

Global Advertising



Lawyers Alliance



Self Regulation: A Global Perspective

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Argentina

Does your country have a non-governmental challenge process?



Self - Regulatory Organization: CONARP

In Argentina, there is a self regulation commission (SRC) within the CONARP (Advertising Self-regulation Board) which deals with claims against advertisements made by any of their associates or third parties. The 10 member SRC can act either: (i) ex-officio; or (ii) at the request of associate or any individual/organization who files a complaint in respect of any ad that violates any provision of the Code of Self Regulation and Ethics for Advertising (Code).

Within two days from the date of receipt of the complaint, the SRC shall meet and deliberate. If after the deliberation the SCR decides that no provision of the Code is violated by the ad, it shall inform to the complainant of its decision.

If, on the contrary, the SRC concludes that there is a violation of the Code, then it shall inform the interested parties in writing of the infringing company or agency, detailing the provisions that considers infringed. The SCR shall also invite the interested parties for a hearing to present their views and arguments.

In event the SRC decides the ad is contrary to the principles of the Code, it will ask the company and agency to modify, discontinue or withdraw (cease broadcasting) same within 24 hours. If the company and agency agree to this, then the SRC shall inform the complainant and close the file.

In case the company or agency does not respond or decides not to obey the resolution, the SCR shall inform within 24 hours this fact to the complainant, and shall inform the public through the media and press about the questioned ad and the attitude of the company/agency involved. CONARP will also inform the result of the complaint to the enforcement governmental agency such as AFSCA (Federal Authority for Audiovisual Communication Services).

The AFSCA (Federal Authority for Audiovisual Communication Services) -created as a decentralized entity within the National Executive Power-, is the one to safeguard the enforcement of the Law on Audiovisual Communication Services No. 26.522 (Media Law) and to impose any applicable penalties. Among other functions, the authority of application is empowered to pass regulations, resolutions and procedural rules that may be necessary for the better performance of its duties. It is important to mention that the Media Law contains many provisions intended to regulate the broadcasting of advertisements.

In case of infringement, AFSCA is entitled to act as follows:

- call the attention of the advertiser, requiring compliance with the CONARP resolution and with applicable legal framework
- impose a fine
- order to pull the ad off the air

With regard to tobacco advertising, the Tobacco Industry Chamber has a “Tobacco Code” which regulates the promotion, sales, and advertisement of tobacco products. The Self-Regulation Commission of the Tobacco Industry Chamber is responsible for the observance of the Tobacco Code and can evaluate and order the cessation of every activity that contradicts same.

In addition, ANMAT (National Administration of Drugs and Food) is entitled to control the content of any food product ad distributed. Ads must meet the ethic criterion set by the administrative bureau. If the ethics criteria are not met, the Publicity and Advertisement Commission of ANMAT will ask the company or agency to withdraw the ad. Rulings by the ANMAT can be appealed at the Criminal Court on Economic Matters.

Australia

Does your country have a non-governmental challenge process?



Self - Regulatory Organization: Advertising Standards Bureau

The Australian Association of National Advertisers (AANA) is the Australian equivalent of your Association of National Advertisers (ANA) and has developed a code of ethics called the AANA Code of Ethics (Code). Section 1 of the Code deals with competitor challenges. The grounds for such a challenge essentially mirror the misleading or deceptive conduct and false representation provisions of the Competition and Consumer Act 2010. The challenge can be heard by the Advertising Claims Board (ACB), which is administered by the Advertising Standards Bureau (Bureau).

The ACB system involves a user pays alternative dispute resolution process where the advertiser complainant can lodge a complaint about a competitor's advertisement. The advertiser's written complaint and the competitor's written response are considered by a panel of three legal practitioners with advertising law expertise (ACB Panel) which are chosen from a register of such legal practitioners.

Once the ACB Panel has considered the evidence (usually in the form of written submissions) they are required to publish a written determination.

The ACB Panel is rarely used by advertisers (there have been a total of 12 ACB Panel complaints in 13 years), mainly because the determinations published by the ACB Panel are not enforceable. All the ACB can do in respect of an ACB Panel determination in the event that the competitor ignores the ACB Panel's request that the competitor modify or discontinue its advertising, is to refer the matter to a regulatory authority such as the Australian Competition and Consumer Commission (ACCC) and/or send a case report to the various media proprietors.

The ACB process from the time the complaint is lodged to the publication of the ACB Panel's determination usually takes about 2 months. In addition, there are a range of issues that the ACB does not have jurisdiction to deal with. These include:

- Complaints about material that does not constitute an 'advertisement' for the purposes of the Code;
- Complaints raising issues of taste, decency and/or morality;
- Complaints involving trivial issues;
- Complaints about advertising that is the subject of litigation or an order by a government agency;
- Complaints about highly technical matters;
- Complaints about packaging claims; and
- Complaints about advertisements for services or products where a specific industry code applies (eg slimming, alcohol, therapeutic goods)

Given that most competitor challenges need to be dealt with quickly and the fact that there is no binding decision which can be enforced by the ACB Panel or the Bureau, competitors usually bring these type of actions in the Federal Court by way of urgent interlocutory application (which is usually heard within 1 to 2 weeks) or an expedited early hearing (2 to 3 months).

The Advertising Standards Board (ASB), which is also administered by the Bureau, provides a self-regulatory mechanism for dealing with consumer complaints in relation to taste and decency issues concerning an advertisement (see: www.adstandards.com.au). The ASB however does not deal with competitor challenges.

There are other self regulatory alternative dispute resolution processes that are industry or product specific. For example, these include the Australian Self Medication Industry (ASMI) Complaints Panel and the Complaints Resolution Panel (CRP), which relate specifically to therapeutic goods and in the case of ASMI, non prescription therapeutic goods (also known as over-the-counter (OTC) products). The ASMI Complaints Panel is the self regulatory alternative dispute

resolution process that members of ASMI can utilise in respect of each other's advertising claims (whether to consumers or healthcare professionals) and revolves around an industry code of practice (ASMI Code) that is binding on its members only. Most reputable OTC producing companies are members of ASMI and take their membership very seriously. Sanctions for breaches of the ASMI Code include fines (upto AU\$50,000), corrective advertising and the discontinuance of the advertising complained of. The ultimate sanction in the event of non-compliance is expulsion from the membership of ASMI.

The CRP on the other hand is administered by the Therapeutic Goods Advertising Code Council (TGACC) (which is a statutory body formed under the Therapeutic Goods Act 1989) and only deals with complaints concerning advertisements directed to consumers (excluding packaging claims) which are in breach of the Therapeutic Goods Advertising Code 2007. Its sanctions include corrective advertising and discontinuance of the advertising complained of. In the event of non-compliance, the ultimate sanction is a recommendation to the Secretary of the Department Health and Ageing to cancel the listing or registration (as the case may be) of the therapeutic good concerned. Most reputable producers of therapeutic goods comply with the CRP's determinations, or through the Therapeutic Goods Administration, have the recommendation reviewed by a delegate of the Minister of the Department of Health and Aging and ultimately the Administrative Appeals Tribunal and the Federal Court.

Other industry complaint resolution panels specific to the health industry which oversee their respective codes of practice and are utilised by competitors include Medicines Australia (prescription medicines), Complementary Healthcare Council (CHC) (complementary medicines), and Medical Industry Association of Australia (MIAA) (medical devices).

Depending on the industry concerned and the existence of any relevant industry code of practice, a complaint resolution mechanism that competitors in that industry (or industry sector) may utilise to resolve advertising complaints may, or may not, exist.

Austria

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Österreichischer Werberat

There is a self regulation body called "Österreichischer Werberat" (www.werberat.or.at) which may deal with complaints against advertising of Austrian enterprises.

However, in case of a violation of law they may refuse to deal with it and refer the complainant to the ordinary courts. Decisions of the Werberat are not binding for the advertiser and not enforceable and have only the character of recommendations.

Belgium

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: JEP or Jury

A formal non-governmental challenge is both possible and widely used and rather well developed through the Belgian Self Regulatory Authority SRA called 'JEP' or 'Jury'. The problem however is that the JEP does not accept complaints by competitors. This obstacle takes away the usefulness of describing the procedure and the typical steps and timeline of a complaint before the JEP. Often times, though, competitors file complaints through consumers.

Bolivia

Does your country have a non-governmental challenge process?

No

Self - Regulatory Organization: N/A

It is not possible to carry out a non-governmental challenge process because of the lack of self-regulation entities that may handle those matters.

Brazil

Does your country have a non-governmental challenge process?



Self - Regulatory Organization: CONAR

Brazil has an efficient and fully functioning advertising self-regulation system, by which advertisers can be challenged. The Brazilian Advertising Self-Regulating Council (CONAR) was founded as a non-governmental organization composed primarily of advertising agencies whose mission comprehended the enforcement of the Brazilian Advertising Self-Regulation Code - especially ethical rules - and assurance of a fast and objective solution for disputes involving the advertising industry. Any person or legal entity may submit to CONAR a complaint regarding national advertising, regardless of whether it is addressed to consumers, professionals or to business entities. In Brazil, self-regulation does not replace government and legislative regulation, therefore, CONAR only implements administrative penalties. Thus, if there is any interest in pecuniary compensation, a Court Action will have to be filed, based on the Brazilian Civil Code. Brazil has an Advertising Self-Regulating Council named CONAR. Most advertising disputes in Brazil are decided by CONAR and not by the court system.

Any advertiser, group of consumers, NGO, Government Agency or Authority or any entity with legitimate interest, may file a complaint before CONAR, challenging an ad, commercial, or advertising campaign. CONAR does not have powers to ban an ad but its recommendations are accepted by the media and by advertisers. Only rarely CONAR's decisions are challenged in the court system.

CONAR received 366 complaints in 2011 and either recommended the change or banned 64% of the ads. 127 complaints were filed by consumers and 97 by advertisers. The average time for deciding a complaint is 90 days. The Ethics Council of CONAR has 180 members and all of them are volunteers. Most complaints are filed against alcoholic beverages companies, followed by telephone carriers. The number of complaints in 2011 were lower than in previous years.

Canada

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Advertising Standards Canada (ASC)

Canada's national not-for-profit self-regulator is the Advertising Standards Canada ("ASC"). Complaints are adjudicated primarily on the basis of the Canadian Code of Advertising Standards (the "Code"). ASC manages dispute resolution processes for consumers, special interest groups and competitors.

