Information Request on advertising features

Requested by: ASAI, IE

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Background

The Irish SRO, ASAI, currently includes ‘advertisement features’ within the remit of its Code. The Code states that “an advertisement feature, announcement or promotion published or electronically broadcast in exchange for a payment or other reciprocal arrangement where the content is controlled by the advertiser should comply with the Code. It should also be clearly identified and distinguished from editorial matter.”

As can be seen, an advertisement feature, announcement or promotion will only be within the remit of the Code if its content is controlled by the advertiser. During the review of the Code, ASAI is considering including advertisement features, announcements or promotions which are ‘influenced’ by advertisers, but not controlled by them, within the remit of our Code. For example, blogs where the blogger gets free goods with the expectation of positive reviews, but where the blogger actually controls what s/he writes.

Question

- Does your SRO include advertising features, announcements or promotions which are ‘influenced’ by advertisers within the remit of its code?
  - If so, could you please provide us with the definition included in your code? Could you also let us know if your SRO receives many complaints regarding advertising features, announcements or promotions? Could you tell us what type of complaints do you received?

Answers

Belgium

The Belgian SRO, JEP, has not received any complaints regarding the issue described by ASAI. JEP has, however, received complaints regarding infomercials and advertorials. There is no specific provision or definition in JEP’s Code/Regulations with regards to advertising features, announcements or promotions which are ‘influenced’ by advertisers. JEP tends to rely on a quite broad description of the SRO’s remit in the Regulations. If this specific question arose, it would be put to the Jury who would decide on a case by case basis whether or not the “advertisement feature, announcement or promotion” fell within the remit.
BULGARIA

The Bulgarian SRO, NCSR, has within the scope of the Code: ‘virals and consumer generated content, produced and or distributed by private individuals, however with the support of the advertiser/marketing specialist’. NCSR has received only one complaint regarding the quoted issue so far. The complaint concerned an advertisement of a slimming product, which was advertised by a private post, which in turn provided a link to the producer’s sales page.

In Bulgaria, the problem concerning such advertising is an issue mainly for suppliers of food supplements, especially because some of these suppliers/ websites are hardly identifiable.

FRANCE

The French SRO, ARPP, is of opinion that in case the advertiser does not control the message entirely, but has only some influence on the message, it still should be treated as advertisement. The rationale behind is that the advertiser is able to influence it and, therefore, is aware of its existence.

Examples of rulings:

- An online video advertisement on the website of the magazine “Love” (2013)

The video depicted women in postures and situations recalling prostitution. Therefore, ARPP contacted the advertiser notifying them that the video breached ARPP’s Codes and needed to be removed. Soon, ARPP received a complaint in which the complainant challenged the genuineness of the video. Following the contacts with ARPP, the advertiser stated that the video was not an advertisement due to several reasons. Firstly, they were not aware of its existence; secondly, they did not order it; thirdly, they did not pay for it; and finally, they did not have any control or even influence on it. The advertiser also explained that the video was merely editorial content of the magazine “Love”. In conclusion, the Jury did not adjudicate on this case since the video was not considered as advertisement, but editorial content.

- Online advertisement for Pampers (2013)

The case concerned an interview with a French singer talking about her engagement with UNICEF and Pampers regarding the vaccination of children. ARPP received a consumer complaint challenged a part of the interview in which the singer pointed to the baby products of Pampers as well as misleading nature of the interview as such.

According to Pampers, the interview was not an advertisement and they could not be held responsible for the video since they had not ordered, supervised its production, paid for its display online. The Jury, however, decided that it was indeed an advertisement and that Pampers should be held responsible for it due to the fact that the singer was a Pampers affiliate and
therefore Pampers had a certain influence on her public interviews and statements. Finally, the interview clearly presented Pampers in a favourable way.

HUNGARY

The Hungarian SRO, ÖRT, does not have provisions related to advertising features in the Code. Neither has ÖRT received any complaints regarding this issue.

NETHERLANDS

The Dutch SRO, SRC, applies a very broad definition of ‘advertising’ which also includes advertisement feature, announcement or promotion. Article 1 of the Dutch Advertising Code defines ‘advertising’ as ‘any form of public and/or systematic direct or indirect commendation of goods, services and/or ideas by an advertiser or, either wholly or partly, on behalf of him, with or without the help of a third party. The solicitation of services is also defined as advertising. The advertiser is an organization or a person, not being a consumer.’

Explanation of Article 1

The different forms of advertising include, for instance, e.g.: teleshopping, telemarketing, sponsorship, product placement, packaging, labelling, direct marketing and buzz-marketing.

It is important that the description of an (organized) mechanism may be given, by means of which the direct or indirect commendation of goods, services and/or ideas is taking place or has taken place. The requirement of systematic commendation is needed in order to prevent all so-called one-to-one announcements, as for example, an individual promotion talk, from being regarded as ‘advertising’. A one-to-one announcement may be regarded as advertising if has been established that the statement was a standard statement and not specifically aimed at the individual receiver.

Announcements which lack any element of commendation do not fall within the definition of this article.

Examples are purely factual statements such as opening times, and purely factual statements about the policy (or changes in policy) of public authorities or private sector companies.

Similarly, announcements about goods, services and/or ideas, in which there is no question of inducement or influencing by the advertiser, do not fall within the definition of this article. A promotional announcement made by an advertiser may, therefore, be called advertising¹.

