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AND INTERNATIONAL RELATIONS

ADVERTISING SELF-REGULATION:
A Comparative Study between the United Kingdom and
Turkey, with reference to the European Union

- Master Thesis -

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İSTANBUL, 2002

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	i
ABSTRACT	
FOREWORD.....	ii
LIST OF ABBREVIATIONS.....	iii
I. INTRODUCTION.....	1
II. THE ETHICIST ARGUMENT ON AN ASSUMPTION OF ADVERTISING.....	3
III. SELF-REGULATION CONTROL SYSTEMS OF ADVERTISING.....	6
3.1. Theoretical Framework of Self-Regulation.....	6
3.2. The European Union.....	7
3.2.1. The Consumer Movement.....	7
3.2.2. Organisation of Advertising Self-Regulation.....	9
3.2.3. Functioning of Advertising Self-Regulation.....	11
3.2.3.a. The Code-Making Body.....	11
3.2.3.b. The Code Applying Body.....	11
3.2.3.c. The Appeals Body.....	12
3.2.3.d. The Permanent Secretariat.....	12
3.3. The United Kingdom.....	13
3.3.1. The Consumer Movement.....	13
3.3.2. Organisation of Advertising Self-Regulation.....	14
3.3.2.a. Implementation of the European Union Legislation... ..	14
3.3.2.b. Implementation of the National Legislation.....	15
3.3.2.c. The Non-Broadcasting Advertising Categories Prohibited by Law.....	15

3.3.3.	The Codes of Advertising Self-Regulation.....	15
3.3.4.	Main Activities of the ASA.....	16
3.3.4.a.	Copy-Advice / Pre-clearance.....	17
3.3.4.b.	Monitoring / Compliance.....	17
3.3.4.c.	Complaints Handling.....	17
3.3.4.d.	Appeals.....	18
3.3.4.e.	Sanctions.....	18
3.3.5.	Functioning of Advertising Self-Regulation.....	19
3.3.5.a.	Statutory Authorities.....	19
3.3.5.b.	Self-Regulatory Organisation: The Advertising Standards Authority (ASA).....	20
3.3.5.b.a.	The Advertising Standards Board of Finance (ASBOF).....	20
3.3.5.b.b.	The ASA Council.....	21
3.3.5.b.c.	The Joint CAP/ASA Executive.....	21
3.3.5.b.d.	Responsibilities of the ASA.....	21
3.3.5.b.e.	Funding of the ASA.....	22
3.4.	Turkey.....	22
3.4.1.	The Consumer Movement.....	22
3.4.1.a.	Actions Taken for the Harmonisation of the Turkish Consumer Protection Law with the European Union Legislation.....	23
3.4.2.	Organisation of Advertising Self-Regulation.....	24
3.4.2.a.	Implementation of the European Union Legislation..	24
3.4.2.b.	Implementation of the National Legislation.....	24
3.4.2.c.	The Non-Broadcasting Advertising Categories Prohibited by Law.....	25
3.4.3.	The Codes of Advertising Self-Regulation.....	25
3.4.4.	Main Activities of the ASRB.....	25
3.4.4.a.	Copy Advice / Pre-clearance.....	26
3.4.4.b.	Monitoring / Compliance.....	26
3.4.4.c.	Complaint Handling.....	26
3.4.4.d.	Appeals.....	27
3.4.4.e.	Sanctions.....	27

3.4.5. Functioning of Advertising Self-Regulation.....	27
3.4.5.a. Statutory Authorities.....	28
3.4.5.b. Self-Regulatory Organisation: The Reklam Özdenetim Kurulu (RÖK).....	28
3.4.5.b.a. The Advertising Self-Regulatory Board.....	28
3.4.5.b.b. The Executive Board.....	29
3.4.5.b.c. The Secretariat.....	30
3.4.5.b.d. Responsibilities of the ASRB.....	30
3.4.5.b.e. Funding of the ASRB.....	30

IV. A COMPARISON OF THE APPLICATIONS OF THE SELF-REGULATION..31

4.1. The Concept of Advertising.....	32
4.1.1. The Definition of Misleading Advertising in the European Union Legislation.....	32
4.1.2. The Definition of Misleading Advertising in British Legislation.....	33
4.1.3. The Definition of Misleading Advertising in Turkish Legislation.....	33
4.2. The European Union.....	34
4.2.1. The Cross-Border Complaint System.....	34
4.2.1.a. The Definition of the Cross-Border Complaint.....	34
4.2.1.b. Principles of the Cross-Border Complaint System.....	34
4.2.1.c. Examination of a Cross-Border Complaint.....	35
4.2.2. The Cross-Border Complaint Statistics.....	35
4.2.3. Examples to the Cross-Border Complaints from the Press.....	36
4.2.3.a. Case No.625: KLM.....	36
4.2.3.b. Case No.681: Lufthansa German Airlines.....	37
4.3. The United Kingdom.....	38
4.3.1. The Complaint Statistics.....	38
4.3.2. The Areas of Complaints by the Codes.....	38
4.3.3. Examples from the Press.....	39
4.3.3.a. Kia Cars UK Ltd.....	39
4.3.3.b. Air Bounce Trampolines.....	40

4.3.3.c. Telewest Communications plc.....	41
4.4. Turkey.....	44
4.4.1. The Complaint Statistics.....	44
4.4.2. The Areas of Complaint by the Codes.....	45
4.4.3. Example from the Press.....	46
4.4.3.a. Case No. 339: Maxi Shopping Center.....	46
V. GENERAL ASSESSMENT.....	49
5.1. The United Kingdom.....	49
5.2. Turkey.....	51
VII. CONCLUSION.....	53
BIBLIOGRAPHY.....	56
APPENDICES.....	62


ACKNOWLEDGEMENTS

My thanks are firstly to my supervisor Assist. Prof. Dr. Funda Savaş GÜN, who encouraged me to deal with such an untouched issue and lead me with her dearly guidance through the research stages; Assist. Prof. Dr. Armağan Emre ÇAKIR and Dr. Esra HATİPOĞLU, my lecturers at the European Community Institute, İstanbul, for their friendship and ever lasting supports; Mr. Michiel TEGELAARS, of the European University Institute Library, Fiesole, Florence, for his concern and helping me about the technique of the research; Ms. Müge Tanıl, of the Advertisers Association (Reklamcılar Derneği), İstanbul, for her precious help and concerns, and to Nurçin, Ayşe Nur and Orhan KURAL, not only for supporting me as my family, but easing my mind in these tough times.

FOREWORD

Advertising self-regulation is an interesting and transparent subject which most people do not even realise its presence. On the other hand, its existence helps the advertising sector develop further creativity and more over, it does this without a sense of censor.

In this research, it will be possible to observe the advertising self-regulation systems in a combination of comparisons, between the United Kingdom and Turkey, with a reference to the European Union. It will clarify the unique character of the self-regulation in these two countries and the reference to the European Union will help to realise the differences in a context.



LIST OF ABBREVIATIONS

- AA:** Advertising Association
ASA: Advertising Standards Authority
ASRB: Advertising Self-Regulatory Board
EASA: European Advertising Standards Alliance
RÖK: Reklam Özdenetim Kurulu (Advertising Self-Regulatory Board)
SRO: Self-Regulatory Organisation

-vi. : viewed on



I. INTRODUCTION

Advertising should be accepted as an effect in a human-being's life, where people are unconsciously taken under control to act in a possible positive manner which leads to buying certain products or service, or in a negative way, without any remarks to the advertised. Although many individuals do not realise, the power of advertising should never be underestimated.

It is known that the potential consumer is being affected by some factors, such as the information received from the acquaintances, the messages given from social sources, where media should also be counted in, and besides all these, the advertisements. The advertisements can be in various kinds and styles, and they deliver the message in such a way which the potential consumer could be created suddenly or day by day.

During this very sensitive stage of the potential consumer becoming a 'real' consumer, the power of advertising is rather remarkable. It is well-known that the advertising sector is a huge entity and as much as other business sectors, this sector has some 'rules' to obey, in order to constitute a successful structure in itself. Different from some other sectors, advertising industry has an ethical base, where relativity issue is a major fact to be considered. In the light of this reality, advertising managers apply such a 'system of rules', with an ethical point of view, that supplies a free space to do whatever is required for the creation of the best of advertising products. This system is named as 'advertising self-regulation'. As it is just mentioned, self-regulation is being applied inside the advertising sector by the members of the sector, who are the whole of advertising employers and employees. The detailed information about the definition of self-regulation and its application is given later below.

The advertising self-regulation system is applied by many countries all around the world. For this reason, there is even an international understanding being applied by the advertising sectors in these countries. Two of these countries are the United Kingdom and Turkey. The United Kingdom has one of the leading advertising industries in the world. As a result of this, it has established a well-developed advertising self-regulation system. Turkey is applying the self-regulation system in advertising for the last eight years, with

the establishment of *Reklam Özdenetim Kurulu (the Advertising Self-Regulatory Board)*. The comparison about the self-regulation systems of Turkey and the United Kingdom will be made referring to the European Union, as both of the countries are the members of the self-regulatory organisation of the EU. Also, the United Kingdom being a member state to the Union and Turkey being one of the candidate countries, the research has another face considering the political conditions and the social developments.

The thesis is organised of six chapters, including the conclusion. In the first two chapters, the reader will observe the ethics, in brief, and the ethical perspective for advertising in terms of the need for self-regulation. Beginning from the Third chapter, the self-regulation control systems could be found, with references to the consumer movements and the governmental systems. In this chapter, detailed information about the self-regulation systems in the EU, the UK and Turkey could be found. Chapter Four will place the comparison about the applications of the self-regulation systems and chapter Five will make a general assessment covering the whole research. In chapter Four, a comparison is made by using examples chosen from the complaints made to the self-regulatory organisations.

As well as general information, it is rather important to point out that the research has been limited both in the historical means and the field of advertising sector. It is very necessary to realise that only one particular section of the advertising sector is chosen and it is, the press, especially the national press. For the historical limitation, it would be easy to follow the search mostly in the near past.

II. THE ETHICIST ARGUMENT ON AN ASSUMPTION OF ADVERTISING SELF-REGULATION

The word 'ethics' comes from the Greek word *ethikos* meaning *of or for morals*, which morals is described as *being concerned with ... the distinction between right or wrong*¹. The definitions on ethics are variable depending on the ideologies of the related authorities. Ethics, in general, is defined as *a discipline which observes how the human behaviour has to be*². According to this description, ethics are expected to observe or analyse the 'ideal' act of all human activities. From the way of eating to the way of talking, from discussing politics to deciding whether a childish act is right or wrong, ethics is everywhere where a human being exists. Supporting this point of view, Hegel claims that *the ethical regulation is concerned with the family life, economical and social lives*³. It is very well understood that the bases of ethics are firstly constructed by the family and later on the real life, which an individual is surrounded by the social and economic conditions of the environment. In the light of this fact, it is no surprise to find out the first traces of ethics comes out from the family structure. What a child sees from his/her parents builds up the main body of his/her life-time psychology in some ways. In brief, the root of ethics is from family first and the external effects later on.

Religion is another subject when ethics is being observed. While an action is discussed as being good or bad, religion plays a basic role, because it is considered as religion being one of the main affections in the human behaviour. The main criticism of religion as an ethical system is the need for faith⁴. Without believing in a certain power, an individual might have troubles to find a place in the society. The claim is also supported by Merrill, Lee and Friedlander, when they mention that *ethics is a branch of philosophy that reflects what has to be done and which actions are good or bad*⁵. It can be seen that wherever 'good or bad' relation is mentioned, religion is behind it.

¹ Chris Frost, *Media Ethics and Self-Regulation*. London: Longman Harlow, 2000, p.1.

² A.Rıdvan Bülül, *İletişim ve Etik*. Ankara: Nobel Yayın Dağıtım Ltd. Şti., İletişim Kitapları, 2001, p.11.

³ *ibid.*, p.11.

⁴ Frost, *loc.cit.*, p.5.

⁵ Bülül, *loc.cit.*, p.13.

On the other hand, it is brought a universal point of view by Immanuel Kant, when he expresses his ideology with mentioning that *behaviour has to be able to become a universal law to be ethical*⁶. This is rather a general perspective. Although for a larger manoeuvre area, a general comment is very necessary. Considering the fact Kant reflects, it can be easily observed that any human behaviour should be accepted by all human beings to be recognised as 'ethical'. General acceptance is recommended also by August Comte, when he claims that *ethics' main principle is to live for others*⁷. It is an agreeable comment for a person who believes in the general point of view to define ethics. From Comte's description, it is understood that once a person behaves in a particular way, it has to be in terms of the general acceptance of the entire human beings.

Comparing Kant's ideology with Comte, it could be clearly seen that both ethicists agree on the general comment about the way the ethics is accepted. In terms of the realities of life, it would be better to consider the ethics in general means, now that the research will not be limited in national or regional terms, but with an international perspective.

When ethics is concerned, it occurs to be a need to make general definitions. It would be better to see that the main agreement on the definitions of ethics is whether an activity has to be good or bad. Also, the activity or the behaviour has to be generally accepted by the public. These two characteristics are seen as common for all definitions.

Ethics is an important issue when advertising is concerned. Noticing the fact that every day, people are being interacted with enormous number of every kind of advertising taking place everywhere, such as television commercials and billboards, ethics is a sensitive case for the advertising sector.

For this specific field of business, ethics functions in a rather unusual way. Sir William Ross expresses his point of view on the subject as; *everybody is bound by their own words or acts*⁸. Starting from this idea, it can be said as self-regulation appears as a natural outcome. It should never be put aside that there is a high amount of relativity in advertising business. For one person advertising can be very wrong, but for another, it can be the best work he/she has ever seen in his/her life. For this reason, some discussions go on about what is a bad advertisement or how a good advertisement is supposed to be.

⁶ *ibid.*, p.13.

⁷ *ibid.*, p.12.

⁸ Frost, *loc.cit.*, p.8.

At this point, subjectivism could save time for further arguments. According to subjectivism, *ethical judgements are neither true nor false or if those judgements are true or false, they are individualistically applicable to the psychology of the person who utters them*⁹. This approach supports the fact that understanding an advertisement differs from one another, eventually.

The way John Stuart Mill has defined ethics seems to be the most likely description for the ethics applied in advertising: *to supply the biggest happiness for the most amount of people*¹⁰. Is not advertising claiming this? Advertising is made to reach the most number of the potential consumers in the least amount of time. There is a certain path which this potential consumer follows. In this path, it is firstly targeted to create *awareness* of the product or the brand, later on, it is provided to make *comprehension* to understand the product and to know the superiority that will be given by the product, followed by *conviction* stage where there is pointed the good when the product is bought and finally, *action* when the potential consumer visits the market area or sees the product expressed with the message content¹¹. Following this route, the potential consumer usually becomes a real consumer and buys the product.

The importance of the 'buying' stage is there that the consumer has to be convinced that he/she is buying exactly the same service or product which the advertising explains. For this reason, ethics is a must to be considered while doing the advertising of the product or the service, depending on the 'bringing reality' to the target people.