Consumer Complaints: Consumers may submit a complaint in writing about an ad they believe violates the Code. If ASC agrees that the advertisement raises a valid issue, it will notify the advertiser of the complaint. Depending on the nature of the complaint, the advertiser will either respond directly to the consumer or to ASC. If the consumer or ASC is not satisfied with the response, the matter may proceed to the Standards Council (or the "le Conseil des normes", in Quebec) (the "Council"), an independent review body made up of volunteers from across a number of sectors (e.g., legal, marketing, public relations, regulatory, etc.). If the Council upholds the complaint, the advertiser is asked to amend or withdraw the ad. If either side disagrees with the decision, an appeal may be requested. Council findings on upheld complaints are published in ASC's Ad Complaints Reports (the "Report"). Note that if an advertiser withdraws or modifies the ad appropriately before the Council hearing, the advertiser's identity will not be disclosed in the Report.

Special Interest Group Complaint: A special interest group (defined as an identifiable group, representing more than one individual and/or organization, expressing a unified viewpoint that is critical of the content of an advertisement) may also submit a complaint at no cost that an advertisement is in perceived violation of the Code. Such complaints must not be identified as a disguised trade dispute. Special interest complaints are subject to the same complaint procedures as consumer complaints.

Trade Dispute: Upon receipt of the applicable fee and a written complaint from an advertiser (competitor) detailing the basis of the allegation and specifying the provision(s) of the Code which the advertising allegedly violates, ASC will notify the complainant (within five (5) working days) whether ASC agrees an infraction of the Code may have occurred. If so, and the complaint is not excluded from the trade dispute procedure (e.g., if the complaint is already the subject of litigation or review by the Competition Bureau, etc.), ASC will attempt to informally resolve the complaint by convening resolution meetings with the advertisers. If not settled, the matter will proceed to a Trade Dispute Panel (the "Panel") hearing. The Panel is

comprised of advertising, media and legal professionals experienced in advertising. Each party will be given at least fifteen (15) working days' notice (subject to extensions that may be granted by ASC) of the hearing during which each party will make submissions and present its case. Written notice of the Panel's decision will be sent within five (5) working days of the conclusion of the hearing. Either party may request leave to appeal. If the ad is found to infringe the Code, the advertiser will need to confirm in writing to ASC within four (4) working days of receipt of the decision that the advertiser will either withdraw or modify the ad, or appeal the decision. If the advertiser appeals, then, it will need to suspend the ad until the appeal has been adjudicated.

Trade disputes – both the complaints and the decisions – are confidential and are therefore not published in any form.

Chile

Does your country have a non-governmental challenge process?



Self - Regulatory Organization: CONAR

In Chile it is possible to carry out a non-governmental challenge process. Advertising matters are mostly self-regulated by The Chilean Code of Advertising Ethics (CCAEE) which is enforced by CONAR (Council for Self-regulating and Ethical Advertising), a non-profit organization which essentially acts as an Arbitrating Court that resolves disputes or complaints regarding advertising issues. According to the Code, advertising must respect the values, rights, and principles stated in Chile's Political Constitution, especially regarding family morals and values, whilst also recognizing freedom of speech as a pillar of advertising.

CONAR's members include advertising agencies, organizations that group independent advertisers, and various media like television networks, radio stations, magazines and newspapers. By paying their monthly membership fees, they can elect the members of the Board of Directors, and can file complaints for any behavior that contradicts the Code's regulations. It is important to note that complaints can be filed by any individual or legal entity and it must be in written form. These complaints are handled first by the Board of Directors, and appeals are filed before CONAR's Advertising Ethics Court. Sanctions imposed by any of these may range from the temporary interruption of an advertising campaign to expelling a member. However, these decisions are not binding, but are generally respected.

Costa Rica

Does your country have a non-governmental challenge process?



Self - Regulatory Organization: CONAR

In Costa Rica, there is a self-regulatory body called CONAR. CONAR is funded and managed by INPUB, which is a NGO representing the advertising industry. The process at CONAR is very uncomplicated. The complaint is notified to the defendant, who is given a term to answer. After the answer is filed, either party may request an oral hearing before the deciding committee, which rules on whether or not there is a violation of the self-regulation code. Due to its own nature, procedures at CONAR are completely voluntary. Hence, if a party does not accept to appear at the procedure and there are reasonable elements to consider that there is a violation to the Self-regulatory code and/or the Law, CONAR may file a complaint before the Consumer Protection authority, and if the case concerns public health or a grave damage, it may also issue a public statement and publish it.

Czech Republic

Does your country have a non-governmental challenge process?



Self - Regulatory Organization: Czech Self-Regulatory Advertisement Council (Rada pro reklamu)

In the Czech Republic, there is indeed a non-governmental challenge process. It is governed by the Czech self-regulatory Advertisement Council (Rada pro reklamu), or more specifically by its Arbitration Committee (Arbitrazni komise).

A challenge (complaint) to The Arbitration Committee can be filed by any natural or legal person - not necessarily from the Czech Republic and not necessarily the Advertisement Council member. Nonetheless, the complaint must always claim that some specific provision of The Advertising Codex (Kodex reklamy, a self-regulatory non-governmental rules concerning ethical advertising in the Czech Republic issued by the Advertisement Council) has been breached. If the complaint argues that state law has been breached as well ' for instance The Act on Advertising Regulation ' than the Committee hands the complaint to appropriate state body and usually does not further deal with the complaint itself.

The complaint must be made in writing and sent together with corresponding evidence (TV spot, poster, newspaper ad, etc.) to Advertisement Council's address in Prague. The complaint must also identify the person of the complainant sufficiently. Filing of the complaint and the consequential proceedings is wholly free of charge.

After the complaint is filed, the Committee summons the "defendant" to hand over counter-evidence and counter-statements. If the defendant claims that his advertisement is fully in accordance with The Advertising Codex, and that he is not willing to stop or change the advertising campaign according to the complaint, the Committee delivers its decision: The complaint is either found unsubstantiated and dismissed, or if found substantiated, the Committee declares the advertisement detrimental. In the later case, the defendant most usually obeys the decision and stops/changes the advertisement accordingly.

Denmark

Does your country have a non-governmental challenge process? **No**

Self - Regulatory Organization: N/A

In Denmark there is no formal non-governmental challenge process, but in regard to advertising on pharmaceuticals or alcohol, there is the possibility to submit the challenge before a committee.

The Committee on Advertising for Alcohol reviews complaints on advertising containing alcohol and anybody can submit a complaint. A complaint must be written and contain relevant information on the advertising and a copy of the ad together with a description on which regulation has been broken. The advertising may not be older than a year when complaining. The review process takes about 1-2 months and the liable company will be contacted to get a chance to express their opinion in the process.

Ecuador

Does your country have a non-governmental challenge process?

Self - Regulatory Organization: N/A

In Ecuador, there is no non-governmental challenge process. The only option would be to file a complaint before a judge, based in our Consumer Defense Law, which is the main legal body of advertisement regulation. This complaint can be filed by any person, even a competitor, against misleading or abusive advertisement made in Ecuador.

El Salvador

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Consejo Nacional de Publicidad (National Advertising Council - NAC)

El Salvador has a non-governmental, self regulatory entity named “Consejo Nacional de la Publicidad” (National Advertising Council – NAC), that gathers most local media, the major advertisers and the main advertising agencies. An advertising challenge can be filed before NAC, if an advertiser has violated the ethics code that governs the advertising industry. Resolutions of the NAC are mandatory to its members and can include stopping advertisements.

Finland

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Board of Business Process

(*Liiketapalautakunta*) part of the Central Chamber of Commerce of Finland (http://www.keskuskauppakamari.fi/site_eng/).

In Finland, the non-governmental challenge process would be with the Board on Business Practice (in Finnish: *Liiketapalautakunta*) that is part of the Central Chamber of Commerce of Finland (http://www.keskuskauppakamari.fi/site_eng/).

A statement may be requested from the Board if actions of a competitor appear to be against fair business practice. The Board gives statements in matters regarding, e.g., misleading marketing, copying, comparative marketing and derogating of competitors. The Board may take a stand on whether the actions are against the International Chamber of Commerce's Codes of Marketing. The Board does not have the competence to give statements on issues regarding purely contractual rights, industrial rights or copyrights.

A request for a statement should define the claims of the applicant and grounds thereof. A request with appendices is to be filed in as many copies as there are counterparties, in addition to the original request. A counterparty may submit its opinion in the matter before a statement is given. Average process time of the Board is approximately three (3) months. The matter is handled in written proceedings and no witnesses are heard.

The process is confidential. The statements of the Board are not usually public. However, a statement can be made public if it has not been complied with. A statement by the Board is subject to a fee. An application fee of EUR 1.500 is invoiced after the request for a statement has been received. A statement fee of EUR 4.000-5.000 is invoiced after the Board has decided to give a statement in the matter. A publication permission fee of EUR 900 is invoiced if a separate request for publication is made after the statement has been given.

France

Does your country have a non-governmental challenge process?

yes

Self - Regulatory Organization: Autorité de Régulation Professionnelle de la Publicité (“ARPP”)

There is a formal non-governmental process that allows companies and individuals in France to challenge an ad, through a complaint filed with the Jury de Déontologie Publicitaire (“JDP”). The JDP is an independent non-governmental body within the Autorité de Régulation Professionnelle de la Publicité (“ARPP”).

Below is a quote from the web site of the ARPP (<http://www.arpp-pub.org>) that should give you a fair idea of the process:

The ARPP is the French advertising self-regulatory organization. Its goal is to maintain high standards in terms of legal, honest, and truthful advertising, which is in the interest of both the consumers and the advertisers.

Its mission is to uphold the balance between creativity as well as the advertisers' freedom of expression and the responsibility and respect due to consumers. This is at the heart of the advertising self-regulatory system.

CONSUMER'S COMPLAINTS: If you would like to complain about an advertisement ' Contact the Jury de déontologie publicitaire. The Jury de Déontologique Publicitaire (JDP) is an independent authority and handles consumer complaints concerning regarding ads that seem to breach the rules. This body is not competent to deal with complaints concerning ads that violate the law. In this case the relevant governmental authority or court should be contacted.

