

Responsive Advertising Regulation: A Case Study from New Zealand

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As the most visible element of the marketing communications mix, advertising has had its critics and, given the choice, developed countries usually select a self-regulatory approach to deal with unacceptable or irresponsible advertising. This article reviews the literature in this area and incorporates thoughtful contributions from research conducted with New Zealand's Advertising Standards Authority. This approach helps bridge the gap between theory and practice and assists advertising practitioners and regulators concerned with advertising control to eliminate undesirable features of such systems in the future. Findings indicate that practice differs from theory in the areas of complaint acceptance procedures and code enforcement. A challenge for future research lies in addressing these two key components of the model in more detail and less breadth.

Introduction

Whilst Best (1997) argues that 'only ethical people can make ethical choices', many cynical observers of advertising in society would argue that advertisers are

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increasingly unethical and irresponsible in their attempts to reach their target markets. For many years advertising has been described as pervasive, intrusive and pernicious, and advertisers labelled mischievous in their attempts to reach and persuade their target markets (Harker and Wiggs 1999).

It has been suggested that the more money spent on advertising activity in a country, the greater the need for protection from unacceptable advertising (Harker 2000); indeed, research has found that a connection exists between annual advertising expenditure in a country and the presence of a self-regulatory body concerned with the investigation of unacceptable advertising (Miracle and Nevett 1987). This leads to the problems within advertising identified by Harker (2000) who suggests that some advertisements may be 'unacceptable', that is, unfair, misleading, deceptive, offensive, false or socially irresponsible. The purpose of this paper is to narrow the gap between theory and practice by adding practical insights from an advertising self-regulation (ASR) body to the existing theoretical knowledge in the area. The literature suggests a conceptual framework to assist in improving the effectiveness of ASR schemes, comprising seven key components (Harker 2003). This paper presents the results of the application of this normative framework, developed in Australia, to the different geographical context of advertising regulation in New Zealand.

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Whilst this research relates particularly to the context of advertising, lessons can be learnt and applied to other regulatory regimes. What is apparent in this analysis of New Zealand's Advertising Standards Authority (ASA) is that the system of advertising self-regulation has evolved in line with the 'responsive regulation' philosophy provided so articulately by Ayres and Braithwaite (1992). The efficacy of the 'tit-for-tat enforcement' (Ayres and Braithwaite 1992, 19) is argued as the best means of achieving effective regulation. In other words, sanctions can be applied as a means of gaining compliance but they should not be overtly applied, rather 'kept in the background' (1992, 19). Further, regulators that 'speak softly' will be more effective and moral suasion is the best route to effective control (Ayres and Braithwaite 1992; Braithwaite 1985).

As will be demonstrated in this paper, the ASA regulators certainly persuade rather than punish overtly, and a soft, consultative tone is used to achieve compliance; this is a method of regulation to which industry responds favourably and thus other stakeholders also achieve their objectives. So, enforcement of decisions, which is paramount to the success of any regulatory scheme, is achieved at the ASA with a big stick used sparingly and quietly.

Complaint acceptance and processing is at the heart of any good advertising self-regulatory scheme. In this case, the ASA veers from the literature for economic reasons and also to make the process more expeditious for the vast majority of complainants who have serious claims to be considered. In an attempt to speed up deliberations, complaints that are received by the ASA are filtered to ensure that spurious complaints are not put before the board for full consideration. In Australia, as a contrast, the Advertising Standards Bureau does not have a filtering system and all complaints are considered by the board; however, whether or not this is effective is open to debate. Some may argue that considering a large number of obviously spurious complaints is a waste of valuable board time and may also mean that serious complaints are lost in the volume; in effect throwing the baby out with the bathwater.