When ethics is concerned in the advertising sector, it was previously mentioned that self-regulation is the most effective way of controlling how the business works. Advertising requires a rather free space, as inspiration and creativity should co-operate in such an atmosphere. Being aware of this reality, it should be in a sensitive balance between controlling one self and creating. It is highly believed that advertising self-regulation is the best way to give such a balance to the creators of the advertising sector in terms of ethical orders. As Boddewyn points out, advertising self-regulation is *more moral and ethical than being disciplinary*¹².

⁹ *ibid.*, p.10.

¹⁰ Bülbul, *loc.cit.*, p.13.

¹¹ Filiz Balta Peltekoğlu, *Halkla İlişkiler Nedir*. İstanbul: Beta Basım Yayın Dağıtım A.Ş., 1998, p.23.

III. SELF-REGULATION CONTROL SYSTEMS OF ADVERTISING

3.1. Theoretical Framework of Advertising Self-Regulation

The term of 'self-regulation' has appeared in 1937 by the need of regulating commerce, when International Chamber of Commerce has first published its *International Code of Advertising Practice*¹³. The contents of the ideal self-regulation system are explained with these codes. According to the *ICC Code of Advertising Practice*, all advertisements and sales promotions should be:

- *legal, decent, honest and truthful,*
- *prepared with a sense of responsibility to consumers and society ,*
- *in line with the principles of fair competition generally accepted in business*¹⁴.

The ICC Codes of Advertising Practice are accepted throughout Europe and around the world. Although the main characteristics of these codes are common, forms of self-regulation differs from country to country. But the common characteristics of the term give an opportunity to define a self-regulatory organisation (SRO):

- *it is an independent body, i.e. independent of government and specific interest groups and having its own decision-making function;*
- *it is a body set up and funded by the advertising industry;*
- *it has practical responsibility for regulating advertising;*
- *it has the power to enforce its decisions; i.e. the moral and practical support of the advertising industry;*
- *it can rely on sufficient support from the constituent parts of the advertising industry (or in the case of a sectoral body, enough of the sector for which it is responsible) to ensure its credibility;*

¹² Jean J. Boddewyn, Advertising Self-Regulation: True Purpose and Limits. *Journal of Advertising*, Volume 18, Number 2, 1989, p.24.

¹³ The European Advertising Standards Alliance (EASA), *EASA Guide to Self-Regulation*. Belgium: EASA Publications, 1997, p.8.

¹⁴ Public Management Occasional Papers No.18, *Co-operative Approaches to Regulation (The Advertising Standards Authority and the System of Self-Regulation in the United Kingdom, by Caroline Crawford)*. Paris: Organisation for Economic Cooperation and Development (OECD) Publications, 1998, p.23.

- *it is impartial;*
- *it deals with consumer complaints on a cost-free basis;*
- *its decision-making process and adjudications are transparent*¹⁵.

The description of the main structure of the self-regulation system is as such, where in the following chapters will be pointed and cleared of with the examples of the advertising system in the United Kingdom and the Republic of Turkey. In the first place, advertising self-regulation will be explained how it is being applied throughout the European Union.

3.2. The European Union

3.2.1. The Consumer Movement

As previously mentioned, the system of self-regulation has appeared out of the need to regulate the commerce. In this respect, the interaction between the advertising and the consumer needs come out in a perfect relation, where the consumer needs play an effective role in the first sight.

For the people of the European Union, it is no different from anywhere else in the world. To give some numbers about the population and the amount of consumers inside the Union; the population by the year 1998 was 375 million, of whom over two-thirds were living in Germany, The United Kingdom, France and Italy¹⁶. In the same year, some 56% of the EU population was aged between 20 and 59¹⁷. Between 1995 and 1998, the number of young people fell in all Member States except Denmark, Germany, Luxembourg and the UK, while the number of people aged over 59 rose in all Member States¹⁸.

Concerning the economy of the Union, employment rates amongst men of working age were higher than of women. Between 1995 and 2000, women's employment rates

¹⁵ The European Advertising Standards Alliance (EASA), *loc.cit.*, pp.10-11.

¹⁶ Eurostat, 'Consumers in Europe' Facts and Figures. Luxembourg: Eurostat, 2001, p.13.

¹⁷ *ibid.*, p.16.

¹⁸ *ibid.*, p.16.

increased in all age ranges, highly for the ages of 40 and 44 (at 68.6 Per cent)¹⁹. For men, these ages were high at 35 and 44 (at 90.1 Per cent)²⁰. Naturally, these ages vary from one member country to another, depending on the social conditions.

The population of the European Union by January 1st, 2002, is 379.6 million, with a rise of 1.560.000, which is 2 Per cent of the total increase of the world's population²¹.

The policy about the consumer protection has appeared as a result of *globalisation*, now that the interaction between the countries is unlimited. In this respect, the consumers in the European Union is being protected by the European Union Agreement article 129A, signed in Maastricht, and later on, this is improved in 1997 in the Amsterdam Agreement and became article 153 in future²².

After 1990s, the Union has paid serious attention to the consumer protection to prepare a well-structured policy. Here are the subjects which the Union directed its activities upon:

- *package tours (June 13, 1990),*
- *general product safety (June 29, 1992),*
- *unfair conditions in the consumer agreements (April 5, 1993),*
- *periodic estate (October 26, 1994),*
- *long distance agreements (May 20, 1997),*
- *comparative advertising (October 6, 1997),*
- *showing the prices of the foodstuffs and non-foodstuffs (February 16, 1998),*
- *ways of solving the alternative disagreements (recommended decision of March 30, 1998),*
- *sanctions (May 19, 1998),*
- *tobacco advertising (July 6, 1998),*
- *legal and commercial guarantees (common action of September 24, 1998)²³.*

As it can be clearly observed, the actions are newly improved in the recent years. The outcome could be drawn so that, the fast growing trade and advertising required a high amount of control, not only inside the European Union but all around the world. It can also be seen that the consumer protection is a relatively new term, although the EU supports an

¹⁹ *ibid.*, p.16.

²⁰ *ibid.*, p.16.

²¹ Eurostat (2002) **EU population up by 0.4 % in 2001 mainly to net migration** –vi.14.08.2002.[WWW Document]. URL http://w.../EN?catalogue=Eurostat&product=3-07082002-EN-AAP_EN&mode=download.

²² Thierry Bourgoignie, Véronique Cambier, **Türkiye'nin Tüketici Koruması Mevzuatının Avrupa Birliği ile Uyumlaştırılması**, İstanbul: İktisadi Kalkınma Vakfı Yayınları, 1999, p.10.

active consumer policy since 1972²⁴. The reality behind this is supposed to be the recent developments in technology and a high rise in the variety of the products to consume.

3.2.2. Organisation of Advertising Self-Regulation

In the European Union, advertising self-regulation is being conducted by *the European Advertising Standards Alliance*, which is founded in 1992 and based in Brussels²⁵. The Alliance describes self-regulation as *a system by which the advertising industry actively polices itself*²⁶. For them, the advertisers, the advertising agencies and the media are all responsible from working together to agree advertising standards and to set up a system to ensure that advertisements which fail to meet those standards are quickly corrected or removed²⁷. The EASA has ten advertising associations representing advertisers, agencies and the media and 28 self-regulatory organisations, of which four are extra-European, indirect membership²⁸.

The roles of the EASA is described as; *the management of cross-border complaints on a country-of-origin basis, the promotion of self-regulation in those Member States where it is under-developed or recognised, and as provider of information on codes of practice across the EU (and increasingly in Eastern Europe)*²⁹. Understanding from this, the Alliance does not have any regulatory power; it can only promote, develop and co-ordinate national systems.

The legal side of the self-regulation system shows up a difference from one member country to another. The EASA obeys the ICC Codes of Advertising Practice. According to the legislation of some member countries, self-regulation is subject to legislation, while in some other countries, the system is freed for the self-regulatory bodies

²³ *ibid.*, p.11.

²⁴ *ibid.*, p.10.

²⁵ The European Advertising Standards Alliance (EASA), 'Advertising Self-Regulation in Europe' (An analysis of advertising self-regulatory systems and their codes of practice in 22 countries). Belgium: EASA Publications, 2001, p.135.

²⁶ *ibid.*, p.13.

²⁷ *ibid.*, p.13.

²⁸ The Advertising Standards Authority (ASA) (16.02.2002) **Improving Self-Regulation at a European Level** –vi.01.09.2002 [WWW Document]. URL http://www.asa.org.uk/news/show_news.asp?news_id=37.

²⁹ The Advertising Association (AA) (19.12.2000) **Advertising and Self-Regulation (Executive Brief)** –vi.24.03.2002 [WWW document]. URL <http://www.adassoc.org.uk/briefs/self.html>.

to regulate the content of the advertising. The system, eventually, provides this freedom to the Member States, by the help of the *Directives*, especially the *Misleading Advertising Directive* of 1984³⁰. For the ICC Codes of Practice, see APP. 1.

In the UK, the Netherlands and Ireland, the law has set the national SROs free to have a high profile and wide responsibilities about regulating the advertising content³¹. On the other hand, in Germany, there functions two SROs, which one works to limit to issues of taste and offence, while the other is staffed by lawyers and enforces an extensive body of detailed legislation on unfair competitive practices, which prohibits *inter alia* commercial activities which are commonplace in other countries³².

In Denmark, Sweden and Finland, the system is being applied under the body of *the Ombudsman*³³. Depending on the responsibility for different areas, there functions more than one Ombudsman, e.g. racial inequality and sexual discrimination. The self-regulation system in Sweden has been developed since 1970s³⁴.

Italy is pointed as unique by having a highly structured, quasi-legal self-regulatory system, whose procedures include formal hearings in front of a jury. On the one side, France has the oldest self-regulatory system in Europe. Compared with the other countries, French SRO has established a different function: *to provide legal advice to the advertising industry, as the most satisfactory way of ensuring compliance*³⁵.

For Spain, self-regulation was created in 1970s, but by the effect of the change in consumer demand, the system has been overhauled and restructured under a new name and a new code, and in 1999, these changes are recognised formally for the first time in a piece of legislation.

In Portugal, the self-regulatory system has been recently restructured to form a newly independent SRO, while in Greece, the system was established in 1968, but is now in the process of re-organisation to create an independent SRO.

The EASA works closely with the European Commission, the European Parliament and national governments to inform them about the latest developments in advertising controls throughout Europe³⁶.

³⁰ The Advertising Standards Authority (ASA), *Advertising Standards in Europe (Background Briefing)*. London: 1995, p.1.

³¹ The European Advertising Standards Alliance (EASA), *loc.cit.*, p.19.

³² *ibid.*, p.19.

³³ *ibid.*, p.19.

³⁴ *ibid.*, p.19.

³⁵ *ibid.*, p.19.

³⁶ The Advertising Standards Authority (ASA), *loc.cit.*, p.2.

3.2.3. Functioning of Advertising Self-Regulation

The advertising industry inside the European Union follows a code of standards and practice, where each member agrees to support financially, morally and practically.

To conduct this ideal formation, they constitute an independent body that is properly staffed and funded. This is called a *Self-Regulatory Organisation (SRO)*³⁷. This organisation usually consists of these parts: *the code making body, the code applying body, the appeals body and the permanent secretariat.*

3.2.3.a. The Code-Making Body

The purpose of this body is *to agree the code or rules by which the industry is to be regulated and subsequently to be responsible for amending and updating them*³⁸. The code-making body should be fully represented by the advertisers, the agencies and the various media. Such a co-operation is necessary for the self-regulatory system to work properly, as, the advertisers finance advertising, the agencies are responsible for the form and content of the advertising and the media has to reflect the message correctly³⁹. While support, in this respect, seems to be a necessity, it is also a voluntary feeling. To form an SRO and to see it work, support and full agreement of the whole industry should not always be looked for.

3.2.4.b. The Code-Appling Body

This is the body responsible for *the practical interpretation and application of the rules and codes of practice*⁴⁰. The chairman of the code-applying body is recommended to be a retired judge, civil servant or a distinguished academic to provide an independent space, so as to maintain public confidence and respect for the decisions⁴¹.

³⁷ The European Advertising Standards Alliance (EASA), *EASE Guide to Self-Regulation*. Belgium: EASA Publications, 1997, p.7.

³⁸ *ibid.*, p.13.

³⁹ *ibid.*, p.13.

⁴⁰ *ibid.*, p.14.

⁴¹ *ibid.*, p.14.

The code-applying body considers the complaints and makes the decisions in the light of these complaints. If the body decides that a complaint is justifies, then it has to decide what action to make; *the immediate withdrawal or amendment of the offending advertisement, or, in the case o technical infringement of the code, an admonition to the advertised and/or the agency concerned*⁴².

3.2.4.c. The Appeals Body

If the complainant or the advertiser whose advertisement is subject to the complaint are not satisfied by the decision of the code-applying body, then a separate body is formed to act as a court⁴³. Unless there are no separate bodies to act as a court of appeal, the code-applying body may also act as such.

3.2.4.d. The Permanent Secretariat

This body is usually headed by a chief executive who also acts as secretary to the code-making and/or code-applying bodies⁴⁴. The secretariat is responsible from daily running of the SRO. The activities of this body include:

- *disseminating information about the SRO, its codes and activities,*
- *providing support for the code-making, code-applying and appeals bodies,*
- *handling complaints,*
- *communicating the decisions,*
- *arranging for the publication of the decisions,*
- *liaising with advertisers and agencies,*
- *providing advice to advertisers and agencies,*
- *monitoring advertisements,*
- *conducting research,*
- *meeting with government bodies, consumer groups, industry bodies and other interested parties*⁴⁵.

⁴² *ibid.*, p.15.

⁴³ *ibid.*, p.15.

⁴⁴ *ibid.*, p.16.

⁴⁵ *ibid.*, p.16-19.

3.3. The United Kingdom

3.3.1. The Consumer Movement

The population of the United Kingdom is the second highest in the European Union, with 15.8 Per cent⁴⁶. Employment rates of persons aged between 50 and 64 in the UK is app. 75 Per cent for men and app. 55 Per cent for women in the year 2000⁴⁷.

The *Product Sales Law* of 1979 foresees, in the agreements made between the salesmen and the consumers, the definition and the availability of the purpose of the products that are subject to sell⁴⁸. The *Fair Trade Law* of 1973 and the *Conditions of Unfair Agreements Law* of 1977 bring certain regularities to the consumer protection⁴⁹. Considering the fact about the functioning of the European Union laws, they are also being applied to the member countries, which the UK is among.

3.3.2. Organisation of Advertising Self-Regulation

In the United Kingdom, there is a combination of statutory and self-regulatory control, which often co-operates with each other. For this reason, the definitions of these two control mechanisms have to be made, in order to clear the differences.

Self regulation is:

- *cost-effective, fast, flexible, and can keep pace with developments;*
- *honoured in the spirit and the letter, engenders consensus, reverses the burden of proof;*

⁴⁶ Eurostat, *loc.cit.*

⁴⁷ *ibid.*

⁴⁸ Mete Oktav, Rezan Tatlıdil, Mustafa Tanyeri, **Avrupa Birliği'nde Tüketiciyi Koruma Politikaları ve Türkiye'nin Uyumu**. Ankara: Türkiye Ticaret, Sanayi ve Deniz Ticaret Odaları ve Ticaret Borsaları Birliği, 1989, p.58.

