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Advertising Standards Authority for Ireland

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# Annual Report

30th Annual Report 2010



## THE OFFICIAL HERALDIC ACHIEVEMENT OF ASAI

The coat of arms or official heraldic achievement of the Advertising Standards Authority for Ireland was granted by the Chief Herald of Ireland and registered in his Office in April, 1983.

The design and composition of the arms graphically symbolise the sphere of influence as well as the function of ASAI.

The heraldic arrangement of the national tinctures enhanced by the wreathed cross is designed to suggest the packaging of goods on a nationwide basis, while the lion, traditional symbol of active vigilance, signifies the role of ASAI as overseer in relation to the advertising of those goods.

The shield, historically an emblem of defence, is symbolic of the protection afforded the consumer public by the ASAI, which seeks to establish and maintain principled advertising in Ireland.

All these items are encapsulated in the slogan or motto of the ASAI, 'FIANT SECUNDUM DESCRIPTIONEM BONA' - let the product accord with its description - which bespeaks the ideal of the Advertising Standards Authority for Ireland.



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Edward McCumiskey, Chairman

## CHAIRMAN'S STATEMENT

I have pleasure in presenting the 30th Annual Report of the Advertising Standards Authority for Ireland. The Report covers a period of continuing difficulty in the advertising industry. In my Reports for 2008 and 2009, I referred to concerns regarding the general level of reduction in business being experienced, almost uniformly, throughout the advertising industry.

Again in 2010 the Authority has seen a further, albeit small, reduction in the level of income received. I am happy to say, however, that despite this the development of a new case management system has assisted with the continued provision of a timely service on standard consumer complaints in almost all cases.

In 2010 we also increased the level of structured monitoring of advertisements carried out across all media. This served once again to confirm the overall very high level of compliance by responsible advertisers with the provisions of our Code.

In the 2009 Report, I mentioned the Authority's expanding remit in the area of advertising in the digital media. The level of work in this area is increasing not alone because of an increasing number of complaints related to advertising in this media but also because of the difficulty in separating editorial material and advertising content on many advertisers' websites.

Our approach to digital media is still developing as is the situation with the other 25 members of the European Advertising Standards Alliance (EASA) in Europe. Discussions are continuing both on relevant content and on the jurisdiction of self-regulatory authorities for advertising that can often be developed in one country hosted in another but directed at many other locations.

A separate but equally important issue is the funding of Self-Regulatory Organisations (SROs) for their work in this area. Discussions related to the funding to be made available by digital media companies are ongoing under the direction of EASA. In this area our Board strongly support the views of Mr Robert Madelin, Director General of the Information Society and Media Directorate, that self-regulation can work effectively when it is properly funded by the advertising industry.

As I previously indicated, the 2009 broadcasting legislation included a provision on the use of a self-regulatory model. The initial intention is to use the model in the regulation of the advertising content included with on-demand services. During 2010, the industry with assistance from IBEC developed a self-regulatory code,

which has since been approved by the Broadcasting Authority of Ireland. Following a request from the industry, the Board of the ASAI have agreed to deal with the complaints investigation involved and the Secretariat are currently finalising arrangements to undertake the work.

I would like to express my sincere thanks and that of my fellow Board members to the members of the Secretariat for once again accepting an increased and more varied work load while continuing to provide an excellent level of service to the public and to the industry. Expansion of the scope and coverage of their responsibilities is now a feature of all SROs in Europe and we anticipate a further expansion in our remit to meet the concerns of the EU in the area of consumer privacy and Online Behavioural Advertising (OBA).

I would like to record my sincere appreciation and that of the Board for the unstinting manner in which the independent Complaints Committee exercise their role in deciding on the complaints referred to them for decision and review. Without their input and knowledge, our system could not lay claim to the credibility and standing that it enjoys amongst consumers and in the advertising industry.

Finally, on my own behalf, I would like to thank the Board and particularly the members serving on our committees for their support and input in a difficult period for our organisation and the advertising industry generally.

**Edward McCumiskey**

Chairman





# REVIEW OF THE YEAR

## REVIEW OF THE YEAR

This is the 30th Annual Report of the Advertising Standards Authority for Ireland (ASAI) and relates to the year 2010.

