Agenda

Advancing economics in business

Self-regulation in advertising: it's a matter of trust

In a marketplace affected by failures in a number of sectors, regulators are finding themselves under increasing scrutiny. Dr Oliver Gray, General Director of the European Advertising Standards Alliance, explains how the system of self-regulation in the advertising industry has evolved over the past 50 years. With 20 of the 27 Member States now with self-regulatory organisations up and running, how successful has the model been?

As the current global financial crisis unfolds, consumers and governments alike are raising concerns regarding the checks and balances used in the banking community. These concerns have begun to generate an atmosphere of distrust regarding the industry and its ability to self-regulate.

The advertising industry has taken great pains over the past 50 years to provide consumers, governments and the industry itself with checks and balances to ensure trust. Evidently, there are some important differences between advertising and banking—not least the systemic financial implications of banking crises. Nonetheless, as I will discuss in this article, lack of self-restraint in advertising can also have widespread impacts on economies and the societies within them. Moreover, one factor that arguably contributed to the current financial crisis was a lack of effective self-regulation by banks and, given this apparent breakdown of trust, it is now likely that there will be a tightening of external supervision. The experience in advertising shows how self-regulation can work, and the conditions conducive to this.

The concept and record of advertising self-regulation

Most people nowadays when they think of advertisements think of the flyer they found in their mail for the pizza place around the corner, or the huge poster across the street for the latest car. Advertisements, however, are not only for commercial goods and services of private companies; they are also used for government services, public sector campaigns, health campaigns, awareness campaigns and much more.

For advertisements to have a positive effect—be it that people remember the advertised product or to raise (brand) awareness—they must not only be creative and memorable but also believable. Without trust an advertisement will not generate a consumer base, which is ultimately what it sets out to do.

The clothing company Benetton famously launched several controversial campaigns in the 1990s with images considered by many as shocking (eg, of AIDS victims and death row prison inmates). As a result the brand was damaged and the company lost a high-profile distribution agreement in the USA.

To ensure high standards in advertising, and thus generate trust, the advertising industry set out to write the first International Code of Advertising Practice in 1937. The basic principles of the code state that advertising should be legal, decent, honest and truthful, with a due sense of social responsibility and a respect for the rules of fair competition. This is still the basis of all advertising codes today.

Over the last 50 years the advertising industry has been making these global principles locally relevant through national codes of practice and by setting up independently run systems to ensure their application. Since it was necessary to have a body that made sure the rules were adhered to, the advertising industry set up national self-regulatory organisations.

The system works in two ways. First, it handles complaints that individual consumers or competitors have made about advertising on TV, radio, print media, outdoor media and new digital forms of advertising. Second, it provides a means of giving feedback on possible problem areas to the industry, either on pre-launch ideas for advertisements or on the overall compliance of advertisements that have appeared.

EASA's European vision and challenges

Conscious that the concept of self-regulation was not in place everywhere in the EU 15, the advertising industry created the European Advertising Standards Alliance (EASA) in 1992. Its initial aim was to ensure that standards were high across the EU and that cross-border complaints in the single market were handled. EASA quickly assumed the best practice mentor role, and since 1993 has been called upon to provide support for the establishment and development of self-regulatory projects across Europe.

As Europe enlarged, EASA also enlarged its operating range. Recognising that self-regulation had to be available consistently across the growing EU, and embracing the newly developing communication channels, EASA launched a Self-Regulatory Charter in June 2004. This Charter, signed by the European advertising industry, set out a ten-point best practice vision.

The Charter also became the basis of a discussion on effective self-regulation with the European Commission in a dedicated Advertising Self-regulation Round Table. The report that was issued after the Round Table placed the issue as 'not self-regulation against hard law but how the two can work together in a modern Europe'.[1]

As a result, the discussions between EU officials, EASA and representatives of the advertising industry, self-regulatory organisations and NGOs showed that the two key criteria for success were participation and benchmarking of performance. These criteria are part of EASA's progress plan on the Charter and, to date, 80% of the targets have been achieved.

