



How to help stop bad adverts

How to complain about misleading ads – and why the watchdog needs more teeth

The pressure is on for new products to be the smallest, the fastest, the greenest or the healthiest, and it's not uncommon for companies to step over the line and make advertising claims that might mislead.

Which? complained about this ad for 'wholesome' Soft Oaties (left). The ad watchdog, the Advertising Standards Authority (ASA), upheld our complaint; it agreed that the cookies contained high levels of sugar, salt and saturated fat, and that Kellogg's was implying they were more wholesome than they really were. We haven't seen this ad repeated since.

Last year, the ASA received 26,433 complaints about 15,556 ads, resulting in 2,475 being changed or withdrawn.

When it comes to advertising in print, online, on TV or on the radio, the public are the eyes and ears of the ASA. If you see or hear an advert that you feel is misleading, you can report it to the ASA, which will investigate.

The ASA doesn't pre-approve print adverts, and it can't take action in relation to claims made by a company on its website or in its own shops. Trading standards officers (TSOs) police claims of this type, but it's widely accepted that it's not a priority for them.

These aren't the only watchdogs, either. On the opposite page, we show you who to complain to about different types of ad. Note that financial and medical adverts are much more heavily regulated.

It's worth taking action on misleading ads, as our Oaties example shows, but don't expect a conclusion from the ASA in a hurry. If a complaint goes to informal resolution, it takes an average of 12 working days to resolve. If it goes to adjudication, it takes 70 working days on average.

How you'd like ads to be policed

The multibillion-pound ad industry largely polices itself. The ASA is an industry body and relies on erring companies to comply with its decisions, but has no power to force them to do so. (Continued on p68.)



How to complain (See p69 for contact details)

	How to complain	Possible outcomes	Recent case	
Radio/TV	Complain to the ASA via its website, by email or phone. It's unlikely you'll have a recording of a radio or TV ad, but try to be as accurate as possible as to channel, date and time. The ASA will keep you in touch with what happens in the case.	The ASA can pressure the advertiser to change or pull the ad, or ask it to get advice before it advertises again. It can refer cases to regulators, such as the Office of Fair Trading, and issue an 'ad alert' asking the industry not to carry a company's adverts.	A KFC television ad concluded with the words: 'Fresh on-the-bone chicken, every store, every day'. In July 2009 the ASA said it was misleading: the chicken was delivered only three times a week.	
Print, poster, online	Complain to the ASA about paid-for print, poster and online advertising (see below for complaints about claims on a company's own website). Gather evidence, such as original examples of print ads, photos of billboards, and dated screengrabs of websites.	As above.	Thomas Cook's press and poster ads claimed it 'beat the Post Office exchange rates'. In September 2009 the ASA found this breached five advertising code clauses, with 301 Post Office branches offering better deals on US dollars on the day the ads appeared.	
Company websites	To complain about ads on a company's own website, contact trading standards via Consumer Direct. Save dated screengrabs of the website concerned. Trading standards officers (TSOs) will look at the claim's intent and whether a correction has been sought or offered.	If taken up, most cases are addressed within a year. TSOs might issue a caution to the company involved, but the chances of a significant change being wrought by them in this area are relatively slim.	In 2008 the ASA told Direct Marketing (DM) not to advertise at all, as its pyramid scheme was illegal under consumer protection rules. DM's website still contains claims that the ASA considered DM could not prove to be realistic, but it is not within the ASA's remit.	
Financial	Contact the Financial Services Authority (FSA) about ads for non-credit products, and trading standards via Consumer Direct about credit-related ads. If you've lost money because of a financial ad, contact the Financial Ombudsman Service (FOS).	Trading standards can refer complaints to the OFT. The FSA and the OFT can have adverts taken down and can fine companies. The FOS resolves most complaints within nine months and can award redress payments, but it told us that cases hinging on advertising are rare.	In January 2008 the OFT found that Land of Leather advertising failed to state typical APRs with enough prominence and failed to include all important information relating to its credit offers.	
Medicines	Contact the ASA about ads for medicines aimed at consumers. Phone or email the Medicines and Healthcare Products Regulatory Agency (MHRA) about ads for prescription drugs.	There are strict rules on the advertising of prescription medicines. The MHRA has statutory powers to control advertising and can prosecute advertisers.	In March 2009 the ASA brought an ad for Roche to the attention of the MHRA. The MHRA upheld the complaint that it promoted Tamiflu, a prescription-only medicine, to the public. The publisher said it had been used in the UK by mistake.	

It operates on the basis that companies with a reputation to maintain – such as British Gas (see ‘When “free” cost £200’, right) – don’t want bad publicity. It can also issue ‘ad alerts’ requesting that the companies that own advertising space don’t deal with repeat offenders. As a last resort, it can call on the Office of Fair Trading or Ofcom to step in.

In August 2009 we asked 3,695 Which? online members how they thought ads should be policed. The results show that you want much tighter rules:

- 97% want regulators to have the power to ban adverts that break the rules (the ASA can do this only through influence at present)

- 92% want regulators to fine companies that breach rules (the ASA can’t do this as it is not a statutory body)

- 92% want regulators to be able to demand firms run corrective ads when they’ve misled people (the ASA doesn’t have this power)

- 79% would like them to police ads in shops and 83% to police claims on companies’ websites (TSOs currently cover both of these).

The rise of online ads

Currently, the greatest challenge to the effective regulation of advertising is the internet. Spending on online advertising has rocketed from £8.4m in 1997 to £2.9bn in 2008 (at 2000 prices). The online world is littered with misleading claims, but the rules for controlling them are a mess. Unlike radio and TV ads, video and audio ads on the internet aren’t pre-vetted.