The ASAI is the independent self-regulatory body set up and financed by the advertising industry (advertisers, advertising agencies and media) and committed to promoting the highest standards of advertising and sales promotion in the public interest. Membership of the ASAI embraces all major advertisers and agencies and all major media, including broadcast, outdoor, digital and the print media.

The ASAI, since its foundation in 1981, has built up an extensive body of expertise in the regulation of commercial advertising in all Irish media, including print, outdoor, broadcast, digital and direct mail. Since 2009 the jurisdiction of the ASAI in the area of digital media has been expanding and we now regulate commercial communications on advertisers' own website in addition to those on third-party sites. The area of work is likely to continue to develop in 2011 with the EU indicating that advertising Self-Regulatory Organisations (SROs) should be involved in the regulation of consumer privacy issues in Online Behavioral Advertising (OBA).

An independent Complaints Committee adjudicates on the content of advertisements. These adjudications are enforced through the co-operation of the Media Members of the ASAI, whom we regard as the "gatekeepers" for the Code. Media Members will not carry advertisements that are in breach of the ASAI Code. Details of the adjudications are regularly carried in the media and on our website ([www.asai.ie](http://www.asai.ie)). The Complaints Committee of the ASAI still includes among its members nominees of the Director of Consumer Affairs. The practice of the Director of Consumer Affairs making nominations to the Complaints Committee will however change when future vacancies are being filled. The Director has now, after public competition, established a panel of consumers that will be used to fill the vacancies arising. The current Committee also includes academics, social workers, public servants and a minority of representatives from the advertising industry.

The ASAI Code of Standards for Advertising, Promotional and Direct Marketing is based on the principles established by the International Chamber of Commerce (ICC), which are that all advertising and promotions must be legal, decent, honest

and truthful and must be undertaken with a sense of social responsibility. The Code requires advertisers to market and promote their goods and services in a responsible manner. On an ongoing basis, the work of implementing the provisions of self-regulatory codes is being enhanced and supported by the development of Best Practice Guidelines, in all areas of complaints examination, by the European Advertising Standards Alliance (EASA). The ASAI plans to commence the next review of the Code in late 2011, with a view to publishing the seventh edition of the Code in 2012. In developing our new Code, the ASAI will be able to build on the work currently been undertaken by both the ICC and the Broadcasting Authority of Ireland (BAI) in the area of code reviews. An extensive consultative process will be put in place and for the second time will include inviting comments from all consumers.

In times past, the ASAI has operated primarily by inviting and resolving consumer complaints which help to keep the Authority informed of the public's current concerns regarding advertising. Information on how complaints are resolved by the ASAI is given on page 12. The identity of individual complainants remains confidential unless a commercial or other interest is involved. Anonymous complaints are not pursued and all complaints must be in writing (by post, fax or by using the online complaints form). In certain circumstances, where the interests of consumers are involved, intra-industry complaints will be investigated. The ASAI is not, however, an arbitration service for disputes between commercially interested parties.

Prior to 2006, the ASAI only monitored advertising in particular industries or media when identified issues warranted it. In late 2006, however, a new monitoring programme was introduced. An overview of the monitoring carried out in 2010 can be found on page 10.

The ASAI also operates a pre-publication advice service for the advertising industry. Advertisers, agencies and media can obtain advice on whether a proposed advertisement or sales promotion conforms to Code requirements. This advice is given on behalf of the Secretariat and does not bind the ASAI Complaints Committee.

The ASAI is a founder and very active member of the EASA, which brings together national advertising SROs and

organisations representing the advertising industry in Europe. The EASA supervises the operation of the Cross-Border Complaints System. Under this system, a complaint received by the ASAI, or other national advertising self-regulatory body, concerning an advertisement published in another member country is referred to the appropriate national regulatory body for consideration under their Code. This ensures that a consumer can have redress in the case of misleading or offensive advertising originating anywhere in Europe. In 2010, 200 cases were handled under this system by the EASA.