Creating a solid self-regulatory network

In terms of participation, EASA has been working hard to make sure that all countries in the EU 27 have a self-regulatory organisation. To date, 20 exist, four are currently being set up, and three countries remain greenfields.

Achieving this result has not been easy. In the new Member States in particular there was little knowledge of how self-regulation might work and what type of system might be appropriate. Some countries felt that terms such as 'self-discipline' or 'self-control' were synonymous with 'censorship' and 'propaganda'. It has taken some time to persuade people that you can still be very creative while respecting rules for responsibility.

On the other hand, several EU countries with emerging democracies and maturing economies were finding that now was the time to consider concepts such as self-regulation instead of hard law. This was especially the case in countries where law courts were (and sometimes still are) experiencing backlogs of up to three years in small claims cases. In this respect self-regulation offers citizens a clear and low-cost solution.

For example, by providing evidence from other countries, Hungarian self-regulatory representatives and EASA managed to persuade the Hungarian government to include a formal recognition of self-regulation in the law. Other countries close by have followed suit. Recognition of self-regulation in an effective legal framework is essential to guarantee the space for self-regulation to thrive and properly complement the law.

Ensuring that all marketing communications are covered

New technologies such as digital media provide new portals for advertising communications. However, critics of advertising and commercialisation of society tend to see these new technologies as another way to invade an individual's space with unwanted information. The reality is that many people love surfing on the Internet to get the latest news or entertainment. For this medium to operate and provide choice, as with all media, funds are needed and, as with newspapers and television stations, for example, most of these funds come from advertising.

The issue with digital media is not that there is advertising but rather that, due to the exponentially growing variety of ways of providing marketing communications, the fine line between commercial communications and editorial may seem to be more blurred.

EASA, after 16 months of negotiations with the advertising industry, self-regulatory organisations and other stakeholders such as the European Commission and consumer groups, recently produced a best practice recommendation on digital marketing communications.[2]

The document provides both clarification on definitions and sets out best practice on identifying digital marketing communications by providing non-exhaustive lists of digital media which would fall within remit, as well as non-exhaustive lists of excluded areas of digital media. According to the document, text and display advertisements, search and classified advertisements, advertiser seeded/endorsed virals, SMS and MMS advertisements, and outdoor video display are within

remit; editorial content (company information, annual reports, news, etc) and pure user-generated content would be outside remit.

This means that, for example, not all information on an advertiser's website is a marketing communication and, to assist the understanding, a positive list of identified features is provided.

All in all, the document provides a basis for self-regulation covering digital marketing communications to become a reality, enabling consumers to address their concerns about online advertising to self-regulatory organisations. Extending the remit is a significant step change for self-regulatory organisations in terms of resources and application. The British self-regulatory organisation, ASA (Advertising Standards Authority), for example, currently deals only with paid-for advertisements (such as pop-ups and banners), sponsored search, sales promotions and virals, and had to turn away 1,789 complaints on online advertisements in 2007 because they were out of remit. Following EASA's best practice would mean a 61% increase in online complaints being handled and more staff to deal with them.

Making sure people know who to complain to

Some people complain that they do not know who to complain to, and it is true that some existing systems are not as well known as they should be. In Ireland almost one in two people know that they can complain to their self-regulatory organisation—ASAI—but this is not the case in all countries.

In recent years, however, 19 out of the 20 existing self-regulatory organisations within the EU 27 have launched campaigns to raise awareness.

As advertising self-regulation is becoming more and more recognised at both the national and European levels, EASA feels that the burden of creating awareness should lie not only with the self-regulatory systems. It would be great if citizens could find the number under 'national advertising watchdog' on government and consumer websites.

The global perspective

As the financial crisis has shown, a flaw in the system can cause enormous effects worldwide. While the parallels with advertising may not seem immediately obvious, there are areas in which there certainly is a read-across. In terms of advertising, subjects such as sustainability, obesity, alcohol harm and digital media are causing a storm in some countries, and the wind is

blowing over to others, calling for local, regional and global responses.

