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Nick Carter

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ADVERTISING STANDARDS AUTHORITY RESPONSE TO THE APPG ON JUNK MAIL CALL FOR EVIDENCE

Dear Mr Carter

1. Introduction

- 1.1 The Advertising Standards Authority (ASA) is grateful for the opportunity to provide information to the All Party Parliamentary Group on Junk Mail. The ASA is happy for this information to be published.
- 1.2 The ASA is the UK self-regulatory body for ensuring that all advertisements, wherever they appear, are legal, decent, honest and truthful.
- 1.3 The protection of all consumers is at the heart of the ASA's work. The rules aim to ensure that advertising does not mislead, cause harm, or offend.
- 1.4 This response provides:
 - A summary of the UK advertising self-regulatory system. More detailed information can be found on our website www.asa.org.uk.
 - Details of the ASA's work on direct marketing (or 'junk mail').

2. Advertising self-regulation in the UK

- 2.1 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 Codes and ASA adjudications is binding on all advertisers. It is not a voluntary system.
- 2.2 The system is both self-regulatory (for non-broadcast advertising e.g. press, poster, cinema, online, and direct mail) and co-regulatory (for TV and radio advertising). The Codes do sit within a legal framework, which

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ASA Council James Best • Louisa Bolch • Sally Cartwright • Elizabeth Fagan • Alison Goodman • David Harker • Gareth Jones • Andrew Motion • Susan Murray • Colin Philpott • Ruth Sawtell • Nigel Walmsley • Neil Watts • Diana Whitworth • Anthony Wilkes

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means that, where appropriate, they reflect the standards required in law, e.g. misleading advertising.

- 2.3 The ASA is responsible for administering the Advertising Codes and deals with more than 26,000 complaints per year.
- 2.4 The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are the industry committees responsible for writing and maintaining the Advertising Codes.
- 2.5 The Committee members represent the three main parts of the advertising industry, namely the advertising agencies, media owners (e.g. poster site owners, newspapers, broadcasters, and the Royal Mail) and the advertisers themselves.¹ CAP and BCAP also enforce the adjudications of the ASA.
- 2.6 CAP writes and updates:
 - the British Code of Advertising, Sales Promotion and Direct Marketing ('the CAP Code'), which governs non-broadcast advertising (e.g. print, poster, cinema, online and direct marketing)
- 2.7 BCAP writes and updates:
 - The BCAP TV Advertising Standards Code
 - The BCAP Radio Advertising Standards Code
 - The BCAP Code on Text Services
 - The Rules on the Scheduling of Television Advertisements
- 2.8 The Codes do reflect the standards required by law. In addition, the aspects of the Code covering harm, offence, taste and decency and social responsibility protect consumers from issues not covered by the legal system.
- 2.9 The CAP and BCAP Codes are principles-based and wide-ranging in order to prevent the creation of any possible loopholes. The Codes require all advertisements to be legal, decent, honest and truthful and prepared with a sense of responsibility to consumers and to society.

¹ Details of the members of CAP and BCAP can be found at:
<http://www.bcap.org.uk/cap/links/CAP+Members/>

- 2.10 Final adjudications on complaints are decided by the ASA Council and are published on the ASA website. The Council's membership incorporates two-thirds members of the public, one-third advertising experts and is chaired by former Culture Secretary, the Rt Hon the Lord (Chris) Smith of Finsbury.
- 2.11 In the event that the ASA upholds a complaint against an advertisement, the advertiser or broadcaster is required to amend, withdraw or schedule the advertisement appropriately.
- 2.12 ASA adjudications are enforced through CAP and BCAP. Advertisers that breach the Code face financial loss from having an ad campaign pulled and loss of reputation through the publication of upheld adjudications.
- 2.13 For those advertisers who refuse to comply with an adjudication, industry and other pressures can be brought to bear; for example: poster pre-vetting can be imposed and direct marketing companies can have benefits such as Royal Mail bulk-mailing discounts removed. In very serious and extreme cases of non-compliance advertisers can be referred to the OFT and broadcasters can be referred to Ofcom.
- 2.14 CAP also offers pre-publication advice for non-broadcast advertisers via its Copy Advice Team and online guidance (Advice Online). These include using previous ASA rulings as a measure of what is and is not acceptable in advertisements.²
- 2.15 For broadcast advertisements the broadcasters have set up pre-clearance bodies: Clearcast for TV, and the Radio Advertising Clearance Centre (RACC) for radio. These bodies aim to keep advertisers within the Codes; however, clearance by these bodies does not prevent the ASA from investigating or upholding a complaint about a broadcast advertisement.

