

# ASA COMPLAINTS BOARD PROCEDURES

## 1. Making a complaint

- 1.1. Consumer and competitor complaints will be in writing through the forms on the ASA website or via email with the same information required.
- 1.2. Before a complaint can be processed, the complainant must sign a waiver agreeing not to pursue the complaint in any other forum and confirm they are not a competitor of the advertiser or provide the same or similar goods and services.
- 1.3. If more than one complaint is received and the issues raised are substantially similar, one complaint will be designated as the primary complaint, and the others are duplicate complaints.
- 1.4. The ASA notifies the complainant if a complaint is outside the ASA's [jurisdiction and scope](#).
- 1.5. The ASA Chief Executive may submit a complaint about an advertisement if a serious potential breach of the Advertising Codes is identified.

## 2. Complaints assessment

- 2.1. The Complaints Board Chair determines whether a complaint is accepted or not, in the Chair's sole discretion acting reasonably to support compliance with the Advertising Codes of Practice.
- 2.2. If a complaint is accepted, the Chair determines whether the complaint is a consumer complaint or a competitor complaint.
- 2.3. If a consumer complaint is ruled No Further Action, the complainant, the advertiser, the agency (if relevant) and media company (if relevant) will receive a ruling, with a summary published on the ASA website.

## 3. Consumer complaint resolution

Once the Chair accepts a consumer complaint:

- 3.1. The Chair decides the appropriate dispute resolution process for handling the complaint. This is generally adjudication, but the Chair has discretion to apply more informal dispute resolution processes in appropriate cases.

- 3.2 The ASA advises the Complainant in writing that the complaint has been accepted and about the process to be followed.
- 3.3 The ASA writes to other parties to the complaint with details about the process and option of defending or settling the complaint (including duplicate complaints). These parties could include any of the following, or anyone representing any of the following: the advertiser, the advertising agency (if applicable), the publisher and/or broadcaster.
- 3.4 The Complaints Board Chair may also direct the ASA to write to any other party or parties the Chair decides will assist the Complaints Board in its deliberations.
- 3.5 Upon receiving a complaint (including duplicate complaints), the advertiser may decide to remove or amend the advertisement. If this is the case, the advertiser confirms in writing the advertisement has been removed and will not be used again in its current form or provides the ASA Staff with a copy or link to the amended advertisement.
- 3.6 The Complaints Board Chair determines if the complaint is settled.
- 3.7 If the Complaints Board Chair determines the complaint is settled, a decision is issued to parties and a summary published on the ASA website. In due course, the decisions are also published on the New Zealand Legal Information Institute website.
- 3.8 If the advertiser and / or other parties defend the advertising complained about, on receipt of the responses, the ASA Staff will prepare a board paper for the complaint. The board paper will include the advertisement(s), complaint (s), relevant codes, possible precedents, responses from the advertiser and /or other parties and any other relevant material, for determination by the Complaints Board.
- 3.9 If complaints about the same advertisement that raise substantially similar issues are received after the advertiser has responded, or after a decision has been issued, they will be designated as subsequent complaints. Complainants will be sent a copy of the decision or ruling. Subsequent complainants are not parties to the decision or ruling and do not have a right of appeal in relation to it.

#### **4. Consumer complaints decision**

- 4.1 After considering the complaint made and all relevant material, the Complaints Board votes on whether the advertisement(s) complies with the relevant advertising code(s).
- 4.2 If a vote is not unanimous, the Chair polls members in the meeting and the majority vote decides the complaint. Both the majority and minority views are recorded in the decision.
- 4.3 If there is no majority, the Chair has a casting vote.