Functioning of the JDP :

- Anyone can refer a matter to the Jury (private people, associations, government services...)
- In order to be admissible, the complaint must be about (cumulative conditions) :
 - An advertisement ;
 - A clearly identified ad, which was effectively broadcast in France
 - A problem concerning the implementation of the self-regulatory standards
- The Jury meets frequently in order to guarantee that all complaints will be dealt with in less than a month. Most of the complaints are settled within ten days.
- A fast-track procedure, reserved for serious and obvious breaches, enables the Jury to take a decision within a maximum period of 48h.

All JDP decisions are published and can be tracked.

Germany

Does your country have a non-governmental challenge process?

Self - Regulatory Organization: Deutscher Werberat

There is no such procedure by a governmental body. Regulation is done by the parties itself and certain private organisations which may send warning letters and sue in case they find an ad misleading, etc. However, one may file a complaint with the “Deutscher Werberat”. This can be done anonymously.

Greece

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: SEE (Regulation of Communication Council)

The non-governmental advertising challenge in Greece is handled by an SRO named “SEE” (Regulation of Communication Council) which is a member of EASA (European Advertising Standards Alliance). The “SEE” was founded by the Hellenic Association of Advertising and Communication Agencies (EDEE) and the Greek Advertisers Association (SDE).

The Greek SRO “SEE” monitors the compliance with the “Hellenic Code of Advertising & Communication Practices”. Such monitoring of the compliance with the Code can also be exercised proactively.

“SEE” can be activated either after an ex officio monitoring or after submission of a written and signed complaint (not anonymous). Both consumers and competitors are entitled to file complaints. The complaints are adjudicated by a 5member Committee (first instance) and a 12member Committee (second instance).

Decisions are rendered in writing and are reported to the “SEE” website (www.see.gr). The decisions are immediately binding and enforceable. The filing of an appeal before the second instance 12member Committee does not suspend the enforcement of the first instance decision. Recently, the number of decisions rendered has increased.

Guatemala

Yes

Does your country have a non-governmental challenge process?

Self - Regulatory Organization: Código de Ética Publicitario (Code of Advertising Ethics)

In Guatemala there is not a binding non-governmental challenge process for advertisement matters.

There is a self-regulatory 'code' named "Código de Ética Publicitario", (meaning Code of Advertising Ethics), adopted by different institutions which are members to National Council for Advertising, an organization formed by private sector entities. The Council and the Code depart from the basis of "Free Expression" right. The Code establishes the reference which advertisement work should follow and it is administered, at a first level, by segment of service, by each different organization conforming the Council. Ads are submitted for "challenges" before the "Guatemalan Union of Advertising Agencies Union" (UGAP). There is not a detailed procedure for the process and the process will only apply to or can be accessed by "advertising agencies members to UGAP".

The Code has no compulsive strength (neither administrative or judicial); it is an instrument with the effects of a "moral sanction". Decision by UGAP under the procedure should conclude indicating whether the particular advertisement complies or not with the principles set forth in the Code.

Among the Institutions that integrates the National Council for Advertising is the Guatemalan Union of Advertising Agencies (Unión Guatemalteca de Agencias de Publicidad, known by its acronym UGAP). The Advertising agencies affiliated to UGAP, apply to their advertising activities the self-regulatory code, ensuring in their activities the application of ethic principles in order to create a responsible, including national and abroad, advertising.

An advertising agency member to UGAP is legitimated to bring before UGAP a case (an advertisement) it find to be in non-compliance with the principles of the Code. UGAP, through its Board of Directors (which is formed with representatives of the agencies) will hear the parties involved, analyze the case, will seek conciliation and if no conciliation is reached between the parties involved, it will decide emitting its opinion. As anticipated, there is no detailed procedure established in the Code neither under the UGAP's bylaws.

Hungary

Does your country have a non-governmental challenge process?

Self - Regulatory Organization: Advertising Ethics Commission of the Hungarian Advertising Association (<http://www.mrsz.hu>)

In Hungary it is possible to proceed in a formal non-governmental challenge process before the Advertising Ethics Commission of the Hungarian Advertising Association (<http://www.mrsz.hu>). The Commission deals with complains and issues positions concerning the application of the Advertising Code of Ethics.

India

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: The Advertising Standard Council of India (ASCI)

Currently there is no specific legislation which regulates advertising in India. In the absence of an established statutory mechanism dedicated to the regulation of advertising, the industry itself has sought to develop a model for voluntary self-regulation in the form of the Advertising Standards Council of India (“ASCI”). The same is a non-statutory tribunal comprising an association of advertisers established in 1985. The ASCI position on the form and manner of advertising has been laid out in the body’s Code for Self Regulation in Advertising. [ASCI Code for Self Regulation in Advertising (2007)]

The Advertising Standards Council of India (ASCI), an autonomous body formed to regulate advertisements in India, has laid down the Code of Advertising Practice which regulates all advertisements that are displayed in India. The Code applies to advertisers; advertising agencies and advertisements that are created abroad but used in India. The Code is a commitment to honest advertising and to fair competition in the market-place. It stands for the protection of the legitimate interests of consumers and all concerned with advertising - advertisers, media, advertising agencies and others who help in the creation or placement of advertisements.

According to ASCI, if the advertisements offend the provisions of the following Acts of Government of India or various State Governments, as stated herein below, then such advertisements are not acceptable:

- Drugs and Magic Remedies Act 1954
- Prohibition Act of various states.
- Emblems and Names Act 1950
- RBI Rules and Regulations
- Monopolies and Restrictive Trade Practice Act, 1969
- Indecent Representation of Women Act, 1986
- Prize Competitions Act
- Defamatory Ads
- Appointment ads of Private Institutions asking application money.

In other words, the types of advertisement prohibited under the ASCI guidelines include advertisements which:

- Mislead people by false claims;
- Motivate people to commit a crime or promote disorder and violence or intolerance;
- Directly or indirectly promote restricted or prohibited goods;
- Adversely affect friendly relations with a foreign state;
- Disparage any race, caste, creed or nationality; or
- Use particular prohibited words

The Advertising Standards Council of India (ASCI) has no legal status i.e. the Code is not in competition with law. Its rules and the machinery, through which they are enforced, are designed to complement legal controls, not to usurp or replace them.

The purpose of the Code is to control the content of advertisements, not to hamper the sale of products which may be found offensive, for whatever reason, by some people. Provided, therefore, that advertisements for such products are not themselves offensive, there will normally be no ground for objection to them in terms of this Code.

Any complaints against an advertisement should be addressed to the ASCI.

Advertising standards and self-regulation by the advertising industry is an important issue, particularly so in a country such as India where we have our share of the vigilante outfits, the self-styled moral brigade who make a hue and cry if they find any ad offensive.

There can be no two views that self-regulation is the best. Nothing can be better than self-discipline. External regulations imposed by law would not really be necessary if this ideal would have been effective.

Ireland

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: The Advertising Standards Authority of Ireland (ASAI)

The Advertising Standards Authority of Ireland (ASAI) is an independent self-regulatory body set up and financed by the advertising industry and which can be used by both consumers and businesses to make complaints about advertising and marketing communications. Its rules are set out in the Code of Standards for Advertising, Promotional and Direct Marketing which were last reviewed in 2007.

The ASAI Code of Standards provides detailed rules relating to specific industries and types of advertising and sales promotions. It specifically allows for intra-industry complaints although it does recommend that direct contact be made between the parties first before a complaint is made. It also will generally only intervene if the interests of consumers are involved e.g. if your client can prove that the advertising is misleading the consumer. Finally it will not get involved if the matter is the subject of litigation between parties or very likely to lead to litigation.

In terms of procedure once the complaint is received by the ASAI it is reviewed by the ASAI Secretariat to confirm the complaint falls within the remit of the Code. If it falls within the remit the offending advertiser will be sent details of the complaint and asked to provide comments within a time limit of ten days. The complaining party may be asked to substantiate their complaint.

Failure to respond or unreasonable delay in responding is automatically a breach of the Code. Once the response is received the Secretariat will prepare a summary of the case together with his recommendation and forward it to the ASAI Complaints Committee for review and a final decision. A copy of the draft decision will also be forwarded to the complainant and respondent for comment. Particularly flagrant breaches of the Code can be fast-tracked but generally delays can occur at the Committee stage and the length of delays can be dependent on a specific case.

There is no charge for submission of a complaint to the ASAI.

There are alternative methods of enforcement available for brand owners through the courts under the European Communities (Misleading & Comparative Marketing Communications) Regulations, 2007 or a complaint could be addressed to the National Consumer Agency under the Consumer Protection Act, 2007. The

National Consumer Agency is however a statutory body and its prosecution of complaints would lead to court proceedings.

Israel

Does your country have a non-governmental challenge process?

No

Self-Regulatory Organization: N/A

Usually, parties will challenge their competitor's advertisements in court, where they may seek injunctions and/or monetary remedies. Additionally, companies may lodge a complaints with The Consumer Protection and Fair Trade Authority which is headed by the Commissioner of Consumer Protection and Fair Trade. The Commissioner is empowered by the Consumer Protection Law - 1981 ("CPL") and has the authority to act against advertisements which contradict the CPL. However, the Consumer Protection and Fair Trade Authority is a governmental body.

However, advertising on television, is strictly regulated and is subject to non-governmental bodies The Second Television and Radio Authority Rules (Television Advertising Ethics) - 1994 and the Communication Rules (Bezek and Broadcasting) (Advertisements, Services and Sponsorship Broadcasting on designated Channels) - 2004, set specific rules and guidelines relating to advertisements broadcasted on television. The former Rules relate to private television stations (in contrast to state/national television) and the latter Rules relate to private television broadcasted through cable and satellite.

Advertisements broadcasted on the private television channels and cable, in breach of the relevant laws, may be cancelled by the Second Television and Radio Authority and the Cable and Satellite Counsel if they consider that the advertisements are in breach of the relevant rules and regulations. Additionally, both authorities may request corrective statements. Often, complaints against advertisements are lodged by competitors. There are no relevant laws and regulations relating to complaints. Usually, a written complaint will suffice.