⁴⁹ *ibid.*, p.58.

- *independent, harnesses industry and consumer expertise, preserves independence and is preventive;*
- *almost exclusively funded by industry*⁵⁰.

Statutory regulation is:

- *expensive, slow, cumbersome and reactive;*
- *honoured in the letter, provokes litigation, assumes innocence until guilt is proven;*
- *government controlled, subjects media to direct control by law, can become seen as the 'common enemy';*
- *largely funded by the State (courts, etc.)*⁵¹.

Although the differences are as such, the self-regulatory system of 1962 covers the non-broadcast media, with a limited legislative framework⁵². It is necessary to point out the current EU and national legislation applied in the UK, together with statutory authorities and self-regulatory organisation.

3.3.2.a. Implementation of the European Union Legislation

The directives given by the EU to regulate the advertising in the Union is as follows:

- *Misleading Advertising Directive (1984) 84/450/EEC,*
- *Directive amending Directive 84/450/EEC concerning Misleading Advertising so as to include Comparative Advertising (1997) 97/55/EC,*
- *Television Without Frontiers (Broadcasting) Directive (1989) 89/552/EEC,*
- *Directive on the Protection of Consumers in respect of Distance Contracts (1997) 97/7/EC*⁵³.

3.3.2.b. Implementation of the National Legislation

The regulations which are currently in application in the UK are as follows:

- *Control of Misleading Advertisements Regulations* (1988)*
- *Control of Misleading Advertisements (Amendment) Regulations* (2000)*

⁵⁰ The Advertising Association (AA), *loc.cit.*

⁵¹ *ibid.*

⁵² The European Advertising Standards Alliance, *loc.cit.*, p.115.

⁵³ *ibid.*, p.115.

**These regulations permit the Director General of Fair Trading to take action against misleading non-broadcast advertising and confirm the powers of the broadcasting regulators to remove misleading advertisements from transmission.*

- *Broadcasting Acts (1990, 1996)*
- *Consumer Protection (Distance Selling) Regulations (2000)*⁵⁴.

3.3.2.c. The Non-Broadcasting Advertising Categories Prohibited by Law

The category of non-broadcasting advertising that is prohibited by law is the prescription-only medicines and concerns the general public as defined in the Medicines (Advertising) Regulations⁵⁵.

3.3.3. The Codes of Advertising Self-Regulation

The British Codes of Advertising and Sales Promotion are lastly updated in October 1999 and became fully operational since February 1st, 2000⁵⁶.

Advertising Code is as such; *principles, substantiation, legality, decency, honesty, truthfulness, matters of opinion, fear and distress, safety, violence and anti-social behaviour, protection of privacy, testimonials, price indications, free offers, availability of products, guarantees, comparisons, denigration, exploitation of goodwill, imitation, identifying advertisers and recognising advertisements*⁵⁷.

Sales Promotion Code is as such; *principles, public interest, substantiation, legality, truthfulness, protection of consumers by promoters, suitability, availability, children, participation, administration, advertisements promotions, promotions with prizes, trade incentives, charity-linked promotions, free offers and promotions where consumers pay*⁵⁸.

⁵⁴ *ibid.*, p.115.

⁵⁵ *ibid.*, p.115.

⁵⁶ The Advertising Association (AA) (01.02.2000) **Self-Regulation: A report to ASBOF by Andrew Brown, Director-General of the Advertising Association** –vi.03.09.2002 [WWW Document]. URL <http://www.adassoc.org.uk/position/asbof2.html>.

⁵⁷ The European Advertising Standards Alliance (EASA), *loc.cit.*, p.117.

⁵⁸ *ibid.*, p.117.

Product- / sector-specific codes and rules are as such; *alcoholic drinks, financial services and products, motoring, children, slimming, environmental claims, database practice, distance selling, betting and gambling* (with a subsection on casinos), *employment and business opportunities, health and beauty products and therapies* (with sections on medicines, vitamins, minerals and food supplements, cosmetics and hair and scalp)⁵⁹.

Conditions of cigarette advertising are defined under a special code, as a result of the negotiation between the Department of Health, the Tobacco Industry and the ASA⁶⁰.

In addition to these, party political advertising is not subject to the code in the UK, on the other hand, advertisements by central or local government, or concerning government policy are also subject to the Code⁶¹.

3.3.4. Main Activities of the Self-Regulatory Organisation

The activities are the regular procedures for the application of the self-regulation:

3.3.4.a. Copy Advice / Pre-clearance

The *Copy Advice Team* is the advisory body of the SRO, which *advises advertisers, agencies and publishers on how to avoid misleading or offensive advertisements which may lead to complaints*⁶². The advices are non-binding, except the cigarette advertisements, which are subject to sanctions.

3.3.4.b. Monitoring / Compliance

The *ASA/CAP Compliance Team* is the body to indicate the ASA decisions and ensure the correct application of the Codes. To act according to the procedures, the team:

⁵⁹ *ibid.*, p.117.

⁶⁰ *ibid.*, p.117.

⁶¹ *ibid.*, p.117.

⁶² *ibid.*, p.117.

- *takes immediate action against obviously problematic advertisements (compliance cases),*
- *investigates questionable advertisements that have not been subject to complaint (spot-checks),*
- *ensures that advertisements subject to an 'upheld' ASA ruling are amended or withdrawn (post-investigation monitoring),*
- *applies individual ASA decisions across entire sectors,*
- *takes appropriate action against repeat offenders⁶³.*

3.3.4.c. Complaints Handling

The ASA deals with the complaints that come from the competitors, consumers and other interested parties and there is no charge for that. Complaints must be described as written in details of the concerned advertisement.

The advertisement that is subject to the complaint is firstly assessed by the Executive in order to determine in which way the advertisement is right or wrong. *When a complaint is pursued, the advertiser and/or the agency are informed and asked for written comments⁶⁴.* This process is necessary to make an objective decision on the continuity of the advertisement in the light of the complaint. The Codes foresee the advertisers to hold evidence to support their claims, in case of a complaint.

If there are no objections to the decision of the Executive and the advertiser immediately agrees to modify the advertisement, then the case would be closed without any further actions⁶⁵. What if the advertiser does not agree with the decision and believes that the Codes are breached, then *the Executive submits a draft recommendation to the ASA Council, which is responsible for the final decision⁶⁶.* In case of the decision comes out negative on the side of the advertiser, then the advertisement should be amended or withdrawn and undertaken not to repeat the breach. For the table, see App. 3.

⁶³ *ibid.*, p.118.

⁶⁴ *ibid.*, p.118.

⁶⁵ *ibid.*, p.118.

⁶⁶ *ibid.*, p.118.

3.3.4.d. Appeals

The appeals against the conduct of the Council must be sent to the Independent Reviewer for ASA Adjudications, as a written document, in 14 days of the ruling and new evidence or a substantial default in the conclusion reached by the Council should be attached to this⁶⁷.

3.3.4.e. Sanctions

The ASA applies a variety of sanctions according to the decisions. *If an advertisement breaks the Codes, advertisers are expected to amend or withdraw it immediately*⁶⁸. As well as these primary actions, the ASA may inform the media, government agencies, the advertising industry, consumer bodies and the public by monthly reports about the complaint adjudications⁶⁹. Also, the removal of trade incentives is used as a way of punishment, which may cause a loss of financial and some other trading benefits for both the advertisers and the advertising agencies⁷⁰. In cases of an unethical activity, the CAP may issue an *Ad-Alert* warning the media to clear the misunderstanding of that advertiser's future products and about misleading advertisements or promotions are judged by the Director General of Fair Trading, for legal action⁷¹.

3.3.5. Functioning of Advertising Self-Regulation

The conduction of advertising self-regulation in the UK is made through statutory authorities as well as the independent body of Advertising Standards Alliance (ASA) on the non-broadcast advertising.

⁶⁷ *ibid.*, p.118.

⁶⁸ Public Management Occasional Papers, *loc.cit.*, p.23.

⁶⁹ *ibid.*, p.23.

⁷⁰ *ibid.*, p.23.

3.3.5.a. Statutory Authorities

The statutory authorities are the establishments built depending on the legislation and as such in brief:

Office of Fair Trading (OFT); *responsible inter alia for the enforcement of the Control of Misleading Advertisements (Amendment) Regulations in non-broadcast media,*

Independent Television Commission (ITC); *statutory regulator for commercial terrestrial broadcast television services and responsible for the enforcement of the Control of Misleading Advertisements (Amendment) Regulations in those media,*

Radio Authority (RA); *statutory regulator for national, local, satellite, cable, additional and restricted radio services licensed in accordance with the Radio Authority Code of Advertising and Sponsorship, responsible for the enforcement of the control of Misleading Advertisements (Amendment) Regulations in those media,*

Financial Services Authority (FSA); *supervises and regulates financial firms and markets (also authorises self-regulatory organisations to regulate particular sectors of the investment market),*

Trading Standards Departments of local government; *responsible for the enforcement of a consumer protection legislation, including the Consumer Credit Act and the Consumer Credit (Advertisements) Regulations, the Trade Descriptions Act and the Consumer Protection Act*⁷².

It is important to point out the fact that the press advertisements are free of statutory control in the UK, depending on the matter of the editorial content being free, as well⁷³.

3.3.4.b. The Self-Regulatory Organisation: The Advertising Standards Alliance (ASA)

The self-regulatory organisation (SRO) for the non-broadcast advertising in the UK is *Advertising Standards Authority (ASA)*, established in 1962 with a 'company limited by guarantee' status⁷⁴.

To give a short history about the formation of the ASA; just a year before its establishment, in 1961, the Advertising Association, which is the head of the advertising

⁷¹ The European Advertising Alliance (EASA), *loc.cit.*, p.119.

⁷² *ibid.*, p.115-116.

⁷³ Anna Reading, Jane Stokes, *The Media in Britain (Advertising by Peter Meech)*. Basingstoke: Macmillan, 1999, p.30.

sector, proposed to build up a body for the directing of a unified code of practice and establish a system to enforce it. From this idea the Committee of Advertising Practice (CAP) was born and the first edition of British Code of Advertising Practice based on ICC Code of Advertising Practice was released⁷⁵. Although these improvements were expected to be successful, the system seemed not to be able to gain public confidence and the need to establish Advertising Standards Authority has appeared.

The standards of service of the Advertising Standards Association is responding the enquiries quickly, dealing thoroughly with the complaint, being accessible to complainant and improving the service according to the Codes⁷⁶. For the Advertising Code of British Advertising Codes of Practice, see APP. 2.

The composition of the ASA is of the *Advertising Standards Boards of Finance (ASBOF)*, the *ASA Council* and the *joint CAP/ASA Executive* (functions as a secretariat).

3.3.4.b.a. The Advertising Standards Board of Finance (ASBOF)

The ASBOF is responsible for funding the self-regulatory system and comprises advertisers, agencies, the media and trade organisations of the advertising and sales promotion industry⁷⁷. This body is also responsible from the Committee of Advertising Practice, which is a combination of the sector's representatives. These representatives write the rules by which the industry agrees to be bound and they form the *British Code of Advertising and Sales Promotion (BCASP)*⁷⁸. They are in concern of the ASA.

3.3.4.b.b. The Advertising Standards Association Council

The ASA Council is chaired by an independent person who is unconnected to the industry and applies the Codes and operates in the public interest⁷⁹. The Council adjudicates upon complaints received from consumers, competitors and others with a

⁷⁴ The European Advertising Standards Alliance (EASA), *loc.cit.*, p.116.

⁷⁵ Public Management Occasional Papers, *loc.cit.*, p.24.

⁷⁶ The Advertising Standards Authority (ASA) (2002) *Self-Regulation: Standards of Service* –vi.14.08.2002 [WWW Document]. URL http://www.asa.org.uk/self_regulation/standards_of_service.asp.

⁷⁷ The European Advertising Standards Alliance (EASA), *loc.cit.*, p.116.

⁷⁸ *ibid.*, p.116.

⁷⁹ *ibid.*, p.116.

number of 12 members currently, in majority of being independent from the advertising sector⁸⁰.

3.3.4.b.c. The Joint CAP/ASA Executive

The joint CAP/ASA Executive is composed of app. 60 staff, being directed by the Director General and provides administrative support for the ASA Council and for the CAP⁸¹.

3.3.4.b.d. Responsibilities of the ASA

The responsibilities of the ASA explain the sharing of the roles that has to be played by the bodies of the SRO to manage the self-regulation. Depending on the system of self-regulation; the code-making process is applied by the *Committee of Advertising*, as well the code implementation, together with the *CAP Executive*. Copy advice is given by the *Copy Advice Team*, which is a part of the CAP/ASA Executive and works under the auspices of the CAP. *ASA Council* is responsible from the complaint adjudication process, as well as giving an *independent reviewer for the ASA Adjudications* and *ASA Council* during the activities of the *Appeals Body*⁸².

The general administration of the Self-Regulatory Organisation is handled by the CAP/ASA Executive⁸³.

3.3.4.b.e. Funding of the ASA

The funding of the ASA is made by a levy of 0.1 Per cent on advertising expenditure, which is collected from advertisers by the Advertising Standards Board of Finance (ASBOF)⁸⁴.

⁸⁰ *ibid.*, p.116.

⁸¹ *ibid.*, p.116.

⁸² *ibid.*, p.116.

⁸³ *ibid.*, p.116.

3.4. Turkey

3.4.1. The Consumer Movement

The activities about the consumer protection do date back to 1960s and after 1982 the organised actions began to take place, such as seminars and the first attempts to form a consumer protection foundation⁸⁵. On the other hand, the much detailed and renewed consumer protection law no. 4077 is accepted in February 23rd1995 and published in the Official Newspaper in March 8th1995⁸⁶. The purpose of the law is defined in the first section of the law and it is defined as *to regulate the orders to take precautions for the consumer's health and security together with his/her economic profits in order to prevent, enlighten, educate, repay the damages and protect against environmental dangers and to cause the consumer to self-protection and to encourage voluntary actions for the establishment of such structures*⁸⁷.

The population of Turkey, depending on the temporary results of the census of October 22nd2000, is 67.844.903 in total, which 44.109.336 inhabitants live in the cities and the centres of administrative districts and 23.735.567 inhabitants live in the villages⁸⁸. According to the results of a search made on 505 consumers, of 184 women and 321 men, 67 Per cent is married and 25 Per cent of all belongs to 17-25 years of age group, 30 Per cent belongs to 26-35 years of age group, while 27 Per cent is between 46-45 and lastly, 16 Per cent is 46 and above⁸⁹.

Depending on the research made in the second half of 2002 (April, May, June) about the household joining the productive power, the temporary results of the attendants

⁸⁴ *ibid.*, p.117.

⁸⁵ Eser Borak, Development of Consumer Consciousness in Turkey – Policy of Consumer Protection Through Reformation. *Boğaziçi Journal*, Review of Social, Economic and Administrative Studies, Volume 9, Number 2, 1995, p.126-129.

⁸⁶ *İstanbul Ticaret Odası, Tüketicinin Korunması Hakkında Mevzuat ve İstanbul Ticaret Odası'nın Bu Konudaki Uygulamaları*. İstanbul: İTO Dokümantasyon Şubesi, 2000, p.5.

