

COMMUNICATION & SOCIETY COMUNICACIÓN Y SOCIEDAD

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ISSN 0214-0039

E ISSN 2174-0895

www.unav.es/fcom/comunicacionysociedad/en/

www.comunicacionysociedad.com

COMMUNICATION & SOCIETY/
COMUNICACIÓN Y SOCIEDAD
Vol. XXVII • N.3 • 2014 • pp. 1-18

How to cite this article:

MUELA-MOLINA, C., & PERELLÓ-OLIVER, S., "Advertising self-regulation. A comparative analysis between the United Kingdom and Spain", *Communication & Society / Comunicación y Sociedad*, Vol. 27, n. 3, 2014, pp. 1-18.

Advertising self-regulation. A comparative analysis between the United Kingdom and Spain

La autorregulación publicitaria. Un análisis comparativo entre Reino Unido y España

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Submitted: August 27, 2013

Approved: January 29, 2014

ABSTRACT: Based on the criteria and parameters considered decisive by the European Union for an effective self-regulation model in advertising, this work carries out a comparative analysis between the advertising self-regulation systems in the United Kingdom and Spain. Setting the British system as a benchmark due to its effectiveness, the main objective of the study is to identify the strengths and weaknesses of the Spanish system in terms of independence, effectiveness, funding

and coverage. In line with the best practice model and in view of the results obtained, certain improvement tools are proposed within a framework of an independent and proactive body.

RESUMEN: Según los criterios y parámetros que la Unión Europea considera determinantes para un modelo efectivo de autorregulación publicitaria, este trabajo realiza un análisis comparativo entre los sistemas de autorregulación publicitaria de Reino Unido y España. Teniendo en cuenta que el modelo británico es considerado una referencia internacional por su eficacia, este estudio tiene como principal objetivo identificar las fortalezas y debilidades del sistema español en términos de independencia, eficacia, financiación y cobertura. En consonancia con el modelo de buenas prácticas y a partir de los resultados, se proponen herramientas de mejora en el marco de un organismo independiente y proactivo.

Keywords: Self-Regulation, advertising, ethics, best-practice model, comparative analysis.

Palabras clave: Autorregulación, publicidad, ética, modelo de buenas prácticas, análisis comparativo.

1. Introduction

Due to market saturation, the similarity of products on offer and characteristic aggressive competition, many advertisers use methods that are not entirely honest to achieve their market objectives. As a result of this behaviour that often violates the established regulation, advertising loses credibility not only as a business tool used against competitors and in terms of market fair play, but also as a communicative activity with society in general (Schutz, 1981; Obermiller *et al.*, 2005).

The mechanics of the judicial system prove inoperative for illicit advertising since, by the time the rulings have finally been delivered, the effects of the advertisement or campaign have not only fulfilled their persuasive purpose of influencing the target audience and conditioning the conduct of the consumer, but their messages have already been substituted by subsequent others. Furthermore, the judges specialised in commercial law are not acquainted with advertising in the way Advertising Self-Regulation organisations or bodies (from hereon ASR) are, as the latter deal in these matters exclusively (Edelstein, 2003, p. 537). Therefore, this communicative dimension of advertising, as a tool subordinated to the marketing area of any manufacturer, is understood to differ from the law –a lot slower and careful (Aznar, 2000)– and more in line with self-regulation which, according to Boddewyn, is faster, cheaper, more effective and efficient than state regulation (1985, p. 131).

The main reason why self-regulatory systems are created and implemented within the advertising field is because they are precisely the most adequate, effective and inclusive complement to the judicial approach (Ramos, 2001; Patiños, 2007). The objective is to set up efficient out-of-court systems for the settlement of claims and to ensure compliance with national and European Community legislation. The systems' main purpose is therefore to guarantee that all agents involved in the production, execution and broadcast

of any advertising message adhere to the laws and codes of conduct that govern and regulate the professional sector.

The ASR system is, therefore, the general framework of the object under study in this research, with a starting point set by previous works (Muela-Molina and Perelló-Oliver, 2011a, 2011b, 2013) that have shown, on one hand, the scarce amount of deceitful advertising reported in Spain when compared with the amount consumers are exposed to on a daily basis; and on the other hand, the alleged shortcomings and weaknesses of the ASR managed by the *Asociación para la Autorregulación de la Comunicación Comercial* (from hereon *Autocontrol*). All this is also set within a context of complacency on the part of *Autocontrol* which relates the low number of disputes [referring to results for the 2009 exercise] to the healthy ethics of the Spanish advertising sector and to its high degree of responsibility, even comparing it in excellence with the most advanced European countries (El Publicista, 2010, p. 10).