Membership of the EASA also serves to ensure that the ASAI is informed both on all industry developments and equally the developments in 25 other European SROs to the regulation of advertising. These relationships are particularly relevant at the present time when experience is being developed on the handling of complaints in digital media. The EASA has a close working relationship with DG SANCO, the directorate responsible for health and consumer matters. At the present time because of consumer concerns on the regulations of OBA they are developing an active relationship with the Directorate for the Information Society and Media. This allows the staff of the EASA to keep self-regulatory and industry members informed on and, where appropriate, have an input into, legislative and policy developments in these critical areas.

The ASAI is also part of the EEJ-Net, (European Extra Judicial-Net) which was set up by the European Commission and launched by Commissioner David Byrne in October 2001. To belong to this network it was necessary to satisfy the Department of Enterprise, Trade and Employment and the EU Commission that the ASAI complied with the recommended principles established in Commission Recommendation on the Principles Applicable for Out-of-Court Settlement of Consumer Disputes (98/257/CE). These principles relate to independence, transparency, adversarial process, effectiveness, legality, liberty and representation.

## PUBLIC AWARENESS OF THE ASAI

The ASAI's effectiveness as a regulatory body depends on the practical and active support of advertisers, agencies and the media. The ASAI, together with the Association of Advertisers in Ireland (AAI) and the Institute of Advertising Practitioners in Ireland (IAPI), is constantly working to ensure that all of those employed in the relevant agencies and the media are aware of

the ASAI and its Code.

The ASAI Code specifies that it should be implemented primarily in the interests of consumers. Indeed, the main area of work of the ASAI – the examination of complaints – depends on the public being aware not only of the Authority's existence but also of its role. Consequently, public awareness of the ASAI is a vital element of its successful operation. In December 1998, the ASAI began commissioning independent research to objectively measure such awareness. The research is conducted by means of an omnibus survey by an independent market research organisation.

The most recent research reported in 2009 that 73 per cent of the population is aware of an independent organisation that oversees the standards for all advertising in Ireland. This reflects a basic understanding among people that, when they have concerns in relation to an advertisement published in any section of the media, there is a specific organisation they can contact in order to pursue their complaint. This figure shows a continuing high level of awareness of the ASAI among the population. This level of awareness is demonstrated by the level of consumer contact experienced by the Authority when current consumer issues are publicised in the media or elsewhere. A further survey is planned for late 2011.

The ASAI wishes to increase levels of awareness of the organisation and, in particular, of the services offered. This is done partly through the publication of the adjudications of the independent Complaints Committee, which are regularly carried in the media, in trade publications and on the ASAI website. In addition, media members in a range of areas will when requested carry advertising promoting the services of the ASAI.

It is worth noting that, in considering the role that a system of self-regulation might play in the future regulation of advertising, a high level of public awareness of the system is considered to be of importance by the EU Commission and particularly by officials of DG SANCO.

## COPY ADVICE

The ASAI's principal activities are resolving consumer complaints and actively monitoring advertising. However, it also provides a valuable copy advice service which is available to all

those involved with advertising – advertisers, their agencies and the media. During 2010, 110 advertisements were submitted to the ASAI Secretariat in this way. Informal advice was also given in respect of a further 80 proposed advertisements. The advice is free and given on a confidential basis but does not bind the independent Complaints Committee, should the advertisement subsequently come before them. However, it is the case that, where the service has been availed of, advertisements are less likely to contravene the Code in any substantial way.

### MONITORING

2007 was the first full year in which the ASAI conducted continuous monitoring of commercial communications in the media. In 2007, 11,400 advertisements were examined and, as previously reported, the overall compliance rate was 98 per cent, with 100 per cent compliance in some business sectors. During 2008, the number of advertisements monitored was reduced to 4,000. In 2009, just 1000 advertisements in the print media, direct mail and the broadcast media were monitored. We are glad to say that the compliance rate remained reassuringly high at 99 per cent across all media. In 2010 our programme of monitoring was increased across all media and in total 3,560 advertisements were reviewed.