Italy

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Institute for Advertising Self-Regulation (IAP)

Aside from potential Court action - under Italian law the following options are available:

- A special, independent Authority (the Competition and Market Commissioner) is in charge of controlling misleading and unfair comparative advertising. The Commissioner is enabled to:
 1. issue a desist order aimed at stopping the illegitimate message,
 2. deliver an injunction imposing corrective advertising,
 3. allocate fines on the infringing company,
 4. eventually suspend the offending company from doing business for a period up to 30 days.
- Another independent Authority (the Communication Commissioner) with similar enforcement powers is competent on control of Radio and Television advertising.
- Industry Self-Regulation:

In Italy local industry self-regulation is administered by the Institute for Advertising Self-Regulation – IAP, a private organization, which represents almost the entire advertising sector, i. e. advertisers (and their trade association), professionals, practitioners and services providers active in the advertising industry and media companies (members to IAP both, on an individual basis as well as through their associations).

The system is based on the provisions of a specific Self-Regulation Code – CAP, which becomes applicable through a contractual agreement obliging all members to the IAP to include a standard clause in all their contract forms. The CAP was adopted in 1966. The code is periodically reviewed and adapted; currently the 45th version is in force (if I recall correctly).

The Code contains: (a) Rules of Behaviour, (b) Special Rules governing Sales Systems as well as certain Product Categories, (c) Complaint system (procedure, organs and sanctions), (d) Protection of Advertising Ideas/Creative Concepts, (e) Social Advertising (including fund raising for social, humanitarian, health-care initiatives).

Even if based on a merely voluntary basis, the self-regulation system is widely acknowledged and has proven to be effective for over 40 years. It succeeded in extending its reputation to a point where the CAP's provisions are commonly recognized as a reliable standard reference for “good business practice” in the advertising sector: a number of local Chambers of Commerce have therefore

inserted the Code's rules in their official collections of "Uses in the Field of Advertising", while in a decision of the Italian Supreme Court (Corte di Cassazione) reference is made to those rules as a useful standard for assessing fair conduct and professional correctness in the area of advertising business.

How does the system work? The self-regulation system can be activated:

- ex officio by the Review Board or the IAP's Secretariat,
- by a consumer (individually as well as through a consumer protection association) with a petition submitted to the Review Board, which – after a preliminary check – may ask for changes of the ad, issue a desist order (in cases of clear violations of the CAP; the order may be challenged before the Jury) or decide to approach the Jury and to open a formal proceeding for infringement,
- by a complaint directly filed with the Jury (the IAP's dispute resolution body, which consists of independent experts and issues decisions on the cases brought to its attention); a standing has everyone feeling that his interests have suffered prejudice by a campaign performed – in violation of the Code – by a subject bound (through personal membership, adherence to an association member of the IAP, or by acceptance of the standard clause) to comply with the Code's provisions.

A proceeding is usually handled:

- in from 2 to 15 days by the Review Board,
- in up to 3 weeks in front of the Jury.

The Jury's decisions are final (no appeal is given) and are rendered at the end of the hearing, after a discussion allowing all parties involved (the complying party, the defendant, the representative of the Review Board) to argue their positions, and a summary of the findings is immediately handed out, while the full verdict is published – through deposit with the IAP's Secretariat – as soon as possible. The decisions are also communicated to the media and both, published in the IAP's official Bulletin as well as posted on the IAP's website.

Compliance with the Jury's decisions has to be ensured within seven working days (after the decision was delivered).

While the system does not provide for sanctions, fines or damage restoration, its effectiveness (i.e. actual enforcement of the Jury's decisions) is widely granted by the fact that all the relevant players in the advertising sector are members to the self-regulation administered by the IAP. So, when the Jury renders a decision or the

Review Board issues a desist order on the basis of ascertained violations of the Code, the advertising professional's image and business reputation are at stake.

Korea

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Korean Advertising Review Board

In Korea, there is a self-regulatory body named "Korea Advertising Review Board" ("KARB") handling dispute matters. For more detailed information on KARB, please refer to its official website, www.karb.or.kr.

KARB was established in 1994 and it offers services of reviewing and mediating any dispute matters concerning advertising in Korean media as well as any advertising claims reported by anyone that may possibly violate any local laws and regulations. KARB applies different examination procedures for different types of medium where the advertisement at issue is published - for instance, the examination procedures for broadcast advertisements (especially for advertisements aired on regional/community broadcasting channels) and advertisements in a printed form differ.

Once a complaint or a report is filed, KARB will examine the advertisement in question in accordance with all applicable local laws and regulations, including the Regulations on Examination of Broadcast Advertisement, and thus, the scope of its examination is deemed somewhat broad as it will review the fairness, reasonableness, safety, etc. of the content thereof, and the appropriateness of language and accuracy of expression used therein, and it also covers comparative advertising. Also, it should be also noted that KARB applies different standards of review for different products/services offered in the advertisement in question. KARB may issue a decision ordering the party which is determined to have violated any applicable law to take a corrective measure (such as to cease broadcasting of the advertisement in question, to allow broadcasting under certain conditions, etc.)

Any decision or examination result of KARB is not legally binding upon the parties concerned, and the parties may subsequently file a lawsuit with the relevant government authorities or a local court to contest it. On the other hand, if the violating party fails to comply with KARB's decision, KARB may ask the relevant authorities to examine the party's advertisement and any decision by the authorities based on the examination result will be binding upon the party. Furthermore, in

practice, the dispute resolution mechanism offered by KARB for disputes between private companies is not yet commonly used in Korea and the effects of KARB's decision have been extended only to the terms of the agreement between the parties concerned.

Lastly, there are other self-regulatory bodies that appear to offer similar services to KARB for specific types of advertisements, such as the Korea Broadcasters Association (www.kba.or.kr) for television commercials and the Korea Cable Television Broadcasters Associations (KCTA: www.kcta.or.kr) for cable television commercials. The examination procedures, standards for review and effects of their decisions are similar to those of KARB.

Luxembourg

Does your country have a non-governmental challenge process?



Self - Regulatory Organization: Commission for Ethics in Advertising (“Commission luxembourgeoise pour l’éthique en publicité” - “CLEP”).

In Luxembourg, the advertising self-regulatory body is the Commission for Ethics in Advertising (“Commission luxembourgeoise pour l’éthique en publicité” - “CLEP”).

The CLEP is an emanation of the Luxembourg Council for Advertising (“Conseil luxembourgeois de la publicité”), a non-profit association of private law formed by the major players active in the fields of marketing and commercial communication in the country. Both the CLEP and the Luxembourg Council for Advertising have been operational since 19 May 2009.

Independent from public authorities and member of the European Advertising Standards Alliance (EASA), the CLEP aims at ensuring loyalty and ethics for advertising in all kinds of media throughout the Grand-Duchy of Luxembourg.

The CLEP has enacted a code of ethics in advertising (the “Luxembourg Code for Ethics”) and is competent to advise the advertising community and to handle complaints. It is also entitled to act on its own initiative.

Advertising agencies can request prior advice before launching an advertising campaign. The request must be duly motivated and filled in writing with the

Luxembourg Council for Advertising. The CLEP will then take a decision on the compliance of the project as soon as possible.

In addition, every legal and natural person can also lodge a writing and duly motivated complaint against an advertisement broadcast by any means. Anonymous complaints or complaints with a lack of motivation will not be processed. If the complaint is justified, the CLEP can ask for modifications or withdrawal. Its recommendations are, however, not legally binding.

Malaysia

Does your country have a non-governmental challenge process?

No

Self - Regulatory Organization: Communications and Multimedia Content Forum of Malaysia (CMCF)

There are no non-governmental bodies that can assist in disputes on advertising issues in Malaysia. However there is a Communications and Multimedia Content Forum of Malaysia (CMCF) , a self-regulatory body that provides an avenue and channel for complaints in relation to content. The relevant guidelines for advertisements are contained in the Communications and Multimedia Content code and the Communications and Multimedia Act 1998.

Structure:

- The Constitution of the CMCF states that a Complaints Bureau be established under Article XIII, to deal with complaints. The Bureau is empowered by the Council to impose sanctions on any member who is considered to have breached the Content Code.
- It will be set up to receive, consider, mediate and if necessary, adjudicate and make a ruling on matters relating to alleged breaches to determine if there indeed, had been a breach of the Code.
- The Bureau will deal with all complaints of a general and or specific nature that relate to the Code. The Bureau will accept complaints made by 'industry players' and the 'general public'.
- The basis of the action of the Bureau is the Code and provision of the Communications and Multimedia Act 1998.

Complaints Procedure:

Any Company or individual can submit a complaint to the CMCF regarding any material advertised on the internet, TV, Radio, Text messages etc.

Complaints can be submitted:

- Online;
- via mail or
- directly by contacting the complaints bureau.

Mexico

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: CONAR A.C.

In Mexico, CONAR, A.C. is the self-regulating advertising standards body, created by advertisers, advertising and/or communication agencies, communication associations and media, to act as a conciliator in disputes regarding advertising, issuing resolutions based on an Advertising Ethics Code.

Among its activities is the drafting of preventive reports regarding advertising campaigns whose dissemination has not yet started. Said advertising is analyzed by a Council that is made up of attorneys, advertisers and advertising experts issuing their resolutions based on an Advertising Ethics Code and other Self-Regulatory Codes but no other legal provisions regarding advertising matters. One may not participate on the Council if they have a conflict of interest with the advertising to be evaluated. The reports issued by CONAR must be duly substantiated and motivated. The response time is approximately 10 business days. The approximate cost is \$3,000 USD for TV, radio or internet ads.

Advertising nonconformity proceeding: According to the CONAR Regulations, members or non-members of CONAR, as well as any consumer, may file a written complaint of advertising nonconformity before CONAR with respect to any Advertising.

The complaining Party may annex to its brief all the relevant evidence available to accredit the facts related to the advertising nonconformity, clarifying everything that should be considered Confidential Information.

The complaining Party may offer a filing of documents or expert evidence to be shown before the Advertising Analysis Committee or before the Board of Directors. Said evidence must be shown on the date agreed upon by CONAR.

CONAR shall notify the Party responsible for the advertising of the filing of an advertising nonconformity proceeding within two days following the filing thereof.

The Party responsible for the Advertising shall answer the respective nonconformity within a term of five business days following the day after the notification of the advertising nonconformity. The response shall comply with the corresponding formalities and respond to each of the referred considerations, facts and violations. Relevant evidence must be included in the response.