One of these neighbouring countries is the United Kingdom¹, which has, according to Petty, developed the largest, most active and best financed ASR system in the world (1997, p. 3). Thus, a quick glance at the data published by the two counterpart organisations in the United Kingdom (ASA: *Advertising Standards Authority* and CAP: *The Committee of Advertising Practice*) and Spain (*Autocontrol*) calls into question the objectivity and validity of the considerations put forward by the Spanish organisation regarding its own monitoring activities.

Most works on ASR have analysed its function in different countries to emphasize its advantages and disadvantages when compared, generally, with the judicial system (Boddewyn, 1985, 1989; Edelstein, 2003; Locke, 1994). In some cases they highlight the criticism of the system (Rotfeld, 1992; Rubin, 2000) or of the codes of conduct (Harker and Harker, 2000) while others defend the model (Taylor, 2002; Fernando-Magarzo, 2008, p. 73). In addition, other studies have proved the effectiveness of ASR in countries like Australia (Harker, 2002; Harker, 2003) and have identified the seven main components needed to measure the correct achievement of ASR objectives: funding, creation of a written code, complaint acceptance, code enforcement, audit of an advertising self-regulation programme, education and creation of public awareness.

On the other hand, other comparative studies have also been undertaken on the structure and organisation of ASR between several countries (Harker and Wiggs, 2000; Harker, 1998) in order to focus the analysis on the four variables of the theoretical framework of so-called 'acceptable advertising': the legal regulatory framework, the self-regulatory framework, industry compliance and prevailing community standards (Harker, 1998). In Spain, there is a study that compares the case load of its ASR with its counterpart in the United States: *Autocontrol* and the *National Advertising Division* (NAD) through seven variables: product category, origin of the complaint, type of media, *Autocontrol's* response, advertiser's response, codes and legislation and basic principles (Medina and An, 2012); there is, nevertheless, a limitation in the study derived from the disparate time frames of the cases analysed in both countries: 2005-2009 in Spain versus 1973-81 in the United

¹ On an international level, the two references for the regulation of advertising activities are, on one hand, the United States where the *Federal Trade Commission* (FTC) was created in 1914 to prevent unfair methods of competition in the market, and in 1938 the North American congress banned a wide range of unfair and misleading actions and practices (Simonson, 1995); due to its work, it is considered the main source of legal regulation in advertising matters. The mentioned body is complemented deontologically by The *National Advertising Division* (NAD) that was created in 1971 (Edelstein, 2003, p. 516). And, on the other hand, within our geographical setting, *Autocontrol* in Spain belongs to *European Advertising Standards Alliance* (EASA) and so does the United Kingdom where in 1962 CAP established the ASA as the independent adjudicator with legal backing in 1981.

States. And another work has also been published that focuses on the case load and analyses the contents of the complaints (Armstrong and Ozanne, 1983) put before the self-regulatory system of the United States, NAD.

Based on these matters and previous studies, the objectives to be achieved by this work are:

O1. To analyse the factors that measure the effectiveness of ASR.

O2. To compare the activity results of ASR in the UK and in Spain.

O3. To identify the weaknesses of ASR in Spain.

The intention is therefore to analyse the similarities and differences of ASR in two countries that share the same economic and political background and are subject to the same European legislation with the ultimate aim of, if appropriate, proposing improvement measures for the Spanish model that would increase the effectiveness of the industry and of advertising as a professional activity and, above all, for the benefit of consumers and of society in general. The United Kingdom has been chosen because its ASR is set as an example and reference in most works.

2. Framework for comparison: Best Practice Self-Regulation Advertising Model

The *European Advertising Standards Alliance* (EASA) established some guidelines on ASR based on ten principles² necessary to achieve a practical and correct functioning of self-regulatory organisations and bodies, to be respected by all its members. However, the framework used for this work is the ASR model proposed by the European Commission that comprises the four basic components that determine ASR effectiveness. The *Directorate-General of Health and Consumer Protection* of the European Union held a meeting, “The Round Table on Advertising Self-Regulation” composed of members of the European Commission, non-governmental organizations interested in the subject and EASA representatives. The debate’s results and conclusions can be found in a document published by the organisers: European Commission (2006). This choice of model is therefore justified as it includes the same principles proposed by EASA in a more effective order. These components and their corresponding factors, listed in Table 1, are used, with different degrees in breakdown, in most of the above mentioned works.