The numbers in each area of the media are set out below:

Print	Broadcasting	Outdoor	Direct Mail	Digital
2450	500	210	100	300

The overall review demonstrated a compliance rate in excess of 99 per cent. In the small number of cases where it was necessary to contact advertisers for non-compliance, agreement was obtained to withdraw or vary the advertising.

### REVIEW PANEL

In January 2007, in line with commitments given in conjunction with the EASA to the EU Commission, the Board of the Authority appointed a three-person Review Panel for a five-year term of office. The Panel comprises a Chairman and two ordinary members. The Chairman of the Panel is independent of the advertising industry and the Authority. One ordinary member has a background in the advertising industry and the remaining ordinary member has a consumer background.

The members of the Panel are Dr Miriam Hederman

O'Brien (Chairman), Ms Josephine Garry (consumer) and Mr Tom McGowan (advertising industry).

The grounds on which a review can be requested and the procedures involved are fully set out in Appendix 1 of the Code. During 2010, three requests for a review were received. One was successful and the Complaints Committee subsequently set aside their previous decision when the matter was referred back to them. In the other two cases the Panel refused the applications since they did not consider that they met the criteria set out in the Code.

### ALCOHOL ADVERTISING

Since 2003 all alcohol advertisements are pre-vetted by Central Copy Clearance Ireland (CCCI), which was set up under the auspices of the AAI and the IAPI, facilitated by the Drinks Industry Group. No advertisement can appear in the Irish media without pre-vetting and a certificate from CCCI. The ASAI Secretariat and the copy clearance managers from CCCI meet on a regular basis to discuss the provisions of the Code and their interpretation. Such meetings help to ensure that alcohol advertising in Ireland continues to operate to the highest standards.

In 2010, complaints were received in relation to 16 advertisements. Some related to concerns on taste and decency and others related to the alcohol provisions of the Code. No advertisements were found to have breached the alcohol provisions of the Code in 2010.

### THE ALCOHOL MARKETING COMMUNICATIONS MONITORING BODY

The Alcohol Marketing Communications Monitoring Body (AMCMB) was established at the end of 2005 to monitor industry compliance with Voluntary Codes of Practice in relation to the possible exposure of young people to alcohol. This initiative was launched by the then Minister for Health and Children, Mary Harney, TD, in December 2005.

The Monitoring Body, with an independent chairman, Mr Peter Cassells, oversees adherence to the Voluntary Codes of Practice agreed between the Department of Health and Children and representatives of the advertising, drinks and media communications industries.

Secretarial and executive services for the Body are provided by the ASAI. The ASAI also examines complaints arising under the Voluntary Codes. The Voluntary Codes were reviewed and extended during 2008 and the extended Codes, which now also cover the print media and digital marketing communications, remained in place until 2010. The system is awaiting a review but will continue in place and operational pending the outcome of the review.

The AMCMB published its fourth report, for the year 2009, in July 2010. In the report, Mr Cassells states: “As this Annual Report shows, there was overall compliance in 2009 by television, radio, cinema and outdoor advertisers with the obligation set down in the Codes”. He also confirmed that, where breaches of the provisions of the Codes were identified, immediate action was taken to rectify the position. The AMCMB also used this report to make a number of recommendations on matters of interpretation of the Codes to the Department of Health and Children. The recommendations included specific proposals on areas where the Codes’ provisions could be strengthened.

### THE EUROPEAN ADVERTISING STANDARDS ALLIANCE

Set up in 1992, the European Advertising Standards Alliance (EASA) is the single voice for advertising self-regulation in Europe. The EASA promotes responsible advertising through best practice in self-regulation for the benefit of consumers and business. Its work is vital to the continuation of advertising self-regulation. The Secretariat of the ASAI is actively involved through participation on various EASA committees.

The EASA is uniquely placed to represent advertising self-regulation at European level. Its members are 25 SROs and European associations representing the advertising industry – advertisers, agencies and the media.

The variety of bodies that the EASA works with to develop and refine the model of advertising self-regulation continues to grow. These include industry organisations, state bodies and NGOs. A particular focus with EASA during 2010 was the ongoing discussions with IAB and the EU on the development of a suitable regulatory model for dealing with the concerns of consumers in relation to

privacy and related matters in the operation of OBA.