The Party responsible for the Advertising may offer expert evidence regarding the material of the nonconformity and this may be shown through technical documents drafted by experts in the art before the Advertising Analysis Committee or before the Board of Directors of CONAR. Said evidence must be shown on the date agreed upon by CONAR.

Any Party may request holding a settlement meeting during the nonconformity proceeding. Said settlement meeting will be held only if there is agreement from both Parties on holding it. CONAR will intervene in said meetings and ensure that the agreements do not pose any harm to consumers.

In case of reaching an agreement during the settlement meeting, it will be recorded in the minutes taken by CONAR which will reflect them. Said minutes will have the effects of a final resolution.

The Advertising Analysis Committee will evaluate the evidence, arguments and considerations issued by the Parties according to their free, informed and justified appraisal.

The resolution report of the Advertising Analysis Committee shall be duly substantiated and motivated, expressing the reasoning that functioned as basis to resolve the matters posed regarding the compliance of the Code of Ethics and other relevant Secondary Codes, as well as determining the corrective measures to be taken in case appropriate.

The Advertising Analysis Committee will send a copy of the resolution to the Board of Directors within a two day term after its issuance, for its final judgement.

Once a final resolution is adopted by the Board of Directors, CONAR shall publish it on its web site as well as in any other gazette or means of communication of CONAR so the Members and general public may know the content thereof. The

resolutions will be available for consultation at CONAR. CONAR may determine whether there will be publications of the resolutions in any other media.

The resolutions of CONAR may not be used or referred to in any way by the Members or the Parties for commercial or advertising purposes.

The Parties to an advertising nonconformity proceeding may file an appeal against the resolution issued by the Board of Directors before CONAR. Such appeal shall be filed within a term of five business days following the notification of the final resolution and it will be analyzed by the other chamber of the Advertising Analysis Committee (that did not examine the advertising unconformity initially). Said chamber will act as reviewer and issue its opinion. This will be sent to the Board of Directors for them to definitively resolve the appeal.

CONAR, within two days following the filing of the appeal, will notify the other Party of such filing by delivering copies of the appeal.

The other Party may submit its response within a five day term following the notification of the appeal.

The Board of Directors, within a maximum term of ten days following the day on which the response to the appeal is filed, will issue a resolution confirming or modifying the original resolution.

The resolution of the Board of Directors shall be duly substantiated on law and fact, expressing the arguments that were used to resolve the queries posed in the appeal regarding the compliance of the Code of Ethics of CONAR and other relevant Secondary Codes, as well as determining the confirmation or modification of the original resolution.

Once a resolution regarding an appeal is adopted or accepted, CONAR shall publish it on its website as well as in any other gazette or means of communication of CONAR so the Members and general public may know the content thereof. The resolutions will be available at CONAR for consultation. CONAR will determine whether there will be publications of the resolutions in other media.

The Board of Directors' resolutions shall be fulfilled by the Parties in the following terms:

a) In cases requesting the modification or suspension of advertising transmitted through TV, radio and/or internet, the Party responsible for the advertising will have a term of four business days after the notification of the resolution.

b) In case of exterior or printed advertising, the Board of Directors will determine the terms of fulfillment depending on the specific case in question.

In case the modifications requested by CONAR were not effected promptly, the Party responsible for the advertisement shall suspend the distribution thereof until the corresponding changes are made.

In case the Board of Directors orders the modification or suspension of an Advertisement, it may not be transmitted again at any time in the format analyzed by CONAR.

In case of non-observance of the resolutions of the Board of Directors of CONAR the following is provided:

a) In case of repeated disregard by the Party responsible for the advertising of a resolution of the Board of Directors, this will have as a consequence the suspension of the responsible Party's rights as a Member of CONAR for one month.

b) If the responsible Party, despite being suspended as a Member, still does not comply, it shall be liable to expulsion from CONAR in accordance with the provisions of the Bylaws.

New Zealand

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Advertising Standards Authority (ASA)

The Advertising Standards Authority ("ASA") is New Zealand's self-regulating advertising compliance body.

The ASA has implemented a set of rules ("Codes") which seek to establish certain standards in advertising. The Codes are both generic and specific covering the matter of ethical and responsible advertising across all advertising content, whilst also covering a number of very specific areas such as advertising aimed at children, liquor, finance, gaming and comparisons.

A complaint can be made to the ASA about an advertisement in any media which the complainant feels has breached the Codes. In making a complaint, the

complainant accepts that they will not pursue the complaint in another forum, and will be required to sign a waiver to that effect.

Complaints to the ASA are in the first instance reviewed by the Chairperson who considers whether the complaint is suitable for Advertising Standards Complaints Board (the "Board") to consider. If it is, the complaint will be circulated to all relevant parties for their comment and the Board will consider whether any of the Codes have been breached. Where a complaint is upheld the advertiser will be requested to voluntarily withdraw the relevant advertising. All decisions are published on the ASA's website and are often widely reported. The name of the complainant is included in the written decision. Media are also requested not to broadcast advertisements that have held by the Board to have breached the Codes. Decisions of the Board may be appealed on certain grounds to the Advertising Standards Complaints Appeal Board.

Where commercial parties make a complaint, the complainant procedure may be subject to filing fees and the ASA may request that the parties or their representatives appear in person.

Nicaragua

Does your country have a non-governmental challenge process?

No

Self - Regulatory Organization: N/A

A formal non-governmental challenge process does not exist.

Nigeria

Does your country have a non-governmental challenge process?

No

Self - Regulatory Organization: Advertising Practitioners Council of Nigeria (APCON)

Nigeria's process for instituting a complaint is with the Advertising Practitioners Council of Nigeria (APCON), the main regulatory body charged with the responsibility of regulating and controlling advertising practice in Nigeria. APCON

in the discharge of its responsibilities issued the Nigerian Code of Advertising Practice and Sales Promotion (NCAP) which sets the rules, regulations and standards for advertising practise in Nigeria. APCON also established committees/panels which are charged with the duty of enforcing the NCAP.

Regarding the complaint process, the NCAP provides that complaints regarding unethical or unprofessional conducts of an advertising practitioner and/or product or exposure of offensive or unacceptable advertisements are to be made in writing to either the Registrar of APCON or the Chairman, Advertising Standards Panel (ASP) of APCON. The written complaints will then be treated by the Advertising Practitioners Investigating Panel (APIP) and the Advertising Practitioners Disciplinary Committee (APDC), as the case maybe and the decisions of the council on the complaints will be appropriately communicated to the parties involved. Please note that in practice, depending on the facts or level of the complaints, the committee/panel may take representations from the parties.

Norway

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: N/A

The most similar process is The Industry's Competitive Committee and the Market Council.

The Industry's Competition Committee

The Competition Committee gives opinions in disputes between traders as to whether marketing is in violation of the law. The Committee is an independent organ which is set up through a collaboration between the big trade associations in Norway. It has its mandate in the Marketing Act. (Law on control of marketing and contract terms of 01.06.2009.). The opinions are given after both parties have stated their opinions, much like the proceedings in an arbitration case.

The Competition Commission provides opinions in disputes between traders as to whether marketing is in violation of the Marketing Act.

Competition Commission's statement expresses how the representatives of the business look at marketing in practice. The statements from the committee are therefore regarded as important in business and in court practice. Although the

Competition Commission's statements are formally advisory and not legally binding, serious businesses will take the Competition committee's decisions into account, and usually respect them. If not the opinions will off course be important if the court should assess the marketing in a civil court case. .

The Market Council

The Market Council is a kind of administrative “court of law”. It carries out supervision of the Marketing Control Act, as well as parts of the regulatory framework governing prohibitions against advertising in the Norwegian Tobacco and Alcohol Act, and the advertising regulations in the Act on Broadcasting.

The Marketing Council was established in 1974. It is subordinated The Ministry of Children, Equality and Social Inclusion, and receives all its allocations from the national budget.

The procedure at The Market Council represents the second of a two-step procedure. Cases concerning assumed violation(s) against regulations in the Marketing Control Act must initially be considered by The Consumer Ombudsman (CO). The CO considers cases upon complaints from consumers and traders, but will also at own initiative look at marketing measures.

Through negotiations with traders CO sought to achieve voluntary arrangements. Failure to reach such a solution, the CO may submit the case to The Market Council. The CO may also take matters of principle to The Market Council, even if there is no dispute with the trader concerned. Traders and consumers with a legal interest may appeal a decision made by The Consumer Ombudsman to The Market Council.

Cases concerning assumed violations of the prohibitions against advertising in the Norwegian Tobacco and Alcohol Act must initially be considered by The Norwegian Directorate of Health, whereas cases concerning violations on the regulations in the Act on Broadcasting must initially be considered by The Norwegian Media Authority.

The Market Council has the authority to issue decisions banning unlawful marketing, contract terms and conditions in standard contracts when deemed necessary in the interests of consumers. It also has the authority to ban unlawful advertising and to repeal decisions made by The Consumer Ombudsman, The Directorate of Health and The Norwegian Media Authority, respectively.

Decisions made by The Market Council can not be appealed to a superior administrative body, but can be brought to an ordinary court. Alleged maladministration can also be brought to the Parliamentary Ombudsman for assessment.

Panama

Does your country have a non-governmental challenge process?

No

Self - Regulatory Organization: N/A

There is no formal non-governmental challenge process in Panama

Paraguay

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: CONAR

In Paraguay, it is possible to proceed in a formal non-governmental challenge process under the CONAR rules.

The Center for Regulation, Norms and Studies on Communication - CERNECO by its initials in Spanish - is a trade association bringing together advertising companies, media, advertising agents and other media professionals. In 1998 CERNECO adopted an Advertising Self-Regulation Code that is mandatory for its members.

The Code contains general guidelines, sets forth the extent to which comparative advertising will be acceptable, guidelines on the protection of privacy, protection of the environment and advertising of toxic products, guidelines regarding advertising directed to children, restrictions on advertising of tobacco and alcohol, and regarding consumer credit, insurance, loans and investments. A few years ago CONAR also ruled on a decency in advertising issue.

The Council for Self-Regulatory Advertising - CONAR - is in charge of enforcement and may act ex-officio or upon a denunciation by any party. CONAR may impose

the following sanctions: correction or banning of the advertisement, publicly warn the infringer, member suspension or exclusion.

