



Advertising Standards Authority for Ireland

ASAI

# Annual Report

29th Annual Report 2009



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Edward McCumiskey, Chairman

## CHAIRMAN'S STATEMENT

I have pleasure in presenting the 29th Annual Report of the Advertising Standards Authority for Ireland. The Report is being presented during a period of great difficulty in the advertising industry. In my Report for 2008 I referred to concerns regarding the future level of activity in the Advertising industry and in fact there was a general reduction in business almost uniformly throughout the industry.

In line with all of those involved in the advertising industry the Authority has seen a reduction in the level of income received in 2009 and a similar situation is expected in 2010. While our budgets have been adjusted to take account of the reduction in income, every effort has been made to minimise the effect on front line services and particularly the examination of complaints from consumers and advertisers.

I am confident in reporting, however, that the reduction in the level of business was not reflected in any way in a reduction in advertising standards and the limited monitoring undertaken by the Secretariat in 2009 confirmed this.

In fact one of the few concerns that can be expressed is in relation to a very small number of advertisers who do not appear to learn from their mistakes and even when a complaint is upheld subsequently produce further advertisements that contravene the same provisions of the Code.

In line with the practice of colleagues in the Advertising Standards Authority (ASA) in the UK, the Secretariat, when they become aware through monitoring or through the receipt of further complaints of such advertisements, immediately request their withdrawal or amendment. Were an advertiser to refuse to comply with such requests then the media involved would be requested to withdraw the advertising. We do not consider it necessary or appropriate to present the same facts to the Complaints Committee when they have made an earlier adjudication on the principles involved.

In the Report for 2008 I referred to contacts with the Minister for Communications, Energy and Natural Resources and his officers. I am glad to confirm that the broadcasting legislation of 2009 contains an enabling provision on the use of advertising self-regulation and following on a range of meetings and correspondence, ASAI will now undertake the regulation of the commercial communications carried in conjunction with on demand services.

During 2009, the examination of complaints regarding marketing communications on advertisers' own websites commenced. This complements the work already being undertaken into other areas of digital media.

Once again I would like to express my thanks to the members of the Board, and in particular those serving on our sub-committees, for their work during the year. On behalf of the Board I would like to express our sincere gratitude to Professor Bairbre Redmond and the members of the Complaints Committee for their level of commitment to the self-regulatory system and their work during 2009. As complaints in some areas become more technical and complex, the work load of the Committee increases even without any increase in the number of cases being reviewed or adjudicated on.

Finally on behalf of the Board I would like to express our thanks to the Secretariat for their efficient and ever courteous discharge of the functions of the Authority during the year.

**Edward McCumiskey**  
Chairman



Advertising Standards Authority for Ireland

ASAI

# REVIEW OF THE YEAR

## REVIEW OF THE YEAR

This is the 29th Annual Report of the Advertising Standards Authority for Ireland (ASAI) and relates to the year 2009.

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, electronic 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, electronic and direct mail. In the report for 2008 we indicated that, during 2009, the jurisdiction of the Authority would be extended to new areas of the electronic media, including advertisers' own websites. This was done on an incremental basis, with complaints regarding advertisers' own websites being dealt with informally from 1 August to 31 October 2009 and, in accordance with all normal procedures, from 1 November 2009.

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, who 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 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 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 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 plan to commence the next review of the Code in 2011, with a view to publishing the seventh edition of the Code in 2012.

Historically, 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 13. 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).

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 project commenced. An overview of the monitoring carried out in 2009 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 member of the EASA, which brings together national advertising self-regulation organisations 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 2009, 65 cases were handled under this system by the EASA.

Membership of the EASA also serves to ensure that the ASAI is continually updated on all industry developments and the approach being adopted by 25 other European Self-Regulatory Organisations (SROs) to the regulation of advertising. The EASA has a close working relationship with DG SANCO, the directorate responsible for health and consumer matters. This allows the staff of the EASA to keep self-regulatory and other members informed on and, where appropriate, have an input into, legislative and policy developments in these 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. A new study module on advertising self-regulation has been developed by the EASA and a third level institute. This will be first tested in Romania in 2010.

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 and this research has been conducted in December of each year since.

The research is conducted by means of an omnibus survey by an independent market research organisation.

The most recent research reported at the beginning of 2009 shows 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.

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 carry advertising promoting the services of the ASAI. In mid-2010, the Authority will commence a new advertising campaign on radio, in the print media and in areas of the electronic media.

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 Commissioners and officials of DG SANCO.

## SATISFACTION LEVELS AMONG CONSUMERS

As in the previous year, a question was included in an annual survey (reported in January 2009) in relation to satisfaction levels among consumers with the service provided by the ASAI. The response to this question showed that 79 per cent of all those aware of the ASAI considered that it performs in an excellent or satisfactory manner in upholding advertising standards.

