code. In March 2011 the CAP code was extended to apply to advertisements and other marketing communications by or from companies, organisations or sole traders on their own websites or in other non-paid-for space online under their control, that are directly connected with the supply or transfer of goods, services, opportunities and gifts, or which consist of direct solicitations of donations as part of their own fund-raising activities (CAP, 2010). This is a demonstration of the ASAs versatility and how reactive it can be to the problems and innovations of a technological society (reference?)

The enforcement power of the ASA can also be questioned as failures can occur in advertising. Ambiguities in the CAP and BCAP code can be exploited and thus boundaries are pushed. Gerrard (2009) studied a number of internal documents of the alcohol industry. He identified that young people were key targets and that the industry had an increasing interest in student markets where they had ambition to increase the sales of alcohol.

Sponsorship was another issue raised by the study as it is not covered clearly by the codes therefore unclear boundaries can be exploited. He is also found that new media is a fast-growing channel for alcohol advertising through the introduction of websites, email, viral marketing that offer alcohol producers ways to engage with the consumer interactively. Whilst the new channels of media are covered by the codes, the rate of innovation of new

media presents particular problems. For instance, viral marketing is a form of media that can exploit the ambiguous terms.

The case of Coors Brewers Ltd in February 2007 questioned the ASAs decision who chose not to uphold the complaint. The advert showed starlings flying in formations across the British countryside. The advert featured music from Hifi with the lyrics 'going out tonight' with the tagline 'Belong.' The relevant clauses (11. 8. 1. a, d and 11. 82. a) of the BCAP code for alcohol state that advertisements must not suggest that alcohol can contribute to an individual's popularity or confidence, or that the refusal is a sign of weakness, that they must not suggest regular solitary drinking is acceptable or that advertisements for alcoholic drinks must not be likely to appeal to young people. In this case, starling formations would not appeal to young people (BCAP, 2013). The ASA did not uphold complaints about the advert as the ASA noted that the advert presented the flight of the birds as a group activity and did not focus on an outstanding individual or the transformation of a social event by an external factor. It was concluded that the advert did not imply alcohol contributed to the popularity of an individual or the success of the social event (ASA, 2006). However, the advert can be perceived differently depending on the viewer; the advert could be seen as a clever way of exploiting the code and as a result a more cryptic and imaginative message has emerged seeing the starlings as group of people and thus if you don't drink carling you don't belong.

Compared to other advertising regulatory frameworks in other countries the UK has a mature system in place that is effective and encourages the industry to cooperate and comply with the code; 97% of advertisements are <https://assignbuster.com/the-advertising-standards-authority-economics-essay/>

in line with codes (ASA, 2013). The Federal Trade Commission (FTC) is the regulator of advertisements in the US and operates under the Federal Trade Commission Act 1914 and has the legal power to prosecute any inquiry to its duties in any part of the US (FTC, 2013). The FTC however has faced criticism for being too powerful and for discouraging cooperation between regulator and the industry. The UK uses legal legislation as a back stop whereas the US uses statutory regulation as a means of success.

In my view, the ASA offers the UK a system that is both fair and just. Every case is investigated against the same regulations no matter how big or small the organisation may be. The ASA acts in a socially responsible as the text above shows how it is able to independently evaluate every situation without the influence of the advertising industry or public influence allowing a quality service to be delivered time, and time again.