Regulation, Self-regulation and Advertising

The parent body of literature for this research is social control (Streeck and Schmitter 1985) and, in particular, regulatory theory, incorporating collective action and group decision making, in the context of advertising. **Q3**

Regulation is used by government to support, or to obtain the collaboration or assistance of business, as well as to control it (Byrt 1990). Indeed, there are few business activities in developed countries that are not subject to government regulation, either directly or indirectly (Pincus and Withers 1983). However, 'regulation' can have a very broad meaning in everyday life and this is largely a result of its historical usage (Harris and Carman 1984). Indeed, in their typology of regulatory response, Harris and Carman emphasise the fact that regulation is generic and very broad in scope and effect (1984). **Q4**
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Regulation is concerned primarily with social control and specifically the interaction between 'authority' and 'exchange' (Harris and Carman 1984). Ultimately, the authority of the state is used to protect those involved in the exchange process. The concept of exchange, of course, is at the heart of the marketing process and, when dealing with advertising in a society, those people who are exposed to significant amounts of advertising are often those least able to protect themselves when that advertising oversteps the boundaries of acceptability. The item exchanged in advertising is information, and problems arise when misleading, deceptive or offensive information is communicated to the marketplace—in other words *unacceptable advertising*. One of the most important, and current, challenges for both marketing and public policy researchers and practitioners is to ensure that the remedy chosen to avert, or correct, market failure is the best that can be designed (Carman and Harris 1986). Effective advertising self-regulatory frameworks are one such remedy for unacceptable or irresponsible advertising practices. **Q7**

Whilst research in this area is problematic, scholars such as Wotruba (1997) have issued the challenge to scholars, suggesting that the literature on self-regulation in general has little empirical flavour, does not inform about the effectiveness of schemes, does not enlighten about what types of programs are more effective than others, under what conditions and for what interested stakeholders. Given this challenge, it is not surprising that there are cynics among researchers when discussing the merits or demerits of industry self-regulation; indeed, some researchers have likened self-regulation to 'letting the lunatics run the asylum' (Ducret 1991, 76). **Q8**
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Before the advent of self-regulation of any industry, a strong driving force must be apparent. A 'knee-jerk' reaction from many industries when faced with the prospect of government regulation is to opt for self-regulation in an attempt to stave off what is seen as 'interference' in the marketplace by government bodies. In the advertising industry this is often the impetus needed to establish the foundations for self-regulation and, whilst the reasons might be purely enlightened self-interest, the positive outcome, when compared to a legal alternative, is a fast, cost-effective system, supported and paid for by the industry. However, where advertising industries opt for self-regulation of their members' conduct and behaviour, they pay the price of constant scrutiny by interested parties such as government bodies, consumer groups and social commentators. Many ASR schemes around the globe, including New Zealand, have evolved in this way.

Whilst ASR is an attractive option for advertisers, a prerequisite to continued operation and little direct government involvement is the concept of 'collective

action'. Collective action has three main purposes (Harris and Carman 1984, 46); first, to realise economies of scale in production; second, to internalise the benefits of productive actions; and, finally, to change the balance of power between participants in the exchange process. However, when focusing on the marketing exchange process, and in particular the activity of advertising, unless the vast majority of advertisers, agencies and media are committed to, and involved in, the ASR scheme, continued self-regulation will be short lived.

Gupta and Lad (1983, 419) suggest that effective industry self-regulation will occur only if the firms in the industry, the advertisers, decide to *cooperate* with each other. Similarly, where the ASR scheme incorporates a national tripartite system (Boddewyn 1992, 9; Sinclair 1992, 3) and the advertisers, agencies and media are involved in the regulatory process, such cooperation should be significantly enhanced. This collective action, which grows out of the need to regulate, succeeds in spreading the decision-making responsibility across a group. Although group decision making has received a number of criticisms over the years (wasting of time, evading individual responsibility, producing conformity and compromise (Ofner 1959)), the benefits of quality and acceptance of group decisions still prevail (Jewell and Reitz 1981).

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The New Zealand Context

Advertising expenditure and activity in New Zealand has seen a healthy increase over the past decade. In this context, advertising regulators need to consider whether increased expenditure necessitates stricter provisions to protect vulnerable groups (Harker 2000; Miracle and Nevett 1987). Table 1 displays the trends in advertising expenditure over the past five years in New Zealand.

