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NEW STANDARDS FOR ADVERTISING SELF-REGULATION

A question being asked in many countries of the world is whether advertising should be self-regulated or government regulated. The question is also being asked in Australia and New Zealand but the emphasis is on certain product areas such as food and alcohol. The European Union was sufficiently concerned to conduct an inquiry, which it did by means of a Round Table on Advertising Self-Regulation (ASR). The process was thorough, long and arduous and involved politicians, bureaucrats, NGOs and industry. The report of the Round Table has now been released and is a good review that supports advertising self-regulation but at the same time it throws out challenges to self-regulators and industry. Europe is an interesting area for researchers as it has in various countries the full range of the best of self-regulatory regimes such as United Kingdom, embryo self-regulation in many of the former Communist regimes where the concepts of self-regulation were unknown and mainly state regulation in Sweden, Denmark and Finland.

Academic Background

The 1980s were very much the golden age of the academic development of ASR. The leader was Boddewyn but there were others such as Armstrong, Ozanne, LeBarbera, Moyer and Banks who contributed to the rapid development to the development of ASR. Since that time academic development has been sparse and over the past decade Associate Professors Debra Harker and Michael Harker at the University of Sunshine Coast, Queensland have been foremost in the field and are now arguably the world leaders.

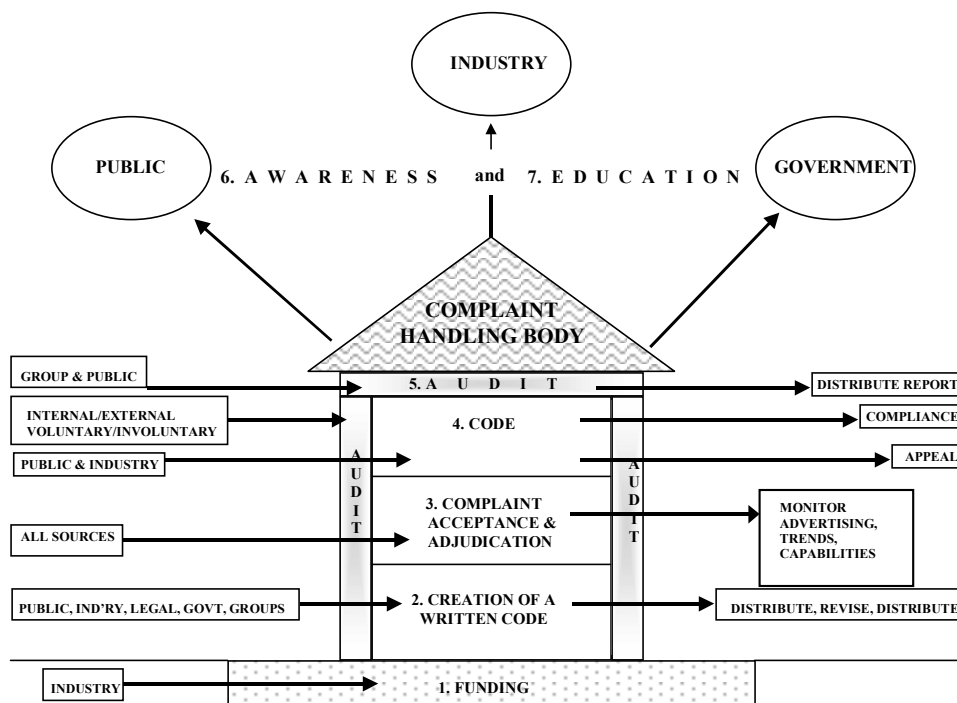
Development is ongoing as ASR must respond effectively to the new forms of marketing. It is therefore important that not only should the underlying principles be understood but strategies devised to meet the new challenges.

Debra and Michael Harker list seven criteria that an effective ASR organisation should follow. In brief they are;

1. *Funding* - Proper funding.
2. *Written Code of Ethics* - Deals with specific problem of concern to consumers.
3. *Complaint Acceptance* - An independent code administrator should receive all complaints.
4. *Code Enforcement* - Hearing by independent adjudication board with appeals process.
5. *Audit of ASR Programme* - There should be periodic audit of the ASR programme.
6. *Education* - Ongoing education of industry and publication of adjudications.
7. *Creation of Public Awareness* - The codes and complaint procedure should be widely publicised

Using the seven criteria the Harkers constructed a model 'house' using the Funding as the foundation and other elements as various parts of the construction as shown in the following diagram.