CERNECO's link is <http://www.cerneco.org.py/>.

Peru

Does your country have a non-governmental challenge process?



Self - Regulatory Organization: CONAR

In Peru it is possible to carry out a non-governmental challenge process similar to the US National Advertising Division of the Council of Better Business Bureaus. The 'Consejo Nacional de Autorregulaci3n Publicitaria ' CONAR' (National Advertising Counsel of Self Regulation) is the Peruvian advertising self-regulation organisation. It is composed by the Asociacion Nacional de Anunciantes ' ANDA (National Associations of Advertisers), Sociedad Nacional de Radio y Television - SNRTV (National Society of Radio and TV) and Asociacion Peruana de Agencias de Publicidad ' APAP (Peruvian Association of Publicity Agencies), as well as the main advertising industry associations (for example, another media, companies or agencies related to advertising). In the following link you can check who are the associates of ANDA (main advertisers): <http://www.andaperu.org/asociados-regulares>

CONAR attends complaints made by any person, associate or ex officio in respect to any ad -made by their associates or third parties- that violates the Code of Ethics for Advertising (Code) or specific guidelines (refers to tobacco and alcohol advertisement). Each party to the dispute has the opportunity to explain its position and provide supporting data. Complaints are solved (by a written decision) in first instance by the Permanent Commission of Ethics and in second and definite instance by the Direction Board. It is important to mention also that during the process the parties could reach an agreement. Also the complainant may require - during the process- the removal or suspension of the ad.

In the event the CONAR concludes that there is a violation of the Code, it can impose to the infringer a written warning (private or public) and it may also order to publish a rectification. In the same way it will ask the company/ agency to modify, discontinue or withdraw (cease broadcasting) the ad.

Poland

Does your country have a non-governmental challenge process?



Self - Regulatory Organization: Rada Reklamy

There is one non - governmental body dealing with claims related to advertising, namely Advertising Council (the "Council"); for details please see: <http://www.radareklamy.pl>.

General Information: The Council is in charge of self-regulation in the field of advertising. It is committed to increase the standards of marketing communication by promoting good practice and condemning unethical and unfair advertising. The Council is a member of EASA Alliance, an association of self-regulatory organizations from 26 countries worldwide.

The self-regulatory system is based on the Code of Ethics in Advertising (the "Code"), a document drawn up jointly by the representatives of the three main groups on the advertising market in Poland: advertisers, advertising agencies and media.

The specific body within the Council appointed to adjudicate on compliance of the advertising activities with the Code is the Advertising Ethics Committee (the "Committee"). The Committee consists of experts in the field of media and advertising. The proceedings before the Committee may be initiated independently of the proceedings before the court / tribunals etc.

We have represented our clients before the Committee on numerous occasions. The rules of the procedure ensures that the proceedings is fast and efficient. At the same time composition of the judging panel allows various-angle look at the complaint and balanced decisions.

Complaints: Anyone who feels that the provisions of the Code are violated may file a complaint. Please note that the Committee does not adjudicate on the ads (a) not being disseminated in Poland and (b) where the advertiser does not have its seat / branch in Poland, (c) that were previously adjudicated on by the Committee (i.e. the final decision of the Committee was made in respect of such ads).

The complaint should be lodged on the special form. There are separate forms provided for the consumers and the entrepreneurs (the procedure is simplified for the consumers). The form for the consumers may be found at <http://www.radareklamy.pl/formularz-zgloszeniowy-online.htm>. Advertising, while the

form for the entrepreneurs lodging complaint connected with their business activity at http://www.radareklamy.org/img_in//PLIKI/Regulamin_zalacznik_01.pdf. The entrepreneurs lodging complaint connected with their business activity must do so in writing, while in other instances one may lodge complaint also over the Internet (special form available at: <http://www.radareklamy.org/formularz-zgloszeniowy-online.htm>). It is also possible to file joint complaints (i.e. by more than one person). Personal data of the person lodging a complaint is disclosed only to the Council (it is not made available to other entities, in particular to the entities against whom the complaint is being lodged). The complaint may be withdrawn until begging of the session of the judging panel (see below).

The complaints are lodged to the bureau of the Council (which provides also office services to the Committee). As explained above, it is also possible to lodge complaint online.

The complaints are lodged free of charge (with the exception of the entrepreneurs lodging complaint connected with their business activity where fee amounts to circa EUR 1200 net - calculated based on the current exchange rate).

If the members of the judging panel decide that the complaint should be accepted for examination on the merits, the copy of the complaint is being sent to the alleged perpetrator (advertiser). The advertiser has 10 days to answer to the complaint. Any materials delivered after this deadline are disregarded by the judging panel. The parties may ask for admittance of specific evidence (only evidence requested in the complaint and answer to the complaint may be accepted). The date of the session of the judging panel is being fixed not latter than within 14 days following receipt of the answer to the complaint (or lapse of deadline for submission of such answer). The parties are informed on the date of the session of the judging panel and may participate in such session.

After the session, the judging panel adopts the resolution. The parties may appeal against the resolution within 10 days as of receipt of the resolution.

Sanctions: The main sanctions applied by the Committee in the resolution encompass: (i) recognition of an ad as violating the Code; (ii) imposition of an obligation to amend the ad so that it no longer violates the Code; (iii) issuance of an opinion stating that dissemination of a specific ad should be immediately ceased and (iv) publication of resolution issued by the Committee in specific media in a given branch of industry.

All resolutions are made available on the website of the Council.

Please note that according to the Council, the experience of other European countries shows that more than half of advertisers respond very quickly to the recommendations of self-regulatory organization.

The resolutions adopted by the Committee have persuasive effect. However, in specific cases violation of the Code may also constitute violation of good practices, which in turn may be recognized under the Act on Combating Unfair Competition as a tort of unfair competition (i.e. action contrary to honest trade practices). Thus violation of the Code in specific cases may create a link enabling to construe claims based on the statutory provisions of law

Portugal

Does your country have a non-governmental challenge process?

yes

Self - Regulatory Organization: ICAP - Instituto Civil da Autodisciplina da Comunicação Comercial

In Portugal, there is a self-regulatory association called “ICAP - Instituto Civil da Autodisciplina da Comunicação Comercial” which provides for both mediation and arbitration procedures and is usually very fast in deciding the cases which are presented to them. They are part of EASA - European Advertising Standards Alliance.

They have a panel of Arbitrators which decide the cases and their decisions are published online at their website (www.icap.pt) – unfortunately they still do not have an English version of the website.

They decide based on Portuguese law and their Code of Conduct, which in turn is also based on the International Chamber of Commerce Code on Advertising Standards and Commercial Communications.

As an arbitration procedure, their decisions are only binding if the parties accept them or, in case they are members of the association. The vast majority of media entities (including television and advertising agencies) are members of this association and, therefore, their decisions are usually enforced.

Romania

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Romanian Advertising Council (RAC)

With regard to non-governmental opportunities in Romania concerning advertising challenges, the competent body is the Romanian Advertising Council (the “RAC”). This is an advertising entity established for the self-regulation and development of advertising activities including the assurance of fair competition, consumer’s protection and the protection of the general public interest against potentially negative consequences of advertising.

The activity of the RAC is based on a Code of Advertising Practice, prepared by its members (the “Code”), which contains a set of ethical rules to be respected by all those involved in advertising and in any form of commercial communication.

Any natural person, legal entity or State authority can give notice to the RAC and file a complaint related to any form of commercial communication.

Complaints submitted to the RAC must be made in writing and may be submitted by fax, mail, email or on the RAC website.

The RAC recommends that the complaints are detailed, argued and should include:

- a. the subject of the complaint;
- b. the elements likely to breach the Code;
- c. the provisions that the commercial communication may infringe;
- d. the decision expected following the complaint (termination or modification of the campaign);
- e. contact data of the party that submitted the complaint.

The complaints shall be settled by the Ethics Committee, a body organized and operating within the RAC.

After receiving a complaint, the Ethics Committee invites the parties involved to participate in the meetings to be held in this respect.

However, the parties do not have the obligation to accept the invitation and the activity of the Ethics Committee is not conditional upon the parties’ presence in the meetings.

Within 24 hours after filing the complaint, the RAC shall contact the party against which the complaint was submitted, informing it of the object of the complaint, and shall provide it with the supporting documentation. In addition, the RAC shall ask the party at issue to state its official position regarding the complaint.

To settle the complaint, the Ethics Committee may gather additional evidence, hear the parties involved, request the advertiser to provide documents supporting the veracity of the data, descriptions, statements, illustrations and testimonials, and may also appeal to independent experts to analyze the evidence.

Based on the evidence produced, the Ethics Committee will issue its decision, which shall contain information regarding the:

- a. source of complaint;
- b. object of complaint;
- c. date of registration;
- d. meeting date of the Ethics Committee;
- e. decision of the Ethics Committee and reasons thereof;
- f. provisions of the Code based on which the decision was issued;
- g. deadline for implementing the decision.

If, the Ethics Committee decides that the communication violates the rules of the Code, then the Ethics Committee invites the party concerned to take measures so that the communication observes the provisions of the Code.

If the advertisement causes serious prejudices to consumers, then the Ethics Committee may request the emergency implementation of its decision within less than 5 days from the date of communicating such decision.

The Ethics Committee may extend the deadline for implementation only for logistical reasons, at the request of the party concerned.

Russia

Does your country have a non-governmental challenge process?



Self - Regulatory Organization: N/A

In accordance with the Federal Law No. 38-FZ as of March 13, 2003 “On advertising” (the main source of Russian advertising regulation) it is permitted to

establish a self-regulatory organization in field of advertising, which is aimed at representation and protection of rights of its members (advertisers, producers and distributors of ads, etc.), elaboration of requirements for compliance with ethical rules in advertising and execution of control over their fulfillment. However currently there are no such organizations in Russia.

Theoretically a non-governmental organization could be organized which would be entitled to issue guidelines to its members and impose fines/penalties on non-compliant members.

A non-governmental challenge process is not permitted by the Russian legislation in force to alternatively settle the disputes regarding violation of advertising laws. There are only governmental authorities which are entitled to issue resolutions which have legally binding power against the parties to the dispute (state courts/Federal antimonopoly service).