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Modelled on the UK system of ASR, New Zealand's Advertising Standards Authority (ASA) was formed in 1973 and its founding members included advertising agencies and print and broadcast media. Two key objects of the ASA were established to underpin its work in ASR (Wiggs 2003):

- (1) To seek and maintain, at all times and in all media, a proper and generally acceptable standard of advertising and to ensure that advertising is not misleading, either by statement or by implication,
- (2) To encourage media voluntarily to co-operate in any self-regulation that may be necessary from time to time.

In 1973 the ASA created codes of practice and instigated a complaints process. Fifteen years later, in 1988, the Authority established the separate and independent Advertising Standards Complaints Board (ASCB) to determine complaints from people who felt that ads had breached the codes of conduct. In 1994 an appeals board (the Advertising Standards Complaints Appeals Board (ASCAB)) was born. Both the ASCB and ASCAB are funded and resourced by the ASA, and both of these bodies have significant public representation. The complaints handling body, the ASCB, has eight members—four public and four industry—with the Chair being a public member and having a casting vote. The appeals body, the ASCAB, has three members—two public and one industry—with the Chair being a public member (Wiggs 2003).

The New Zealand system of ASR can be described as one of the most comprehensive in the developed world, however, as it encompasses the issues of both *taste and decency* and *misleading* advertising; the Australian system covers only taste and

Table 1. Advertising expenditure in New Zealand, 1999–2003^a

Media	1999		2000		2001		2002		2003	
	NZ\$	%	NZ\$	%	NZ\$	%	NZ\$	%	NZ\$	%
Newspapers	566	40	596	40	606	41	628	40	689	37
Television	487	34	501	34	479	32	516	33	592	32
Radio	178	13	190	13	196	13	203	13	224	12
Magazines	159	11	157	11	166	11	173	11	194	10
Outdoor	18	1	28	2	32	2	37	2	47	3
Cinema	12	1	13	1	9	0.5	8	0.5	12	0.5
Online	—	—	—	—	—	—	—	—	8	0.5
Totals	1420	100	1485	100	1488	100	1565	100	1857	100

Note:

^aAddressed and unaddressed mail is not included as the figures are too small. All figures are rounded.

Source: ASA (2004).

decency, and the UK system changed recently (in November 2004; Ofcom 2004) to a fully comprehensive system, from a focus on non-broadcast advertising. As a summary, Table 2 provides a comparison of the key features of the New Zealand, Australian and UK ASR schemes.

In summary, the ASA can be analysed using Harker and Harker's (2002) framework, comprising the macro elements of ASR; a solid legal regulatory framework, a complementary ASR framework, and effective industry compliance.

Research Design

There are three rationales for selection of a single-case study. First, when the case in question represents the *critical* case in testing a well-formulated theory; second, where the case represents a *unique* or *extreme* case for consideration; and, third, where the case is a *revelatory* case (Yin 1994). Given the dearth of studies in this area and thus still-emerging literature, the ASCB cannot be classified as a *critical* case. However, as the only advertising complaint handling body in New Zealand, it can be described as *unique*. Similarly, the ASCB can also be classified as a *revelatory* case in that researchers have never previously been granted such depth of access to investigate the role of the ASCB in New Zealand. The research design for this work was concerned with seeking evidence relating to the ASCB's processes in relation to the literature in this area, and two methods of data collection were used.

Non-participant observation (Easterby-Smith, Thorpe and Lowe 1993) was conducted through attendance at a board meeting, and during two days spent in the Secretariat offices where complaints were processed. Semi-structured depth interviews were also conducted with the regulators; all interviews were tape-recorded, transcribed and returned to respondents for verification. The grounded theory approach of Strauss guided the analysis of the data in this study, and methods advocated by Strauss and Corbin (1990) were employed in the quest for increased rigour.