⁸⁷ *ibid.*, p.5.

⁸⁸ Devlet İstatistik Enstitüsü (2002) *2000 Genel Nüfus Sayımı Geçici Sonuçları* –vi.25.05.2002 [WWW Document]. URL http://www.die.gov.tr/nufus_sayimi/02012002.htm.

⁸⁹ İsmail H. Sabuncuoğlu, "Tüketici Haklarının Korunmasına İlişkin Gözlemler". *Standard Dergisi*, Sayı:141, Mart 2001, p.33.

to the household productivity are 20.869.000 and the non-attendants are 2.217.000⁹⁰. The rate of employed household is shown as 49.6 Per cent, while the unemployed is 9.6 Per cent⁹¹.

3.4.1.a. Actions Taken for the Harmonisation of the Turkish Consumer Protection Law with the European Union Legislation

In order to harmonise the Turkish consumer law with the European Union legislation, the following pre-assessment is made, including the law no. 4077:

- *Competition Protection Law (December 7th, 1994),*
- *Consumer Protection Law (February 23rd, 1995),*
- *Decision about the production, consumption and inspection of the foodstuffs (June 24th, 1995),*
- *Communication about the application principles for the certificate of guarantee and presentation and usage guide (TRKGM 95/116-117),*
- *Communication of TRKGM 98/19-20 about the different application principles and bases for from-door selling (TRKGM 95/136-137),*
- *Regulation concerning the principles and application bases for the commercial advertisements and declarations (TRKGM 95/142-143),*
- *The Consumer Council Regulation (came into force in September 8th, 1995),*
- *The Brand, Tariff and Price Lists Regulation (came into force in September 8th, 1995),*
- *Decision of February 1st, 1996, about the technical arrangements and standardisation regime towards the foreign trade,*
- *Regulation of January 16th, 1998, about the technical arrangements and standardisation regime towards the foreign trade⁹².*

It is claimed that the Turkish Consumer Protection Law foresees a rather tight protection compared with some EU member countries, although it is prepared on the basis of the EU directives⁹³.

⁹⁰ Devlet İstatistik Enstitüsü (2002) 2002 Yılı II. Dönem Hanehalkı İşgücü Anketi Sonuçları –vi. 25.05.2002 [WWW Document]. URL <http://www.die.gov.tr/TURKISH/SONIST/ISGUCU/09082002.htm>.

⁹¹ *ibid.*

⁹² Bourgoignie, *loc.cit.*, p.14-15.

⁹³ Meral Gezzin Eriş; Seminer, Avrupa Birliği ve Türkiye’de Tüketici Korunması Politikaları. İKV Dergisi, Sayı:142, Eylül-Aralık 1998, p.17.

3.4.2. Organisation of Advertising Self-Regulation

The advertising self-regulation in Turkey is a rather new term compared with most of the European countries. For Turkey, the advertising self-regulation is dated back at 1980s, so when the United Kingdom is taken as a subject of comparison, this structure is a newly established system. As well as the UK, the same EU legislation on advertising is applied in Turkey, even though it is not a member state yet.

3.4.2.a. Implementation of the European Union Legislation

The EU legislation, that the Turkish advertising system is concerned with, is as such as in Chapter 3.3.2. a.

3.4.2.b. Implementation of the National Legislation

The national legislation concerning the self-regulatory actions is as such:

- *Regulation concerning the principles and applications of commercial advertising (1995)*
- *Law No. 3914 concerning approval of the European Convention on Transfrontier Television (1994)*⁹⁴.

3.4.2.c. The Non-Broadcasting Advertising Categories Prohibited by Law

The categories of non-broadcasting advertising that are prohibited by law are the tobacco products -mentioned in the Law on Preventing the Harmful Effects of Tobacco Products, alcoholic beverages -mentioned in the Law on Alcohol and Alcoholic Drinks, drugs/medicines -mentioned in the Law on Medicinal and Pharmaceutical Products and educational establishments -mentioned in the Law on Private Educational Establishments⁹⁵.

⁹⁴ The European Advertising Standards Alliance, *loc.cit.*, p.111.

⁹⁵ *ibid.*, p.111.

3.4.3. The Codes of Advertising Self-Regulation

The codes for the proper imposition of the advertising self-regulation are the *Serbest Ticari İletişim ve Uluslararası Denetim Esasları (Free Trade Communications and International Regulatory Principles)*⁹⁶. These principles are lastly updated in 1994 and applied to all media⁹⁷. The general codes are the same with the ICC Codes, together with the product- / sector-specific codes and rules, while there are no principal areas uncovered by the Code⁹⁸.

3.4.4. Main Activities of the ASRB

These are the activities of the Advertising Self-Regulatory Board (ASRB) for the functioning and dealing with the complaints.

3.4.4.a. Copy Advice / Pre-clearance

The Executive Board provides the copy advice, free of charge, and the guidance in case the media refers to the Board, due to hesitation in publishing or broadcasting of an advertisement⁹⁹. The ASRB does not apply any pre-clearance to the advertisements¹⁰⁰.

3.4.4.b. Monitoring / Compliance

The ASRB follows the advertisements on national television and in national newspapers for compliance with the Code¹⁰¹.

⁹⁶ Reklamcılar Derneği (2002) **Reklamcılar Derneği Özdenetim Esasları** –vi.06.03.2002 [WWW Document]. URL <http://www.rd.org.tr/rdstandart/ozdenetim.asp>.

⁹⁷ The European Advertising Standards Alliance (EASA), *loc.cit.*, p.113.

⁹⁸ *ibid.*, p.113.

⁹⁹ The Advertising Self-Regulatory Board (ASRB), *loc.cit.*, p.2.

¹⁰⁰ The European Advertising Standards Alliance (EASA), *loc.cit.*, p.113.

3.4.4.c. Complaint Handling

The ASRB takes the decisions according to:

- *consumer complaints in relation to misleading advertisements,*
- *complaints of advertisers and advertising agencies about each other, in relation to commercial communication and promotion activities,*
- *dishonest and incorrect advertisements which are brought up by the Board members – receiving help from the Board Secretariat if necessary- without waiting for complaints to arise, with the objective of protecting image and improving the respectability of the advertising sector and ensuring reliability¹⁰².*

Complaints must be as written documents, mentioning the allegedly breached article of Code and attaching the concerned advertisement's details¹⁰³.

The Chairman of the Board takes the decision about how to deal with the complaint, after evaluating it. The Secretariat registers the complaints and asks for the opinion of the advertiser and the advertising agency about the concerned advertisement, completes the missing information and finally, presents the report, attaching its own comments, to the Executive Board¹⁰⁴. After reaching a decision, the Executive Board informs both parties by a written document, while, if there are no decisions taken negative on the advertisement that is subject to the complaint, then the Executive Board reports about its decision only to the party which made the complaint¹⁰⁵. For the table, see APP. 4.

3.4.4.d. Appeals

In case of an objection to the decision of the Executive Board, the implementation of the decision continues and the appeals could be made to the Advertising Self-Regulatory Board to make the final decision¹⁰⁶.

¹⁰¹ *ibid.*, p.113.

¹⁰² The Advertising Self-Regulatory Board (ASRB), *loc.cit.*, p.2.

¹⁰³ The European Advertising Standards Alliance (EASA), *loc.cit.*, p.113.

¹⁰⁴ The Advertising Self-Regulatory Board (ASRB), *loc.cit.*, p.5.

¹⁰⁵ *ibid.*, p.5.

¹⁰⁶ *ibid.*, p.4.

3.4.4.e. Sanctions

In case of an advertisement being obviously contrary with the Codes, then *the publishing or broadcasting should be stopped immediately, the decision may be taken without asking for the opinion of the advertiser*¹⁰⁷. Amendment and withdrawal of the advertisement are the action that the Executive Board may demand from the advertiser in the first place.

On the other hand, if there is non-compliance concerned, then the media are asked to refuse the advertisements, which is a rather cruel attitude for both the advertiser and the advertising agency¹⁰⁸.

3.4.5. Functioning of Advertising Self-Regulation

The application of the advertising self-regulation system is conducted by both the statutory authorities and the self-regulatory organisation of Reklam Özdenetim Kurulu (Advertising Self-Regulatory Board).

3.4.5.a. Statutory Authorities

One of the statutory authorities, the *Reklam Kurulu (Advertising Board)* is set up in 1995, monitoring advertising in national and local press together with radio and television. This board has the power to impose fines and order to withdraw an advertisement¹⁰⁹.

The other statutory authority is the *Radio-Television Supreme Council (Radyo-Televizyon Üst Kurulu)* which regulates television and radio, including advertising¹¹⁰.

¹⁰⁷ *ibid.*, p.4.

¹⁰⁸ The European Advertising Standards Alliance (EASA), *loc.cit.*, p.113.

¹⁰⁹ *ibid.*, p.112.

¹¹⁰ *ibid.*, p.112.

3.4.5.b. The Self-Regulatory Organisation: Reklam Özdenetim Kurulu (RÖK)* (Advertising Self-Regulatory Board)

The *Advertising Self-Regulatory Board (ASRB)* is firstly introduced in the 1980s by the Istanbul Chamber of Commerce as an alternative to the current legislation, later on the establishment is realised in 1994, with the status as a ‘non-profit organisation’¹¹¹.

The Board is composed of the advertisers, the advertising agencies and media which are described as being *aware of the fact that advertisement should be legal, ethical, honest and true within the framework of responsibility towards the consumer and public*¹¹². During the decision-making process, the ICC Codes of Advertising Practice are aimed to be implemented.

The bodies of the ASRB are the *Advertising Self-Regulatory Board*, in general, the *Executive Board* and the *Secretariat*.

3.4.5.b.a. The Advertising Self-Regulatory Board (ASRB)

The ASRB is composed of 16 members, 5 from the advertisers, 4 from the advertising agencies, 4 from the press, 2 from the private television institutions and 1 from the state television, TRT (The Turkish Radio and Television), for the period of 2 years on duty¹¹³. The ASRB is concerned with both broadcast and non-broadcasting advertising.

The Board makes the decisions on the suitability of the advertisements according to the ICC Codes of Advertising Practice¹¹⁴. Its aim is *to establish awareness for self-regulation among the advertising agencies, advertisers and the advertising media; and to make the implementation of these codes standard practice in a way as toward of complaints*¹¹⁵. The other function of the Board is to constitute a dialogue between the advertisers and advertising agencies to awaken an understanding about the sensitivity and necessity of the self-regulation system.

* ‘Reklam Özdenetim Kurulu’, the self-regulatory organisation of Turkey, will be mentioned by its English interpretation, ‘Advertising Self-Regulatory Board (ASRB)’, in order to build up an accurate form in the entire text.

¹¹¹ *ibid.*, p.112.

¹¹² The Advertising Self-Regulatory Board (ASRB), *The Advertising Self-Regulatory Board, Operating Principles and Procedures (By Law)*. İstanbul: 15.03.2002, p.1.

¹¹³ *ibid.*, p.1.

¹¹⁴ *ibid.*, p.1.

¹¹⁵ *ibid.*, p.1.

3.4.5.b.b. The Executive Board

The Executive Board consists of two members each representing the advertisers, the advertising agencies and the media (one from the visual media and the other from the press), elected by a majority of votes among the members of the ASRB¹¹⁶.

The Chairman of the ASRB works as the chairman of the Executive Board either, who is elected as a result of a majority voting. The Board is responsible from the efficient functioning of the self-regulation system, as well as assessing the advertisements which are subject to complaint or whether the Board itself being contrary to the Codes¹¹⁷. Also, making decisions and requesting the implementation of the decision concerned is among the tasks of the Executive Board¹¹⁸. The Board, additionally, *develops an infrastructure and organisation adequate for an effective system to implement the Codes and applies communication and public relation strategies approved by the ASRB*¹¹⁹.

Decisions are taken with a majority of votes, which have to represent at least one member's opinion from each group inside the ASRB, the advertiser, the advertising agencies and the media¹²⁰. The final decision is on the ASRB, who can also interfere the decisions taken by the Executive Board¹²¹.

3.4.5.b.c. The Secretariat

The Secretariat is composed of two staff members and reports to the Chairman¹²².

3.4.5.b.d. Responsibilities of the ASRB

The code-making body of the Advertising Self-Regulatory Board is itself as well as functioning as the Appeals Body¹²³. On the other hand, the code implementation is run by the Executive Board, together with the copy advice and complaint adjudication¹²⁴.

¹¹⁶ *ibid.*, p.3.

¹¹⁷ The European Advertising Standards Alliance (EASA), *loc.cit.*, p.112.

¹¹⁸ *ibid.*, p.112.

¹¹⁹ The Advertising Self-Regulatory Board (ASRB), *loc.cit.*, p.3.

¹²⁰ *ibid.*, p.4.

¹²¹ *ibid.*, p.4.

¹²² The European Advertising Standards Alliance, *loc.cit.*, p.112.

¹²³ *ibid.*, p.112.

The Secretariat, also, deals with the complaint adjudication, but the main task is the general administration¹²⁵.

3.4.5.b.e. Funding of the ASRB

The revenues of the ASRB are from *the contributions of institutions which have signed the Codes, fees per application and per objection* (the amount is determined by the Board, except for the complaints that come from the individual consumers) and *donations*¹²⁶.

¹²⁴ **ibid.**, p.112.

¹²⁵ **ibid.**, p.112.

IV. COMPARISON ON THE APPLICATIONS OF THE SELF-REGULATION

The self-regulation systems in both countries are reflected in their own frameworks. It is possible to witness the examination of an advertisement, according to some regulatory rules. On the other hand, this possibility of judgement could be provided depending on the conditions foreseen by the advertising self-regulatory organisation.

Generally, in the UK and the Republic of Turkey, the government does not interfere the work of the self-regulatory establishments, although the statutory authorities are also active. The applications of the self-regulatory system depend on the conditions, on the cultural structure of the countries and the freedom given to the advertising sector.

The comparison will be made referring to the examples from the complaints received by the self-regulatory organisations of the subject countries and the EU. The complaints that reach to the EASA are in concerns of two national self-regulatory organisations, which show how the cross-border complaints come to life and how the EASA deals with them. It is believed that these two examples from the EASA complaints are necessary to understand the perspective of the self-regulation. The three complaint examples from the United Kingdom are chosen as the complaints that claim to mislead the consumer. They show how the self-regulatory organisation of the UK deals with the misleading advertising. The examples for the EU and the UK are in concerns of the misleading advertising and chosen especially to point out this concept. On the other hand, the only example for the self-regulatory organisation of the Republic of Turkey is about denigration. As the complaints received and examined by the ASRB are not declared to the third parties, thanks to the understanding of the ASRB authorities, one case example is provided especially for this research. All the examples are approximately in the same period of time, as the examples from the EASA are between the period of September and December 2001, also the same for the ASA, while the example of the ASRB is from the beginning of 2002. The reason here is to give up-to-date information on the research. As well as the number of complaints in recent years are higher than the previous years, this point out the fact that the awareness to the self-regulation is growing.

¹²⁶ The Advertising Self-Regulatory Board (ASRB), *loc.cit.*, p.7.

