



ADVERTISING STANDARDS AUTHORITY

COMPETITOR COMPLAINTS PROCESS 2013

The competitor complaints process gives fast and thorough consideration to competitor complaints for the benefit of consumers and to ensure a level playing field for industry. It is a user-pays process where all parties have ample opportunity to put their cases, however, the overriding consideration is making a fair, fast decision, based solely on the Advertising Codes of Practice. Once a decision is made, offending advertisements are requested to be withdrawn.

STEP ONE Provide a detailed complaint citing the provisions of the Advertising Codes of Practice you believe to have been breached and enclosing copies of the relevant advertisement/s. If you require a current copy of the Codes, this can be obtained free of charge by contacting the ASA on (04) 472 7852 or via our website www.asa.co.nz.

STEP TWO The Chairman of the Complaints Board will consider whether the complaint is suitable to be dealt with in the competitor complaints process - within 24 hours if urgency is requested.

Depending on the nature of the complaint, an independent Investigator/ Auditor may be appointed to interview the parties and provide a report. An adjudication panel of three complaints board or appeal board members will also be confirmed.

STEP THREE A copy of the complaint is circulated to the advertiser, agency and media involved, with a response sought within seven days. The hearing date is set around five days after that deadline. One of the procedural rules is:

“The Complainant shall waive the right to take or continue proceedings against the advertiser, publisher or broadcaster concerned.”

This is to avoid the possibility of the decision being used as a ‘trial run’ for any further action.

STEP FOUR With the written comments of all parties and the independent Investigator/Auditor's report (if required) circulated to parties beforehand, the hearing is held. You have the opportunity to speak to your submission and refute your opponent's arguments. The process is not unduly formal, more akin to a robust board meeting than a court case, and usually takes around two hours.

STEP FIVE The Adjudication Panel will come to a decision and it will be circulated within about seven days. If your complaint is upheld, the advertiser, agency and media are requested to withdraw or amend the offending material. In accordance with the industry's self-regulatory principles, compliance is excellent. The whole process from initial complaint to final decision can be expected to take about twenty days. It can be longer depending on the level of co-operation from parties. It is important to note that the decision of the Panel will be full and final and that there is no appeal procedure within the competitor complaints process.

HOW MUCH DOES IT COST?

The total fee for members of ANZA, CAANZ and other members of the ASA is \$5,500 plus GST. For non-members, who are currently paying the ASA advertiser levy, the fee is \$7,500 and for all other competitor complainants the fee is \$10,000 plus GST. If an independent Investigator/Auditor is appointed, then an additional \$2,500 plus GST is payable. Once a competitor complaint has been accepted by the Chairman, if the adjudication does not proceed, the only cost to the complainant will be a \$1,500 filing fee plus GST. There is no fee for advertisers, agencies or media to defend themselves against competitor complaints. If the complaint is upheld then, in accordance with self-regulatory principles, the losing party is requested to voluntarily pay the hearing fee, which is refunded to the complainant on receipt.

DO I NEED A LAWYER?

This is up to you - a number of lawyers are familiar with the ASA process and legal representatives appear in around 50% of competitor complaints. It should be remembered, however, that disputes are about specific advertisements and whether they breach the Codes, not about complicated or technical points of law. You may find it preferable to argue your case yourself.

IS THE SYSTEM BETTER THAN THE COURTS?

This depends on the outcome you are looking for. Although the ASCB cannot issue a Court Order, the Adjudication Panel can provide a much speedier resolution with an offending advertisement withdrawn quickly. It is also likely to cost many thousands of dollars less.

It should be noted that once both parties agree to the complaint being dealt with through the ASCB system, they are required to forego the option of civil action through the courts. If you are seeking damages and/or costs from your competitor, this should be done through the normal court procedures.

HOW CAN I SPEED UP THE PROCESS?

You can ensure there are no delays by obtaining a copy of the advertisement as quickly as possible and including your agreement to pay the fee when you initially lodge your complaint.

CAN I STILL COMPLAIN UNDER THE CONSUMER SYSTEM?

No. Experience over many years has shown that competitor complaints are by their nature much more complex and that the free consumer complaints service is quite unsuitable. There is also no right of appearance for the parties involved.

NEED TO KNOW MORE?

If you would like further information or have any questions about the competitor complaints process, please feel free to contact the Chief Executive, Hilary Souter at the ASA on (04) 472 7852. She can supply you with up to date copies of the Advertising Codes of Practice and give you a specific timetable for the consideration of any complaint you may wish to make.

FILING A COMPLAINT

Address your complaint to The Secretary, Advertising Standards Complaints Board, P.O. Box 10-675, Wellington 6143, email to asa@asa.co.nz or fax to (04) 471 1785.