Applying the Theory to Practice in New Zealand

The foundations for the components of an ASR scheme (Harker 2003) were drawn from the literature, and fieldwork was then conducted with the, then, Advertising

Table 2. Comparison of New Zealand, Australia and the United Kingdom

	New Zealand: Advertising Standards Complaints Board	Australia: Advertising Standards Board	United Kingdom: Advertising Standards Authority
Established	1988	1998	1962
Funding	50:50 voluntary levy/subscriptions 4:4	0.035% billings 0:14	0.1% billings 4:8
Complaint handling body—industry/non-industry member ratio	13	1	1
Number of codes/guidelines administered	Misleading, untruthful, offensive, all media	Offensive, all media, except Internet	Misleading, untruthful, offensive, all media
Coverage	No	No	Yes
Monitor advertising	Yes	No	Yes
Filter system	Yes—ASCAB	Yes—ACB	Yes—CAP
Appeals procedure	Yes	No	Yes
National tripartite system	Separately, by Large Competitors' Sub-board	Separately, by Advertising Complaints Board	By CAP
Industry complaints considered	Modify or withdraw ad.	Request for modification or withdrawal of ad.	Modification or withdrawal of ad. Else
Sanctions			adverse publicity, refusal of space, removal of \$ incentives
Audit conducted	Yes, regularly	Occasionally	Not known
Member of European Advertising Standards Alliance	Yes	No	Yes
Public awareness campaigns	At industry discretion	At industry discretion	ASA discretion

Standards Council. Harker's (2003) findings suggest that seven key areas should be addressed in an effort to improve the effectiveness of ASR schemes.

Key differences between the literature and practice were found, and these findings have had an impact on Australian regulatory practice in the field of advertising. For example, the new ASR body in Australia now includes an audit as part of its *modus operandi*, the office of the Chair (which was found to be overbearing in the previous regime) is shared and revolves at each meeting. Further, the filter system that rejected 50% of all complaints has been abolished, although, as discussed here, this may not be a change for the good.

Harker's (2003) seven key components of effective ASR are presented in Table 3 and also discussed in relation to the analysis for this New Zealand (NZ) study; key deviations from the literature are highlighted.

1. Funding

Apart from stating that funding of ASR schemes must be sufficient, not token or symbolic (Armstrong and Ozanne 1983), there is little guidance or depth supplied by the literature in this area. However, it is apparent that appropriate funding provides a firm foundation for an independent system (Harker 2003). The funding responsibility in NZ is equally divided between a voluntary levy paid by advertisers and subscription by members who pay on a formula relating to revenue of that medium. This approach is different from some other schemes (such as the United Kingdom and Australia) where a levy alone is found to be the most efficient way to secure funding. However, NZ's scheme appears to be adequately funded, both in the amount of, and access to, funds; the NZ regulators operate a bottom-up, objective and task approach (Shimp 2003), whereby the process is to establish an expenditure budget and then secure enough money to fund the budget through the funding scheme.

2. Creation of a Written Code

The literature in this area suggests that a code should be created through consultation with representatives from industry, the public and lawyers; the codes should be written in a clear manner, be easily accessible and revised periodically (LaBarbera 1980; Armstrong and Ozanne 1983; Boddewyn 1985; Wiggs 1992). In terms of code creation, the ASA has a Codes Committee with the power to co-opt members from government agencies to assist in the process. There are also a minimum two rounds of public consultation with the aim of achieving a consensus view. Once operational, the codes are reviewed regularly, either as a matter of normal evolution or as a response to requests from stakeholders such as consumer groups, politicians or government agencies. For example, the *Road Safety Code* is currently under review following requests from a government agency and the industry. Prevailing community standards also inform the creation and evolution of codes; for example, following the debate about the influence of advertising on rising levels of obesity, there is now an industry accord of good conduct and the *Food and Children's* codes will be reviewed as part of that process (Wiggs 2004). Another current debate in New Zealand relates to Direct-to-Consumer Advertising of prescription drugs, which is allowed in America and New Zealand, is being considered in Hong Kong and is soon to be debated in Europe and Australia.