Singapore

Does your country have a non-governmental challenge process?

yes

Self - Regulatory Organization: Advertising Standards Authority of Singapore (ASAS)

One may file a complaint (a challenge) with the Advertising Standards Authority of Singapore (ASAS). Usually, a firm is engaged to analyze the advertisement for any breaches under the Singapore Code of Advertising Practice. The administrative aspects of the complaint will be handled by the Consumer Association of Singapore, which is an umbrella organization. The council which decides upon the complaint is made up of advertisers, advertising agencies, government agencies, media owners and other supporting organizations. One current council member is a law professor.

Procedure: ASAS will acknowledge the receipt of the complaint.

ASAS will write in to the company/advertiser and investigate (if it is within their sanctionable purview)

During the investigation, if a third party/expert/professional opinion is required; the cost of engaging experts will be borne by the complainant.

Decisions will be made at the ASAS Council meeting which is held once a month:

Council members of ASAS, except the chairperson, have a vote each. All decisions are made by a simple majority vote of members present. In the event that votes are divided, the chairperson will have a casting vote.

Any member of ASAS who has a vested interest in the dispute will declare the interest and absent themselves from the deliberations.

ASAS will notify/alert the relevant parties about the outcome, after the Council meeting

The Council's decisions are guided by and in accordance with the code and the decisions shall be final

Sanctions: Withholding advertising space or time from advertisers, and withdrawal of the trading privileges from advertising agencies. Both these sanctions are applied by the media owners.

Adverse publicity. ASAS has the option of publishing details of the outcome of the investigations, ie. naming those who may have offended against the code. This is particularly so for recalcitrant offenders.

South Africa

Does your country have a non-governmental challenge process?

yes

Self - Regulatory Organization: Advertising Standards Authority (ASA)

In South Africa, the Advertising Standards Authority is an independent body set up and paid for by the marketing communication industry. It is a self regulated body and its purpose is to ensure that its system of self-regulation works in the public interest. Its guiding document is its Code of Advertising Practice and it is based on the International Code of Advertising Practice which is prepared by the International Chamber of Commerce. Its principles are related to the particular circumstances of advertising in South Africa. The Code is drawn up by the ASA with input from representatives from the South African marketing communication industry and the Code may be amended from time to time to meet the challenges from industry and society.

All members of the ASA are required to adhere to the Code. The members consist, inter alia of various associations, such as the Direct Marketing Association, the Cosmetic Toiletry and Fragrance Association, Print Media, the National Association of Broadcasters, among others. The primary objective of the Code is to regulate all commercial advertising. The definition of advertising in the Code is very broad and includes any visual or oral communication, representation or notification which is intended to promote the sale, leasing of use of any goods or services or which promotes any cause. It also covers packaging.

The ASA consists of a Directorate, an Advertising Industry Tribunal, the Advertising Standards Committee and a Final Appeal Committee. Complaints may be filed, based on contraventions in the Code, to the Directorate, where the complainant is a competitor of the advertiser or a consumer. The Directorate will consider the complaint and either make a ruling or refer it to the Advertising Industry Tribunal. It is possible to appeal the ruling and, if an appeal is filed, it is referred up to one of the Appeal Committees. Consumer complaints are filed free of charge, while there is a fee payable for competitor complaints.

Essentially, there are 19 General Principles to which all advertisers must adhere to avoid a contravention of the Code. These include principles relating to unacceptable and offensive advertising, truthful presentations (in the instances where objective substantiation will be required to back up claims), misleading claims, disparagement, comparative advertising, exploitation of advertising goodwill and imitation of advertising. This list that I have given to you is not exhaustive.

The advertiser, against whom a ruling has been made in a complaint, must adhere to the ruling and it is the complainant's responsibility to monitor whether or not the ruling is adhered to and carried into effect. There are time lines laid down in the Code for the withdrawal of offending advertising and the time periods are dependent on the type of advertising. For example, a three month phase out period is prescribed for offending packaging while television advertising must be withdrawn immediately, as any deadlines permit. In terms of penalties for contraventions of the Code, the ASA may order that the offending advert be withdrawn or it may direct the advertiser to submit to pre-publication advice. It may also order the publication of the names of defaulting advertisers, thus creating adverse publicity. Where the advertiser ignores a reasonable request for co-operation, the ASA will issue an Ad Alert to its members, thereby calling on the members to refuse to publish any further advertising for that advertiser.

On 1 April 2011, the Consumer Protection Act 2008 came into effect. It also contains provisions that relate to the advertising of goods and services in South Africa and has specific provisions relating to the use of misleading and over exaggerated claims in relation to the advertising of goods and services. The Act sets

up a complaint procedure in terms of which complaints may be filed with the Consumer Commission. This body is, however, a creature of statute and, as such, governmentally created. If you need further advice on how the Commission works and what type of complaints it would consider, please let me know.

Spain

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Autocontrol

In Spain controversies and complaints relating to advertising that your client is interested in can be solved before the advertising self-regulatory organization Autocontrol (www.autocontrol.es). The members of this organization are main advertisers, agencies and media and it is active in different areas like out-of-court dispute settlement and development of Codes of Conduct.

A complaint can be brought before the Jury of Advertising (Jurado de Publicidad) by anyone with a legitimate interest in complaining against a particular advert, i.e. individuals, companies, consumer and business associations or public authorities. It can be filed online by completing a form or by sending a written complaint indicating the data of the complainant, the advertiser, the advertising in question and including the relevant evidence together with the reasons to support the complaint.

The procedure is free for consumers, consumer associations, public authorities and members of Autocontrol. Non-member companies and business associations can file a complaint against payment of a fee.

The Jury resolves complaints about advertising distributed in Spain in the last 12 month prior to filing of the complaint which allegedly violates the ethical standards contained in the Code of Conduct.

Moreover, the Jury can rule on complaints filed against advertisements already broadcasted or published in other countries which have been declared in breach of the applicable rules either by the competent advertising self-regulation body or by a court or equivalent body, provided that there is enough evidence about its imminent broadcasting or publication in Spain.

To make its rulings the Jury follows the procedure laid down in the Regulation of the Jury applying the Code of Conduct and the relevant legislation.

Once the Jury receives a complaint and verifies its compliance with the Rules, a copy of the complaint is sent to the advertiser with the request to reply within 5 working days. If the complaint has been filed against a non-member and he rejects to take part in the proceeding, the Jury will not issue a decision. However, upon request of the complainant a non-binding advisory opinion about the correctness of the commercial communications broadcasted or published by the non-member can be issued.

In all other cases the Jury adopts its decision by majority. If the advertising was found in breach of the Code of Conduct the Jury can take the following decisions which can be appealed before the Plenary Session of the Jury:

- a) Declare that the complained advertisement breaches the rules.
- b) Urge the advertiser to definitely withdraw or amend such advertisement in accordance with the content of the adjudication.
- c) Issue a warning.
- d) In those cases considered particularly serious by the Jury, active publication of the decision in the way the Board of Directors consider more appropriate.

The decisions of the Jury are of mandatory compliance for the members and non-members who expressly accept the competence of the Jury, and voluntary for the rest. The Autocontrol's Board of Directors is competent to supervise the enforcement.

However, despite of the voluntary nature of the system, the majority of the advertisers follow the ruling of Autocontrol.

Further, it is important to point out that in case of a subsequent court proceeding, the courts attach great importance to the settlement issued by Autocontrol and mostly adopt the same position in the judgment.

It is also possible to solve the complaint through Autocontrol's mediation.

Sweden

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Reklamombudsmannen (Ro.)

The main self-regulatory organization is Reklamombudsmannen (Ro.). There are many different bodies covering different industries and kinds of matters.

Switzerland

Does your country have a non-governmental challenge process?

No

Self - Regulatory Organization: N/A

In Switzerland there is no regulation of a challenge (or „call for tenders“) in the law, except for the government and official entities. The company calling for the bids has to make clear if the competitor who enters in the challenge will get paid for the offer or not.

Turkey

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Turkish Advertising Self-Regulatory Board (“RÖK”)

Turkish Advertising Self-Regulatory Board (“RÖK”) is a formal and non-governmental ad challenge authority in Turkey. RÖK was established in April 1994 to implement the Advertising Self-Regulation model in Turkey via adopting the worldwide accepted principles of the International Chamber of Commerce (ICC). RÖK, which was founded by the members of Advertisers Association, the Turkish Association of Advertising Agencies and media, has been requesting the correction of advertisements that they find to be in violation of the International Code of Advertising Practice. It fulfills this function in a manner that is not based on legal

requirements but as a consequence of its commitments to the society and with the conscience of the responsibilities it has against the society. RÖK functions on complaints from consumers and agencies as well as on its own regular auditory methods.

RÖK engages itself in all kinds of cooperation with respect to the effectiveness of self-regulation. However it shall not deal with any objections or disputes that have previously been filed before judicial authorities and in judicial process.

The consumers, consumer and environmental institutions, the related professional organizations and competitors or advertising agencies may file complaints before RÖK. The applications shall be made in writing to the Head of Executive Committee of RÖK and a soft copy of the complaint is also sent to RÖK via email. The advertising principles that have been violated should be clearly indicated and a sample of the advertisement (photograph, video recording etc) should be attached to the application. The members of RÖK can file complaints free of charge while the non-member advertisers pay TL 4,000 (approximately USD 2,280) to the Advertisers Foundation and the non-member and non-advertiser companies (ad agencies, media institutions etc.) pay TL 2,000 (approximately USD 1,140) to ROK for filing each complaint application.

Upon receiving the complaint application, RÖK shall seek the opinion & defense of the advertiser and the advertising agency about which there is a complaint. In the event that either party wishes to review the reports and documents of the other party sent to the Executive Committee as an attachment of their petition, the information requested shall be conveyed to the party in request on condition that they do not constitute commercial secrets. The decisions shall be notified to both parties in writing. In the event that the Executive Committee decides that the advertisements are not against the principles without feeling a need to seek their opinion, the decision will only be notified only to the party having made the application. RÖK renders its decision within 1-2 weeks upon receipt of the complaint application.