Before comparing the self-regulation systems, it will be necessary to clarify which specific kind of advertisement is subject to self-regulation. To do so will be helpful to understand the application of the system.

4.1. The Concept of Misleading Advertising

4.1.1. The Definition of Misleading Advertising in the European Union Legislation

In the European Union legislation, the definition of misleading advertising is not made, on the other hand, in the article 2 of 1984 EU Directive explains the definition as; *a misleading advertisement is an advertisement which misleads or is possible to mislead the people, including the presentation, directed to or reached in any way, and with this characteristic, possible to effect their economic attitudes or with these peculiarities, is harmful or possible to be harmful to the competitors*¹²⁷. Assessing the sentence, it could be understood that the creators of the advertisement must consider the general ethical behaviour in order not to mislead the target people.

Also, the European Union includes the comparative advertising in concerns of misleading advertisement. *Directive 97/55/EC of European Parliament and of the Council of October 6th, 1997 amending Directive 84/450/EEC* foresees the comparative advertising is permitted in conditions where a comparison is concerned either in prices or the service provided¹²⁸.

¹²⁷ Inal, loc.cit., p.102.

¹²⁸ European Union Official Web Site (1997) **Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising** –vi.08.06.2002 [WWW Document]. URL http://www.europa.eu.int/smartapi/cgi/sga_doc?smartapi!prod!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997L0055&moden=guichett.

4.1.2. The Definition of Misleading Advertising in the British Legislation

In addition to the EU Directive concerning the misleading advertising, the United Kingdom also applies two legal acts to ban this kind of advertising. One of them is called the *Trade Descriptions Act* of 1968 and the *Control of Misleading Advertisements Regulations 1988/915*, to adapt the EU Directive into national law¹²⁹.

4.1.3. The Definition of Misleading Advertising in the Turkish Legislation

The misleading advertising finds a definition in the *Consumer Protection Law article 16*¹³⁰. In this article, the definition of the commercial advertising is not clearly made; instead the description is made as *there can not be made any advertisements and declarations which are misleading or exploiting the inexperience and lack of information of the consumer's, putting the consumer's security of life and possession into danger, causing violent actions and committing offence, disturbing the public health, exploiting the ill people, old people, children and handicapped*¹³¹. Although there is not made any clear definitions of the commercial advertising, the description of how an advertisement should be and the characteristics of it is mentioned in the *Compliance Obligatory Professional Decision about the Honest Advertising*¹³². On the other hand, it is believed that the article 16 defines the details of how advertising would better be, which provide a flexibility to the advertising sector in the creativity process.

¹²⁹ İnal, *loc.cit.*, p.91.

¹³⁰ İstanbul Ticaret Odası, *loc.cit.*, p.13.

¹³¹ *ibid.*, p.13.

4.2. The European Union

As it is previously mentioned, the advertising self-regulatory system in the European Union is under the responsibility of the European Advertising Standards Alliance (EASA). The Alliance have functions of copy-advice and pre-clearance, but most of all, the *cross-border complaint* system is being actively operated.

4.2.1. The Cross-Border Complaint System

4.2.1.a. The Definition of the Cross-Border Complaint

A cross-border complaint is *a complaint by an individual or an organisation in one country about an advertisement carried in media circulating in that country, but published in another country*¹³². For a complaint to be a cross-border complaint, the particular advertisement is required to cross borders other than the country that it has been published.

4.2.1.b. Principles of the Cross-Border System

Noticing the fact that the EASA does not have any regulatory power, the self-regulatory function is conducted depending on *the country of origin*. This term is described as *a concept that is enshrined in EU Law to facilitate the functioning of the Single Market by ensuring that advertisements circulating in more than one country have to comply with only one set of rules*¹³³. The advantage of the cross-border system is providing one unique set of rules for every Member Country to obey in terms of self-regulation, when an advertisement receives a complaint and to be able to solve the problem in a single and common framework. The other advantage of this system is to give an opportunity to the self-regulatory organisation in the country of origin to deal with the problem following its

¹³² İstanbul Ticaret Odası, *Dürüst Reklamcılık Konusunda Riayeti Mecburi Mesleki Karar*. İstanbul: İTO Dokümantasyon Şubesi, 2000, p.286.

¹³³ The European Advertising Standards Alliance (EASA), *loc.cit.*, p.139.

¹³⁴ *ibid.*, p.139.

own procedures. By this way, the EASA constitutes a structure of *mutual recognition*, especially for the country of origin as well as the complainant country¹³⁵.

4.2.1.c. Examination of a Cross-Border Complaint

The SRO first decides whether the complaint is cross-border one or not, if so, then the SRO transfers the complaint to its counterpart in the country of origin. The complaint would be assessed according to the self-regulatory system of the concerned country.

If the advertisement in the complainant country is not found intentional to the consumers, then the SRO of this country may reach a conclusion of not pursuing the case. On the other hand, if the SRO of the complainant country decides that the advertisement is directed to the consumers in the complainant's country, then the SRO continues the case according to its own rules and procedures¹³⁶.

4.2.2. The Cross-Border Complaint Statistics

The cross-border complaints show a rise since the establishment of the EASA in 1992. Annual Cross-Border Complaint Statistics point out that in the year 2000, there were made 115 cross-border complaints, while in the year 2001, this number rose up to 202¹³⁷. In between the years 1993 and 2001, there were made 584 cross-border complaints, in total¹³⁸. In 2001, there were three annual reports published in three periods of the year.

Between January and April 2001, 22 cross-border complaints were made, later on this number became 83 from May to August 2001 and lastly from September to December, it rose up to 97 and the year 2001 closed with 202 complaints, as mentioned above¹³⁹.

Evaluating the cross-border complaints by the medium they are noted with, the number of cross-border complaints concerning the press is 8 between January and April

¹³⁵ *ibid.*, p.139.

¹³⁶ *ibid.*, p.139.

¹³⁷ The European Advertising Standards Alliance (EASA) (03.2002) **Complaints Statistics** –vi.30.08.2002 [WWW Document]. URL <http://www.casa-alliance.org/complaints/en/statistics.html>.

¹³⁸ *ibid.*

¹³⁹ *ibid.*

2001, has lessened to 3 in the period of May-August, and closed the year by 5 complaints from September to December, with a conclusion of 16 in total¹⁴⁰.

These results reflect an increasing awareness of the EASA and a belief, together with support, to a social institution of the European Union.

4.2.3. Examples to the Cross-Border Complaints from the Press

In the Report No. 23 of the EASA, there were 109 complaints and information exchanges placed about the period of September and December 2001, and inside these there are 66 advertisements which are claimed to be misleading, while the medium of 5 complaints is the press¹⁴¹. Here, it can be observed two of the examples from the press advertisements that have been subject to cross-border complaint about being misleading to the consumer.

4.2.3.a. Case No. 625 : KLM

Complaint (Misleading) to ASA UK from a UK consumer regarding an ad published in the "Flying Dutchman", a magazine of the Dutch airline KLM. The complainant objected to the fact that the magazine advertised flights that could be bought by collecting its points. She did not manage to book her flight because no flights or a very low number of flights were available. She was told by the helpdesk that the economy flights were already bought or reserved by travel agents. ASA forwarded the complaint to SRC Netherlands, which contacted KLM for comments. KLM replied to the complainant and SRC explaining that when they discovered that the promotional flights had sold out, they had asked their agency to change the advertisement. They said they had changed the published price on the Internet immediately. The advertisers believed that, although demand for the tickets had exceeded the supply, they had acted responsibly to ensure

¹⁴⁰ *ibid.*

¹⁴¹ The European Advertising Standards Alliance, **Report No. 23 -December 2001** –vi.28.08.2002 [WWW Document]. URL http://www.easa-alliance.org/complaints/en/cbc_reports_cbc_23.html.

consumers were not misled. They said they did not intend to use the advertisement again. SRC decided to close the case. Complaint not upheld¹⁴².

4.2.3.b. Case No. 681 : Lufthansa German Airlines

Complaint (Misleading) to ASA UK, from a UK consumer regarding an advertisement for the Lufthansa Airlines Miles and More Scheme. The ad said that all flights could earn air miles. The complainant considered the ad misleading since the points collected while travelling with partner members had not been credited to the consumer's account even after having contacted the advertiser. The complainant wrote to ASA and the advertiser. On review of the material submitted by the complainant, ASA discovered that the material sent was months old and informed the complainant that it was only able to act against claims in advertising that were recent or that had appeared in the previous three months. However, ASA forwarded the complaint to Zentrale who contacted the advertiser. The advertiser replied that they did not see any chance for taking measures against unfair competition. According to them, giving boarding passes to get the miles happens often in mass traffic and the statement of automatic crediting of mile points was not misleading. In exceptional cases, they added, miles do get lost but the passenger had taken care of the matter. Following the advertiser's response, Zentrale decided to close the case. Complaint not upheld¹⁴³.

¹⁴² **ibid.**

¹⁴³ **ibid.**

4.3. The United Kingdom

The Advertising Standards Association (ASA) is the self-regulatory body for all the media, but as the press is the subject concerned, the example complaints from this media received and solved by the ASA will be observed.

4.3.1. The Complaint Statistics

In 2001, the ASA received 12600 complaints about 9945 advertisements, additionally from the complaints that are carried from the year 2000 with a percentage of 2.7¹⁴⁴. The number of advertisements that received complaint concerning misleading claims have been the major cause of complaint to the ASA, with a number of 2703 and among those 789 advertisements were investigated¹⁴⁵.

4.3.2. The Areas of Complaints by the Codes

The complaints made to the ASA are found against the following codes:

- truthfulness: 1397,
- substantiation: 821,
- decency: 550,
- comparison: 293,
- honesty: 169,
- denigration: 37,
- legality: 16,
- exploitation: 13¹⁴⁶.

¹⁴⁴ The Advertising Standards Authority (ASA) **Annual Report 2000: Complaints** –vi.29.08.2002 [WWW Document]. URL http://www.asa.org.uk/annual_report/ar_2001/complaints.asp.

¹⁴⁵ **ibid.**

¹⁴⁶ **ibid.**

4.3.3. Examples to the Complaints from the National Press

The advertisements which are published in the national press and became subject to complaint has shown a decrease since 2000, from 2216, to 1734 in the year 2001¹⁴⁷.

The ASA receives complaints from various sectors and every medium, both broadcast and non-broadcast. Here can be found out those three examples from the press advertisements which have been subject to complaint for being misleading.

4.3.3.a. Kia Cars (UK) Ltd.

37 Mount Ephraim *Date: October 24th 2001*
Tunbridge Wells *Media: National press*
Kent *Sector: Motoring*
TN4 8BS *Agency: MML*
 Industry Complaint From: Milton Keynes

Complaint:

Dealer Marketing Services Ltd objected to a national press advertisement for a car. The advertisement was headlined "The new Kia Rio, from £5,995"; underneath the headline was a picture of a Kia Rio. The small print at the bottom of the advertisement stated "PRICES CORRECT AT TIME OF GOING TO PRESS. MODEL SHOWN IS KIA RIO 1.3 LX AT £7,645.00 ON THE ROAD (OTR) PLUS OPTIONAL ALLOY WHEELS AND METALLIC PAINT". The complainants objected that the advertisement was misleading because the car shown in the advertisement did not match the price quoted in the headline.

Codes Section: 7.1, 15.1 (Ed 10)

¹⁴⁷ *ibid.*

Adjudication:

Complaint upheld

The advertisers maintained that the advertisement was not misleading because the price of the model featured was clearly shown in the small print at the bottom of the advertisement. They asserted that it was common practice within the trade, when advertising a range of cars, to show a picture of a representative model and to quote the starting price in the headline. The Authority reminded the advertisers that, when a product was illustrated in conjunction with a price, the illustrated product must be for sale at that price. The Authority concluded that the advertisement was misleading and asked the advertisers to ensure they conformed to the Codes requirements in future¹⁴⁸.

4.3.3.b. Air Bounce Trampolines

London House

100 New King's Road

London

SW6 4LX

Date: 5th September 2001

Media: National press

Sector: Leisure

Public Complaint From: Hertfordshire

Complaint:

Objection to a national press advertisement, for trampolines, headed "Fabulous 14 ft Diameter Trampoline". It showed the trampoline in a garden with a girl bouncing on it. The complainant objected that the advertisement exaggerated the size of the trampoline, because the girl was superimposed onto the picture at a much smaller scale than she was in reality.

¹⁴⁸ The Advertising Standards Authority (ASA) Adjudications: Kia Cars (UK) Ltd (24.10.2001)

Codes Section: 7.1 (Ed 10)

Adjudication:

Complaint not upheld

The advertisers sent a copy of the leaflet that featured the original and unretouched photograph of the girl and a different trampoline but one of the same true sizes as the advertised trampoline. The advertisers believed the size of the superimposed picture of the girl in the press advertisement was a true and fair representation of her size in relation to the size of the advertised trampoline. The Authority noted the picture of the girl superimposed in the press advertisement was, in relation to the size of the trampoline, proportionately smaller than in the original picture in the leaflet. It concluded, however, that because the diameter and area of the trampoline were stated clearly in the advertisement and the relative scale of the girl was close to the correct scale, the advertisement did not exaggerate the size of the trampoline¹⁴⁹.

4.3.3.c. Telewest Communications plc

ntl Group Ltd

Date: 12th December 2001

ntl House

Media: National press, Poster

Bartley Wood Business Park Hook

Sector: Computers and telecommunications

Hampshire

Agency: J Walter Thompson

RG27 9UP

Public Complaints From: Dorset, West Yorkshire

Complaints upheld in

last 12 months: 10

Telewest Communications plc

160 Great Portland Street

London

WIN 5TB

-vi.02.09.2002 [WWW Document]. URL

http://www.asa.org.uk/show_adjudication.asp?adjudication_id=28304...

¹⁴⁹ *The Advertising Standards Authority (ASA) Adjudications: Air Bounce Trampolines (05.09.2001)*

-vi.02.09.2002 [WWW Document]. URL

http://www.asa.org.uk/show_adjudication.asp?adjudication_id=27835...

Complaints upheld in

last 12 months: 2

Complaint:

Objections to a poster and national press advertisement, for broadband cable services, that stated "Broadband internet. From £24.99. Going fast." Smaller print underneath stated "the internet · nearly ten times faster than dial-up · always on · from £24.99 per month". The national press advertisement continued "... for digital subscribers". The footnote in both advertisements stated "...*Broadband services and advertised price subject to minimum term contract and subscription to other ntl/Telewest services. Installation charges may apply." The complainants objected that the advertisement was misleading because it did not make adequately clear that broadband Internet access was available for £24.99 only to existing subscribers to either ntl or Telewest and new customers would have to pay a monthly subscription charge.*

Codes Section: 3.1, 7.1 (Ed 10)

Adjudication:

Complaints upheld

The advertisers said they had intended the joint campaign to help fulfil public policy objectives to facilitate the roll-out of broadband and higher bandwidth services across the UK. The advertisers said broadband connection was subject to customers subscribing to other services but pointed out that that was made clear in the advertisements. The advertisers argued that both ntl and Telewest offered digital services and that their charges differed; they believed that to include prices would have confused consumers. They said they had used the "from £24.99" claim because they believed that was the clearest and most viable price indication. They argued that the campaign invited readers to find out more. The advertisers pointed out that the advertisements invited readers to visit a generic web site where they could find out whether their area was cabled and then pointed consumers to either the ntl or the Telewest web site for pricing and package information. The advertisers asserted that, although they had used some national media,

the campaign was mostly targeted in areas in which either company's services were available. They argued that many people seeing the advertisements would be able to buy the product at the advertised "from" price. The Authority noted that existing customers of either ntl or Telewest could get broadband Internet for £24.99 and that the headline price of "From £24.99" was therefore accurate. It was concerned, however, that the qualification that access to broadband Internet was subject to subscription to other ntl/Telewest services appeared only in the footnote. The Authority considered that, because of the significance of that condition, it should appear in the body copy of the advertisements. It concluded that the advertisements were misleading. The Authority told the advertisers to amend the advertisements to include in the body copy that consumers must subscribe to other ntl/Telewest services¹⁵⁰.

