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# Editorial

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## Why Self-Regulation?

2002 will be a year of anniversaries. The year that sees the Golden Jubilee of the Queen's accession to the throne will also see the 40th anniversary of the establishment of the Advertising Standards Authority (ASA). Anniversaries are good times to celebrate our institutions but also to reflect on the justification for them.

The ASA was established in the wake of the Maloney Committee Report on Consumer Protection. It represented the first stirrings of official interest and recognition for the "consumer interest." Its pages recommended tough new legislation – which found fruition in the Trade Descriptions Act – and threatened statutory regulation of advertising. It was this threat that led the industry to create the ASA as a separate body under the independent chairmanship of Sir Arnold Plant of London University.

In its forty years, the ASA has grown in stature and respect. Its existence has helped to ward off several attempts to undermine or destroy industry self-regulation, particularly from Brussels and from the Labour Party, which, until recently, had the ending of advertising and sales promotion self-regulation as party policy.

The threats have receded and the ASA's position is now secure. And there is even talk of extending the ASA model to broadcast advertising. The system has defeated the threat of "draconian legal controls" but ironically it has been at the cost of imposing far greater burdens on the business than the law ever could.

First, the system reverses the burden of proof making advertisers and promoters guilty, certainly in relation to substantiation of claims, unless they can prove their innocence. The law couldn't do that. Secondly, the Codes are administered in the spirit as well as in the letter, so advertisers and promoters can come unstuck even though the substance of a complaint isn't covered by the precise wording of the Codes. The law doesn't work like that.

Finally, the time within which companies must deal with complaints with the ASA is now only a matter of days, otherwise complaints are upheld. Readers might like to make a complaint to the statutory system controlling television advertisements run by the Independent Television Commission to see how long legal controls take to operate compared to those of self-regulation. The comparison is instructive.

Why then, as we approach the 40th anniversary, should we support self-regulation? Some support the ASA simply because it is there, much as individuals become attached to a particular chair or a pair of slippers. Others remember the painful experience of a parent or aunt telling them that advertising or marketing was a waste of their education and that they should do something respectable, such as becoming a lawyer – an experience which created in them an ingrained hostility to the law and lawyers.

The real justification for self-regulation in today's world can be found, somewhat ironically, even further

back than the early 1960's, and particularly in the deliberations of the 1937 Berlin Conference of the International Chamber of Commerce (ICC).

The ICC concluded that with the growing importance of repeat purchase consumer goods, it was vital to ensure consumer confidence in marketing claims. Consumer expectations would not be satisfied if consumers could not trust advertisements. The result was the ICC International Code of Advertising Practice – the first of several international Codes of Marketing Practice which were very much the parents of our own British Codes of Advertising and Sales Promotion.

The issue is, therefore, not one of preventing legal controls, but how best to secure consumer trust. And the best way is for the industry to be proactive in the maintenance and enhancement of those high standards – often standards which go much further than the law – which secure the integrity of marketing communications. The very first code of advertising practice, launched at the British Empire Exhibition in 1924, made the point succinctly: "... truthful advertising builds both character and good business."

### *Philip Circus*

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