

New Chapter for the Advertising Standards Authority in Ireland

22 July 2024

In April this year, the Advertising Standards Authority for Ireland rebranded as the Advertising Standards Authority (“ASA”). In a press release announcing this rebranding, the ASA noted that while the media landscape in Ireland has “*evolved and utterly transformed*” in recent times, the ASA has remained the “*most authoritative voice of influence*” in relation to advertising standards.

In this briefing, we consider the ASA’s recently published Annual Report for 2023, as well as the latest guidance and decisions issued by the ASA, all of which serve to demonstrate the increased scrutiny on all sectors in Ireland and in particular in relation to misleading advertising and so-called ‘green-washing’.

Highlights from the ASA Annual Report 2023

- **Key Partnerships:** In its annual report for 2023, the ASA highlighted its partnership with key organisations and stakeholders on a series of strategic initiatives. In particular, the report notes that the ASA worked closely with newly formed Coimisiún na Meán to explore areas of common interest and agreed to progress the development of a Memorandum of Understanding which will set out how both organisations will cooperate in the advertising regulatory space. Similarly, the ASA engaged with the Gambling Regulatory Authority of Ireland (GRAI) to discuss the Gambling Regulation Bill 2022, the role of the GRAI when established, and the existing remit of the ASA.
- **Complaints:** The ASA received 1,402 complaints concerning 1,134 advertisements in 2023, an increase of 18% in the number of complaints received in 2022. 59 advertisements were found to be in breach of the Code of Standards for Advertising and Marketing in Ireland (the “**Code**”). Approximately two thirds of the complaints received in 2023 (68%) were on the basis that an advertisement was misleading.
- **Advertisements from Social Media Influencers:** In 2023, the ASA issued Joint Guidance on Influencer Marketing with the Competition and Consumer Protection Commission (CCPC). The ASA also introduced an anonymous Social Media Influencer Content Complaints Reporting Form along with a reach out programme to engage with influencers. From the introduction of this form in November 2023 to year end, the ASA received 903 notifications in relation to content posted by social media influencers.

New ASA Guidance on use of ‘limitless’ in marketing communications

The ASA recently published new guidance on the use of claims such as ‘unlimited’ or ‘limitless’ or words or phrases that claim unlimited use or access to an advertised product or service in marketing communications. Such descriptors should only be used where no thresholds or limits apply to use of the product or service in question.

The guidance note is clear that companies are not prohibited from offering a product or service which has a limit on usage/consumption. However where there is such a limit, the relevant product or service should not be described as ‘unlimited’ or ‘limitless’.

The guidance is effective from 25 April 2024, however, a 6 month lead in period will be permitted by the ASA to allow advertisers time, if necessary, to amend their advertising.

ASA Opinion on Green Advertising

In response to an increase in marketing communications with environmental and sustainability themes, the ASA recently published an opinion titled ‘*Green advertising sometimes gets the ad regulator’s red light*’.

In this opinion the ASA acknowledges that many advertisements responsibly incorporate ‘green’ topics. However, it expresses concern that some advertisements fall foul of ‘greenwashing’, i.e. the creation of a false or misleading impression in relation to the positive environmental impacts of a particular product or service.

The opinion references a European Commission monitoring exercise carried out in 2020 on environmental claims which found that over half of the claims that were evaluated were “*vague, misleading or unfounded*”, and 40% were “*completely unsubstantiated*”. The ASA notes that complaints received by the ASA in relation to green-washing typically relate to the ambiguous or exaggerated nature of environmental claims in certain marketing communications, as well as the use of superlative and absolute claims. The ASA emphasises that environmental claims in advertisements must be truthful and must be based on the full lifecycle of the advertised product and not only on part of the product’s lifecycle.

The opinion notes the European Commission’s proposal for a dedicated directive on green claims which would require companies to substantiate voluntary green claims made in business-to-consumer commercial practices. If this initiative is adopted by the European Parliament and Council, the ASA predicts that advertisers could face significantly increased workloads in order to comply with legislative requirements to provide “*evidence-based substantiating material*” to ‘prove’ green claims before going to market to advertise a product or service.

Recent ASA Decisions

In the ASA’s latest complaints bulletin, 18 advertisements were found to be in breach of the Code. Common features of complaints that were upheld by the ASA include comparative claims, claims using superlatives and ambiguous or misleading statements.

- **Comparative claims and claims using superlatives**

It is clear from the ASA's recent decisions that comparative claims and claims using superlatives require a high level of substantiation. By way of example, in a decision against Leinster Senior College, the ASA Complaints Committee found that no evidence had been provided to substantiate the claim that the school had "*Ireland's Best Teachers*". Similarly, an advertisement by the Airport Driving School claiming that it operated the "*most modern fleet of vehicles in Europe*" was considered by the ASA Complaints Committee to an unsubstantiated and superlative claim with the potential to mislead consumers. The Complaints Committee indicated that independent research or market share data would be required in order to substantiate such a claim.

Accordingly, in the absence of adequate substantiating evidence, there is a significant risk that the ASA will consider comparative or superlative claims (e.g. "*leading*", "*best*", "*cheapest*") to be misleading and in breach of the Code.

- **Ambiguous and misleading statements**

15 out of the 18 complaints upheld by the ASA Complaints Committee in its latest complaints bulletin involved misleading marketing communications.

In one decision, the Complaints Committee held that an advertisement in a legal magazine which referred an entity as being regulated by the "*IAPPR - Probate Research Regulator*" was misleading on the basis that the phrase 'probate research regulator' implied that the organisation was a state regulator with universal coverage in Ireland, when in fact it was an industry membership-only organisation. In another decision, the Complaints Committee considered the claim by MoveHome.ie that a property for sale in Glasnevin was a "*28 minute walk from the city centre*" to be misleading on the basis that the listed property was at least a 50 minute walk from Dublin's O'Connell Street, which the Committee considered to be a reasonable understanding of 'city centre'.

It is clear that advertisements which have the potential to mislead consumers by omitting, hiding or presenting material information in an unclear, unintelligible, ambiguous or untimely manner continue to be a focus of the ASA.

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