Table 3. Towards effective ASR: a review of the literature

Component	Constituent features	Author(s)
1. Funding	<ul style="list-style-type: none"> • Funding must be sufficient, not 'token' or 'symbolic' 	Armstrong and Ozanne (1983)
2. Creation of a Written Code	<ul style="list-style-type: none"> • A code of ethics should be created, dealing with specific problem areas that consumers have highlighted • Representatives from industry, the public and lawyers should be consulted in drafting the code • The codes should be written in a clear and unambiguous manner, be easily accessible and revised periodically to remain relevant, practical and timely 	LaBarbera (1980); Armstrong and Ozanne (1983); Boddewyn (1985); Wiggs (1992)
3. Complaint Acceptance	<ul style="list-style-type: none"> • There should be systematic monitoring of advertising in all media • Complaints should be encouraged and accepted from all sources and not 'screened out', else the flow of complaints might not reflect the concerns of those who use the process 	Moyer and Banks (1977); LaBarbera (1980); Boddewyn (1985)
4. Code Enforcement	<ul style="list-style-type: none"> • An independent code administrator should take receipt of the complaints • If a complaint cannot be resolved informally, a hearing should be held before a grievance committee that should include an equal number of representatives from industry and the public • Procedures for due process should be incorporated into the enforcement process: <ol style="list-style-type: none"> a. reasonable notice of the charges b. notice of the hearing c. a right to confrontation and cross-examination d. an opportunity to refute all charges e. a hearing before an unbiased tribunal • Alleged offenders should be involved • If violation is proved a penalty should be imposed; immediate economic incentives are essential • An appeals procedure should be in place 	Moyer and Banks (1977); LaBarbera (1980); Boddewyn (1985)

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|---------------------------------|---|--|
| 5. Audit of ASR Program | <ul style="list-style-type: none"> • There should be periodic audit of the ASR program to: <ul style="list-style-type: none"> a. identify weaknesses and determine effectiveness b. survey consumers and government on: attitudes towards advertising, awareness of the ASR system, and satisfaction with complaint resolution c. review enforcement procedures and scope of service d. analyse sources of complaints e. analyse type and frequency of complaints • The audit should be undertaken by a group with public representation to ensure credibility and the report should be widely distributed and publicised • The industry must be educated in regard to: <ul style="list-style-type: none"> a. standards b. recent research c. precedent decisions • The public must be informed: <ul style="list-style-type: none"> a. through public disclosure of disciplinary actions through the media b. care must be taken with complainants in the handling of their cases c. full information should be provided on the mode of operation, who considered the case, and a full and written decision must follow • The codes and complaint procedure should be widely publicised to members of the industry, government and the public • Member bodies should assist by distributing pamphlets on the code and ASR details | Moyer and Banks (1977); LaBarbera (1980); Wiggs (1992) |
| 6. Education | <ul style="list-style-type: none"> • The industry must be educated in regard to: <ul style="list-style-type: none"> a. standards b. recent research c. precedent decisions • The public must be informed: <ul style="list-style-type: none"> a. through public disclosure of disciplinary actions through the media b. care must be taken with complainants in the handling of their cases c. full information should be provided on the mode of operation, who considered the case, and a full and written decision must follow • The codes and complaint procedure should be widely publicised to members of the industry, government and the public • Member bodies should assist by distributing pamphlets on the code and ASR details | Moyer and Banks (1977); Boddewyn (1985); Wiggs (1992) |
| 7. Creation of Public Awareness | <ul style="list-style-type: none"> • There should be periodic audit of the ASR program to: <ul style="list-style-type: none"> a. identify weaknesses and determine effectiveness b. survey consumers and government on: attitudes towards advertising, awareness of the ASR system, and satisfaction with complaint resolution c. review enforcement procedures and scope of service d. analyse sources of complaints e. analyse type and frequency of complaints • The audit should be undertaken by a group with public representation to ensure credibility and the report should be widely distributed and publicised • The industry must be educated in regard to: <ul style="list-style-type: none"> a. standards b. recent research c. precedent decisions • The public must be informed: <ul style="list-style-type: none"> a. through public disclosure of disciplinary actions through the media b. care must be taken with complainants in the handling of their cases c. full information should be provided on the mode of operation, who considered the case, and a full and written decision must follow • The codes and complaint procedure should be widely publicised to members of the industry, government and the public • Member bodies should assist by distributing pamphlets on the code and ASR details | Moyer and Banks (1977); LaBarbera (1980); Armstrong and Ozanne (1983); Boddewyn (1985); Wiggs (1992) |
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Complainants are not expected to have knowledge of the individual codes as the regulators assist in the process on receipt of the complaint (Wiggs 2004) and recent ASA market research has shown that about 9 out of 10 (92%) New Zealanders are aware that they can complain about television advertising, with nearly two-thirds (64%) aware of where to complain (Wiggs 2004). The codes are easily accessible and given free to enquirers and complainants. In terms of clarity, few ASR bodies actually achieve the levels of 'plain English' needed to protect the vulnerable and there appears to be a continuum ranging from providing one code to many. The United Kingdom and Australia, for example, have only one written code in place; in the United Kingdom the code is comprehensive and lengthy, while Australia's code is short and vague. New Zealand's ASR scheme is at the opposite end of that continuum, providing numerous advertising codes, and this seems to be an attempt to provide focused, rather than voluminous, content. To discuss which approach is 'best' is beyond this paper but worthy of examination in future research. Knowledge of the complaint process is felt to be more important than knowledge of the code content (Wiggs 2004).

