

Date: 28/02/2020

Subject: Section 218 Public Consultation on Advertising Regulations

Dear Ms Lee

I am writing in connection with the invitation to provide a submission on the Legal Services Regulatory Authority's consultation in relation to the making and issue of regulations on the advertising of legal services.

The Advertising Standards Authority for Ireland (ASAI) is the self-regulatory body set up by the advertising industry to maintain the highest standards in commercial advertising and sales promotions in the public interest.

The ASAI Code applies to all media, both traditional and digital. The Code has general provisions (general rules, misleading, promotional practices) that apply to all advertising and sector or issue specific rules such as alcohol, gambling, children that provide additional requirements for relevant marketing communications.

We consider that the nature and the level of complaints we received across different sectors may be indicative of consumer sentiment at any given point of time.

In looking at the level of public concern about legal services advertising, the ASAI has received a very small number of complaints concerning advertising related to legal services, 15 in the last decade.

We would consider this to be an indication that such advertising is generally compliant with the ASAI Code and is not generating significant consumer discourse at a national level.

We note that Section 218 of the Legal Services Regulation Act 2015 provides that the Authority may make regulations in relation to advertising of legal services and provides at 218 (5) (d) areas that may be covered by those regulations. A number of the areas referred to in 218 (5) (d) are also reflected in the ASAI Code, set out below.

Reference to 'bad taste' at point (ii):

The ASAI Code contains provisions relating to 'Decency and Propriety' and 'Fear and Distress'. The Code requires that advertising should not cause grave or widespread offence and that it should not cause fear or distress without good reason.

Reference to unfavourably reflecting on other legal practitioners at point (iii)

The ASAI Code contains specific provisions in relation to comparative advertising and exploitation of goodwill. Whilst comparisons are permitted in the interests of public information and vigorous competition, they should be fair and should not unfairly attack, discredit or denigrate other businesses or their products, trademarks, trade names or other distinguishing marks. In addition, marketing communications should not exploit or make unfair use of the goodwill attached to the name, trademark, trade name, other distinguishing mark, brand, slogan or marketing communications campaign of any other entity or person.

Reference to false or misleading at point (iv)

The ASAI Code has detailed provisions in relation to Truthfulness, Honesty and Substantiation. It requires that marketing communications should not mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise, that consumers' lack of knowledge, credulity or inexperience should not be exploited and the design and

presentation of marketing communications should allow them to be easily and clearly understood.

Further rules detail the requirements for substantiation

While the remit of the potential regulations is broader than the ASAI Code (for example, the Code would not consider stationery to be an advertisement), the specific provisions that are similar to the ASAI Code sections, set out above, would not appear to conflict with the ASAI Code.

In order that consumers would continue to have choice as to where they submit their complaint concerning legal advertising, we would suggest that nothing in any relevant Regulations restrict consumers in where they can complain about such advertising.

Alternatively, should you wish us to consider any additions or changes to our Code, please indicate such areas and we will take full account of same when we approach the 8th Code Edition. In any event, it is likely that we will reach out to your Authority at that time as part of a public consultation.

We would be happy to meet to discuss these matters if that is considered helpful.

Your sincerely,

Orla Twomey
CHIEF EXECUTIVE.

Some Information on the ASAI

The ASAI

The ASAI, founded in 1981, is the self-regulatory body set up by the advertising industry to maintain the highest standards in commercial advertising and sales promotions in the public interest. Membership of the Authority consists of advertisers, agencies and all strands of the media including companies representing broadcast, print, outdoor and direct mail. These interests are represented on the Board of the Authority. The role of the media is particularly important as “the gatekeepers” and they will refuse to publish a commercial advertisement which contravenes the Code. Specifically advertising self-regulation means the strict adherence by the advertising industry to standards drawn up and enforced on behalf of all advertising interests. It involves the enforcement of those standards through the commitment and co-operation of advertisers, agencies and media.

The rules to ensure that these standards are met are set out in the Code of Standards for Advertising and Marketing Communications (7th Edition), based on the principles established by the International Chamber of Commerce and drawn up by the ASAI following detailed consultation with all relevant interests and bodies including the public, consumer representatives, and government department/agencies. The Code applies to advertising in all Irish media including broadcast and electronic media. Formal decisions on complaints are made by our Complaints Committee and details of the membership of the Committee and the procedures involved are set out in this Appendix.

The Code is available [here](#) and hard copies are available on request.

Complaints Procedure

A complaint is evaluated by the Executive, and where appropriate, comments are then sought from the advertiser, the advertising agency or sales promoter. Where, in the light of the response, there is a case for adjudication, the Executive prepares a report with a recommendation for the independent Complaints Committee and sends a copy to the complainant and the respondent who have an opportunity to express further views in the matter before adjudication.

The ASAI Complaints Committee decides whether or not Code rules have been contravened. Details of the case including the names of the advertiser, advertising agency or sales promoter involved together with the Committee's adjudication are set out in a Case Report which is issued to the parties involved and released for publication. A marketing communication which breaks the rules must be promptly withdrawn or amended. A monitoring service carried out by the Executive ensures that this actually happens.

The investigation procedure may be accelerated where circumstances warrant and if a case is particularly grave the Executive may request interim action, including withdrawal of the advertisement, pending completion of the investigation.

Complaints Committee

The Complaints Committee comprises an independent Chairperson, six persons with a background in the advertising business and six other independent members including a nominee of the Competition and Consumer Protection Commission. The six independent members are drawn from a range of backgrounds and currently include senior public servants, a scientist and a social worker who specialises in the welfare of children.

Further information on the ASAI is available on www.asai.ie

Orla Twomey
Chief Executive

Setting Standards for Advertising

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