Table 1. The basics components for a Best Practice SR model on advertising

Effectiveness	Provision of Copy Advice
	Complaint handling
	Sanctions
	Consumer awareness
Independence	Involvement of interested parties in Code drafting
	Involvement of independent persons in the complaints adjudication process
Coverage	
Funding	

Source: European Commission (2006: 17).

² The ten principles are available at: <http://www.easa-alliance.org/About-SR/Charter-Validation/page.aspx/237>, y http://www.easa-alliance.org/binarydata.aspx?type=doc/SR_CHARTER_ENG.pdf/download, retrieved March 2012.

The analysis of the factors that determine the effectiveness, independence, coverage and funding of the two ASR under study and their impact in terms of operation in both the UK and Spain needs to apply the comparative method understood as the systematic comparison of the same phenomenon in different time and geographical frames, in order to obtain a richer and freer view of the reality of the context or time of the research, or to put forward a theory or explanation appropriate to phenomena or behaviour dynamics that go beyond particular areas or eras. The comparison therefore takes into account both the differences and similarities of the analogous objects of study.

In this way, and since there are many previous studies on the various factors and perspectives of ASR, this work will focus on the comparative analysis of the organization, structure and results of the systems in both countries in order to achieve the research objectives previously outlined.

The fundamental aim of any ASR is to achieve that all advertising broadcast or published is legal, honest and truthful. And one of the characteristics that distinguish it from the judicial system is that it is more proactive than reactive (Boddewyn, 1989). In this way, we conceptualize each one of the basic components for a Best Practice SR model in advertising:

2.1. *Effectiveness*

There are four parameters that measure the effectiveness of ASR and they operate during the previous and subsequent moment to the broadcast of the message or publicity campaign, affecting whoever is responsible for the message or advertiser, the target audience or consumers in general.

2.1.1. *Provision of Copy Advice*

Copy Advice is a report that any advertiser, agency or type of media can freely request in order to obtain, in confidence, expert advice on whether the contents of an advertisement or campaign satisfy the established codes of conduct; the request must be made prior to the production stage so that the argument or claim may be corrected without financial losses. This report is based on a specialist's opinion which is never binding but which guarantees the use of legal advertising.

Nevertheless, added to this voluntary service, there is another that is similar in nature but different in function. The so-called Pre-clearance service makes it compulsory for all advertisements to be analyzed in order to ensure that they satisfy the legislation and codes of conduct, and is a process which takes place before broadcast or publication. In this case, the resolution is binding and any suggested changes must be incorporated. It mainly involves the media, in special television and radio, as well as the advertising of certain products such as tobacco, health-related goods, etc.

2.1.2. *Complaint handling*

The complaints put forward by the general public, institutions, businesses, official bodies, etc. are one of the pillars of self-regulatory systems and one of the main barometers of their activity. The number of complaints received is largely influenced by the complaint traditions and customs of each country. The culture of demanding respect for violated rights is based, on one hand, on the belief or scepticism on a just resolution and, on the other hand, on the knowledge or ignorance that the public has of the existence of these bodies and how they operate. Thus, and with regards the management of complaints, there are some key requirements to be considered when evaluating the effectiveness of self-regulatory systems:

- To establish annual objectives set against benchmarks and publish the achieved annual results. In this sense, a planned program must be specified and monitored to evaluate performance levels and annually verify client satisfaction through surveys. Additionally, external institutions should carry out independent non-periodic assessments -as suggested by the European report- to measure effectiveness and therefore strengthen the positive opinion of the public with regards self-regulatory systems.
- To set a benchmark regarding the procedure and ease to channel complaints as well as a standard handling time period. It must be remembered that one of the advantages of ASR over the judicial system is precisely the speed with which disputes are settled, hence the importance of this factor and the vigilance required in the matter. Most complaints are generally made by telephone or the Internet, although other options must be made available, such as mail, fax, email or even SMS.
- All self-regulatory systems should publish their rulings in order to increase the transparency of the system and public trust.

2.1.3. *Sanctions*

The sanctions received by advertisers that violate the codes, repeatedly offend or systematically ignore them, must be clear and effective. The minimum sanction is the timely withdrawal of the advertising copy and, although economic sanctions are not ruled out, it is understood that the economic loss of the withdrawal added to the publication of the ruling damage the public image of the advertiser and influence their good business practice. The European Commission also indicates the need for the collaboration of the media in the decision-taking of ASR regarding the application of sanctions, and advises the inclusion of compliance clauses in advertising contracts in order to make sanctions more effective.