3. *Complaint Acceptance*

The literature in relation to this component suggests that there should be systematic monitoring of advertising, complaints should be encouraged and accepted from all sources and not 'screened out', and an independent code administrator should take receipt of the complaints (Moyer and Banks 1977; LaBarbera 1980; Boddewyn 1985). However, contrary to the literature, but in line with the Australian ASR system, NZ regulators do *not* monitor general advertising trends but do log the source of complaints and their content. The UK system, in comparison, does monitor advertising but the issue appears to be one of funding, as the UK system is wealthy in comparison to both Australia and NZ (Harker 1998).

All complaints must be in writing and signed when they arrive at the ASCB where they are initially reviewed by the Chairperson to determine whether the complaint is suitable for the board's consideration and within its jurisdiction. The complaint then goes before the board for determination; all parties are informed of the outcome, and a formal written decision is distributed to both the parties involved, and also the media. The ASCB has a maximum six-week turnaround period and the result is communicated immediately, with a written decision following soon thereafter (Wiggs 2003). However, in contrast to the literature in this area, NZ regulators do operate a 'filter' system in this initial stage of complaint acceptance to gauge whether a *prima facie* case exists, or whether the complaint is outside the jurisdiction of the body. The filter is the Chairman of the ASCB and 37% of complaints were filtered out in this way in 2003 (Wiggs 2004). This filter process is outlined in the ASCB's Codes Booklet and in a letter, which is sent to complainants (Wiggs 2004). In the Australian and UK systems *all* complaints are put before the adjudicating board. Given these differences, it seems that the issue of a filtering process should be examined in more detail in future research; specifically, the right to be heard needs to be balanced with the scope of the ASR body and its ability to allocate resources to inappropriate complaints.

4. Code Enforcement

In terms of this component, it is recommended that a hearing should be held before a grievance committee that should include an equal number of representatives from industry and the public; further, procedures for due process should be incorporated into the process. If violation is proven then a penalty should be imposed and an appeals procedure should be in place (Moyer and Banks 1977; LaBarbera 1980; Boddewyn 1985).

New Zealand's ASA opts for a relatively small adjudication body, the ASCB, with only eight members; however, there is an equal split of industry and public members, with the chair being a public member. The benefits of this structure are that the Chairman, in effect, has a casting vote, which provides a weighting in favour of the public; this is an enhancement of the literature. To deter serial offenders who regularly breach advertising codes of conduct, and to rehabilitate those advertisers who do not abide by decisions from the ASCB, the ASA deals severely with perpetrators. An informal alert is broadcast to all media, warning of the serial offender and requesting the withholding of space (Wiggs 2004). The ASA's voluntary nature of compliance seems to work well in this respect. The NZ system emphasises that codes should be followed not only in the letter but also the spirit and, as a consequence, members who seek loopholes in the rules are exposed in that this is against the spirit; technical compliance is insufficient (Wiggs 2004).