¹⁵⁰ The Advertising Standards Authority (ASA) Adjudications: Telewest Communications plc (12.12.2001) –vi.02.09.2002 [WWW Document]. URL

4.4. Turkey

In Turkey, the Reklam Özdenetim Kurulu -RÖK (Advertising Self-Regulatory Board -ASRB) is the self-regulatory organisation for all the media. As the national press is concerned for the subject, the example will be assessed from this viewpoint.

4.4.1. The Complaint Statistics

By 26.08.2002, the ASRB has dealt with 358 cases in total¹⁵¹. The complaints received from:

- the rival firms: 184,
- the consumers: 79,
- the professional associations: 9,
- the consumer associations: 2,
- the Board's assessment by its own accord: 84¹⁵².

Among these, the ASRB has reached the following decisions concerning the principles. The advertisements that are found:

- against the principles: 213,
- against some sections of the principles (the same advertisement could be against some sections of the principles and not to others): 27,
- not found against the principles: 95
- the applications taken back according to the parties negotiation: 11,
- currently being examined: --¹⁵³.

http://www.asa.org.uk/show_adjudication.asp?adjudication_id=33108..

¹⁵¹ The Advertising Self-Regulatory Board (ASRB) (2002) **Reklam Özdenetim Kurulu'nda İncelenen Dosyalar** -vi.26.08.2002 [WWW Document]. URL <http://www.rok.org.tr/incelelendosya.html>.

¹⁵² **ibid.**

4.4.2. The Areas of Complaint by the Codes

The applications made for the assessment of the advertisements by the ASRB are subject to breach the following Codes¹⁵⁴:

	received by the Board	found against the principles	found not against the principles	taken back	currently examined
- main principles	24	18	6		
- decency	10	4	6		
- honesty	18	10	8		
- truthfulness	205	145	57	3	
- comparative adv.	34	22	8	4	
- witness used adv.	4	3	1		
- denigration	45	32	13		
- getting advantage from commercial use	12	9	3		
- imitation	41	14	23	4	
- identification of adv.	9	8	1		
- respect to human safety	3	3			
- children and youth	10	7	3		
- main principles of advertising directed to children	7	6	1		
- responsibility	82	56	26		
TOTAL	504	337	156	11	—

¹⁵³ **ibid.**

¹⁵⁴ **ibid.**

4.4.3. Example from the National Press

The ASRB mostly deals with the complaints coming from the broadcasting media, especially television. As the ASRB authorities report, some 95 Per cent of the complaints are being received about the cleaning materials and most of the cases are brought to the Board by the rival firms' applications.

It is pointed out in the principles of the Board article 12.1 of 'The Confidentiality of Board Meetings' as; *Discussions held, opinions conveyed, and votes given at the Board meetings can under no circumstances be disclosed, regardless of whether or not names are revealed*¹⁵⁵. Also, following this, article 12.2 expresses; *Board decisions can not be negotiated except meetings. No one, including parties, can ask questions to, request information from or express their opinion to members about the decisions*¹⁵⁶.

On the other hand, the Principles foresee a flexible exception about helping the researchers on their studies. This exception is formulated in the article 10.4 as; *In case the Board's decisions are required from the universities for educational purposes, they can be given in the form of an opinion without the names of the concerned parties mentioned and according to the written approval of the parties of disagreement*¹⁵⁷. Considering this, the authorities kindly agreed to share one of their decisions about denigration.

4.4.3.a. Case No. 339 : Maxi Shopping Center

Application date: 24.01.2002

Complaint from: Gima Türk A.Ş.

Complainant Advertiser: Maxi Shopping Center

Advertising Agency: Öykü Reklam

Media: Press

Complaint subject: Maxi Supermarket Press Advertisement

Proof (band, advertisement, document): Advertisement

Codes section: 7

¹⁵⁵ The Advertising Self-Regulatory Board (ASRB), **Operating Principles and Procedures (By Law)**. İstanbul: 15.03.2001, p.6.

¹⁵⁶ *ibid.*, p.6.

¹⁵⁷ *ibid.*, p.6.

Claim of the complaining party:

'Maxi Market Tüketim Maları Pazarlama ve Tic.A.Ş. has chosen a directly denigrating way by its advertisement published in Hürriyet newspaper in 24.01.2002, referring the advertisements according to our company's 'No VAT' campaign published in the newspapers between 7-20.01.2002 and broadcast on television and radio starting from 7.01.2002 and still continued, mentioning 'some deceives you, Maxi makes you win...We do not deceive you, no so-called sales, no 50 million limits!' and by the expression 'some has No VAT prices' using the Gima Türk A.Ş. receipt.

The products on the receipt and being compared are not definite according to which criteria they are chose, these 10 products on this receipt are impossible to represent the price structure of 40.000 products in our portfolio. Also, the Maxi selling prices of the products stated on the Maxi market receipt are below the Gima purchase prices, as well as being the inapplicable prices in Gima and rival chain markets.

Also, it is in no way mentioned about the Gima receipt where there is a right of 1.226.000 TL. sales check in accordance with the Gima T.A.Ş. point collecting.

The subject to complaint advertisement is against the article 'Denigration' of the Self-Regulatory Codes. In addition to this, it is clear that this advertisement is against the article concerning 'Unfair Competition' of the Turkish Trade Law and general applications about the national and international advertising.

The Executive Board's Assessment:

At the moment, in the retail selling sector, only Gima applies the marketing elements of '50 million limits' and 'No VAT Price'. The expressions of 'We do not deceive you, no so-called sales, no 50 million limits!' are directly targeted to Gima and denigrated the rival firm as well as humiliated. The concerned expressions are against generally accepted honest competition principles.

Date: 25.01.2002

Subject product/service: Maxi Supermarket Press Advertisement

The complaint of Gima to the corrected advertisement:

Maxi Market has published a different version of these advertisements in the Hürriyet and Sabah newspapers on 27.01.2002. The advertisements that are published under the title of 'Receipts don't lie!', refer to the previous advertisements both by this title and by their designs. In these advertisements which use 4 shopping receipts, it is explicit that it is a Gima receipt because the receipts with '? Cash Receipt' (over limit sale prices) show; in our sector point collecting according to the products and VAT sales up to a limit are only made by Gima Türk A.Ş. Also, with the expressions of 'over limit sale prices and below limit sale prices', it is referred to Gima Türk A.Ş. which is the only supermarket that gives sales up to a certain limit.

Date: 28.01.2002

The Executive Board's assessment: In the Star newspaper of 25.01.2002, there was reported the statement of the Gima General Manager explaining that they applied legal procedures concerning the Maxi press advertisements. After this statement, it is learned by the telephone interview that Gima Türk A.Ş. brought Maxi an action for damages depending on the article concerning 'Unfair Competition' of the Turkish Trade Law.

This new improvement has again been assessed according to the article in the Board's principles 'if it is discovered that an advertisement that is being evaluated by the Board is also being examined by a regulatory authority, or that legal action has been taken in relation thereto, the negotiations of the Board are discounted', and depending on this article, it is determined that there will not be any opinions revealed to the application.

Date: 30.01.2002¹⁵⁸.

¹⁵⁸ The Advertising Self-Regulatory Board (ASRB), Reklam Özdenetim Kurulu Dosya Özeti (Dosya No.339). İstanbul: 24.01.2002.

V. GENERAL ASSESSMENT

In this research, it is tried to be pointed out the main structure of the self-regulation system in two subject countries, the United Kingdom and Turkey, and the European Union, in this respect, as a crossing point. Although, the European Union can not provide a common body, as the Republic of Turkey, yet, is not a Member State, it is in the essence of the principles of the Union to be applied to the member countries' conduction. For this reason, as the Republic of Turkey being a candidate country, it must be kept in mind that in the future, the principles of the EU will also be valid for this country. As a part of this unity most of other structures, especially in the social life, will be spontaneously applied or be improved in the Turkish life.

As a result of this outcome, the comparison has to be cleared of about the self-regulatory systems of the subject countries and the European Union.

5.2. The United Kingdom

The United Kingdom, as in the name, is a harmonious composition of various states, with a symbolic representation of the Queen. Because of this unique body, the administration shows up a particular difference from the governmental system to the social improvements. Even the development of the press has received controls from the governing sections concerned with the privacy of the Queen and the Royal Family. Considering this fact, the self-regulation system has a significant tie with the overall developments in the UK.

The self-regulatory organisation in the country is among one of the oldest self-regulatory organisations across Europe. The Advertising Standards Authority (ASA) is in its forty's and it is also one of the founder members of the EASA¹⁵⁹. Its functions are not

¹⁵⁹ Public Management Occasional Papers, *loc.cit.*, p.26.

simply providing self-regulatory advises and procedures to the advertising sector, but also helping the developments of the new self-regulatory bodies around the continent, especially to the Eastern European countries, while most of them are, yet, candidate countries¹⁶⁰. The Authority foresees an information share to encourage new improvements.

The United Kingdom government follows a particular policy *to make the UK home to the most dynamic and competitive communications and media market in the world*¹⁶¹. Already in 1999, the Convergence Green Paper states the government's priorities about the communication sector as *servicing consumer interests, supporting affordable universal access, ensuring competition, promoting service quality, plurality, diversity and choice, encouraging investment, and providing efficient management of scarce resources*¹⁶². Noticing this fact, the self-regulatory system could be considered as an important concept. The improvements in the communication sector bring a need to self-regulation, but within limits. It should be understood that the UK government does not interfere the ASA decisions, but is aware of the current developments.

The ASA is, as well as being old, is a well-structured body, which often deals with the complaints received both from the public and the advertising practitioners. The statistics point out that the ASA has dealt over thousands of complaints¹⁶³. The question of public confidence should be answered from a long time ago. There should be another question asked about what the limits of self-regulation are and the answer could be the requirement of flexibility without damaging the creativity. The flexibility is also foreseen by the UK government in order to provide the freedom from the administrative level.

¹⁶⁰ *ibid.*, p.26.

¹⁶¹ All Party Parliamentary Group on Advertising, Communications Reform Meeting (16.01.2001) 'The Impact of the Communications Reform White Paper on the Regulation of Advertising' A Speech by Andrew Brown, Director General of the Advertising Association and Chairman of the Committee of Advertising Practice –vi.03.09.2002 [WWW Document]. URL http://www.adassoc.org.uk/position/ab_appga_speech.html.

¹⁶² The Advertising Association (AA) (29.07.1999) An Advertising Association Summary of Regulating Communications: The Way Ahead Results of the Consultation on the Convergence Green Paper –vi.03.06.2002 [WWW Document]. URL <http://www.adassoc.org.uk/summary/conver2.html>.

¹⁶³ The Advertising Standards Association (ASA) Annual Report 2000: Complaints –vi.01.09.2002 [WWW Document]. URL http://www.asa.org.uk/annual_report/ar_2001/complaints.asp.

5.3. Turkey

The self-regulatory organisation of Turkey, the Reklam Özdenetim Kurulu – RÖK (Advertising Self-Regulatory Board - ASRB) seems to be the newest SRO when it is located between the EASA and the ASA. By knowing the fact that the ASA, even, is among the founder members of the EASA, it can be clearly understood. The ASRB is also among the members of the EASA, in order to develop further co-operation¹⁶⁴.

The positive side of all the improvements in the communication sector of Turkey, especially by the establishment of the first private sector television, forced the administrative organs to make the necessary regulations in both the press and broadcasting. These regulations should be differed from those of censorship; otherwise the regulatory powers would become a group of freedom destroyers.

Apart from the ICC Codes of Advertising Practice, self-regulation should be a system to respond *the minimisation of unfavourable reactions from the community, the market and the state in forms of bad image, unbridled competition and over-regulation, and ensuring that most practitioners behave properly without excessive evasion by 'free-riders'*¹⁶⁵. Agreed with this, Pınar Kılıç, Vice Chairman and Regional Director of International Advertising Association Europe, states as; *The effort for too much regulation is also a kind of censorship. This effort means that people are weak, foolish, unable-to-choose creatures*¹⁶⁶. From this idea, the support to divide the self-regulation and censorship could be constituted. Noticing the statistics of the complaints received are mostly from the television commercials, the self-regulation of the broadcasting media in this field is rather improved. The fact on this issue is also a further concern on the censorship, while the viewing of television commercials differs from the schedule of the broadcast and the viewer groups.

It is an important step for Turkey to accept and apply the European Union laws to its own constitution, as to the respect of being a candidate country. For the establishment

¹⁶⁴ The Advertising Self-Regulatory Board (ASRB), **Operating Principles and Procedures (By Law)**. İstanbul: 15.03.2001, p.1.

¹⁶⁵ Boddewyn, *loc.cit.*, p.22.

¹⁶⁶ Writer Unknown, AB Üyeliğinin İletişim Dünyasına Etkileri, AB Uyuma! Süreci. **Mediacat**, Aralık 2000.

and the functioning of the ASRB, it can be considered as just another improvement for the adaptation of the social life to the European Union's. It is not only for the good of the Union or any governmental institution, but it is an advantage for the public to trust such a well-working association. The presence of the ASRB is a plus especially to the organisations which are concerned with the consumer protection. The consumer protection is not a very new concept for the Turkish consumers although the Consumer Protection Law is renewed in detail in 1995¹⁶⁷. For Turkish consumers, the awareness of the ASRB could be learned and realised that it is a way of their right's representation in terms of consumerism.

¹⁶⁷ İstanbul Ticaret Odası, *Tüketicinin Korunması Hakkında Mevzuat ve İstanbul Ticaret Odası'nın Bu Konudaki Uygulamaları*. İstanbul: İTO Dokümantasyon Şubesi, 2000, p.5.

VI. CONCLUSION

The self-regulation of advertising is a unique subject, a sensitive issue. There can be observed a fragile border between censorship and self-regulation. As the fact is mentioned, too much obeying rules may damage the content and consequently, the spirit of the creativity in the whole advertisement work could fade away. On the other hand, advertising self-regulation foresees a structure which the advertising practitioner controls his/her own self by complying with the rules. So, this can be done by own will following an internationally accepted route. This is provided by the International Chamber of Commerce when the Chamber drew a way by publishing the Advertising Codes of Practice, to the service of the advertising sector. By doing this, the ICC seems to have established a common basis for the people involved in advertising, as well as the companies which they sell their products by advertising. This giant step might have been a force for the countries all around the world to build up the associations concerning the protection of advertising sector under a set of rules. The Codes provide the advertising industry, and the companies who pay attention to the Codes according to their company's business field, a general framework to productivity without losing the ethical attitudes.

