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## **SPECIAL TOPIC SESSION**

### **SLEEPING BEAUTY: GLOBAL ADVERTISING SELF-REGULATION AWAKENS.**

*Presenters: Gayle Kerr, Queensland University of Technology, Brisbane, Australia.*

*Jim Avery, University of Oklahoma, Norman, Oklahoma, USA.*

*Vesna Zabkar, University of Ljubljana, Slovenia.*

#### **Overview**

The system of self regulation of advertising in mass-media was a dream scenario. If stakeholders complained and the advertisement was deemed offensive by an expert panel, it was an easy matter to withdraw the advertisement from mass media and from public attention. This was done locally, according to the cultural values and aesthetics of the population and the mandate of the self regulation board.

To advertising regulators, the internet became their worst nightmare. The system of self regulation was no longer closed, and could be circumvented by placing the offending advertisements online. The system of self regulation was also no longer local, but global. All internet users had access to the same advertisements, regardless of cultural considerations.

The awakening of global advertising self regulation is something that demands discussion. It is of value to all conference goers of AAA 2010 Europe, as it affects all advertising academics and all stakeholders in the advertising process. As the leading advertising body seeking to bring global advertising issues to a new venue in Europe, the AAA 2010 European Conference seems ripe for a special session on advertising self regulation. This is especially true as the panel contributes a European, US and Asia-Pacific viewpoint.

## ADVERTISING SELF-REGULATION IN AUSTRALIA

*Gayle Kerr, Queensland University of Technology, Brisbane, Australia.*

### Summary

Advertising content in Australia is regulated through the Trade Practices Act and the Australian Broadcasting Authority (ABA) Act. In addition, specialist industries have their own codes of ethics which are managed by individual industry groups, including the Therapeutic Goods Code (TGC), the Alcoholic Beverages Advertising Code and the Weight Management Industry Code. All other advertising is self-regulated by the advertising industry through the Advertising Codes and their administrative Boards (Kerr and Moran 2002).

Over time, and facilitated by technology, Australia has seen an evolution of power from the hands of the regulatory board to socially-networked forces such as consumers, advertisers and lobby groups. This evolution is explored in three stages.

**Stage 1: A system driven by the media** From 1974 to 1996, the Australian Standards Council (ASC) monitored, evaluated and enforced the Media Council of Australia (MCA) Advertising Code. Self regulation, under this system, was a simple and effective process. Those offended by advertising complained in writing to the Advertising Standards Council and if the complaint was upheld, the offending advertisement was removed by the media and from the public domain. Executive Director of the ASC, Colin Harcourt (1997 in Kerr and Moran 2002, p.15) said, 'The system, including the ASC, whilst not without its critics, was regarded as a world model of self-regulation. In fact, the systems in place in New Zealand, Singapore, India, South Africa and even the UK and Canada, include many components adapted from Australia.'

While the self regulatory process worked effectively, it was tied to a system of advertising agency accreditation and media commission, run by the Media Council of Australia. The decision to revoke the authorisation of the agency accreditation system led to the dissolution of the self-regulation system.

**Stage 2: The advertiser-driven system** The Australian Association of National Advertisers (AANA), a fierce critic of the old system, became the architect of the new. AANA President, Robert Koltai contended that advertisers - not agencies - should control the content of their advertisements. He said, 'I think it's time advertisers stepped up to the plate and managed this part of their affairs. After all, it's their advertisements.' (B& T, October 4 1996, p.1)

The current system is advertiser-driven and differs from the previous one in a number of ways. Firstly, a second board was introduced to adjudicate on claims between advertisers. Secondly, the panel of the consumer claims board, the Advertising Standards Board, was designed to be more representative of the general public, including media identities, sports stars and even a school child. But perhaps the most critical difference is that the current system has no enforcement mechanism (Kerr 2007). It relies upon the good intentions of the advertisers for compliance. While this generally works well, there have been cases where the advertiser has refused to withdraw the offending advertising at the suggestion of the ASB. In such cases, it has

defaulted to the previous system and the media removed the offending advertisement.