The literature suggests that if a 'national tripartite system' (Boddewyn 1992, 9; Sinclair 1992, 3) exists, whereby the advertisers, agencies and media are involved in the process, the chances of industry compliance with decisions are greatly enhanced. Again, NZ differs from the literature as ASR players have given a *voluntary* undertaking not to publish or broadcast an advertisement that has been determined in breach of the Codes of Practice (ASA 1993). Given the enduring nature of this approach, and 100% enforcement rate, it can only be assumed that this approach is successful. However, like other schemes, NZ still faces the challenge of determining complaints in time to stop unacceptable campaigns before conclusion.

The literature is scant in relation to the appeals procedure in ASR but, in practice, the process for appeal can be promoted and encouraged, or just available. In NZ the appeals mechanism is accessed through the separate Advertising Standards Complaints Appeal Board, which has three members (two public, one industry) who adjudicate on any appeals. Other ASR systems, by comparison, can require the discontented advertiser to produce *new* evidence before the *same* body, to hear the case again. Further, an appeals system needs to be promoted to improve the integrity of the system; in NZ all complainants are informed of their right to appeal twice during the process (Wiggs 2004).

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5. Audit of ASR Program

There should be periodic audit of the ASR program, it should be undertaken by a group with public representation to ensure credibility, and the report should be widely distributed and publicised (Moyer and Banks 1977; LaBarbera 1980; Wiggs 1992).

New Zealand's ASA conducts periodic audit of its processes and procedures. The most recent audit was conducted by the Chancellor of Australia's Wollongong University as part of the business harmonisation process in relation to therapeutic

goods advertising (Codd 2002). Quarterly reports are also made to the Ministry of Culture and Heritage (Wiggs 2004). These are examples of both voluntary external and internal audits. The reports are well publicised and suggestions debated and adopted if appropriate.

6. Education; 7. Creation of Public Awareness

The industry must be educated in relation to: standards, recent research, and precedent decisions. The public must be informed through public disclosure of disciplinary actions, care must be given to complainants, full information should be provided and a full and written decision must follow (Moyer and Banks 1977; Boddewyn 1985; Wiggs 1992). Further, the codes and complaint procedure should be widely publicised and member bodies should assist in the dissemination (Moyer and Banks 1977; LaBarbera 1980; Armstrong and Ozanne 1983; Boddewyn 1985; Wiggs 1992).

There are two key foci of promotion in ASR: the public and the industry. The former needs to be aware of the mechanism for complaint, the latter needs to be informed that 'ignorance of the law is no excuse for unacceptable advertising' (Wiggs 2004). Like many ASR schemes, the ASA promotes its services to the general public through advertising and editorial space devoted to publicising determinations. However, through a proactive approach to public relations, there is a weekly news report of complaints. This publicity, in turn, generates around 40–50 media interviews each year by the CEO. The NZ regulators view the number of complaints received as an indication of the success of such campaigns, rather than an indication of poor standards of advertising.

The advertising industry is educated in line with the literature and clearly written complaint determination decisions are widely publicised so that education can take place and precedent is understood; however, this is a continual learning exercise as new advertisers join the commercial world. The ASA conducts about six industry seminars each year and attendance is good; three lectures are also given at universities. Promotion about the scheme is also conducted with industry groups through attendance at meetings, seminars and conferences. Member organisations report on these promotions, and on ASR in general, in their annual reports (Wiggs 2004). The rationale for industry support is to ensure that there is long-term consumer confidence in advertising, which also ensures future revenue for the scheme (Wiggs 2004).