## 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 2009, 85 advertisements were submitted to the ASAI Secretariat in this way. Informal advice was also given in respect of a further 165 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. It is the case, however, 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 year in which the ASAI conducted continuous monitoring of commercial communications in the media. In 2007, just 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 99/100 per cent over all media.

During 2010, an extended programme of monitoring has been initiated and, initially, this will focus on advertising for travel services, employment opportunities and electrical retail goods.

## 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 2009, two requests for a review were received. One was successful and the Complaints Committee subsequently amended their decision when the matter was referred back to them. In the second case the Panel refused the application since they did not consider that it met the criteria set out in the Code.

## ALCOHOL ADVERTISING

As reported in previous Reports, since 2003 all alcohol advertisements are pre-vetted by Central Copy Clearance Ireland, 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 met on a number of occasions during 2009 to discuss the provisions of the Code and their interpretation, with a view to ensuring that alcohol advertising in Ireland continues to operate to the highest standards.

During 2009, an industry-sponsored training programme on the content of the relevant advertising codes was developed for all those involved in any aspect of developing marketing communications for alcohol.

In 2009, complaints were received in relation to eight 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 provisions of the Code in 2009.

## 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 originally launched by the Minister for Health and Children, Mary Harney, TD, in December 2005.

The Monitoring Body, with an independent chairman, Mr Peter Cassells – Chair of the National Centre for Partnership and Performance, 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 communication, will remain in place till 2010.

The AMCMB published its third report, for the year 2008, in July 2009. In the report, Mr Cassells states: “As this Annual Report shows, there was overall compliance in 2008 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.

Five complaints were received in relation to the Codes in 2009 and, in the case of two, it was found that advertisements for alcohol had been shown in one cinema during films that had an adult audience profile of less than 75 per cent.

## 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 closely 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.

During 2009 the EASA was pivotal in organizing European level monitoring of both food and alcohol advertising. The ASAI took part in the monitoring of alcohol advertising.

The variety of bodies that the EASA works with to develop and refine the model of advertising self-self-regulation continues to grow. These include industry organisations, state bodies and NGOs. A particular development during 2009 was the launch, in conjunction with Clearcast UK, of a new European Copy Advice/Pre-Clearance facility. Advertisers who register for the online, one-stop shop can submit requests for copy advice to one or more of the 15 self-regulatory organisations taking part in the project.

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

## COMPLAINTS

In 2009, the ASAI received 1,303 written complaints concerning 942 advertisements. This level of complaint shows a very small reduction over the figure of 1,348 complaints received in 2008. 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 154 complaints carried forward from 2008, and the ASAI dealt with 1,247 complaints in 2009, leaving 210 in respect of 173 advertisements to be carried forward to 2010.

	COMPLAINT ISSUES				ADVERTISEMENTS			
	Carried F/w from 2008	Received during 2009	Resolved during 2009	Brought F/w to 2010	Carried F/w from 2008	Received during 2009	Resolved during 2009	Brought F/w to 2010
<b>Complaint</b>								
AMCMB Code - Complaint	0	5	5	0	0	5	5	0
ASAI Code - Complaint	154	1298	1242	210	132	937	896	173
<b>Total</b>	<b>154</b>	<b>1303</b>	<b>1247</b>	<b>210</b>	<b>132</b>	<b>942</b>	<b>901</b>	<b>173</b>

### 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 2009, 1,084 issues were raised regarding claims that advertisements were misleading and constituted the largest category of complaints received. 377 issues were reported in relation to advertisements being offensive. As already indicated the number of advertisements to which these issues related was 937.