When the concerns about the ethics are on the front row, the applications of self-regulation might have become a wall in front of creativity. On the other hand, ethics do not suggest what to think of; it only suggests doing the good for one's own good. Looking from the perspective of advertising self-regulation, terms of 'ethically right or wrong' create an enormous relativity in this world of good and bad. At this point, the advice may only include a universally applicable comment, which is formulated by Kant as behaviour has to be a universal law to be ethical. If the self-regulation codes could be converted into a category of behaviours, then they would be a set of laws and finally, ethical. While the reality is there, the comment could get a shape as the self-regulation codes are easy to find an ethical body that is accepted world wide. Depending on these outcomes, the implementation of the self-regulatory codes, regarding ethics, could be said as being under concerns of the self-regulatory organisations.

The two SRO examples from the United Kingdom and Turkey make a pleasant combination, as well as an interesting composition. As it is briefly mentioned, almost all

the governmental organs of the UK and, as a result of being an EU member state, the social establishments, as well, show a difference when compared with Turkey. This difference provides easiness for the comparison.

The SRO of the UK has become a successful choice for the subject of the search. As the ASA is in function for long years and the experience it has gained until now is indeed remarkable, the observation has been eased. When it is Turkey in concerned, then the limited experiences have caused a little difficulty. On the other hand, the functioning of the ASRB is depending strictly on the principles and this seems to give the Board an availability to bring its experiences forward. It might be settled about the complaints being revealed in a rather less strict way, in order to provide some kind of a source to the interested bodies. At this point, it can be necessary to reflect that the EASA and the ASA release annual reports where the complaint received advertisements are shown and why they are being subject to these complaints. So, the ASRB could, at least, be a bit more flexible about revealing the work they do about the complaints. It is believed that the interest of public could be awakened by doing this and it also would help the consumers to understand their rights better.

Another comment could be made about the two SROs. As the fact that they both apply the ICC Codes, this provides an international acceptance for both of their decisions. In addition to this, the British Codes of Advertising Practice supply a further self-regulation for the advertising sector. This might be understood as an additional self-regulation, which should be true. For this reason, the self-regulation system in the UK is rather 'doubled' and taken under control. It is not an aim for this search whether the content of the advertising in the UK is being affected in any way from this two-way self-regulation, but if it would be, then the outcome would not supposed to be very negative.

The SROs both receive complaints mostly from the broadcasting media. This assessment gave an opportunity to make an outcome about the advertising viewers, as the television viewers are supposed to be more effective than the newspaper readers. It is clear that the television commercials are able to reach the viewers than in any other media. Another reason for the complaints being received from the broadcasting media could be because the production of this kind of advertising costs more than the actual budget of the press advertising. The advertising that reaches to the people is in numerous amounts and from various media, but mostly by the broadcasting.

For the EASA and the ASA, there is a slightly different situation, as another significant number of complaints they receive are from direct mailing. This is supposed to be a result of being a part of a union. For ASRB, the television viewers' complaints shape the comments made for the self-regulatory system.

Finally, the self-regulation is a need according to the century's directory. It would be appropriate to conclude the search with referring to Confucius: *Lead the people with governmental measures and regulate them by law and punishment, and they will avoid wrongdoing but have no sense of honour or shame. Lead them by virtue and regulate them by the rules of propriety, and they will have a sense of shame, and, moreover, set themselves right.*



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APPENDIX 1

**THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)
CODES OF ADVERTISING PRACTICE (1997 EDITION)**



INTERNATIONAL CHAMBER OF COMMERCE (ICC) CODES OF ADVERTISING PRACTICE (1997 Edition)*

Introduction

This edition of the ICC International Code of Advertising Practice follows the well-established policy of the ICC of promoting high standards of ethics in marketing via self-regulatory codes intended to complement the existing frameworks of national and international law. The Code, which was first issued in 1937, and revised in 1949, 1955, 1966, 1973 and 1987, is an expression of the business community's recognition of its social responsibilities in respect of commercial communications. The globalisation of the world's economies, and the intense competition which ensues therefrom, require the international business community to adopt standard rules. The adoption of these self-disciplinary rules is the best way that business leaders have of demonstrating that they are motivated by a sense of social responsibility, particularly in light of increased liberalisation of markets. A manifestation of this commitment to social responsibility is to be found in the ICC's decision to incorporate formally within this code the former ICC Guidelines for Advertising Addressed to Children.

This edition combines past experience with current thinking based on the concept of advertising as a means of communication between sellers and customers. In this respect the ICC freedom of communication (as embodied in article 19 of the United Nations International Covenant of Civil and Political Rights) as a fundamental principle.

The Code is designed primarily as an instrument for self-discipline but it is also intended for use by the Courts as a reference document within the framework of applicable laws.

The ICC believes that this edition of the Code will promote adherence to high standards of commercial communications leading to efficient international markets and significant consumer benefits.

Scope of the Code

The Code applies to all advertisements for the promotion of any form of goods and services. It should be read in conjunction with the other ICC Codes of Marketing Practice, namely:

ICC International Code of Sales Promotion

ICC International Code of Practice on Direct Marketing

ICC Code on Environmental Advertising

ICC Code on Sponsorship

ICC/ESOMAR International Code of Marketing and Social Research Practice

The Code sets standards of ethical conduct to be followed by all concerned with advertising, whether as marketers or advertisers, advertising practitioners or agencies, or media, and is to be applied against the background of the applicable law.

Interpretation

The Code is to be applied in the spirit as well as in the letter.

Because of the different characteristics of the various media (press, television, radio and other broadcast media, outdoor advertising, films, direct mail, fax, e-mail, internet and online services, etc.) an advertisement which is acceptable for one medium may not necessarily be acceptable for another. Advertisements, therefore, should be judged by their likely impact on the consumer, bearing in mind the medium used.

The Code applies to the entire content of an advertisement, including all words and numbers (spoken and written), visual presentations, music and sound effects.

Definitions

For the purpose of this code:

- the term ‘advertisement’ is taken in its broadest sense, and means any form of advertising for goods or services, regardless of the medium used;
- the term ‘product’ refers to any good or service;
- the term ‘consumer’ refers to any person to whom an advertisement is addressed or who can reasonably be expected to be reached by it whether as a final consumer or as a trade customer or user.

Basic Principles

Article 1

All advertising should be legal, decent, honest and truthful.

Every advertisement should be prepared with a due sense of social responsibility and should conform to the principles of fair competition, as generally accepted in business.

No advertisement should be such as to impair public confidence in advertising.

Decency

Article 2

Advertisements should not contain statements or visual presentations which offend prevailing standards of decency.

Honesty

Article 3

Advertisements should be so framed as not to abuse the trust of consumers or exploit their lack of experience or knowledge.

Social responsibility

Article 4

1. Advertisements should not condone any form of discrimination, including that based upon race, national origin, religion, sex or age, nor should they in any way undermine human dignity.
2. Advertisements should not without justifiable reason play on fear.
3. Advertisements should not appear to condone or incite violence, nor to encourage unlawful or reprehensible behaviour.
4. Advertisements should not play on superstition.

Truthful presentation

Article 5

1. Advertisements should not contain any statement or visual presentation which directly or by implication, omission, ambiguity or exaggerated claim is likely to mislead the consumer, in particular with regard to
 - a. characteristics such as: nature, composition, method and date of manufacture, range of use, efficiency and performance, quantity, commercial or geographical origin or environmental impact;
 - b. the value of the product and the total price actually to be paid;
 - c. delivery, exchange, return, repair and maintenance;
 - d. terms of guarantee;
 - e. copyright and industrial property rights such as patents, trade marks, designs and models and trade names;
 - f. official recognition or approval, awards of medals, prizes and diplomas;
 - g. the extent of benefits for charitable causes.
 - h. Advertisements should not misuse research results or quotations from technical and scientific publications. Statistics should not be so presented as to exaggerate the validity of advertising claims. Scientific terms should not be used to falsely ascribe scientific validity to advertising claims.

Comparisons

Article 6

Advertisements containing comparisons should be so designed that the comparison is not likely to mislead, and should comply with the principles of fair competition. Points of comparison should be based on facts which can be substantiated and should not be unfairly selected.

Denigration

Article 7

Advertisements should not denigrate any firm, organisation, industrial or commercial activity, profession or product by seeking to bring it or them into public contempt or ridicule, or in any similar way.

Testimonials

Article 8

Advertisements should not contain or refer to any testimonial or endorsement unless it is genuine, verifiable, relevant and based on personal experience or knowledge. Testimonials or endorsements which have become obsolete or misleading through passage of time should not be used.

Portrayal or imitation of personal property

Article 9

Advertisements should not portray or refer to any persons, whether in a private or a public capacity, unless prior permission has been obtained; not should advertisements without prior permission depict or refer to any person's property in a way likely to convey the impression of a personal endorsement.

Exploitation of goodwill

Article 10

Advertisements should not make unjustifiable use of the name, initials, logo and/or trademarks of another firm, company or institution nor should advertisements in any way take undue advantage of another firm, person, or institution's goodwill in its name, trade name or other intellectual property, nor should advertisements take advantage of the goodwill earned by other advertising campaigns.

Imitation

Article 11

1. Advertisements should not imitate the general layout, text, slogan, visual presentation, music and sound effects, etc., of any other advertisements in a way that is likely to mislead or confuse the consumer.
2. Where advertisers have established distinctive advertising campaigns in one or more countries, other advertisers should not unduly imitate these campaigns in other countries where the former may operate, thus preventing them from extending their campaigns within a reasonable period of time to such countries.

Identification of advertisements

Article 12

Advertisements should be clearly distinguishable as such, whatever their form and whatever the medium used; when an advertisement appears in a medium which contains news or editorial matter, it should be so presented that it will be readily recognised as an advertisement.

Safety and health

Article 13

Advertisements should not without reason, justifiable on educational or social grounds, contain any visual presentation or any description of dangerous practices or of situations which show a disregard for safety or health.

Children and young people

Article 14

The following provisions apply to advertisements addressed to children and young people who are minors under the applicable national law.

Inexperience and Credulity

- a. Advertisements should not exploit the inexperience or credulity of children and young people.
- b. Advertisements should not understate the degree of skill or age level generally required to use or enjoy the product.
 - i. Special care should be taken to ensure that advertisements do not mislead children and young people as to the true size, value, nature, durability and performance of the advertised product.
 - ii. If extra items are needed to use it (e.g., batteries) or to produce the result shown or described (e.g., paint) this should be made clear.
 - iii. A product which is part of a series should be clearly indicated as should the method of acquiring the series.
 - c. Price indication should not be such as to lead children and young people to unreal perception of the true value of the product, for instance by using the word 'only'. No advertisements should imply that the advertised product is immediately within reach of every family budget.

Avoidance of Harm

Advertisements should not contain any statement or visual presentation that could have the effect of harming children and young people mentally, morally or physically or of bringing them into unsafe situations or activities seriously threatening their health or security, or of encouraging them to consort with strangers or to enter strange or hazardous places.

Social Value

- a. Advertisements should not suggest that possession or use of a product alone will give the child or young person physical, social or psychological advantages over other children or young people of the same age, or that non-possession of the product would have the opposite effect.
- b. Advertisements should not undermine the authority, responsibility, judgement or tastes of parents, taking into account the current social values. Advertisements should not include any direct appeal to children and young people to persuade their parents or other adults to buy advertised products for them.

Guarantees

Article 15

Advertisements should not contain any reference to a guarantee which does not provide the consumer with additional rights to those provided by law.

Advertisements may contain the word 'guarantee', 'guaranteed', 'warranty' or 'warranted' or words having the same meaning only if the full terms of the guarantee as well as the remedial action open to the purchaser are clearly set out in the advertisements, or are available to the purchaser in writing at the point of sale, or come with the goods.

Unsolicited products

Article 16

Advertisements should not be used to introduce or support the practice whereby unsolicited products are sent to persons who are required, or given the impression that they are obliged to accept and pay for these products (inertia selling).

Environmental behaviour

Article 17

Advertisements should not appear to approve or encourage actions which contravene the law, self-regulating codes or generally accepted standards of environmentally responsible behaviour. Advertisers should respect the principles set forth in the ICC Code on Environmental Advertising.

Responsibility

Article 18

1. Responsibility for the observance of the rules of conduct laid down in the Code rests with the advertiser, the advertising practitioner or agency, and the publisher, media owner or contractor.
 - a. Advertisers should take the overall responsibility for their advertising.
 - b. Advertising practitioners or agencies should exercise every care in the preparation of advertisements and should operate in such a way as to enable advertisers to fulfil their responsibilities.
 - c. Publishers, medium-owners or contractors, who publish, transmit or distribute advertisements should exercise due care in the acceptance of advertisements and their presentation to the public.
2. Those employed with in a firm, company or institution coming under the above three categories and who take part in the planning, creation, publishing or transmitting of an

advertisement have a degree of responsibility commensurate with their positions for ensuring that the rules of the Code are observed and should act accordingly.

Rules apply to entirety of advertisement

Article 19

The responsibility for observance of the rules of the Code embraces the advertisement in its entire content and form, including testimonials and statements or visual presentations originating from other sources. The fact that the content or form originates wholly or in part from other sources is not an excuse for non-observance of the rules.

Effect of subsequent redress for contravention

Article 20

While an advertiser's subsequent correction and appropriate redress for a contravention of the Code are desirable, they can not excuse the original contravention of the Code.

Substantiation

Article 21

Descriptions, claims or illustrations relating to verifiable facts should be capable of substantiation. Advertisers should have such substantiation available so that they can produce evidence without delay to the self-regulatory bodies responsible for the operation of the Code.

Respect of self-regulatory decisions


Article 22

No advertiser, advertising practitioner or agency, publisher, medium-owner or contractor should be party to the publication of any advertisement which has been found unacceptable by the appropriate self-regulatory body.

Implementation

Article 23

This Code is to be applied nationally and internationally, and should be the basis for the decisions by bodies set up for the purpose of self-regulation.



Document No. 240/381
International Chamber of Commerce
The World Business Organisation
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* International Chamber of Commerce Official Web Site,
ICC International Code of Advertising Practice [WWW Document] URL
http://www.iccwbo.org/home/statements_rules/rules/1997/advercod.asp.

APPENDIX 2

THE ADVERTISING STANDARDS AUTHORITY (ASA) ADVERTISING CODES



Testimonials and endorsements

14.1

Advertisers should hold signed and dated proof, including a contact address, for any testimonial they use. Unless they are genuine opinions taken from a published source, testimonials should be used only with the written permission of those giving them (but see 14.5 below).

14.2

Testimonials should relate to the product being advertised.

14.3

Testimonials alone do not constitute substantiation and the opinions expressed in them must be supported, where necessary, with independent evidence of their accuracy. Any claims based on a testimonial must conform with the Codes.

14.4

Fictitious testimonials should not be presented as though they are genuine.

