

Guidance note on responding to a complaint about misleading claims

The Advertising Standards Authority's complaints process requires the Advertiser to provide substantiation/evidence to support the claims made in their advertising, if challenged. Therefore, if a complaint is made that an advertisement is misleading or deceptive, it is the responsibility of the Advertiser to provide sufficient information to enable the Complaints Board to assess the accuracy of claims or statements made. It is important to note that the Complaints Board will consider the likely consumer take-out of the whole advertisement, not just the claim in isolation.

When responding to the complaint, it is recommended that the Advertiser consider the complaint in conjunction with the relevant Advertising Codes and the issues raised by the complainant.

Substantiating claims made in the advertisement

Before publishing/broadcasting an advertisement, the Advertiser should ensure they have evidence to prove or support all claims made, whether they are direct (absolute/express) claims or implied. There is a need to be able to support absolute claims and the overall impression conveyed in the advertisement.

Statements such as "we are the cheapest", "fastest growing" and "best price" are absolute claims. The advertiser is making a clear statement about their product or service which is able to be proven.

An implied or indirect claim can occur when products or services are advertised using a comparative approach. For example "better than all the rest".

Exaggerated statements such as "world's best coffee" and "best night's rest" which are impossible to prove because they are subjective, fall into the category of hyperbole.

What is substantiation and why do we require it?

Substantiation refers to the requirement for verification, confirmation, evidence or proof that a claim made by an Advertiser is true. Consumers need to have confidence the Advertiser has a reasonable basis for making the claim. Therefore, claims should be supported by sound, relevant, clear and robust evidence.

Substantiating absolute claims

When substantiating an absolute claim, the Complaints Board expects the Advertiser to have at the least, the advertised level of substantiation (e.g. "tests prove" or "studies show"). If scientific claims are made, the Complaints Board requires that scientific tests have actually been undertaken to support the claim. The following are characteristics of scientific evidence:

- Tests, studies, other scientific research which are controlled, randomised and methodologically sound;
- Based on expertise of a professional in the field;
- Objectively conducted by qualified people and published in a recognised, peer reviewed forum;
- Using procedures accepted as accurate.

The following is not competent scientific evidence and / or does not constitute adequate substantiation:

- Anecdotal evidence from customers;
- Newspaper, magazine or Wikipedia articles;
- Sales material from the manufacturer;
- Low return rate or money back guarantee;

- Testimonials.

A full copy of the relevant scientific evidence/study should be provided with your response. ***Please highlight the relevant sections, and include an explanation as to why they are relevant to the issue at hand.*** Do not just provide the extract which supports the claim – it is the totality of good scientific evidence available that is important. While the Complaints Board is not an arbiter of scientific fact, it will make an assessment as to whether the evidence applies to and supports the advertised claim.

Please note testimonials alone do not constitute substantiation and opinions expressed in them must be supported by independent evidence of their accuracy. As noted in Rule 9 of the Code of Ethics, testimonials must be genuine, current and representative of the typical (not an exceptional case). All testimonials should be verifiable.

Substantiating implied or indirect claims

Advertisers are not always likely to possess evidence to support implied claims. However, the Advertiser's response to the complaint should clearly illustrate how they come to possess the "reasonable basis" on which the claim is made.

FACTORS TAKEN INTO CONSIDERATION BY THE COMPLAINTS BOARD

The substantiation provided must equal the claim being made. However, when considering the Advertiser's response to a complaint (and the substantiation provided) there are a number of factors the Complaints Board will examine. These factors include:

- The type of claim;
- The type of product / nature of the good or service;
- The benefits if the claim is true;
- The consequences if the claims is false;
- The ease and cost of developing substantiation for the claim;
- The level of substantiation experts in the field would agree is reasonable.

The Complaints Board will also have regard to:

- Whether research or other appropriate steps were taken by the Advertiser prior to making the claims in the advertisement;
- The nature of the claim – i.e. quality or quantity and fact or opinion;
- Actual / potential effects of the claim on any person;
- Whether comparative claims have been monitored to reflect changing market conditions;
- Whether the evidence provided relates to testing on the subject matter's current formulation.

Confidential Information / Substantiation

PLEASE NOTE: The Complaints Board is NOT able to accept or consider any material which is marked as "Confidential" as all material provided is contained within our Decisions which are made available to the public via the ASA website. In exceptional circumstances (usually involving proprietary information) precedent is in place to allow the Complaints Board to accept confidential information by way of third party affidavit.

Further Assistance

The ASA staff is available to provide advice and assistance with responses to complaints. Contact us on 0800 AD HELP (0800 234 357) or (04) 472 7852.