In 2010, EASA was still also leading discussions with the members of the digital media on the operation of and funding for suitable systems for the self-regulation of commercial communications in the digital media.

The EASA believes that raising public and political confidence in advertising is important. Part of the reason for this is that responsible and accurate advertising informs consumers, serves to underpin consumer confidence and contributes to economic development.

### DIGITAL MARKETING COMMUNICATION

As already indicated, the Authority’s remit was extended to advertisers’ own websites during 2009. This work will be in addition to the range of complaints already dealt with in relation to digital marketing communications published on third-party websites. As indicated above, a learning process in this area is continuing which will better equip the Authority to meet the requirements of this particularly complex section of the media. Overall in 2010 complaints related to digital media at 425, constituted just 24 per cent of the overall number of complaints received in the year.

## COMPLAINTS

In 2010, the ASAI received 1,736 written complaints concerning 910 advertisements. This level of complaint shows an increase over the figure of 1,303 complaints received in 2009. Again a notable feature is that the number is a very small proportion of the thousands of advertisements that were published during the year in all Irish media – TV, radio, newspapers, magazines, outdoor arena, brochures, leaflets and paid-for advertising on the Internet. This low level of complaint, when considered in conjunction with the historical high level of consumer awareness of the ASAI, serves to show the high level of compliance with the Code demonstrated by the advertising industry.

There were 210 complaints carried forward from 2009, and the ASAI dealt with 1,676 complaints in 2010, leaving 270 in respect of 185 advertisements to be carried forward to 2011.

### How complaints are dealt with

After an initial evaluation, and investigation where appropriate, complaints are either dealt with informally by the Secretariat or submitted to the independent Complaints Committee for formal adjudication. The decision on how the complaint will be processed depends on whether or not the advertisement in question is likely to be in breach of the provisions of the Code. Most complaints are suitable for dealing with informally, using well-established procedures. Further details on the complaints dealt with by the independent Complaints Committee are set out in the section of this report devoted to the Complaints Committee.

### Grounds of Complaint

Every year, the two principal grounds of complaint are that an advertisement appears to be misleading or that it causes offence. In 2010, 694 advertisements were the subject of complaints on the basis that they were misleading. Just 133 advertisements were referred to the Authority on the basis that the content was offensive.

### Complaints by Sector

	2010
Food & Beverages	452
Telecommunications	264
Health & Beauty	87
Financial	81
Travel & Holidays	109
Leisure	129
Household	100
Motoring	64

### Intra-industry complaints

Advertisements must not only be legal, decent, honest and truthful, but must also respect the principles of fair competition generally accepted in business. Section 2.50 of the ASAI Code states that “advertisers should not unfairly attack or discredit other businesses or their product”. While comparisons are allowed (for example, between an advertiser’s goods or services and those of competitors) they must be fair and the consumer must not be misled.

Generally, competitor complaints are made under the Code rules relating to substantiation, truthfulness, prices, comparisons and denigration. Of the 118 competitor complaints dealt with in 2010, 46 were formally adjudicated upon by the Complaints Committee and 22 advertisements were found to have breached the Code rules.

This is an expanding area of work for the Authority as evidenced by the increasing level of complaints by competitors. In 2009, only 79 such complaints were dealt with as compared to the 118 received in 2010.

	Complaints by Media	
	2010	2009
Broadcast*	526	451
Brochures/Leaflet	99	101
Direct Marketing	19	28
Digital Media	425	288
Outdoor	426	114
Print	184	262
*Television	288	238
Radio	228	223

Broadcast media again gave rise to the largest block of complaints and increased from 451 in 2009 to 526 in 2010. There was a substantial increase in the level of complaints made regarding advertising in digital media. The increase from 288 in 2009 to 425 in 2010 is due to an extension of the Authority's remit in late 2009. Finally, the increase in the level of complaints in outdoor relates to a small number of particular campaigns.