14.5

References to tests, trials, professional endorsements, research facilities and professional journals should be used only with the permission of those concerned. They should originate from within the European Union unless otherwise stated in the advertisement. Any establishment referred to should be under the direct supervision of an appropriately qualified professional.

Prices

15.1

Any stated price should be clear and should relate to the product advertised. Advertisers should ensure that prices match the products illustrated.

15.2

Prices quoted in advertisements addressed to the public should normally include VAT and other non-optional taxes and duties imposed on all buyers. In some circumstances, for example where advertisements are likely to be read mainly by businesses able to recover VAT, prices may be quoted exclusive of VAT or other taxes and duties, provided prominence is given to the amount or rate of any additional costs.

15.3

If the price of one product is dependent on the purchase of another, the extent of any commitment by consumers should be made clear.

15.4

Price claims such as 'up to' and 'from' should not exaggerate the availability of benefits likely to be obtained by consumers.

Free offers

16.1

There is no objection to making a free offer conditional on the purchase of other items. Consumers' liability for any costs should be made clear in all material featuring the offer. An offer should be described as free only if consumers pay no more than:

- a) the current public rates of postage
- b) the actual cost of freight and delivery
- c) the cost, including incidental expenses, of any travel involved if consumers collect the offer.

Advertisers should make no additional charges for packing and handling.

16.2

Advertisers must not attempt to recover their costs by reducing the quality or composition or by inflating the price of any product that must be purchased as a precondition of obtaining another product free.

Availability of products

17.1

Advertisers must make it clear if stocks are limited. Products must not be advertised unless advertisers can demonstrate that they have reasonable grounds for believing that they can satisfy demand. If a product becomes unavailable, advertisers will be required to show evidence of stock monitoring, communications with outlets and swift withdrawal of advertisements whenever possible.

17.2

Products which can not be supplied should not normally be advertised as a way of assessing potential demand unless it is clear that this is the purpose of the advertisement.

17.3

Advertisers must not use the technique of switch selling, where their sales staff criticise the advertised product or suggest that it is not available and recommend the purchase of a more expensive alternative. They should not place obstacles in the way of purchasing the product or delivering it promptly.

Guarantees

18.1

The word 'guarantee' should not be used in a way that could cause confusion about consumers' legal rights. Substantial limitations should be spelled out in the advertisement. Before commitment, consumers should be able to obtain the full terms of the guarantee from advertisers.

18.2

Advertisers should inform consumers about the nature and extent of any additional rights provided by the guarantee, over and above those given to them by law, and should make clear how to obtain redress.

Comparisons

19.1

Comparisons can be explicit or implied and can relate to advertisers' own products or to those of their competitors; they are permitted in the interests of vigorous competition and public information.

19.2

Comparisons should be clear and fair. The elements of any comparison should not be selected in a way that gives the advertisers an artificial advantage.

Denigration

20.1

Advertisers should not unfairly attack or discredit other businesses or their products.

20.2

The only acceptable use of another business's broken or defaced products in advertisements is in the illustration of comparative tests, and the source, nature and results of these should be clear.

Exploitation of goodwill

21.1

Advertisers should not make unfair use of the goodwill attached to the trade mark, name, brand, or the advertising campaign of any other organisation.

Imitation

22.1

No advertisement should so closely resemble any other that it misleads or causes confusion.

Identifying advertisers and recognising

23.1

Advertisers, publishers and owners of other media should ensure that advertisements are designed and presented in such a way that is clear that they are advertisements.

23.2

Features, announcements or promotions that are disseminated in exchange for a payment or other reciprocal arrangement should comply with the Codes if their content is controlled by the advertisers. They should also be clearly identified as such (see clause 41).

23.3

Distance selling advertisements with written response mechanisms (eg postal, fax or e-mail) and advertisements for one day sales, homework schemes and the like should contain the name and address of the advertisers. Distance selling advertisements with telephone response mechanisms and advertisements for business opportunities should contain the name and contact details of the advertisers. Unless required by law, other advertisers are not normally obliged to identify themselves (see also clause 52.2).

* The Advertising Standards Authority, **ASA Advertising Codes**. [WWW Document] URL http://www.asa.org.uk/the_codes/show_codes.asp?page_no=1.

THE ADVERTISING STANDARDS AUTHORITY (ASA) ADVERTISING CODES*

The tenth edition of British Codes of Advertising and Sales Promotion came into force on 1st October 1999, with Addendum 1 added on 23 April 2000. It replaces all previous editions.

The following codes are the Codes which the Advertising Standards Association applies to the non-broadcast advertising.

Introduction

1.1

The Codes apply to:

- a) advertisements in newspapers, magazines, brochures, leaflets, circulars, mailings, fax transmissions, catalogues, follow-up literature and other electronic and printed material
- b) posters and other promotional media in public places
- c) cinema and video commercials
- d) advertisements in non-broadcast electronic media
- e) viewdata services
- f) marketing databases containing consumers' personal information
- g) sales promotions
- h) advertisement promotions
- i) advertisements and promotions covered by the Cigarette Code.

1.2

The Codes do not apply to:

- a) broadcast commercials, which are the responsibility of the Independent Television Commission or the Radio Authority

- b) the contents of premium rate telephone calls, which are the responsibility of the Independent Committee for the Supervision of Standards of Telephone Information Services; advertising for these services is covered by the Code
- c) advertisements in foreign media
- d) health-related claims in advertisements and promotions addressed only to the medical, dental, veterinary and allied professions
- e) classified private advertisements
- f) statutory, public, police and other official notices
- g) works of art exhibited in public or private
- h) private correspondence
- i) oral communications, including telephone calls
- j) press releases and other public relations material
- k) the content of books and editorial communications
- l) regular competitions such as crosswords
- m) flyposting
- n) packages, wrappers, labels, tickets and price lists unless they advertise another product, a sales promotion or are visible in an advertisement
- o) point of sale displays except those covered by the Sales Promotion Code and the Cigarette Code
- p) political advertisements as defined in clause 12.1.

1.3

The following definitions apply to the Codes:

- a) a product encompasses goods, services, ideas, causes, opportunities, prizes or gifts
- b) a consumer is anyone who is likely to see a given advertisement or promotion
- c) the United Kingdom rules cover the Isle of Man and the Channel Islands (except for the purpose of the Cigarette Code)
- d) a claim can be implied or direct, written, spoken or visual
- e) the Codes are divided into numbered clauses.

The following criteria apply to the Codes:

- a) the ASA Council's interpretation of the Codes is final

- b) conformity with the Codes is assessed according to the advertisement's probable impact when taken as a whole and in context. This will depend on the medium in which the advertisement appeared, the audience and their likely response, the nature of the product and any additional material distributed to consumers.
- c) the Codes are indivisible; advertisers must conform with all appropriate rules
- d) the Codes do not have the force of law and their interpretation will reflect their flexibility. The Codes operate alongside the law; the Courts may also make rulings on matters covered by the Codes
- e) an indication of the statutory rules governing advertising and promotions is given in the Legislation section; professional advice should be taken if there is any doubt about their application
- f) no spoken or written communications with the ASA or CAP should be understood as containing legal advice
- g) the Codes are primarily concerned with advertisements and promotions and not with terms of business, products themselves or other contractual matters
- h) the rules make due allowance for public sensitivities but will not be used by the ASA to diminish freedom of speech
- i) the ASA may decide that it is not qualified to judge advertisements and promotions in languages other than English
- j) the ASA does not arbitrate between conflicting ideologies.

Principles

2.1

All advertisements should be legal, decent, honest and truthful.

2.2

All advertisements should be prepared with a sense of responsibility to consumers and to society.

2.3

All advertisements should respect the principles of fair competition generally accepted in business.

2.4

No advertisement should bring advertisement into disrepute.

2.5

Advertisements must conform with the Codes. Primary responsibility for observing the Codes falls on advertisers. Others involved in preparing and publishing advertisements such as agencies, publishers and other service suppliers also accept an obligation to abide by the Codes.

2.6

Any reasonable delay in responding to the ASA's enquiries may be considered breach of the Codes.

2.7

The ASA and CAP will on request treat in confidence any genuinely private or secret material supplied unless the Courts or officials acting within their statutory powers compel its disclosure.

2.8

The Codes are applied in the spirit as well as in the letter.

Substantiation

3.1

Before submitting an advertisement for publication, advertisers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation.

Relevant evidence should be sent without delay if requested by the ASA. The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the advertisement.

3.2

If there is a significant division of informed opinion about any claims made in an advertisement they should not be portrayed as generally agreed.

Claims for the content of non-fiction books, tapes, videos and the like that have not been independently substantiated should not exaggerate the value, accuracy, scientific validity or practical usefulness of the product.

3.3

Obvious untruths or exaggerations that are unlikely to mislead and incidental minor errors and unorthodox spellings are all allowed provided they do not affect the accuracy or perception of the advertisement in any material way.

Legality

4.1

Advertisers have primary responsibility for ensuring that their advertisements are legal. Advertisements should comply with the law and should not incite anyone to break it.

Decency

5.1

Advertisements should contain nothing that is likely to cause serious or widespread offence. Particular care should be taken to avoid causing offence on the grounds of race, religion, sex, sexual orientation or disability. Compliance with the Codes will be judged on the context, medium, audience, product and prevailing standards of decency.

5.2

Advertisements may be distasteful without necessarily conflicting with 5.1 above. Advertisers are urged to consider public sensitivities before using potentially offensive material.

5.3

The fact that a particular product is offensive to some people is not sufficient grounds for objecting to an advertisement for it.

Honesty

6.1

Advertisers should not exploit the credulity, lack of knowledge or inexperience of consumers.

Truthfulness

7.1

No advertisement should mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise.

Matter of opinion

8.1

Advertisers may give a view about any matter, including the qualities or desirability of their products, provided it is clear that they are expressing their own opinion rather than stating a fact. Assertions or comparisons that go beyond subjective opinions are subject to 3.1 above; also see 12.1 below.

Fear and distress

9.1

No advertisement should cause fear or distress without good reason. Advertisers should not use shocking claims or images merely to attract attention.

9.2

Advertisers may use an appeal to fear to encourage prudent behaviour or to discourage dangerous or ill-advised actions; the fear likely to be aroused should not be disproportionate to the risk.

Safety

10.1

Advertisements should not show or encourage unsafe practices except in the context of promoting safety. Particular care should be taken with advertisements addressed to or depicting children and young people.

10.2

Consumers should not be encouraged to drink and drive. Advertisements should, where appropriate, include a prominent warning on the dangers of drinking and driving and should not suggest that the effects of drinking alcohol can be masked.

Violence and anti-social behaviour

11.1

Advertisements should contain nothing that condones or is likely to provoke violence or anti-social behaviour.

Political advertising

12.1

Any advertisement, whenever published, whose principal function is to influence voters in local, regional, national or international elections or referendums is exempt from the Codes but advertisers are urged to make their identity clear.

12.2

There is a formal distinction between government policy and that of political parties. Advertisements by central or local government, or those concerning government policy as distinct from party policy, subject to all the Codes' rules.

Protection of privacy

13.1

Advertisers should not unfairly portray or refer to people in adverse or offensive way. Advertisers are urged to obtain written permission before:

- a) referring to or portraying members of the public or their identifiable possessions; the use of crowd scenes or general public locations may be acceptable without permission
- b) referring to people with a public profile; references that accurately reflect the contents of books, articles or films may be acceptable without permission
- c) implying any personal approval of the advertised product; advertisers should recognise that those who do not wish to be associated with the product may have a legal claim.

13.2

Prior permission may not be needed when the advertisement contains nothing that is inconsistent with the position or views of the person featured.

13.3

References to anyone who is deceased should be handled with particular care to avoid causing offence or distress.

13.4

Members of the Royal Family should not normally be shown or mentioned in advertisements without their prior permission. Incidental references unconnected with the advertised product, or references to material such as books, articles or films about members of the Royal Family, may be acceptable.

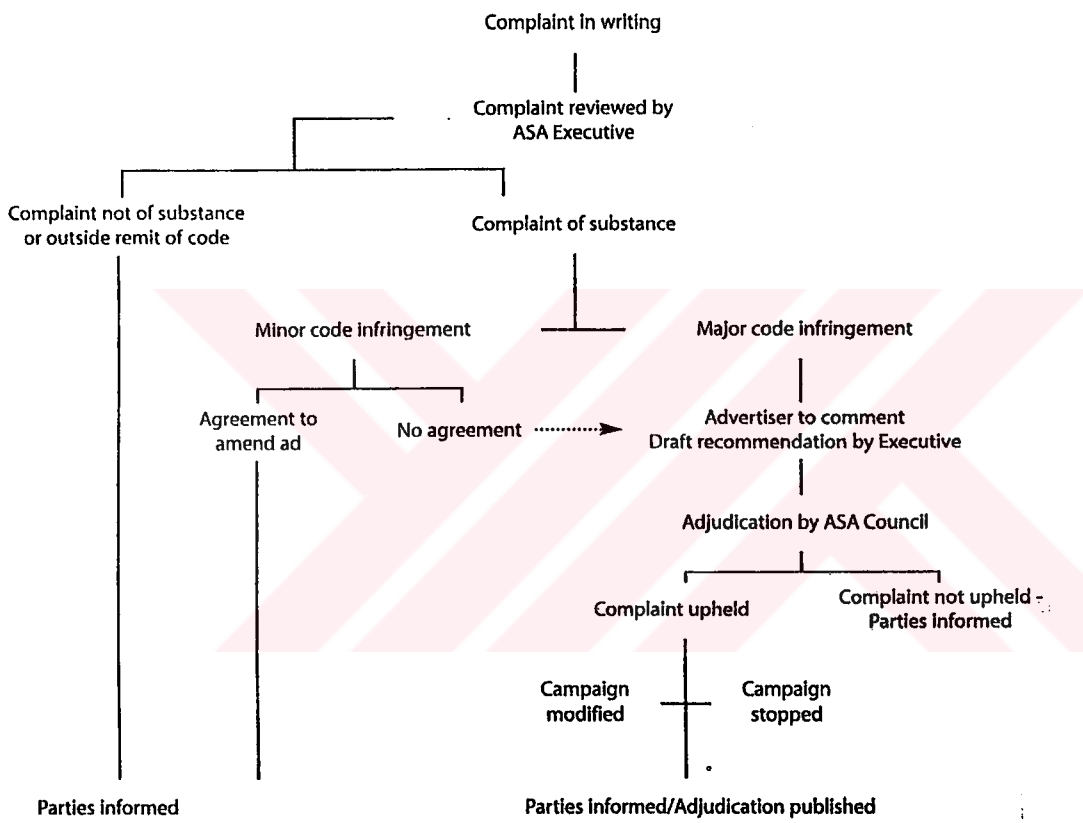
13.5

The Royal Arms and Emblems should be used only with the prior permission of the Lord Chamberlain's office. References to Royal Warrants should be checked with the Royal Warrant Holders' Association.

APPENDIX 3

THE COMPLAINT DEALING SYSTEM OF THE ADVERTISING STANDARDS AUTHORITY (ASA)





APPENDIX 4

THE COMPLAINT DEALING SYSTEM OF THE ADVERTISING SELF-REGULATORY BOARD (ASRB)



