

# The Implications of the Advertising Standards Authority's Decision to Reject Complaints about an Advertisement Declaring that Humane Milk is a Myth

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The structure and statutory basis of advertising regulation in the UK

In the United Kingdom, advertising in non-broadcast media (including newspapers, posters, websites and social media) is entirely self-regulated through the Advertising Standards Authority (ASA), an industry funded regulator independent of Government, which oversees the UK non-broadcast media's compliance with the Advertising Codes. The Codes are maintained by the ASA's sister organisation, the Committee of Advertising Practice (CAP), members of which are drawn from the advertising industry.

The UK broadcast media is subject to general statutory regulation by the communications regulator Ofcom, and Ofcom in turn contracts with the ASA to regulate TV and radio advertising, so that whilst broadcast media is also regulated by the ASA, such regulation is not strictly self-regulation in the way that it is for non-broadcast media. Broadcast media is regulated according to its own code, written and maintained by the Broadcast Committee of Advertising Practice (BCAP) but subject to approval by Ofcom.

Aside from the statutory licencing regime for broadcast media, advertising in the UK is governed by general consumer protection legislation, including most

importantly by the Consumer Protection from Unfair Trading Practices Regulations 2008 (implementing the Unfair Commercial Practices Directive<sup>1</sup>) the purpose of which includes the prevention of misleading or unfair trading practices. Breaches of these regulations may be prosecuted by local authority trading standards agencies, and the ASA may make referrals to trading standards in appropriate cases. Breaches of the BCAP code may, if the ASA is unable to enforce them itself, also be referred to Ofcom, which may bring prosecutions in appropriate cases. It is important to bear in mind that the applicability of the consumer protection legislation is confined to cases which engage the commercial interests of the

<sup>1</sup> Directive 2005/29/EC concerning unfair business-to-consumer

commercial practices in the internal market etc.



consumer; considerations of taste and decency are outside the scope of the statutory consumer regulations and, from an advertising point of view, are the preserve of the ASA.

### The 'Humane milk is a myth' campaign

The campaign group, *Go Vegan World* was responsible for placing advertisements in the national press in February 2017 featuring a photograph of a cow behind barbed wire, with the headline: "Humane milk is a myth. Don't buy it." The advertisement contained the following further text in smaller type than the headline: "I went vegan the day I visited a dairy. The mothers, still bloody from birth, searched and called frantically for their babies.

Their daughters, fresh from their mothers' wombs but separated from them, trembled and cried piteously, drinking milk from rubber teats on the wall instead of their mothers' nurturing bodies. All because humans take their milk. Their sons are slaughtered for their flesh and they themselves are slaughtered at 6 years. Their natural lifespan is 25 years. I could no longer participate in that. Can you?"

### Complaints about the campaign

The ASA considered seven complaints – including from complainants with experience of working in the dairy industry – that the advertisement was not an accurate description of conditions for dairy cattle in the

UK. The ASA considered the complaints and investigated the advertisement under CAP Code (Edition 12) rules 3.1 ("Misleading advertising") and 3.7 ("Substantiation").

The specific statements said to be misleading and unsubstantiated were the claims: "humane milk is a myth", in conjunction with, "the mothers, still bloody from birth" and, "their daughters, fresh from their mothers' wombs but separated from them". It appears to have been alleged that those statements conveyed the misleading meaning that calves were removed from their mothers instantly upon birth.

### *Go Vegan World's* response

*Go Vegan World* submitted that, “still bloody from birth” was descriptive of new mammalian mothers, who in the case of cows were bloody from birth for more than two weeks post-delivery. Similarly, the phrase, “fresh from their mothers’ wombs” described infant calves in the ‘neonatal’ period, which period was commonly defined as being from delivery until 28 days old. The term, “fresh” was apt to describe mothers or calves for up to two weeks post-birth. It followed that nothing in the advertisement should be taken to allege that calves were separated from their mothers prior to the minimum 12-24 hour period recommended by the Department for Environment, Food and Rural Affairs. The advertisement commented upon the fact of the separation of young calves from their mothers, which *Go Vegan World* considered inhumane. They offered to include a statement on future advertisements clarifying that calves were generally separated from their mothers 12-24 hours after birth.

### The ASA's ruling

The ASA declined to uphold the complaints. It held that readers would understand the claims in the advertisement to mean that calves were generally separated from their mothers very soon after birth, which was the case. They would not understand the advertisement to be a comment

on compliance with any specific welfare law or standards. Furthermore, given that it was clear from the advertisement that it was for a vegan pressure group, readers would understand that the language – although “emotional and hard hitting”, in the ASA’s words – was reflective of the campaign group’s particular opinion about the practices it described. The ASA concluded that the advertisement was unlikely to materially mislead readers. The National Farmers’ Union has said that it intends to appeal.

### The significance of the ruling

As with all of the ASA’s rulings, this one stands squarely upon the particular advertisement considered in the complaint. The claims made in this advertisement were found not to have implied any breach of any regulatory standard in the treatment of dairy cattle. The ASA has issued guidance<sup>2</sup> in the related area of animal testing and medical research, in which it has stated that, “Claims that state or imply that experiments are unregulated, or that animal welfare is ignored are unlikely to be acceptable.” It was therefore important for *Go Vegan World* to demonstrate that the claims made in the advertisement (about the very young age at which calves are separated from their

mothers) were not, whether directly or by implication, claims that members of the dairy industry were in breach of any relevant regulations.

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What is interesting is that the ASA was prepared to accept in this case that *Go Vegan World’s* comment upon the treatment as “inhumane” was not to be treated in the same way as an allegation that the treatment of animals in the context of animal testing, ignores animal welfare. It seems that there is some margin between the two concepts: “inhumane” is an opinion a vegan group is entitled to express in relation to dairy farming, whereas an allegation that animal welfare is ignored in relation to animal testing is given as an example of a claim the ASA would find unacceptable.

<sup>2</sup> <https://www.asa.org.uk/advice-online/animal-testing-and-medical-research.html>