Whilst not everyone will know of the ASA in NZ, the networks are in place to forward complaints to the relevant regulatory body. For example, if a complaint is sent to the Broadcasting Standards Authority (which is common), the ASA receives it the same day. Other government agencies or consumer groups also send on complaints received erroneously within a few days (Wiggs 2004).

Conclusions

There are two specific areas of the framework where practice differs from the literature. The first is at the heart of the ASR process: *complaint acceptance and processing*. The NZ ASR body does not monitor advertising as it does not have the resources to do so; this is a sound economic reason and, as is often the case amongst self-regulatory organisations, a fact of life. The scheme also operates a

filter system, which is again at odds with the literature. While the vast majority of complaints are from people with serious claims about misleading, untruthful or offensive advertising, spurious complaints are also received that are not worthy of consideration by the full board. In this case, the ASA Chairman considers whether a prima facie case is made and whether the complaint should go before the board; in effect a board of one. The issue to examine, however, relates to the number of complaints that are deemed not to make a case; at the ASA this proportion is 50%. Thus, it is a conclusion of this research that a filter system should be used by advertising self-regulatory regimes to ensure that an expeditious process is operated. However, rather than one person being responsible for this important filter task, a small committee should be convened of, say, three people to ensure that the process is fair.

The second area of the framework where practice differs from theory is in *code enforcement*. The literature suggests that the most effective way to achieve industry compliance with decisions is to have a national tripartite system which ensures that banned ads are not broadcast or published; NZ operates an informal, voluntary scheme of ASR that achieves a 100% compliance rate. This may be a result of operating a regulatory system in a country of just three million people; however, it is more likely the result of the responsive approach to advertising regulation that is apparent at the ASA. The advertising industry in NZ has been used to regulators that speak softly and appeal to their sense of moral suasion. Thus, even before complaints are received, ASA regulators take the informal route and warn advertisers, in a gentle manner, of possible problems with ads. In this way, many potentially unacceptable ads are amended or withdrawn from the marketplace before the damage is done. There is an informal national tripartite system in NZ so, in effect, their stick is not as big as those belonging to other regulatory regimes; compliance, however, is still high.

Finally, in the area of 'appeals', the literature prescribes only that a 'procedure' should be in place. The ASA has a separate appeals body but also promotes the existence of the process widely. These two deviations from the theory would benefit from closer scrutiny by interested scholars.

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Queries

Michael Harker

- Q1 Glen Wiggs's affiliation correct as "Advertising Standards Authority"?
- Q2 Spelling OK as amended to Nevett to match the spelling in the reference list?
- Q3 Streeck and Schmitter (1985) are not in the reference list.
- Q4 Byrt (1990) is not in the reference list.
- Q5 Pincus and Withers (1983) are not in the reference list.
- Q6 Harris and Carman (1984) are not in the reference list. (Note: there are multiple text citations.)
- Q7 Carman and Harris (1986) are not in the reference list.
- Q8 Wotruba (1997) is not in the reference list.
- Q9 Ducret (1991) is not in the reference list.
- Q10 Gupta and Lad (1983) are not in the reference list.
- Q11 Ofner (1959) is not in the reference list.
- Q12 Jewell and Reitz (1981) are not in the reference list.
- Q13 Spelling OK as amended to Nevett to match the spelling in the reference list?
- Q14 Change "removal of \$ incentives" to "removal of financial incentives" as "\$" symbol is not appropriate in the UK context?
- Q15 Ambiguous? Does "complainants are informed of their right to appeal twice" mean that complainants can make two appeals or does it mean that they are informed twice that they can appeal once?
- Q16 Where are ASA (2003) and Neelankavil and Stridsberg (1980) cited in the text?
- Q17 Boddewyn (1985): does "(4)" represent the volume number or the issue number? If volume number, then please remove parentheses. If issue number then please supply volume number.
- Q18 Codd (2002): where (city name) is the publisher located in NSW?
- Q19 Shimp (2003): where (city name) in the State of Ohio is Thomson situated?
- Q20 Wiggs (1992) and (2004): "Wellington" correct as inserted as the location for the Advertising Standards Complaints Board?