EASA is working with the World Federation of Advertisers and the International Chamber of Commerce to provide the best practice experience and examples from Europe to growing similar forms of self-regulatory systems across the major emerging economies.

As part of this initiative, EASA has launched an International Council, bringing together the already established self-regulatory organisations in Australia, Brazil, Canada, Chile, India, New Zealand and South Africa. This growing membership-based council provides a forum to facilitate information exchange, best practice discussions and communication among advertising self-regulatory organisations around the world.

Can we trust it?

In the advertising market, the implications of bad choices are felt much more directly. If a company launches a campaign in which it blatantly lies about the quality of its product, people may buy it once but never again. The company is bound to go out of business before long.

At the end of the day the results will speak for themselves: 'by your fruits will ye be known'. By listening to the concerns of society and constantly measuring, reviewing and re-evaluating its means to deliver, the advertising industry stays at the top of the league and will be recognised for what it does in society.

As you will see from looking at complaint statistics in Europe, it becomes clear that only 0.1% of advertisements in circulation are complained about. Of that percentage about 20% need to be modified or withdrawn. The most complained about advertisements are those where the complainant has been misled—this accounts for almost 50% of complaints across Europe. Issues of taste and decency (whether an ad causes shock, offence, etc) account for another 19% of the complaints. The products and services responsible for most complaints are travel, entertainment, and telephone and computer/Internet products or services. Areas such as alcohol and food advertising, as well as advertising to children, while attracting political attention, account for less than 4% of total complaints.

What else is the industry doing to improve trust?

Self-regulatory complaints committees and juries are increasingly integrating a majority of lay experts from civil society into their midst to ensure that juries are representative of society and can make informed decisions when interpreting the rules.

Through the system of copy advice, whereby the self-regulatory organisation gives non-binding advice on advertisements that are still at the drawing board stage, the system is able to ensure greater compliance with the code. This system also has an educational factor as agencies and advertisers get to know the code better through using the system.

Some self-regulatory organisations already run some training for professionals, and EASA, together with the European Association of Communication Agencies, is planning on launching a module on self-regulation in various higher education institutes. In addition, compliance-monitoring exercises run by EASA for alcohol and food advertising across several EU countries over a fixed period for TV and print advertisements against national and EU self-regulatory rules have been useful benchmark exercises. In 2007, 97% of all print, TV and online food advertisements which were monitored for a three-month period in eight European countries complied with the code. In the same year, all print and TV advertisements for alcoholic beverages in 15 European countries were monitored for a period of one year. Here the compliance rate was 95.6%.

Useful compliance examples have formed the basis of workshops with the sectors in question on interpretation of the rules and compliance modules, such as the European Forum for Responsible Drinking's online marketing site, www.marketresponsibly.eu.

Pulling our weight

Producing good advertising that is memorable for its message and which builds responsible brands must be the essential goal. Society should not blame the messengers for the very real changes taking place in terms of the family model, lifestyles, use of technology, social responsibility and religious values. Commercial self-regulation has an important gatekeeper role to play in marketing communication content, but this does not replace the very real policy role of the state or the individual responsibility of each citizen in their part of everyday life and society.

The newly elected US president reminded his constituents of the following in his victory speech on November 5th:

> So let us assume a new spirit … of service and responsibility where each of us resolves to pitch in and work harder and look after not only ourselves, but each other.

The advertising industry realises that it must give ever more weight to the trust issue, for it can ill-afford uninformed mistakes in a marketplace already traumatised by regulatory failures. In this, all parts of the advertising industry have a responsibility for their future licence to produce advertising that is not only ethical but that helps facilitate a vibrant, informed consumer economy.

The advertising industry is more ready than ever.

Oliver Gray

[1] Health and Consumer Protection Directorate-General (2006), 'Self-Regulation in the EU Advertising Sector: A Report of Some Discussion Among Interested Parties', July.
[2] See http://www.easa-alliance.org/page.aspx/162.