¹ The Advertising Code Authority and/or the Board of Appeal shall establish whether such announcements may be imputed to an advertiser. This may be the subject of a special advertising code and will depend on the question whether the advertiser can actually exert influence on the announcement(s) and if not, whether the advertiser has made or makes sufficient effort beforehand to take care that the announcement will meet the requirements of the Dutch Advertising Code.
The total message plays a role in assessing the element of commendation. Not only is the text a matter of concern, but also size, lay-out, use of colour and so forth. The mere statement of a name of the advertiser may in itself constitute advertising (e.g. sponsor panels).

The definition does not stipulate that the commendation is a paid advertisement. Although payment is usually the case, from the point of view of the public it makes no difference whether an advertisement is placed free of charge or for payment.

The Dutch Advertising Code for Social Media

The Dutch Advertising Code for Social Media, which entered into force on 1 January 2014, may also be relevant in this case. According to the code, if a person is responsible for spreading messages that could be considered as advertising through Social Media (such as Facebook, LinkedIn, Youtube) against payment or any other benefit, they should disclose the relationship between themselves and the advertiser. What follows is that if an advertiser has paid a person for a certain post or tweet, this should be mentioned. When a consumer or a celebrity receives a payment (financial or an in-kind one) to review a new product, they should report this, too. For instance, by saying ‘I got this tablet for free to test it’ or by using a hashtag in the message, such as #spon (sponsored) or #ad. As of March 2014 no complaints regarding this code have been received.

ROMANIA

The Romanian SRO, RAC, does not have such provisions in the Code.

SOUTH AFRICA

The South African SRO, ASA, does not have such provisions in the Code.

SPAIN

The Spanish SRO’s Code of Advertising Practice does not hold a definition on whether advertising features, announcements or promotions should fall under the remit of the Code if their contents are being controlled by advertisers.

The Code solely sets forth that the ethical rules contained shall be applicable to those commercial communications which have been broadcasted on behalf on an individual or on behalf of an entity (the latter being of a private nature), if such commercial communication fosters attitudes or performances. The remit of the Code includes ‘all advertising communication activities which, directly or indirectly, encourage the trading of goods or services or promote trade marks or trade names, whatever the medium used. Such ethical rules shall also apply to any advertising communication broadcasted on behalf of any individual or legal entity, of a private nature, in order to promote certain conducts or behaviours. They shall not be applicable to political advertising’.

2 English translation of the code will be available soon.
In addition, the ANDI Code for diet products for infants refers to the carrying out of an advertising activity as opposed to control. According to the Code, promotion is understood as ‘any activity of either commercial or informative nature carried out by a company or under its control, aimed to promote the prescription, sale, or consuming of its products’.

There are also other Codes of Conduct, such as the Wine Code, FEBE’s Code or the Gambling Advertising Code, which refer individually to the obligation of payment (or other reciprocal arrangement), or those that specifically exclude editorial content, leaving out, however, any reference to the content being either controlled or influenced.

In regards to complaints, the Spanish SRO has not yet received any issues concerning advertising features, announcements or promotions, whose content may have been influenced by advertisers.

**UNITED KINGDOM-ASA**

ASA UK definition of an advertorial

“An advertorial is an advertisement feature, announcement or promotion, the content of which is controlled by the marketer, not the publisher, that is disseminated in exchange for a payment or other reciprocal arrangement” (Introduction III. K).

**Payment or other reciprocal arrangements**

What is meant by a ‘payment or reciprocal arrangement’? Money does not necessarily change hands and the payment need not be financial. Sometimes other arrangements could have been made in place of direct payment. For example, a bus company might advertise in a newspaper and in exchange the newspaper might be given space to advertise on the bus-sides. Both communications are subject to the Code. Similarly, a magazine might give a significant amount of editorial space to an advertiser that places an ad in the magazine. Or an advertisement might be run free of charge if the marketer agrees to pay for an advertisement at a later date. Further information can be found in the Advertising Features AdviceOnline.

Please note: An advertiser that exchanges of goods for a positive review would likely fall within our remit, but ASA cannot give a definitive example because there has not been any rulings made on this, and therefore there is no precedent yet.

The CAP (non-broadcast) Code states that ‘Marketers and publishers must make clear that advertorials are marketing communications; for example, by heading them <<advertisement feature>>’. (NB rule 2.4)

The BCAP (broadcast) Code states that ‘Advertisements must be obviously distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement’. (B rule 2.1)
Complaints

ASA has not received that many complaints about advertorials. The general nature of the complaints is that the advertisements include misleading claims or are not obviously identifiable as advertorials. The majority of complaints relate to those online (celebrity tweets on Twitter/advertorials on a company’s own website) and sponsored content in newspapers.

2013: 31 complaints about 30 advertisements (NB rule 2.4); 8 complaints about 8 advertisements (B rule 2.1)

2012: 16 complaints about 16 advertisements (NB rule 2.4); 3 complaints about 3 advertisements (B rule 2.1)

Example of rulings

Nike (2012) Twitter advertisement was not obviously identifiable as a marketing communication

The Scottish Government (2012) a regional press piece which stated ‘Column sponsored by Natural Scotland’ was clearly labelled as a marketing communication

Sophora Media Ltd (2012) an advertisement on a website was misleading because it was presented as a news article and did not make clear it was marketing material