**Stage 3: A self-regulation system buffeted by other forces** New media has changed the balance of power in the self regulatory process. Where once the offending advertisement was removed from mass media, now banned advertisements are often posted by advertisers, and consumers share opinions and URLs in the online environment. A recent study by Wailer, Mortimer, Dickinson and Kerr (2009) demonstrated the power of bloggers to comment on the Australian Government "Where the Bloody Hell Are You?" tourism campaign. Likewise, it demonstrated the foresight of advertisers to establish an easy to remember domain, from which they could view the banned advertisement and even share the URL through emailed postcards. There is also evidence of well-funded and organised lobby groups seeking to have advertising banned, particularly junk food advertising in children's television time and alcohol advertising during sports events. There is further evidence of advertising bans being used as political trade-offs to ensure the vote of critical independents on certain bills.

While a system of self regulation exists for mass media, there is a need to recognise that many people view advertising materials in the new media environment. Here, there are many other forces which influence and even promote the viewing of advertising material, which may be deemed offensive by self regulatory boards or even the general public.

## **ADVERTISING SELF-REGULATION IN EUROPE**

*Vesna Zabkar, University of Ljubljana, Slovenia.*

### **Summary**

European Union (EU) is mainly a "unity in diversity". There are diverse self-regulatory systems in 27 EU members; they differ according to the history, business environment and culture of each European country. The legal framework for advertising industry has been harmonised among different EU member countries through European Commission Directives and European regulation. Recently, the concept of co-regulation between advertising industry, government regulators, and other stakeholders has been explored as well.

Self-regulation together with the legal framework aims at ensuring legal, decent, honest and truthful advertising. While the advertising industry is working on inspiring confidence in consumers by keeping promises and acting within boundaries of ethics, there are still several examples of bluntly misleading, offensive and deceptive advertising approaches in the EU market.

Advertising system includes all relevant stakeholder groups concerned with advertising ethics, embedded in a broader society and in a macro environment. The advertising industry in each member country agrees on code of standards and practice, sets up an independent body (self-regulatory organisation, SRO) to apply the code, handle consumer complaints, create awareness of the self-regulatory system, monitor advertising, offer copy advice and/or pre-clearance. Cross-border complaints are handled with EASA, European Advertising Standards Alliance.

The 27 EU countries however differ in their development of the self-regulating systems. Within the group of "old" EU members, the specific cases of self-regulation systems are UK, Nordic countries, Austria and Germany and Mediterranean countries (Italy, France, Spain, Portugal, and Greece). Specific differences among them can be found in the main self-regulatory features, in media regulated by SROs (including internet and new and evolving media), product and sector-specific rules and also in advertising monitoring, code-drafting and independent element in jury. U K has an effective well publicised and well-resourced self-regulatory system with ASA (national SRO) as important and active player in the field. In Germany and Austria, advertising is under extensive legislative regulation, leaving little space to self-regulation on issues of taste, decency and social responsibility. In Nordic countries, self-regulation is coping with a specialised government agency, a Consumer Ombudsman that receives all complaints from the general public. Italy has a highly structured self-regulatory system to cover the area which Italian law did not regulate. French system, one of the oldest established self-regulatory systems in Europe, provides pre-publication copy advice to ensure compliance with self-regulatory rules and legislation. In Spain, self-regulation system is one of the most effective in Europe, while in Portugal and Greece it was recently radically reorganised to better offer services to consumers and the advertising industry. It is interesting, though, that in the "old" countries with most detailed legislation that leaves least space to self-regulation, self-regulation has been most often severely criticised for being ineffective.