Towards Effective ASR: The 7 Components



The Harker 'house model' is based on the literature of the 1980s but upgraded to take into account the developments that have taken place in the past 20 years.

The European Round Table Best Practice Report is entirely consistent with the Harker model but what the Report does do is to fill in some of the practical details. To continue to use the analogy of the 'model house', the Report fills in the detail of the colour scheme, wallpaper and layout of the kitchen. This article examines in some detail the findings in the Report.

European Round Table Report

The Round Table Report supports ASR, however this support is not without reservation. ASR "will have to ... fulfil, like regulation, a certain number of minimal criteria to be used as alternative to regulation. These criteria are efficacy, legitimacy, accountability and consistency with internal market."

The report comments that some critics of self-regulation blame advertising for complex societal problems such as ill health caused by alcohol abuse or obesity. The Round Table Report states clearly that ASR "does not and cannot carry the expectations" of those critics but "by effectively enforcing good codes, may contribute to part of the solution" of such problems.

The Report concentrates on the key determinants of the Best Practice Model and identifies four key areas - effectiveness, independence, coverage, and funding. Interestingly they are determinants that can be used to test the effectiveness of any advertising regime whether it is self-regulatory or state regulatory.

1. Effectiveness

1. Copy Advice - The ASR organisation should provide free copy advice to advertisers, agencies and media. The advice is confidential, non-binding pre-publication advice about a specific advertisement or campaign. This is quite separate from pre-clearance as is required by certain media such as television or for some products such as therapeutic goods and alcohol. The task of pre-clearance bodies is to ensure compliance with the law and appropriate codes.

In Europe 13 countries have a copy advice service plus two others that have a partial service. Six countries have no service.

"The principal purpose of copy advice is to prevent problems before they occur; this benefits not only the advertiser, agency and media immediately concerned, but also the wider advertising industry, by avoiding complaints and being seen to promote social responsibility" the report states.

2. Complaint Handling - This is an important part of a successful ASR organisation and the Report covers a number of issues.

- Performance objectives and benchmarks should be established and published. Performance is measured against the benchmarks at least annually. “Making public the key performance indicators will reassure public opinion that the system is working effectively. Independent evaluations carried out from time to time by external institutions to measure the ASR organisation’s objectives can also reinforce the public opinion perception” concludes the Report.
- Timeliness is important and one where self-regulation has an advantage over the usual judicial process. It is therefore important that KPIs are established and performance monitored. The Advertising Standards Authority in the United Kingdom reported that their target was 25 working days for complaint turnaround and achieved 23 days. The Advertising Standards Authority in New Zealand reports a turnaround of 25 days. The important issue is not only should turnaround times be recorded but that performance objectives and publicly stated and publicly available.
- Ease of complaint is important to consumers especially as most complain only once in their life. Therefore benchmarks should be set for how easy it is to find the ASR organisation and submit a complaint. Most organisations allow email complaints and have a complaint form on the website.
- Publication of decisions is important to ensure transparency. It also strengthens the credibility of the system and enhances public confidence. The decisions are also an essential educational tool for the advertising industry.

3. Sanctions - The minimum sanction for non-compliance with the codes is timely withdrawal of the advertisement. This is the most common sanction used by ASR organisations and is more effective than fines.

Withdrawal is an effective penalty and the Report comments “available evidence suggests that the business costs to companies of a withdrawal are real (reputation, share price). These market penalties can be a more effective source of good behaviour than imposition of specific financial penalties.”

However in order to be effective collaboration of the media is essential. Increasingly media are incorporating the requirement to comply with the codes in their terms of trade. This is to be encouraged as it allows the media to ‘enforce’ the decision of the ASR organisation without argument.

It is also important that media, agencies and advertisers are informed of the implication of the decisions so that the advertiser, or other advertisers, will not repeat the breach - particularly with leading decisions.

Repeat offenders require special attention. Suggestions are mandatory copy advice or pre-clearance for a period of time. However in our view in cases of 'scums and scams' there should be an 'Ad Alert' plus reporting the matter to the police or other authorities. Self-regulation is not always effective with crooks and criminals who have no desire to regulate themselves.

