ASA System briefing note on financial products and services advertising

Background

The UK Advertising Codes contain general rules that require all ads are responsible. Section 14 of both the non-broadcast and broadcast Codes cover financial advertising.

The ASA and Financial Conduct Authority (FCA) share the responsibility of monitoring and enforcing rules around ads for financial products and services.

The non-broadcast Code regulates non-technical aspects of non-broadcast financial advertising (print and online) such as matters relating to offence, social responsibility, , fear and distress, competitor denigration and claims that do not relate to specific characteristics of the product.

Whereas, the FCA covers ads promoting the technical aspects of products by FCA-regulated businesses, for example, those by banks, building societies, insurance companies, stockbrokers or mortgage companies. The ASA refers complaints about misleading non-broadcast ads for FCA-regulated firms to the FCA.

FCA rules also apply to broadcast advertising, however the ASA has an inherited statutory responsibility to consider all complaints it receives about broadcast ads. The ASA therefore does not refer complaints about technical matters in broadcast ads to the FCA but can and does seek advice from the FCA where needed. The ASA also considers complaints about non-technical matters in broadcast ads.

The ASA rules apply to all issues in ads in all media for products not regulated by the FCA, such as NFTs, unregulated investments and some lead generation.

Advertising rules

Under the Non- Broadcast Code, the following advertising rules apply:

- Offers of financial products must be set out in a way that allows them to be understood easily by the audience being addressed. Advertisers must ensure that they do not take advantage of consumers' inexperience or credulity.

- Ads should state the nature of the contract being offered, any limitation, expense, penalty or charge and the terms of withdrawal.

- The basis used to calculate any rate of interest, forecast or projection must be apparent immediately.

- Ads must make clear that the value of investments is variable and, unless guaranteed, can go down as well as up. If the value of the investment is guaranteed, the marketing communication must explain the guarantee.

- Ads should make clear that past performance or experience does not necessarily give a guide for the future.

Insurance

General insurance advertising is subject to statutory control by the FCA under the Financial Services and Markets Act 2000. However, the non-technical aspects fall under the ASA's remit, whereby we consider whether an ad is socially responsible or could cause harm/

offence. However, there are also instances where the ASA can investigate the truthfulness of some claims that do not relate to the specific characteristic of the product.

Crypto

Following the introduction of new rules by the FCA, the ASA no longer regulate technical claims in ads for crypto assets in non-broadcast media. From the 8 October 2023, the FCA took over the regulation of ads for ‘qualifying cryptoassets’ – cryptoassets that are transferable and fungible, including cryptocurrencies and utility (fan) tokens – and introduced new rules.

The non-broadcast Code still applies to the ‘non-technical’ aspects of ads. The ASA concluded that (Papa John's (GB) Ltd t/a Papa John's Pizza, 15 December 2021) breached the Code as it encouraged consumers to engage in a high-risk investment without consideration and trivialised what was a serious and potentially costly financial decision, especially in the context of the intended audience who were likely to have limited knowledge of cryptocurrency.

Short term and payday loans

When assessing ads, the ASA is likely to consider issues such as the undue emphasis on speed and ease of access, the targeting of vulnerable groups and whether the ad could be seen to trivialise taking out a loan. The ASA has upheld complaints against ads that implied short terms loans could be used to fund a social life, buy alcohol or a weekend away (Stop Go Networks Ltd, 26 February 2014).

Greenwashing

Consumer interest in sustainable finance has risen, and as a result, the FCA has recently introduced a new 'anti-greenwashing' rule to prevent firms from exaggerating the green or social credentials of their financial products and services. The FCA cover environmental and sustainability claims at the product level, whereas the ASA consider claims at the entity level. The ASA concluded that HSBC’s ad posters that promoted its green initiatives were misleading because they omitted significant information about HSBC’s contribution to carbon dioxide and greenhouse gas emissions (HSBC, 19 October 2022).

Monitoring and enforcement

The ASA has an ongoing financial project which proactively identifies problem areas such as cost of living issues, crypto, vulnerable consumers and unregulated investments. The project tracks the number of problem ads in these areas and action taken.

Alongside this, we’re committed to using technology to deliver more effective regulation. Since 2021, we’ve been investing in our data science capabilities and building a team to help us take on the specific challenges of regulating online advertising.

We use our in-house AI based Active Ad Monitoring System to sort large volumes of ads, delivering intelligence to experts across the ASA and allowing them to do their jobs more quickly and efficiently. The system covers a subset of core issues for the ASA, one of which being cryptocurrencies. In 2022, we issued an Enforcement Notice to 60 cryptocurrency firms requiring ads to include risk warnings and to not trivialise investment in cryptocurrencies.

In the past, we would have relied on limited, labour-intensive manual searches and complaints from the public to stay on top of any non-compliant ads. However, our Active Ad Monitoring System is able to capture ads by relevant advertisers from a range of online environments, identifying and flagging likely non-compliant ads for our experts to review.

Recent financial ad rulings

Capital Credit Union: 2024

A paid-for Meta post irresponsibly encouraged consumers to spend more than they could afford by taking out a loan to fund Christmas spending.

Nationwide: 2024

TV, radio and press ads for Nationwide were misleading as consumers were likely to understand that the building society had made a long-term decision not to close their branches and that they had not recently closed any branches when this was not the case.

Key Retirement Solutions: 2023

A TV ad for an equity release mortgage product exploited the financial fears of the audience and did not make the risks and suitability of the product sufficiently clear.

Arsenal Football Club: 2022

A Facebook post and website post by Arsenal Football Club promoting fan tokens were misleading because they did not make sufficiently clear that the value of investments in paid-for Fan Tokens was variable and as cryptoassets they were unregulated and omitted material information.

Ziglu: 2022

A digital poster for Ziglu, an online cryptocurrency platform, was banned because it took advantage of consumers' inexperience and because it was likely to cause unjustifiable distress.