2.1.4. *Consumer awareness*

ASR should carry out monitoring surveys of the complaints and complainant satisfaction with the proceedings. It is also important to engage independent firms to undertake studies that measure the awareness of citizens regarding ASR. All these processes must have a high level of transparency in order to establish and maintain the same level of trust among the population.

2.2. *Independence*

The three vital points for ASR to gain public acceptance are as follows: openness, independence and transparency. Thus, most or many of the groups involved in the process should take part in the drafting of codes of conduct, for example government bodies, academics, family representatives, etc.

On the other hand, the involvement of independent persons in the complaint adjudication process is a key factor for ASR independence. In this respect, the members of the committee should be selected by public tender and appointed by the board to avoid any conflict of interest. What needs to be specifically demanded from extrajudicial bodies is the satisfaction of criteria that guarantees the impartiality of the body, its effectiveness, publication and transparency of proceedings.

2.3. *Coverage*

ASR aim to cover not only pure advertising but all other “commercial” or “marketing communication”. Advertising saturation in the conventional media has caused a loss of effectiveness, which has led many advertisers to search for other means of direct communication with consumers through individual media and individual marketing. In addition, the new media technologies have transformed the classic model of communication and it is now the recipient who chooses, starts and talks about brands to praise or criticize them. Thus, social networks and the Internet have produced new ways of communication and advertising such as viral marketing, “buzz marketing” and “word of mouth”. In this respect, it has become a great challenge for ASR to be able to control all types of communication.

2.4. *Funding*

There are two main sources of ASR funding: through membership fees and through taxes. In the first case, the system is funded by membership contributions from trade associations representing the advertising industry. The European Commission points out that this system can be relatively easy to set up at the start up phase, and one of its inconveniences is the difficulty of entry for other local advertisers. Additionally, the fact that the funds come from only a limited number of companies can leave the system open to criticisms in terms of independence.

The levy model is an amount of money which is added to the invoice in order to pay for the self-regulatory system. It is levied on the bill, calculated in proportion to the individual advertising spend and passed on to the advertiser to pay. The European Commission (2006, p. 32) suggests that a small fraction or a percentage point (0.1-0.2 percent) of advertising turnover would be more than adequate. The main advantages of this method are its neutrality, inclusiveness and universality as it guarantees the participation of all agents in the funding of the system according to the level of ad media spend.

3. Results

Once the basic components for a Best Practice SR model in advertising have been defined, this work will describe the characteristic situation in the United Kingdom and Spain with regards each item, insisting on the causes of the specificities of each model and its functional repercussion.

3.1 Effectiveness

3.1.1. Provision of Copy Advice

The data below in Table 2 enables to verify the result differences in terms of activity that the two analyzed ASR show, in relation to the elements that measure their effectiveness. With regards the first, the Copy Advice service, the difference between the ASR from both countries is significant over the years. However, it is important to highlight the increase of this service in Spain in relation to the number of consultations in 2010 –a 151% increase according to *Autocontrol* (2012: 11)–, starting from much lower levels by historical standards. In this respect, according to the latest data offered by EASA for year 2011, the United Kingdom and Spain are positioned in the first and second place respectively in the European ranking; with France in the third position with 14,335 consultations and Germany in fourth position and a significant gap with 1,543.

Table 2. Copy Advice request in the UK and Spain in 2009, 2010, 2011

Country	SRO (Self-Regulatory Organizations)	2009	2010	2011
UK	ASA	8,000	7,445	8,600
	Clearcast	29,428	33,172	31,944
	Total	37,428	40,617	40,544
Spain	Autocontrol	5,675	6,336	15,915

Source: EASA (2012: 50).

However, totals of previous consultation do not highlight the gap reached as much as the results obtained from Pre-clearance which, as it does not exist in Spain, are not comparable. This service has not been implemented in Spain while in the United Kingdom it has been offered since 1996 by the *Radio Advertising Clearance Centre* (RACC), funded and sustained by the main commercial radio channels. And in 2008 *Clearcast* began operating solely for television thanks to funding from the main channels.

3.1.2. Complaint handling

Although complaint handling is implemented in both countries, the United Kingdom has a higher number of active methods for receiving complaints such as text messaging (SMS)

or mobile phone. The most striking aspect of the comparative analysis³ is, however, the marked difference between the number of complaints received and the number of cases⁴ resolved in both countries as shown in Table 3. One of the main hypothesis to justify this fact, and which should be validated in the future, is the lack of awareness of most of the Spanish population regarding *Autocontrol*, its social functions and where and how to place a complaint about a supposedly dishonest advertisement. But another cause is the absence of a monitoring system in Spain, while in the United Kingdom it is implemented and used by the ASA in a proactive way to report any advertising in conflict with codes and legislation. This factor is vital for the effectiveness of the organization and stems from its independence in terms of management and funding. In Spain it is very difficult for the members that fund *Autocontrol* to report themselves due to a lack of honesty involved in their own campaigns.