4. Consumer Awareness and Satisfaction - Consumers should be aware of their right to complain. It is recommended that citizens as a whole should be surveyed on a regular basis as to their awareness of the ASR organisation and issues of concern to them.

Customer satisfaction surveys are recommended annually. Such surveys are carried out by ASR organisations from time to time but it is unlikely that any organisation conducts annual surveys because of the expense.

2. Independence

Openness, independence and transparency are seen as critical points for the public acceptability of self-regulation of advertising. To achieve this certain procedures should be followed;

- Stakeholders should be involved in the drafting of codes. There are a number of stakeholders including government ministries and agencies, academia, relevant business sectors, ethical authorities, consumer, family, youth and relevant citizen organisations. All of their views should be taken into account.
- The adjudication body that hears complaints should have a substantial proportion of independent persons. Public advertising of these positions is recommended.
- The composition of the adjudication body is fundamental in guaranteeing independence of the process. Composition, nomination process, independence and integrity of its members are key determinants for the credibility of the system.

3. Coverage

Somewhat controversial is the question of the definition of advertising and what should be subject to codes and complaint. The Report is quite unequivocal that the ASR organisation should not only cover "pure advertising but also all other forms of

‘commercial’ or ‘marketing communication’.” There should be “global coverage for all types of marketing or commercial communication.”

In particular buzz/viral marketing and word of mouth marketing should be subject to the ASR codes and complaint system. It was noted that there is a Word Of Mouth Association (www.womma.com) that has a Code of Ethics but no links to any advertising ASR codes. Also noted was The Viral & Buzz Marketing Association (www.vbma.net), which has members worldwide but does not even have a Code of Ethics.

The lack of coverage by ASR organisations of this type of marketing was seen as an issue of concern. It is a stated aim of the European advertising ASR organisations to include this type of marketing within their jurisdiction.

These forms of marketing are products of the new media. The Report comments, “as new media is constantly evolving, industry and ASR organisations must commit to keeping abreast of key emerging techniques.” This is a current challenge to advertising ASR organisations worldwide, including Australia and New Zealand, which will increase with time.

4. Funding

Perhaps even more controversial is the question of funding. Traditionally funding of ASR organisations is discussed behind closed doors where the industry players decide on the funding model and who pays what. It is also well known that ASR organisations have very tight budgets. Recent work in Australia and New Zealand has revealed that ASR organisations cost considerably less than their statutory or co-regulatory equivalents. There is little question that private enterprise principles applied to quasi-judicial bodies brings great efficiencies.

The Report discusses two basic funding models.

The Membership Model - This is the most prevalent model in Europe. Trade associations representing the various facets of the advertising industry (advertisers, agencies and media) and sectorial associations (eg spirits federation) make membership contributions. The problem with this model is that income cannot be guaranteed as organisations can withdraw from membership at any time.

The Levy Model - This model is used in UK and Ireland. A mix of the two models is being adopted in the Netherlands. Consideration is being given to the levy model in at least four other countries. Under this system a small levy is added to the invoice payable by the advertiser. The Report recommends a levy of 0.1- 0.2% to give the SRO enough income to meet essential costs.

Usually the levy is added to the invoice by agencies. However difficulties can arise with the collection of the levy from advertisers who place directly and very small advertisers who in total volume are a significant part of the total revenue. In the UK the media make

a contribution using a complex formula. In Ireland a similar approach is taken but the media contribution is decided by negotiation.

The Report considers that the Levy model to be the most effective and those countries that adopt it best meet the best practice model. The Report rejects the idea of an advertising tax.

Conclusion

The European Round Table Report is totally consistent with the criteria established in the Harker 'house model'. However what the Report does do is to establish the details of best practice. In doing so they have raised the bar considerably and it is doubtful if any ASR organisation in the world fully meets the new standards of best practice. To achieve the new standards the cost of running an ASR organisation will increase and in turn require a rethink of funding.

In the 1980s ASR moved forward in leaps and bounds. Since that time there has been incremental improvement and a steady increase in the professionalism by those running ASR organisations.

The new media has brought about new forms of marketing which are really new forms of advertising. The Europeans have thrown out the challenge so it is time for another rapid development phase similar to the 1980s. There are already early signs that this is happening in Australia and New Zealand.

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