

ASA system submission to the Competition and Markets Authority's consultation on *Draft guidance on environmental claims on goods and services*

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 59 years and the broadcast Advertising Code (written and maintained by BCAP) for 17, 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 tackle misleading, harmful or offensive advertisements. We are committed to evidence-based regulation and we continually review new evidence to ensure the rules and our application of them remain fit-for-purpose.
- 1.4. Our system is a form of "collective regulation" – neither statutory nor purely self-regulatory – and involves the active participation of a range of legal backstops and partner organisations including National Trading Standards, Ofcom, the Gambling Commission, the Information Commissioner's Office, the Medicines and Healthcare products Regulatory Agency, the Financial Conduct Authority, and the Competition and Markets Authority. We use our convening powers to bring together the ad industry and media owners to set, maintain and police high standards. Through the sharing of information, joined-up enforcement action and referral processes, our partners bolster our regulation and assist us, where necessary, to bring non-compliant advertisers into line. Together, this 'collective regulation' helps to protect people and responsible business from irresponsible ads: ads that mislead, harm or offend their audience.
- 1.5. The UK Advertising Codes are drafted and maintained by CAP and BCAP, supported by experts in our Regulatory Policy team. This authorship of the rules by the ad industry is an important part of our system. It means businesses have a direct stake and an enlightened self-interest in adhering to the standards they set and creates a level-playing field amongst them. Many of the rules derive directly from legislation, of course. For example, the rules requiring ads not to mislead or be likely to mislead originate from UK consumer law. However, many do not, particularly those seeking to prevent harm, offence and social irresponsibility. Whichever the case, in setting the rules which govern UK advertising, CAP and BCAP have multiple checks and balances in place to ensure the process is transparent, open to scrutiny and follows the principles of good regulation. From calls for evidence and public consultations on rule changes, having an independent consumer panel advising CAP and BCAP, Ofcom signing off on BCAP rule changes and, ultimately, the ASA System's processes being open to judicial review. All to ensure the system is wholly accountable to everyone with a stake in advertising.
- 1.6. 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 722,523 pieces of advice and training in 2020.

- 1.7. The ASA system is providing this written submission in response to the Competition and Markets Authority's consultation on *Draft guidance on environmental claims on goods and services*.

2. ASA System consultation response

- 2.1. The ASA welcomes the opportunity to respond to the consultation on the draft guidance.
- 2.2. We have worked closely with the CMA over recent months in its consultation process, lending our knowledge and expertise of regulating green claims in ads, including sharing our own principles and rules around environmental claims. We welcome the CMA's draft Guidance for environmental claims, including in advertising, and believe they will help consumers make better informed decisions about products and services.
- 2.3. The CMA's draft Guidance aligns well with, and complements, our own work to encourage greener advertising. We've been regulating environmental claims for decades, and currently do so under [section 9](#) of the BCAP Code and [section 11](#) of the CAP Code. Our interventions are important, not only because they prevent consumers from being misled, but also because they create a level playing field in which businesses are encouraged to improve their green credentials.
- 2.4. We welcome the guidance's reference to the role of the ASA system in dealing with advertising-specific environmental issues, to complement the work carried out by the CMA, and look forward to continuing to work together on these issues, as we progress our ongoing work on climate change and the environment. This work is examining how effective our rules are in governing environmental claims, and includes a review of how regulators and legislators, at home and abroad, are dealing with environmental issues in advertising. We will also be proactive in tackling new and emerging misleading green claims, and will develop the advice and guidance we offer advertisers, so they can make responsible and accurate environmental claims.
- 2.5. Given our close work with the CMA to date, including discussions on the detail of the guidance, we do not wish to make specific responses to each consultation question. However, we consider that the guidance and its overarching principles are clear, and will help to achieve their aim of reducing the risk of businesses misleading their customers at a time when the environmental credentials of businesses and products are increasingly important. We support the principles-based approach, with illustrative examples (relating to a diverse range of themes), which reflects the case-by-case assessment of misleadingness that the law requires, and helps to assist with compliance.

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