Table 3. Complaints and cases by main media in the UK and Spain in 2009, 2010, 2011

		2009		2010		2011	
		UK	Spain	UK	Spain	UK	Spain
Cases number by media	Television	4,330	77	4,577	53	5,556	50
	Press General*	143	56	98	31	199	36
	Internet	2,823	21	2,327	33	9,295	30
	Direct Mail	829	17	676	6	649	7
	Packaging	175	6	85	8	108	15
	Radio	444	4	412	6	522	1
	Outdoor	589	2	660	3	614	3
	Other	263	9	307	3	277	4
	Total Cases resolved	13,995	192	13,074	143	22,397	146
Total Complaints	28,929	195	25,214	146	31,458	- **	

Source: ASA and CAP (2010: 15; 2011: 23; 2012: 41) and Autocontrol de la publicidad (2010: 25; 2011: 16; 2012: 17).

* In the UK this media type is divided into National Press (2009: 1,354; 2010: 1,210; 2011: 1,019) and Regional Press (2009 y 2010: 644; 2011: 765).

** The data is not included in the annual report.

No monitoring and assessment program has so far been established in Spain while the ASA does carry out an annual control and tracking of certain factors. The ASA has also established an indicator of the average number of days it takes to settle a complaint, improving the figure every year. In Spain, according to article 16 of the Complaints Committee Regulation⁵, the complaint is sent to the advertiser who has five working days to pass any comments, and is then sent to the Committee whose decision is published on their website.

³ Another element that justifies the parallels drawn between the two countries and allows a comparison of results, refers to the advertising investment figures which are very similar for both. In this way, for example, in the year 2011 the amount invested in Spain was 12,053 million euros while in the United Kingdom the figure was of 12,749 million pounds (see <http://www.theguardian.com/media/2013/nov/25/uk-advertising-spend-hit-pre-crash-high> and http://www.infoadex.es/InfoAdex_Resumen_Est_Inv_2013.pdf respectively; retrieved January 2014).

⁴ A case –advertisement– can receive many complaints, and therefore the number of complaints must always be the same or higher than the number of cases.

⁵ See http://www.autocontrol.es/pdfs/Reglamento_Jurado.pdf, retrieved January 2012.

Autocontrol faces an added problem, consequence of the territorial and administrative model of the Spanish State, in the overlap detected between the different public bodies as indicated by the European Commission⁶:

in Spain the significant overlap of jurisdiction between national legislation, regional legislation, national and regional statutory authorities, the powers of the judiciary and the role of the SRO, has resulted in a lack of clarity and even occasional conflicts between the self-regulatory system and the judiciary. *Autocontrol* has experienced difficulties, particularly with the competition and anti-trust authorities⁷, and has also had its adjudications relating to advertisers not in membership of *Autocontrol* struck down by Spanish courts (2006, p. 16).

3.1.3. Sanctions

Violations of the code are penalised in Spain with one or several of the following pronouncements⁸: to declare the advertising incorrect, to demand that the advertiser ceases or rectifies, a formal warning and publication of the ruling. However, ASA sanctions are more varied and dissuasive so that⁹, in addition to the above-mentioned, it can issue alerts to its members, including the media, advising them to withhold services such as access to advertising space; offenders can be required to have their marketing material vetted before publication and the pre-vetting can last for two years; or ASA is able to refer the advertiser to the *Office of Fair Trading* (OFT) for legal proceedings.

In the same way, in the cases of radio and television, the responsibility to withdraw, change or reschedule a commercial lies with the broadcasters who are obliged by a condition of their broadcast licences to enforce ASA rulings; if, on the contrary, they do broadcast a commercial that violates the codes of conduct, broadcasters risk being referred by the ASA to the *Office of Communication* (Ofcom) which can impose fines and even withdraw their licence to broadcast.

An illustrative example is the case of *Actimel* yogurts that enables to compare the same illicit actions based on a misleading claim with very different rulings in both countries. The two advertisements broadcast on television were banned in the United Kingdom¹⁰ while in Spain the two complains were dismissed, and one of them was appealed and partially won by the complainant¹¹. Although more persuasive still is the 21 million dollar fine that the

⁶ EUROPEAN COMMISSION, "Self-Regulation in the EU Advertising Sector: A report of some discussion among Interested parties", *Health & Consumer Protection Directorate-General*, 2006, <http://www.asa.co.nz/pdfs/Madelin%20Report.pdf>, retrieved June 2011.

