

## Guidance Note on Misleading Claims and Responding to Complaints

*This Guidance Note is to be read alongside the [Advertising Codes](#).*

*Note: This information will assist the advertising industry when responding to complaints about misleading claims. It is not legal advice, and it does not bind the Complaints or Appeal Boards.*

### Introduction

Nearly half of all the complaints the ASA receives each year are about advertising that may be misleading. In our process, and under the Fair Trading Act, advertisers are required to hold evidence to support the claims they make before they make them.

Keep in mind that ads should comply with both the spirit and intention, as well as the principles and rules of the Codes. When assessing complaints, the ASA Complaints Board will consider the impression consumers get from an ad, which does not always match the intent of the advertiser.

### Jurisdiction

The ASA has developed the [Explanatory Statement on its Jurisdiction and Scope](#). It includes information on the types of advertising which the ASA does not deal with.

### Key Rules in the Advertising Codes

The ASA has seven Codes, and they all include rules on truthful presentation. The main requirement is set out below.

*Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.*

It is important to note the sector Codes also have specific guidelines under truthful presentation for claims when advertising food and beverages, therapeutic and health products and services, financial products and services, alcohol, gambling, and advertising to children.

### The role of the Complaints Board

Advertisements are assessed on the overall impression they are likely to give consumers, we call this the consumer takeout, as well as specific claims and images. Advertisers should consider the likely interpretation of the whole ad, rather than individual parts of it. If an advertisement is part of a wider campaign, each advertisement will be considered on its own merits as consumers may not see the whole campaign.

When a complaint is received, the Chair of the Complaints Board will assess whether there is a possible breach of a Code. If the Chair accepts the complaint, the ASA will request a response from the advertiser, and if relevant, the advertising agency and media companies. The Complaints Board considers the complaint and all the responses. If the complaint is upheld, the advertiser is asked to remove or amend the advertisement. The compliance rate with these requests is between 96-99%.

### Factors the Complaints Board will consider

The substantiation provided by the advertiser must prove the claim being made. When considering the advertiser's response to a complaint, the Board will consider several factors.

These include:

- The type of claim
- The type of product / nature of the goods or service
- The benefits if the claim is true
- The consequences if the claim is false
- The ease and cost of developing substantiation for the claim
- The level of substantiation experts in the field would agree is reasonable

The Complaints Board will also consider:

- Whether research or other appropriate steps were taken by the advertiser before making the claim in the advertisement
- The nature of the claim – i.e. quality or quantity and fact or opinion
- Actual / potential effects of the claim on any person
- Whether comparative claims have been monitored to reflect changing market conditions
- Whether research sufficiently relates to the current product being promoted

### **Types of claims**

#### *Absolute claims*

Claims such as “we are the cheapest”, “fastest growing” and “best price” are absolute claims. The advertiser is making a clear statement about their product or service which is quantifiable, and they should have robust evidence to support it.

#### *Indirect claims*

An implied or indirect claim can occur when products or services are advertised using a comparative approach. For example, in the case of “better than all the rest”, on what basis is that claim being made? Does it relate to store size, quality of service, or range of products and what level of evidence does the advertiser hold to support the claim? Is it just what they hear from customers or is there information from another source that can support the claim?

#### *General claims and pricing*

Advertisers need to ensure the main message in any advertisement is accurate and does not rely on fine print to correct a misleading impression. Clearly displayed product information, including disclaimers or small print, is important. Pricing and other key information needs to be clear, accurate and unambiguous. Any additional charges should also be clearly identified. Take care that a headline offer is not significantly reduced or qualified by small print – this could make it misleading. For example, 70% of everything\* (\*except these 25 brands out of a range of 40). Important information that is crucial to a person’s decision to buy goods or service must not be concealed.

#### *Exaggeration / Hyperbole*

Obvious exaggeration is not likely to be misleading. For example, claims such as “world’s best coffee”, “best night’s rest” or “the most comfortable bed in the world” are subjective claims and impossible to prove given different consumer preferences. These claims are likely to be considered hyperbole.

#### **Claim substantiation**

Substantiation refers to the requirement for verification, confirmation, evidence or proof that a claim made by an advertiser is true. Consumers need to have confidence the advertiser has a reasonable basis for making the claim. Therefore, claims should be supported by sound, relevant, clear and robust evidence.

When making a claim, advertisers should ensure they have the evidence to prove it. The level of evidence will depend on the type of product or service and the claim being made. For example, some health claims may require clinical trials.

#### *Substantiating absolute claims*

When substantiating an absolute claim, the Complaints Board expects the advertiser to have at least the advertised level of substantiation (e.g. “tests prove” or “studies show”). If scientific claims are made, the Complaints Board requires that scientific tests have been undertaken to support the claim. The following are characteristics of scientific evidence:

- Tests, studies, or other kinds of scientific research which are controlled, randomised and methodologically sound
- Based on expertise of a professional in the field
- Objectively conducted by qualified people and published in a recognised, peer reviewed forum
- Using procedures accepted as accurate

The following is not scientific evidence:

- Anecdotal evidence from customers
- Newspaper, magazine or Wikipedia articles
- Sales material from the manufacturer
- Low return rate or money back guarantee
- Testimonials

Advertisers need to make sure their use of technical or scientific data – including tests, surveys, research results and expert quotes – isn’t misleading or deceptive. Ensure an independent body, using industry-accepted methods, has verified the data. Test results must be current, and not overridden by newer results.

When providing a test or study as substantiation for an absolute claim, a full copy of the relevant scientific evidence/study should be provided with your response. ***Please highlight the relevant sections and include an explanation as to why they are relevant to the claim.*** Do not just provide the extract which supports the claim – it is the totality of good scientific evidence available that is important. While the Complaints Board is not an arbiter of scientific fact, it will make an assessment as to whether the evidence applies to and supports the advertised claim.

Please note testimonials alone do not constitute substantiation and opinions expressed in them must be supported by independent evidence of their accuracy.

When using testimonials, these must be genuine, current and representative of the typical (not an exceptional case). All testimonials should be verifiable. There are restrictions on using testimonials in therapeutic and health advertising – see the [Therapeutic and Health Advertising Code](#) for more information.

#### *Substantiating indirect claims*

Advertisers are not always likely to possess evidence to support indirect claims. However, the Advertiser’s response to the complaint should clearly illustrate how they come to possess the “reasonable basis” on which the claim is made.

***PLEASE NOTE: Confidential Information / Substantiation***

The Complaints Board is NOT able to accept or consider any material which is marked as "Confidential" as all information provided is included in our publicly released Decisions. In exceptional circumstances (usually involving proprietary information) precedent is in place to allow the Complaints Board to accept confidential information by way of third-party affidavit. An acceptable third-party affidavit confirming the confidential information held by the advertiser is likely to be sufficient evidence to substantiate the claim being made in the advertisement.

***Further Assistance***

The ASA staff is available to provide advice and assistance about the complaints process. Contact us on 0800 AD HELP (0800 234 357) or (04) 472 7852.