Although paid-for internet ads (such as banner ads on websites) are currently policed by the ASA, it was unable to deal with 70% of the 3,500 complaints about online marketing claims it received in 2008, as they were outside its remit.

The ASA’s chief executive, Guy Parker, accepts that this is a problem. He told Which? that these cases ‘seem like advertising to consumers’ and has talked publicly of the ‘remit gap’ that would be filled if the ASA could cover marketing claims on companies’ own websites.

During the course of our research, we randomly picked one week in August 2009 and noted the ASA’s adjudications during that week. We checked



WHEN ‘FREE’ COST £200

Eric Wright 65, Leatherhead

Retired civil servant Eric Wright was tempted by British Gas’s advert offering free gas for a year for those who bought a new boiler plus installation. Winter was approaching and his boiler was more than 20 years old.

Eric, who’d been a British Gas customer for about 40 years, paid nearly £4,000 for the new boiler and its installation. A year later, he

claimed his rebate for the free gas, which he calculated should be £774. But he received a cheque for £571. Only then did he read the small print: the refund was based on the relatively low gas prices of August 2007.

Feeling this was small print that ‘backtracked rather than clarified’ and that was dwarfed by the leaflet’s repeated headline offering

‘free’ gas, Eric complained to the ASA, which upheld the case.

He also complained to British Gas. It offered an extra £229 in goodwill, meaning Eric had been paid the maximum £800 – £26 more than he felt he was owed. The company told Eric that ‘the ASA’s decision places no legal obligation on British Gas’.

to see whether the claims that were judged misleading were still present online three weeks later.

Of 19 upheld complaints, we discovered eight misleading claims could easily be found on the internet.

Six of these fell outside the ASA’s remit as they were claims on companies’ own websites. The ASA is investigating the other two as it believes that

they may be in paid-for space and therefore within its remit.

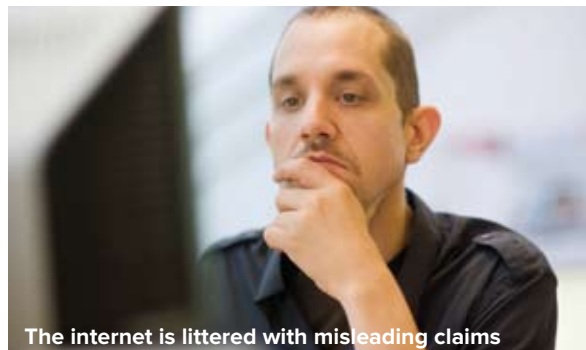
Which? says

Which? members want the ASA to be more powerful. The ASA wants this, too. Among other things, it is part of an industry working party considering how claims on companies’ own websites could be brought into its remit. We would welcome this change. The rules that govern advertising in the UK are also being revised, and the changes are due by the middle of next year.

Advertising is supposed to be legal, decent, honest and truthful. If you see an ad that isn’t, your complaint ought to be handled speedily.

The ASA has strengths, but in the future we’d like it to speed up some of its adjudications and consider requiring companies that have misled consumers to run corrective ads.

We’d like the ASA to speed up some of its adjudications



The internet is littered with misleading claims

**Free gas for a year.
Free gas for a year.**
(Yes, you read it right the first time.)

**Buy a new boiler now and
enjoy up to £800 free gas**

British Gas

**LAST
CHANCE!**
OFFER MUST END
24TH NOV!

Beat the system

Here's our guide to decoding ad-speak, plus some tips for avoiding ads altogether

- 1 Up to:** often seen in claims relating to performance, such as 'get broadband speeds of up to 8Mbps'. Can be meaningless if only a small percentage of products perform this well.
- 2 Typical rates:** often seen in ads for financial products, but not necessarily what you'll be offered.
- 3 Free:** not always, and not for everyone. One common advertising tactic is to leave out unavoidable costs, such as connection fees.



Avoid ads by opting out. The Mailing and Telephone Preference Services are paid for by the direct mail industry and are free to join. You can also use them to stop communications in someone else's name, to a previous address of yours, or for someone

who has died. See www.mpsonline.org.uk or call 0845 703 4599.

If you have a personal video recorder (PVR), such as a Sky+ box, you can fast forward through the adverts in programmes you've recorded. See www.which.co.uk/pvrs for more.

Contacts

Advertising Standards Authority

www.asa.org.uk
020 7492 2222
enquiries@asa.org.uk

Consumer Direct

www.consumerdirect.gov.uk
0845 404 0506

Financial Ombudsman Service

www.financial-ombudsman.org.uk
0845 080 1800 or
0300 123 9123
complaint.info@financial-ombudsman.org.uk

Financial Services Authority

www.moneyadeclear.fsa.gov.uk
www.fsa.gov.uk
0300 500 5000

Mailing and Telephone Preference Service

www.mpsonline.org.uk
020 7291 3310
mps@dma.org.uk

Medicines and Healthcare Products Regulatory Agency

www.mhra.gov.uk
020 7084 2000
info@mhra.gsi.gov.uk

Ofcom

www.ofcom.org.uk/complain
020 7981 3040 or
0300 123 3333

The FREE Which? Money Helpline

Now you can call the Which? Money Helpline for unbiased, jargon-free help – every Tuesday and Thursday in November

If you've ever wondered where to turn for impartial, expert advice on a wide range of money issues, Which? has the answer. Every Tuesday and Thursday throughout November, money experts will be available to call you back and help you find a solution to your money problems.

And although we can't give you financial advice on specific products, we can give you lots of unbiased and jargon-free information to help solve your money concerns.

So, simply mark a Tuesday or Thursday in your diary and give us a call – this valuable service is free to Which? members.



Call **01992 822848**

Lines open Tuesdays and Thursday in November 2009. 10am – 1pm or 2pm – 4pm.

which?