⁷ See the case of two of the main fruit juice brands in Spain: Pascual and García Carrión where the final ruling of the judge contradicts *Autocontrol*'s resolution taken four years previously: <http://www.elmundo.es/mundodiner/2007/08/08/economia/1186558266.html> and <http://www.elmundo.es/mundodiner/2011/01/28/economia/1296218195.html>, retrieved April 2011

⁸ *Op. cit.* 3, See article 25, retrieved January 2012.

⁹ See point 1.11 in <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures-statutory-sanctions/>, retrieved January 2012.

¹⁰ See: http://www.asa.org.uk/ASA-action/Adjudications/2008/3/Danone-UK-Ltd/TF_ADJ_44120.aspx and http://www.asa.org.uk/ASA-action/Adjudications/2009/10/Danone--UK-Ltd/TF_ADJ_47060.aspx, retrieved November 2010.

¹¹ See: <http://www.auc.es/Documentos/Reclamaciones%20Autocontrol/Reclam2009/Salud/Resolucion%20ACTIM EL.AAP.pdf> and

Federal Trade Commission (FTC) lodged against *Danone* for exaggerating the benefits of the advertised yogurt and therefore using misleading advertising¹².

Objectively, sanctions in Spain are more permissive as it is usual to withdraw the underhand advertisement or rectify the claim. In addition, there is no monitoring of sanctions in Spain and therefore some advertisements declared illicit continue to be broadcast or the original claim of the complaint is not rectified, and it is the complainants who carry out the monitoring activity¹³; as in the case of the milk brand *Puleva + energía y crecimiento* whose complaint lodged by AUC (*Asociación de Usuarios de la Comunicación*) before *Autocontrol* was resolved with a sanction to withdraw the television spot, which was not fulfilled by the advertiser. Sanctions for persistent offenders are not increased and what is more striking is that penalising the broadcaster for advertising the message is not even contemplated. Another noteworthy fact is that sanctions are only binding for *Autocontrol* members, so that if an advertiser is accountable for illicit advertising but does not belong to the organization, he is not obliged to satisfy the sanction given.

3.1.4. Consumer awareness

Consumer awareness is much higher in the United Kingdom than in Spain, a hypothesis to be validated in future investigations, although the result data are quite clear. In this respect, the great majority of Spanish people are unaware of the existence of *Autocontrol*, so that the few complaints put forward are presented before other bodies or organizations such as consumer associations¹⁴.

On the other hand, *Autocontrol* broadcasts each year in the main mass media, normally during the summer period when media occupancy is low and advertising spaces are given free of charge, the same self-promotional campaign with the sole aim to increase the awareness of consumers with regards *Autocontrol*. The copy of the text is as follows:

Advertising ¿who cares? Advertising is important for many of us. A large group of agencies, advertisers and media do care about advertising, are committed to self-regulation and advertising ethics, and work day by day for the development of responsible

<http://www.auc.es/Documentos/Reclamaciones%20Autocontrol/Reclam2011/Salud/Resolucion%20AAP.%20%20ACTIMEL.pdf>, retrieved November 2011

¹² See: <http://ftc.gov/opa/2010/12/dannon.shtm>, retrieved May 2011.

¹³

See:

<http://www.auc.es/Paginas/download.php?type=reclama&year=2011&folder=Salud&file=Incumplimiento PULEVA MAX. AAP.pdf>, retrieved March 2013.

¹⁴ As shown by the annual accounts of both organisations (see ASA, CAP, 2010, 2011, 2012 and AUTOCONTROL DE LA PUBLICIDAD, 2010, 2011, 2012), in the United Kingdom, for years 2010 and 2011, 96% of complaints were from the public while 4% were from the Industry. In Spain, percentages for 2010 were broken down in the following way: 53.8% of complaints were from consumers and 39.2% from competitors, while in 2011 the percentages reached 64.38% and 31.51% respectively. Nevertheless, in the case of Spain, the figures should qualify the specific amount of complaints placed by individuals as opposed to consumer bodies or organisations, as a preliminary analysis of complaints by *Autocontrol* on the Web suggests that very few Spanish people actually file complaints on an individual basis. Given this knowledge of the bias in the data, it would be advisable to promote further research on the subject to come up with accurate figures.

advertising, to benefit consumers and the industry itself (Autocontrol de la publicidad, 2010: 31)¹⁵

And although it reinforces the functions of the association, it is not conceived as an information campaign to urge consumers to report dishonest advertising and provide details as to how and where complaints are to be filed. In addition, the communication objective set for the campaign is impossible to measure although it does indicate data in terms of accumulated coverage only for television. Additionally, regarding this last matter, the United Kingdom does carry out monitoring surveys about consumer awareness while Spain never has.