As a result of the examination, in case the challenged advertisement is condemned by RÖK, the advertiser is instructed to amend or terminate the broadcast of the advertisement. It is expected that the advertiser corrects or terminates the broadcast of the condemned advertisement in 2 working days upon receipt of the decision. The authority to determine whether the asked correction is realized in conformity with the RÖK decision lies with the Executive Committee. The corrected advertisements cannot be broadcasted without getting the approval of the Committee. If the advertisement is not corrected or its broadcast is not terminated, the media institutions concerned will be informed in writing by RÖK and they shall be requested to terminate the broadcast of such advertisements.

RÖK's decisions impose no legal obligations over the advertisers, but rather the board tries to act as the common sense of the people by trying to preserve the honesty and morality in advertising. The decisions of the committee are of ethical binding nature within the sector, which is a natural consequence of the announcements and the commitments made to the public.

Objections can be raised to RÖK for its decisions; however the objections shall not stop the implementation of the decisions. The parties have to conform to the requisites of the decision until a decision is adopted by RÖK about the objection.

Lastly, we should note that RÖK is only entitled to examine the ads that are broadcast in Turkish media

United Kingdom

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Advertising Standards Authority (ASA)

The United Kingdom has a very well developed system for this kind of complaint which we have used successfully on numerous occasions for our clients.

The system is run by the Advertising Standards Authority (ASA) which is a self regulatory body funded by the industry but independently administered.

The ASA administers a detailed code called the Committee of Advertising Practice (CAP) Code of Advertising. This contains rules which reflect many of the relevant legal issues, such as the eight conditions for permissible comparative advertising set out in the Comparative Advertising Directive and implemented into UK law through the Consumer Protection Regulations 2008.

In addition, one of the particular advantages of using the ASA for a competitor complaint is that it is not dependent upon the use of the complainant's trade mark as the basis for complaint. Therefore while a competitor complaint through the Courts will require there to be usage of the complainant's trade mark as the foundation for a trade mark infringement action, if a competitor simply feels that its rivals' advertising is misleading, it can still make a perfectly valid complaint to the ASA, even if its own trade mark has not been used.

Indeed, in many instances, it is only a competitor who will understand enough about a particular industry to appreciate why an advertisement is misleading.

Consumers may be successfully misled and therefore may not be minded to make a complaint.

The ASA recently tightened its rules to competitor complaints so a competitor is now required write direct to its competitor in the first instance, setting out the details of its complaint and then give the competitor at least five working days to respond. If the complainant receives no response, or not one which it considers is adequate or satisfactory, the complainant is then free to lodge its complaint with the ASA. Indeed, the original complaint letter can form the basis of a subsequent ASA complaint.

The burden of proof under the self regulatory system lies with the advertisers. This is another advantage for a competitor complaint. The complainant does not have to prove that the relevant advertising is misleading. Instead, once the complaint is raised, it is for the advertiser to prove that its advertising is not misleading and that it can substantiate all of the claims made. There is a slight lack of clarity over the standard of proof required, and whether this should be beyond all reasonable doubt (i.e. the criminal standard) or on a balance of probability (i.e. the civil standard). In our opinion, the appropriate standard of proof would be the civil one, but this is an issue which the ASA has repeatedly failed to address.

In the first instance, the ASA will conduct an initial review of the complaint in order to consider whether it is valid. Providing it passes that fairly low threshold, it will take on the complaint and write to the competitor. In some circumstances, if the competitor agrees to amend or withdraw its advertising and accept that there is a fault which it does not seek to defend, it will allow an informal resolution of the complaint. However, in a competitor complaint, our experience is this does not often happen. Usually the competitor is minded to defend competitor complaints and once they have started down that road, the possibility of an informal resolution dissolves.

The competitor will then be given a period of about 14 days to lodge its response to the complaint, although they may request an extension of up to two further weeks. The ASA will then consider the response and produce a draft recommendation. Unfortunately, at this point the system is prone to delays. The length of time will depend on the complexity of the case and whether expert evidence is required. Once it has been drafted, the draft recommendation will be circulated to both the complainant and the competitor for their comment. Again, at this point there are possibilities for delay which go beyond the scope of this note but which we would be happy to outline if required.

Finally, the draft recommendation will be submitted to the Council of the ASA. The draft recommendation sets out the background facts of the complaint, the

issues raised by the complainant (and any additional issues raised by the ASA itself), the defence put forward by the advertiser and the ASA's assessment of that defence. Finally, it will set out the decision recommended to Council by the ASA executive, together with its reasons. The Council does not have to follow the recommendation of the executive, but this is what happens in most cases. A complaint is often broken down into several elements. Some may be upheld but not others.

Once the decision has been made the parties will be notified of Councils' final decision. It will also be notified of the date on which the complaint will be published. This is usually two or three weeks after the notification letter is received. The advertisement cannot be published again and any identical or similar claims cannot be made. The main sanction is adverse publicity, the amount of which will vary depending upon the extent to which it keeps the interest of the media. However all of the decisions will be made available online. Anybody carrying out a search for the particular advertiser will find that their name features high up in any natural search results. Further sanctions can be applied to advertisers who seek to repeat a claim that has been banned but again, that goes beyond the scope of this note. In any event, for the most part, the level of compliance is very high. The review process is also beyond the scope of this note.

Finally, the CAP Code does not apply to advertising in foreign media. It will therefore be important to find examples of the relevant advertising which have been published in the United Kingdom. If the material has been published online, there is a possibility that it will be within the scope on the basis that the content of companies' own websites is now within the scope of the Code, as is online advertising and paid for space. If, however, the website does not appear to be addressed to UK consumers, there is a possibility that the ASA will not take jurisdiction. We can advise further on this point if needs be.

United States

Does your country have a non-governmental challenge process?

yes

Self - Regulatory Organization: National Advertising Division (NAD)

In the United States, advertising challenges between competitors are frequently adjudicated before the National Advertising Division of the Council of Better Business Bureaus (the 'NAD'). The NAD is a specialized, self-regulatory forum tasked with monitoring and reviewing advertising for truthfulness and accuracy. As

its name suggests, the NAD's jurisdiction is limited to disputes concerning advertisements disseminated on a national basis. In addition, the NAD will only review advertisements that are currently running and are not the subject of pending litigation. While NAD challenges are typically brought by competitors, the NAD may elect to initiate a challenge itself if it believes that a particular advertisement is false or misleading.

The NAD process is relatively straightforward. Any party can initiate an NAD challenge by submitting a written complaint, supporting documentary evidence and/or affidavits and a filing fee that ranges from \$6,000-\$20,000 USD depending on the challenger's gross annual revenue. The NAD will review the complaint to determine whether a review is merited before forwarding the submission to the advertiser. Upon receipt of the challenger's complaint, the advertiser has 15 business days to respond to the challenger's allegations and provide evidence that its advertisements are accurate and substantiated. The challenger then has 10 business days to reply, although it may elect to expedite the proceeding by waiving its right to reply. Should the challenger choose to submit a reply, the advertiser then has 10 business days to submit a final response. Following receipt of these written submissions, the NAD will often schedule meetings to discuss each party's position.

After considering the parties' arguments, the NAD will issue a written opinion that summarizes the parties' respective positions and details the NAD's decision regarding the truth and accuracy of the advertiser's claims. If the NAD determines that some or all of the advertising claims at issue are not substantiated, the advertiser will be asked to discontinue or modify its advertising. If the advertiser refuses to modify or discontinue the challenged advertisements, the NAD may report the advertiser to the FTC for further government investigation and action.

If a party to the NAD proceeding disagrees with the NAD's decision, it may appeal the decision to the National Advertising Review Board (the 'NARB'). The NARB operates much like the NAD except that NARB cases are ultimately argued before a review panel comprised of one 'public' member, one 'advertising agency' member and three 'advertiser' members. If an advertiser refuses an order by the NARB that it discontinue or modify its advertising, the NARB may report the advertiser to the FTC.

The NAD challenge process offers several advantages over traditional litigation. Because there is no discovery phase and NAD submissions are relatively short, the process is significantly less expensive than litigation. Additionally, the NAD adheres to a strict timetable – typically providing a written decision within a few months of its receipt of the challenger's complaint. This expedited process helps to ensure that

challenges are resolved while the challenged advertising is still running. Moreover, unlike judicial records, the NAD keeps confidential all data received from the parties.

Uruguay

Does your country have a non-governmental challenge process?

No

Self - Regulatory Organization: N/A

There is no option for a non-governmental process in Uruguay .

Venezuela

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: Ethical Committee of National Association of Advertisers (ANA)

In Venezuela, there is a self-regulatory arbitration center, funded and managed by the National Association of Advertisers (ANA). The arbitration is ruled under and ethical code on self-regulation principles for the advertising industry

The arbitration process is very uncomplicated, but is a voluntary process, limited to the members of ANA of those who agrees to participate in the process. The complaint is notified to the defendant, who is given a term to answer. After the answer is filed, either party may request an oral hearing before the arbiters appointed, which rules on whether or not there is a violation of the self-regulation code.

This procedure is completely voluntary. Thus, if a party does not accept to appear at the procedure, the process will never start, and the sanctions are merely "recommendations" to the infringing party to amend or shut down the advertising piece of conflict. At the most, a public notification of the decision can be published

In practical terms, it has proven to be a very valuable tool for important companies, who opt to take their disputes before a private and serious entity.

Zimbabwe

Does your country have a non-governmental challenge process?

Yes

Self - Regulatory Organization: The Advertising Media Association (ADMA)

The advertising industry is beginning to recover in Zimbabwe after it nearly collapsed in 2008 and early 2009 due to economic conditions in Zimbabwe when the scarcity and shortage of goods was such that there was no need to advertise. On April 1, 2009, Zimbabwe government abandoned the Zimbabwe dollar and adopted the US dollar as legal tender for all transactions in Zimbabwe. Since that time, the advertising industry has slowly begun to recover.

In Zimbabwe, a complaint could be raised through ADMA (The Advertising Media Association), which is a self-regulatory body for the advertising and media industry. It deals only with matters to do with advertising. Besides accrediting advertising agencies, it also has a sub-committee, called the Advertising Standards Authority. A complaint which you describe could be handled by ASA. After considering the dispute / complaint, ASA is empowered to make decisions which may require the parties to do any of the following:

1. withdraw and / or cancel future advertisements;
2. destroy materials which contain or display the advertisement;
3. issue an apology and /or retraction regarding the advertisement through publications.

However, is it not authorized to decide or impose monetary damages. The decision is binding on the parties.



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