² The Advice Online section has articles on the use of sex, nudity, violence, and weight loss products, all of which are listed in Annex 3. There are no articles relating to sanitary protection, and the full list of all Advice Online articles can be found at: www.copyadvice.org.uk

2.16 The ASA is funded by a voluntary 0.1% levy on advertising space and a 0.2% on Royal Mail Mailsort contracts. The levy is the only part of the advertising system that is voluntary.

2.17 The Advertising Codes can be accessed at:
<http://www.cap.org.uk/cap/codes/>

3. How Direct Marketing works within the ASA/CAP system

3.1 The ASA has two functions, with regards to direct marketing:

- i) to ensure that the content of mailings comply with the CAP Code, and are legal, decent, honest and truthful; and
- ii) to reduce the amount of marketing to those who choose to 'opt out' of receiving mail.

3.2 Complaints about the content of ads are treated in the same way as every complaint: the ASA will assess the ad against the advertising code, and if it is found to be misleading or offensive then the ad has to be amended or withdrawn.

3.3 ASA rulings are then enforced by the Royal Mail, as a member of CAP. The Royal Mail can withdraw the bulk mailing discount from an advertiser, making it prohibitively expensive to produce direct marketing.

3.4 The ASA's other role is to help reduce the number of direct marketing received by consumers who do not want to receive such communications. In 'single suppression' cases the ASA, on behalf of a consumer who has already tried removing their name, contacts an advertiser to suppress a name from a specific database. The ASA will also recommend that consumers contact the Mail Preference Service (MPS) if they wish to opt-out of receiving more general direct marketing material. There is usually a three-month waiting period for a name to be fully cleansed off all databases.

3.5 MPS holds databases containing the names of those who have opted-out of receiving direct marketing. Most reputable marketers will cross-reference their own databases with those held by MPS; however, this only applies to UK-based marketers.

- 3.6 Where the MPS has trouble removing a name from a database, they can escalate the matter to the ASA. The ASA receives approximately 10 referrals a month (compared to over 26,000 complaints in total last year), which we resolve successfully about 95% of the time.
- 3.7 One problem that the ASA and CAP have in enforcing rulings on mailings that originate from outside of the UK, is that mail cannot be removed or tampered with once sent, therefore, there is no way to remove 'bad ads' from the system once they have been sent.
- 3.8 The ASA can issue sanctions against Channel Island mailers that use Spring (the Royal Mail overseas sales agent) by removing their bulk mailing discount. However, we cannot prevent a mailer from changing their distributor to one not controlled by the Royal Mail.
- 3.9 This is particularly pertinent with regards to complaints about direct marketing from the Channel Islands, which often has problematic advertising for health foods and supplements. The ASA cannot enforce a ruling through CAP, nor escalate a problem to the OFT as the UK consumer protection laws do not cover the Crown dependencies. However, the ASA understands that the Government is currently working with the Channel Islands in this area.
- 3.10 Two other areas that the ASA receives complaints about with regards to overseas mailings generally falls into the following categories:
- i) people offering good luck charms and prayers for money; and
 - ii) the European Register/European City Guide, which appears to offer free advertising only to then send invoices for large amounts of money once they have received a signature on a large and confusing document.

This last problem has received time in the European Parliament, with questions answered by DG SANCO's Commissioner Meglena Kuneva. The ASA is aware that individual nation states are being urged take action if the mailings originate in their country.

- 3.11 The ASA also works with the OFT in educating consumers about direct marketing that attempts to obtain money from members of the public.

3.12 Advertisers are encouraged to seek pre-publication advice from the CAP Copy Advice team where possible, as they offer free and confidential advice to all non-broadcast advertisers. Relevant codes and guidance for direct marketing can be found on their website: www.copyadvice.org.uk

4. Conclusion

4.1 The ASA is the UK self-regulatory system for ensuring that all ads, wherever they appear, are legal, decent, honest and truthful. If a complaint is received, the marketing material will be assessed against the codes and where there is a breach the material will be amended or withdrawn.

4.2 The ASA rulings are enforced by the Royal Mail, where possible.

4.3 The ASA also works with the OFT to educate members of the public on how to respond to direct marketing.

4.4 The ASA is confident that the self-regulatory system in place is robust; however, we are aware that our work is inhibited to some degree by the fact that UK consumer protection laws do not extend to the Crown dependencies. We would recommend that the Group looks at this issue in more detail, in light of the work currently being undertaken by Government.

4.5 The ASA is grateful for having the opportunity to provide information to the APPG on Junk Mail. If there are any questions arising from this response then please do not hesitate to contact me.

Yours sincerely



Lynsay Taffe
Communications and Policy Manager