

challenging religious privilege

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cc. Chris Smith,  
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Dear James Best and Malcolm Phillips,

Last month the NSS met with ASA Chairman Chris Smith, Chief Executive Guy Parker and Director of Communications and Marketing Lynsay Taffe to discuss the ASA's rulings on a series of adverts. We enclose our initial letter to Chris Smith that led to the meeting, outlining our concerns. Following that meeting and Chris Smith's advice, we are writing about the CAP code in the area of religion and offence.

We particularly have concerns about the following:

The CAP Help Notes on Religious Offence<sup>1</sup> state that 'it is not the aim of CAP or the ASA to make marketing a religion-free zone' - but we are concerned that religious sensitivities are being given undue and unwarranted consideration by the CAP and that consequently freedom of expression is being restricted.

Rule 4.1 of the Code states 'Particular care must be taken to avoid causing offence on the grounds of race, religion, gender, sexual orientation, disability or age'. We are concerned that, of these 'protected' characteristics, religion is of a different order; it is the only one that people can choose or have any control over. It therefore seems inappropriate to include it in the list or at least to afford it the same level of protection.

Of further concern is that the Help Notes also state: 'certain religious groups are more sensitive and particular about their beliefs against a perceived background of 'secularity''. They continue: 'The Code identifies religion as an area in which marketers should take particular care to avoid causing serious or widespread offence' and that marketers should be 'particularly aware of the possibility of causing serious or widespread offence to those of minority faiths'.

We acknowledge that there are grounds for banning a deliberately inflammatory advert that attacks core beliefs. However, offence is a nebulous concept and one which is increasingly being used by a vocal religious minority to stifle freedom of expression. These are generally the most orthodox of believers who do not represent the views of all followers of a religion or denomination. In claiming that an advert 'offends their religion' they are more realistically claiming that they personally are offended – and would fall into the Notes' category of 'emotional offence'. Just because a group or an individual is 'more sensitive' does not in itself warrant them being given special consideration, especially if this sensitivity may impinge on the

<sup>1</sup> <http://www.copyadvice.co.uk/Ad-Advice/Help-Notes/Religious-Offence.aspx>

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rights of others. However sincerely held a belief may be, we do not believe that it is proportionate to allow it to determine the fate of an advert intended to be seen by a significant number of the population.

We would like to reiterate that in the areas mentioned above, the Code as currently worded is not compatible with Recommendation 1805 (2007)<sup>2</sup> of the Parliamentary Assembly of the Council of Europe on Freedom of Expression. It states that 'Freedom of expression is not only applicable to expressions that are favourably received or regarded as inoffensive, but also to those that may shock, offend or disturb the state or any sector of population within the limits of Article 10 of the Convention'.

Moreover, Resolution 1510 (2006)<sup>3</sup> of the Parliamentary Assembly of Council of Europe points out: 'What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place'. It may be impracticable for advertisers to try and second guess what is currently giving offence and what is permissible, thus undermining the Code.

In addition, your copy advice<sup>4</sup> about religion states that 'the use of religious images and words is often acceptable as long as it is not mocking, disrespectful or contrary to central or sensitive Christian beliefs'. We would like to point out that, under law, it is individuals who are protected and who have rights, not belief systems.

The advice also states that 'References to non-Christian religions can be more likely to cause serious or widespread offence (...) because non-Christian faiths are less established in the UK and might need to be treated with more sensitivity'. The fact that a religion is less established seems to be inadequate justification for giving it special treatment. Individual believers of minority religions are already protected under law.

Changes to the Protection of Freedoms Bill are currently being discussed, including the proposed reform of section 5 of the Public Order Act<sup>5</sup> to remove the word 'insulting' from the section which states: 'A person is guilty of an offence if he — (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting'.

This discussion of the idea that insult does not warrant being in the same category as more serious behaviour would indicate a change in climate and that it is perhaps time for the CAP to review its guidance to keep the code relevant.

Given the above and the small number of people who complained about the religious content of recent adverts,<sup>6</sup> the NSS recommends that you consider rewording the current Code so that the ASA can more easily reject such complaints and take a more proportionate view. We also recommend that the current Code criterion 'will it so deeply offend a minority that it is reasonable for their interests to prevail against the right of the marketer to reasonable free expression' should be removed or at least made a much higher hurdle when it comes to religious offence.

Yours sincerely

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Executive Director

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<sup>2</sup> <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/EREC1805.htm>

<sup>3</sup> <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/ERES1510.htm#1#1>

<sup>4</sup> <http://www.copyadvice.co.uk/Ad-Advice/Advice-Online-Database/Taste-and-Decency-Religion.aspx>

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/1986/64>

<sup>6</sup> For example, the Federici ice-cream adverts as mentioned in our letter to Chris Smith.