3.2. Independence

In ASA, most or many of the groups involved in the process should take part in drafting codes of conduct; the codes themselves are, nevertheless, elaborated by the CAP, exclusively composed of representatives of the industry. In Spain, however, as stated in its bylaws in relation to the functions and powers assigned to the Committee of Advertising, these include “[to formulate the preliminary drafts of Codes of Ethics and other rules of conduct on commercial communication to be presented to the Board of Directors of the Association for their final processing]”¹⁶. So, with regards ASR Independence, *Autocontrol* includes all interested parties of the advertising process in code drafting, but does not consider the opinion, experience and perception of other areas of society involved in the communication process such as the recipient of the message, the audience or the consumer. On the other hand, in the United Kingdom the involvement of independent persons in the complaint adjudication process is matched as follows: two thirds of the Council, made up of 13 persons, is independent from the industry while the others have an updated knowledge on advertising activity and media. In Spain, the Advertising Committee is appointed by the Board of Directors, composed of 33 members, generally current presidents or chief executive officers of leading national and multinational companies, advertising agencies, the media and organisations closely connected to commercial communication¹⁷. Therefore, the factor that really calls into question the independence of *Autocontrol* is that there is no involvement of independent persons in the complaint adjudications process, as the members of the Committee are appointed by the Board of Directors composed, in its majority, of members of the association, i.e. presidents and chief executive officers of national and multinational companies, communication or advertising agencies or the media.

3.3. Coverage

There is also a large difference between the two countries in relation to coverage, with a wider action range in the British ASR than in *Autocontrol*. According to the results of the complaints received and cases resolved, based on the media type that broadcasts the

¹⁵ AUTOCONTROL DE LA PUBLICIDAD, “Trabajamos por una publicidad responsable”. Asociación para la Autorregulación de la Comunicación Comercial, (2010), <http://www.autocontrol.es/pdfs/balance%2009%20AUTOCONTROL.pdf>, retrieved June 2010.

¹⁶ See: http://www.autocontrol.es/pdfs/estatutos_2011.pdf, retrieved January 2012.

¹⁷ See, <http://www.autocontrol.es/pdfs/Junta%20Directiva.Asamblea.%202011.pdf>, retrieved January 2012.

offending message, as shown in Table 3, there are only seven mass media that have been reported in Spain compared to 28 in the United Kingdom -in both cases the category 'other media' needs to be added.

3.4. *Funding*

Autocontrol is funded by membership contributions from trade associations representing the advertising industry and the fees are set by certain standards calculated according to the advertising spend –for advertisers– or income –for media, agencies and associations–.

In UK, the 0.1% levy on advertising spend that funds the ASA is collected by two separate and independent bodies: the *Advertising Standards Board of Finance* (Asbof) for non-broadcast advertising and the *Broadcast Advertising Standards Board of Finance* (Basbof) for broadcast advertising. Both are in charge of the whole process of calculating, collecting and conveying the funds to the ASA (European Commission, 2006, p. 32).

Finally, funding is the main reason why the operational independence of *Autocontrol* is put into question, limiting the imposition of coercive sanctions to members of the association or acting *ex officio* against those that sustain the association. Independent funding grants credibility to self-regulatory bodies and the differences in effectiveness between models, in our case the Spanish and the British, arise from it.

4. *Strengths and weaknesses of Spanish ASR model*

As illustrated in Table 4, *Autocontrol's* main weaknesses can be detected in two of the most sensitive components of self-regulatory advertising systems: effectiveness and independence. With regards the first, a remarkable deficiency can be mentioned as the organisation lacks a system to control advertising that violates codes of conduct and existing legislation, and specially considering that the Spanish population has such little knowledge of the organisation and its functions. This inefficiency becomes further evident in the lack of supervision of the fulfilment of resolutions, as some advertisers do not comply with their sentences.