For the "new" EU members, e.g. countries of Central and Eastern Europe and Baltic countries that joined EU in 2004 or 2007, the important condition for the development of the self-regulating system is a viable advertising industry. Such an industry should be able to support financially, morally and practically the adopted code of standards and practice as well as ensure significant resources to set up an independent body, SRO. In the new member states, SROs are either operational or under way. It is important, however, to ensure their development by overcoming the deficiency of knowledge about the self-regulative mechanisms within the institutions and the general public. Some newly created SROs are organized similarly to the ones in the "old" EU countries while others reflect different political, economic and cultural realities of these countries. Basic components of an effective advertising self-regulation are financial funding, written code, code enforcement with periodical revisions, complaint acceptance procedure, audit of the self-regulation program, education and creation of public awareness about the system and the impartial body of advertising self-regulation that includes participants from outside the advertising triangle. Since these components are in place to a different degree in different EU countries, self-regulation systems ensure different levels of advertising industry support and consumer protection based on legal, decent and truthful advertising.

## **ADVERTISING SELF-REGULATION IN USA**

*Jim Avery, University of Oklahoma, Norman, Oklahoma, USA.*

### **Summary**

Advertising is one of the most heavily regulated industries in the United States. The regulation is done primarily by government agencies, but also by the industry itself and by consumers.

When the regulation is through a court or through a government agency, it most often through the application of statutes or case law. These seek to control the content of the advertising to avoid deception or unfairness. The Federal Trade Commission (FTC), The Federal Communications Commission (FCC), and The Food and Drug Administration (FDA) have the broadest power to regulate advertising, but the Securities and Exchange Commission (SEC), The Bureau of Alcohol, Tobacco, and Firearms (ATF), and the U.S. Postal Service also have some control over advertising in their respective areas. We tend to think of this as the regulation of advertising.

Self-regulation is primarily an industry function. Individual companies control their advertising, media companies ask for substantiation for claims, industry groups provide guidelines, and a system exists to determine non-compliance to regulation for advertisers.

**1. Individual companies:** Most companies have internal guidelines or codes to help them determine the content of their advertising. This could be for compliance to regulation, but it could also be to avoid public displeasure. For example, in August 2009, McDonald's and Procter & Gamble stated that they would no longer buy advertising on talk shows because of the public outrage associated with Glenn Beck's presidential racial slur.

**2. Media companies:** Media companies have two levels of self-regulation. Sometimes they belong to an industry group, like the National Association of Broadcasters, who have a code of ethics that relates to advertising. They might also require claim substantiation directly from the advertiser as do many national magazines and all the television networks. The goal of both of these is to make certain that their advertisers are in compliance with rules and regulations because the courts have ruled that the media can be held jointly responsible for inappropriate advertising.

**3. Industry groups:** Many industries, including both advertising and public relations, maintain codes of ethics for their professional members. These can be broad trade associations, like the Bank Marketing Association and the American Wine Association.

**4. Council of Better Business Bureau:** Likely one of the most important industry self-regulatory groups is the National Advertising Division (NAD) of the Better Business Bureau (BBB). The NAD maintains permanent professional staff to help advertisers resolve differences. If a company has a complaint about another company's advertising they can choose to ask the NAD to be involved instead of filing a court case. The NAD looks at the evidence to determine if the advertising has sufficient substantiation. If either company disagrees with the outcome, they can appeal the decision to the National Advertising Review Board (NARB). The NARB is made up of professionals in the industry who review the case and either support or refute the NAD's decision. Neither the NAD or the NARB have power to mandate adherence, but all decisions made are forwarded to the FTC. State and local Better Business Bureaus also seek to avoid legal issues with advertising by advising their membership.

5. **Consumer groups:** Consumers are likely the last line of defense against false advertising. In recent years this has increased substantially. Groups like the Consumer Union and the Consumer Federation of America fall into this category. They have been instrumental in establishing consumer protection agencies in many state governments. Compliance to advertising rules and regulations benefit everyone in the marketing industry. It helps to build consumer confidence.

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