### Complaints by Sector

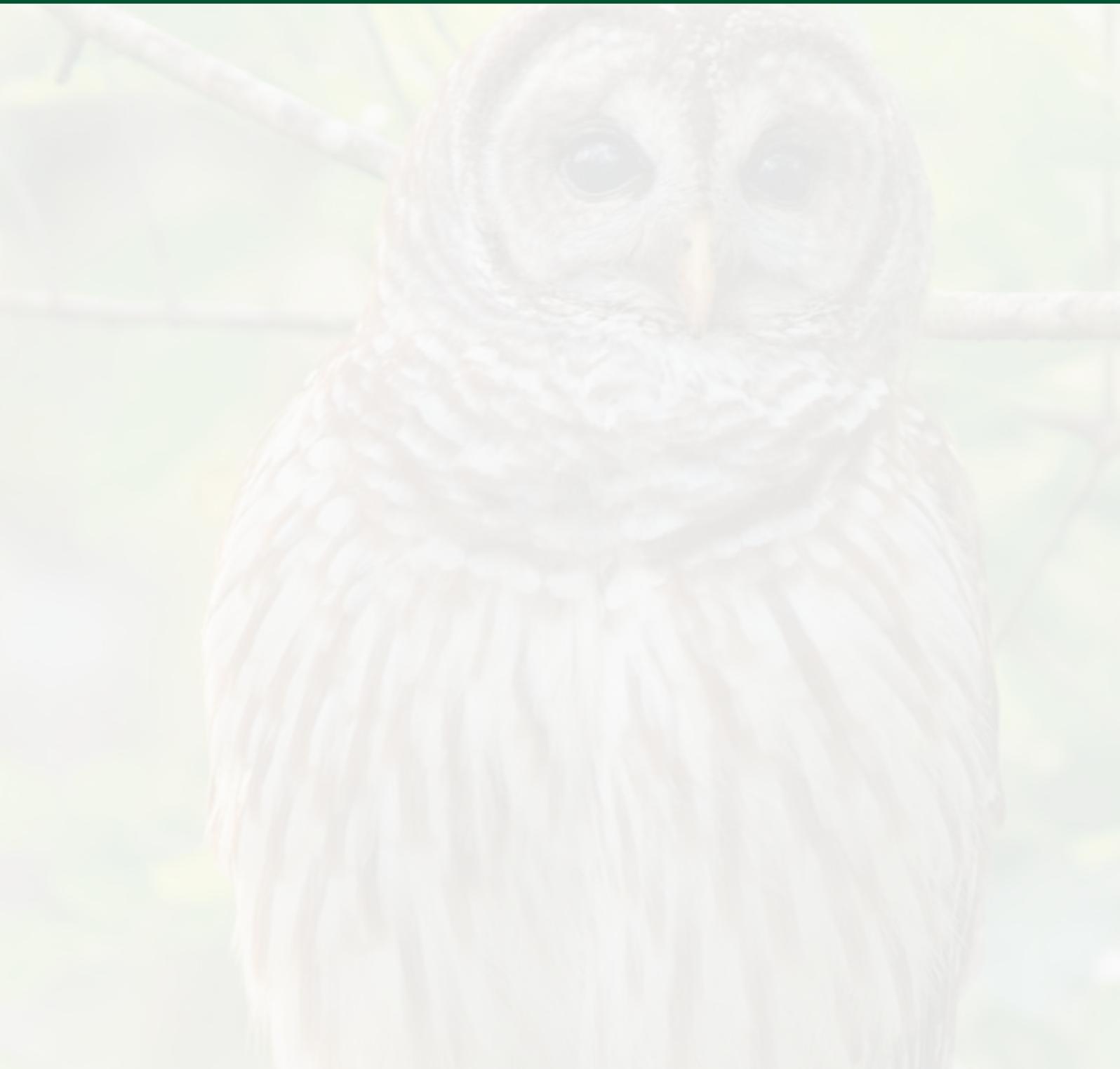
The main sectoral areas attracting complaints were as follows

Telecommunications	188
Food & Beverages	130
Health & Beauty	104
Travel & Holidays	142
Leisure	127
Household	87

### 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 79 competitor complaints dealt with in 2009, 23 were formally adjudicated upon by the Complaints Committee and 15 advertisements were found to have breached the Code rules.



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# COMPLAINTS COMMITTEE



Bairbre Redmond, Chairperson,  
Complaints Committee.

## CHAIRPERSON'S STATEMENT

I have great pleasure in presenting my fifth report as the independent Chairperson of the Complaints Committee. The number of advertisements considered by the Committee was 136 in 2009. In addition, a further 120 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 decreased slightly (from 1,048 in 2008 to 942 in 2009), the relatively low number of advertisements that are the subject of complaints demonstrates, I believe, the high level of advertising standards that prevails in Ireland.

The Committee is a mix of people who are independent of the advertising industry and those who have a background in advertising. While they each act in their personal capacity when considering complaints about advertisements, both non-

industry and industry members bring a breadth of professional experience to the table which the Authority is fortunate to benefit from.

As already identified by the Chairman in his introductory statement to this report an increasing feature of the work of the Committee is that there are a small but significant number of complaints that are increasingly complex to examine and adjudicate on. These are usually related to questions of substantiation of scientific claims. I particularly appreciate the work of the members of the Committee and the Secretariat in researching these matters. We are also now considering the use of a number of external experts to provide independent reports on the material submitted by way of substantiation in a selection of cases.

Finally, I would also like to thank all the individual members of the Committee and the Secretariat 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 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 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 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 2009. 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 136 advertisements considered by the Committee, complaints in relation to 84 were upheld and the remaining 52 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 and 62 of the 84 fell into this category of complaint.

The 136 advertisements considered and adjudicated on involved 174 separate complaint issues. Of the complaints adjudicated on by the Committee, 37 related to broadcast media, 31 to press, 18 to electronic media and 15 to outdoor.





Advertising Standards Authority for Ireland



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