### Resolution of Complaints

	2010		2009	
	Complaints	Advertisements	Complaints	Advertisements
<b>Additional Information</b>				
Requested but not Provided	197	185	189	160
Out of Remit	115	34	150	52
Cross-Border	55	26	33	14
	170	60	183	66
<b><u>Preliminary Assessment of Complaint</u></b>				
Complaint Withdrawn	21	21	16	16
More Appropriate for Another Body	50	48	61	50
No Basis under Code	252	204	232	212
No Evidence of Offence	92	63	90	67
Prev Adjud - Not Upheld	12	5	8	3
Prev Adjud - Upheld	13	2	15	6
	440	343	422	354
<b><u>Investigation by Secretariat</u></b>				
Formal - referral to CC	516	127	166	136
Informal resolution by Secretariat	353	266	292	226
	869	393	458	362
<b>TOTAL</b>	<b>1,676</b>	<b>981</b>	<b>1,252</b>	<b>942</b>



# COMPLAINTS COMMITTEE



Bairbre Redmond, Chairperson,  
Complaints Committee

## CHAIRPERSON'S STATEMENT

I have great pleasure in presenting my sixth report as the independent Chairperson of the Complaints Committee. The number of advertisements considered by the Committee was 127 in 2010. In addition, a further 180 advertisements where complaints were dealt with by the Secretariat were reviewed by the Committee.

The total number of advertisements brought to the Authority's attention by members of the public increased slightly from 942 in 2009 to 981 in 2010.

The significant feature in the work completed in 2010 relates to the increase in the number of complaints relating to digital media. The increase in complaints from 288 in 2009 to 425 in 2010 created a significant additional workload for the Secretariat in preparing draft reports for the Committee. Advertising in digital media is not as defined and self-contained as is the case

with traditional media and greater time and consideration is required in investigating and deciding on the issues involved. While I appreciate the work done by the Secretariat and my fellow Committee members, we will all need to ensure that the required experience, knowledge and skills are available to us for this area of our work. While the majority in membership of the Committee will always be made up by non-industry members we will require additional assistance and guidance to satisfactorily adapt our procedures to this expanding area of work.

Finally, I would also like to thank all the individual members of the Committee, the Secretariat and the Board of the ASAI for their work and support in the last year.

**Bairbre Redmond**  
Chairperson  
Complaints Committee

## COMPLAINTS COMMITTEE

The role of the independent Complaints Committee is:

- (a) To consider and adjudicate on complaints submitted by the public, by a Member of the ASAI, by a government department or by any other person or body of persons, in the light of the ASAI Code;
- (b) To initiate corrective action where necessary and to issue appropriate directives;
- (c) To notify the Board of the ASAI when the corrective action or directive is not complied with or is ignored.

The Complaints Committee may vary in size from 11 to 15 members, including the independent Chairperson. It comprises people with a background in advertising and others with no connection with the industry. Among the latter are four nominees of the Director of Consumer Affairs. The composition of the Complaints Committee is designed to ensure the objectivity of the complaints investigation procedure and to provide assurances that

the system is operated with special regard for the interests of consumers. The members of the Committee act in an individual capacity and consider each case put before them on its particular merits in the light of the requirements of the Code of Standards for Advertising, Promotional and Direct Marketing in Ireland.

As already indicated in this report, the practice of the Director of Consumer Affairs in making appointments to the Committee has now changed for future appointments.

While the Secretariat of the ASAI may resolve cases informally when the circumstances do not justify or require referral to the Complaints Committee, the Committee retains the right to review any of these cases and to request that it be put before them for adjudication.

The Complaints Committee met formally six times during 2010. The Committee's adjudications are published regularly in the media and are posted on the ASAI website.

### Analysis of Adjudications by the Complaints Committee

Of the 127 advertisements considered by the Committee, complaints in relation to 89 were upheld and the remaining 38 were found not to be in breach of the provisions of the Code. As in previous years, the principal reason advertisements were found to be in breach of the Code was because they were considered to be misleading.

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#### **Resolution of complaints by Complaints Committee in 2010**

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	Complaints	Advertisements
Submitted to Complaints Committee	516	127
Upheld/In Breach	428	89
Not Upheld/Not In Breach	88	38

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