- 4.4 The Chair has discretion to adjourn the adjudication if required.
- 4.5 No party to a complaint can attend the meeting and Complaints Board meetings are not open to the public.
- 5. Consumer complaint notification of outcome and compliance**  
Once a complaint has been decided by the Complaints Board:
- 5.1 A written decision must be issued to parties as soon as practicable, under embargo.
- 5.2 If a complaint about an advertisement is upheld, the advertiser, in accordance with self-regulatory principles, is asked to withdraw it and if relevant, media companies are asked not to publish or broadcast the advertisement again.
- 5.3 If a complaint about alcohol naming, labelling and packaging is upheld, the advertiser, in accordance with self-regulatory principles, is asked to withdraw the product from the market and stop advertising it. The timing of the withdrawal will be discussed and approved with the Chair of the Complaints Board. If relevant, the decision may be sent to interested parties including retailers, industry associations, and the New Zealand Police.
- 5.4 In time, summaries of decisions are published on the website, at which point the decision is public. In due course, the decisions are also published on the New Zealand Legal Information Institute website.
- 5.5 Decisions are included in a monthly summary that can be subscribed to on the ASA website.
- 6. Consumer complaint right of appeal**
- 6.1 Parties to a complaint adjudicated by the Complaints Board may appeal. See the Appendix Two to the ASA Constitution and the Appeal Board Procedures.
- 7. Competitor complaints resolution (user-pays)**  
When the ASA receives a competitor complaint:
- 7.1 The ASA will check the complaint form to ensure it contains all relevant information and forward it to the Complaints Board Chair for review.
- 7.2 If the Complaints Board Chair accepts the complaint for determination, the ASA advises the complainant and sends the undertaking to pay the relevant fee.
- 7.3 Before a complaint can be processed, the complainant must agree to a waiver not to pursue the complaint in any other forum and sign the undertaking to pay the relevant fee.

- 7.4 Once the signed undertaking and the waiver are received, the ASA advises the advertiser, advertising agency (if relevant) and media company/s (if relevant) of the complaint and invites their response.
- 7.5 The Complaints Board Chair may also direct the ASA staff to write to any other party or parties the Chair decides will assist the Panel in its deliberations.
- 7.6 In response to the complaint, the advertiser may advise they will remove or amend the advertisement to settle the matter. The Chair may request the complainant's view on any settlement proposal. If the Chair considers the action from the advertiser is sufficient, the complaint can be settled. A decision will be drafted, sent to parties, and in time published on the ASA website.
- 7.7 If the Advertiser defends the complaint, the ASA prepares Panel papers. The papers include the advertisement(s), complaint (s), relevant codes, possible precedents, responses from other parties and any other relevant material, for the Panel's determination.
- 7.8 The ASA sends a set of papers to all parties to the complaint.

## **8. Appointing panel for competitor complaints**

- 8.1 The Complaints Board Chair appoints a Panel to hear and adjudicate on accepted competitor complaints.
- 8.2 The Panel must comprise at least three members including:
- a) A Panel Chair who is a current or former public member of either the Complaints Board or the Appeal Board.
  - b) A current or former public member of either the Complaints Board or the Appeal Board.
  - c) A current or former industry member from either the Complaints Board or the Appeal Board.
  - d) If considered necessary by the Chair of the Complaints Board, a fourth person with expertise relevant to the complaint.

## **9. Competitor complaint procedure**

At the Panel hearing:

- 9.1 Parties can only be represented by a maximum of two people each.
- 9.2 Parties may give an oral presentation of their written submissions.
- 9.3 No new evidence can be introduced.
- 9.4 The Panel may question the parties.

9.5 The Panel Chair may adjourn the hearing.

9.6 Any information provided to the Panel is also made available to the parties (unless the Chair instructs otherwise).

## **10. Competitor complaints outcome**

10.1 After the hearing, the Panel's draft decision is distributed to parties under embargo. Parties have the opportunity to comment on any errors of fact in the draft decision.

10.2 The Panel finalises the decision, it is sent to all parties and released via the ASA website. Decisions are included in a monthly summary that can be subscribed to on the ASA website. In due course, the decisions are also published on the New Zealand Legal Information Institute website.

10.3 If a complaint is upheld, the advertiser, in accordance with self-regulatory principles, is asked to withdraw the advertisement(s) and if relevant, media companies are similarly asked not to publish or broadcast the advertisement

10.4 If the complaint is settled or upheld, the complainant can ask the ASA ask for a refund from the advertiser for the fee they paid.

## **11. Competitor complaints not appealable**

11.1 There is no right of appeal against competitor complaints decisions.