Complaining about a competitor's advertising – a guide to Inter-party resolutions (IPR) and competitor complaints

For the purposes of this guidance, "complainants" refers to companies making complaints and "advertisers" refers to companies about which complaints are made.
This policy applies to complaints about competitors' advertising. Where we have reasonable grounds to consider that a complaint is made on behalf of a competitor, we will treat it as if it were a competitor complaint, and all of our procedures relating to such complaints will apply.

Key points at a glance:

- **Companies must try to resolve their complaints directly with their competitors first.**
- **Complaints then made to the ASA must not raise new issues.**
- **Complaints to the ASA must be set out clearly and concisely, limited to 1000 words.**
- **Complainants should read this guide in full before referring a complaint to their competitors and the ASA.**
- **Advertisers should read this guide in full before responding to a complaint from their competitor.**

Complainant responsibilities under this process

Inter-party resolution (IPR) practicalities and timescales

Step 1: Making a complaint to a competitor / advertiser

Before complaining to the ASA, complainants must first have attempted in good faith to resolve the issue directly with their competitor, following the inter-party resolution process outlined below:

- The complaint must be addressed to a senior officer or other appropriate contact of the advertiser.
- Competitor complainants must use appropriate means to ensure the complaint has been received – for example, email read receipt, phone call or registered post.
- The complainant should receive a substantive response within five (5) working days of receipt.
- It is the complainant's responsibility to communicate those deadlines and a link to this guide to the advertiser.
- If the complainant does not receive a response after five working days, does not consider the advertiser's response to resolve the issue, and/or if the advertiser has not entered into further productive dialogue with the complainant following the deadline, the complainant may submit a complaint to the ASA.
- The complaint must be signed by a suitably senior officer of the competitor complainant (e.g. CEO, Legal, Marketing or Regulatory Director) or by a person who has been identified to the ASA as having suitably delegated responsibility for the accuracy of the complaint.

Step 2: Making a complaint to the ASA

Regardless of the format used to make a complaint to your competitor, when writing to the ASA, you must provide appropriate information, in a clear and concise way, meeting the requirements laid out below:

- The complaint to the ASA must not contain any new points that were not previously raised with the advertiser, save for in exceptional circumstances. Please use the ASA online form to make your complaint.
- The advertisement(s) should be readily identifiable. Ads should be provided in a separate attachment. You should provide the same version of the ad or ads provided to your competitor during the IPR process. Good quality copies of all non-broadcast ads must be provided (except in instances where this is genuinely not possible, for example outdoor posters). Screenshots of webpages must display the entire page and include the URL.
- Complaints must be limited to a total of 1,000 words.
- Complaints should focus on no more than three of what the complainant considers to be the most important issues. The ASA reserves the right to reduce the points of complaint to a maximum of three, taking into account those that are most relevant to consumers.
- The ASA expects competitor complainants to give solid, factual grounds for their objection and back up any assertions with sound logic and, where available, supporting documentation. You must provide a rationale explaining why you think the Code has been breached on each point. For example, simply stating that a claim cannot be substantiated is insufficient without providing clear reasons why you believe that to be the case. If relevant, provide examples of ASA related rulings and/or guidance.
- You must confirm that you are not taking legal action against your competitor on the substance of the complaint. Because the self-regulatory process is an alternative to pursuing complaints through the courts, it would be wrong for the ASA to risk prejudicing legal action. As such, the ASA does not knowingly investigate complaints that have or will be the subject of legal scrutiny.
- You must confirm that the identity of your company can be disclosed to the advertiser.
- You must indicate that any information submitted by you, that you wish the ASA Council to rely on in making a ruling, can be disclosed to your competitor. Advertisers must have an opportunity to see and respond to the case being made against their marketing, and the information that is to be considered by the ASA Council.
- You must provide copies of correspondence sent to and from your competitor as part of the IPR process, including any supporting documents (this will be in addition to the 1,000 word limit on the complaint to the ASA).

If the above requirements have not been fulfilled, then the ASA reserves the right to refuse to accept the complaint. However, we will exercise discretion and reserve the right to waive any or all of these requirements if appropriate.

The ASA may still resolve complaints taken up under the IPR procedure on an informal basis.

Advertiser responsibilities under this process

While companies that are the subject of complaints will in many cases disagree with the points being raised by their competitors and wish to defend their advertising, they are still expected to engage in the IPR process in a meaningful way.

When considering extension requests, once a case has been taken up for investigation, the ASA will take the following considerations into account:

- Whether the advertiser adhered to the deadlines set out in the IPR timeline.
- Whether they engaged in the process in good faith and provided a detailed and substantive response (as opposed to just stating that they refuted the claims).

Where the above has been followed, the ASA will be more likely to be inclined to grant extension requests from an advertiser.

If the advertiser provides a substantive response to the complainant, the ASA may treat that as their initial substantive response to the complaint for the purposes of an investigation.

Further notes

Contact between competitors aimed at the settlement of genuine disputes about advertising claims will not normally give rise to competition law issues. Parties are advised to seek their own legal advice in relation to these issues.

While it is not uncommon for competitors to seek to circumvent these requirements by posing as consumers and not making their competitor status known to the ASA, you should know that we take a very dim view of such behaviour. If in doubt we will carry out our own research and question the complainant, and if we discover they are a competitor at any time during the process, we will immediately halt the investigation and require the competitor complaint to go through the IPR process.

There may be rare occasions when a competitor complainant will have a good reason not to correspond with an advertiser. In those cases, the ASA will retain the discretion to bypass this process, if we believe the complainant raises a potentially serious breach of the Code, or if there are other good reasons to believe that inter-party resolution of the complaint is not appropriate.