On the other hand, the consultancy service provided by *Autocontrol* has proved to be a consolidating factor, with a significant increase in the number of users during the last year of study and also becoming an important source of income. However, the level of efficiency of the consultancy is still to be proved as some of the cases that were tried and sanctioned had received a positive copy advice. But it is even more important to mention the fact that a pre-clearance service has not been implemented, which would be of special interest for television and radio, the two media channels with highest audience levels and where dishonest advertising has maximum impact on consumers. And in this sense it is vital that the media that broadcasts advertising accepts responsibility towards its audience and is not allowed to broadcast advertisements that do not comply with all relevant deontological and legal principles.

The ultimate sanction usually imposed by *Autocontrol* following a complaint is the suspension and withdrawal of the advertisement. In most cases and due to the nature of advertising, this resolution does not have much value as a deterrent, as by the time the penalty is put into effect, the sanctioned advertisement is often no longer broadcast, and

therefore the measure is harmless and ineffective for advertisers at fault though the potential damage to consumers has already taken place.

Table 4. The basics components for a Best Practice SR model on advertising UK and Spain

Basics Components		UK	Spain
Effectiveness	Provision of Copy Advice	Yes	Yes
	- Provision of pre-clearance	Yes	No
	Complaint handling	Yes	Yes
	- Establish monitoring systems to evaluate levels of compliance	Yes	No
	- Benchmarks for the ease of complaints submission	Yes	Yes
	- Benchmarks for the speed of complaints handling	Yes	Yes
- Publication of decisions	Yes	Yes	
Sanctions	Sanctions	Harder	Softer
	- Collaboration of the media	Yes	No
Consumer awareness	Consumer awareness	Higher	Lower
	- Follow-up satisfaction surveys of complainants	Yes	No
	- Survey to measure public awareness	Yes	No
Independence	Involvement of interested parties in Code drafting	Yes	No
	Involvement of independent persons in the complaints adjudication process	Yes	No
Coverage	Media Coverage	Broad	Broad
	- Complaints from: number of media	28	7
Funding	Funding	0.1% levy on advertisers	Membership subscriptions

Source: based on ASA, CAP and *Autocontrol* data.

Another component that allows the evaluation of practice in the Spanish ASR system is independence. Although most advertising codes are very similar among countries that have these systems, it would be advisable to take into account the contributions of the people that are affected by advertising, such as consumers and different leading organisation of society. But it could be claimed that the introduction of an election system for the Board of Directors is the most crucial measure to take if *Autocontrol* is to achieve credibility and transparency. It is necessary to implement an election process that guarantees its own credibility and the credibility of its decisions as well as an absence in conflict of interests. On the other hand, coverage regarding the different types of media channels, whether digital, analogical, graphic or audiovisual, is as widespread in both countries. The difference in result figures is a consequence of the volume of complaints for each case, i.e. the higher the volume the higher the probability of more media types involved.

Finally, the fact that *Autocontrol* is funded by the same industry that creates, produces and broadcasts advertising, reduces significantly the credibility of the organisation. It is difficult to remain impartial and neutralise possible conflicts of interests when the leaders of the organisation are the same that choose the board that will judge the supposedly illicit advertising of competitors, or even their own.

5. *Conclusions and discussion*

The results of this investigation, as well as the background of the laxity and deficiency found in the Spanish ASR when compared to the activity of its British counterpart, seem to point towards the intervention of a more functional, efficient and neutral type of authority. This new body should be an independent institution that would incorporate, to begin with, two suggested initiatives. In the first place, a rigorously scientific monitoring of illicit practices in order to provide information, with independence and judgement, on the abuses that take place in media advertising; and, in the second place, a legal reform that regulates a punitive scale with real deterrent capabilities for unfair, misleading and dishonest practices.

In addition, the comparative analysis has highlighted the main weaknesses of ASR in Spain, some of which could be implemented without much difficulty. Others, however, signify a change in structure and organization which would involve a substantial change to the present model of *Autocontrol*. These weaknesses coincide with the main criticisms of ASR as indicated by experts on the matter, such as that relatively few cases are handled in proportion to the number of advertisements and the true extent of advertising failures, many ASR decisions come too late, ASR penalties are relatively mild and relatively little publicity is given to ASR standards (Boddewyn, 1989: 23).

Addressing these problems publicly should contribute to an improvement in the legal, judicial and deontological system in favour of an advertising that is more truthful and credible in the eyes of the public. The monitoring and assessment system of advertising contents must be a lot more effective since, as proved by previous works (Muela-Molina and Perelló-Oliver, 2011, p. 405), some advertisements ruled illicit continue to be broadcast with absolute impunity.

Therefore, another function should be added to the resolution of complaints and the Copy Advice service carried out by *Autocontrol* with excellent results, and that is to act or be obliged to act *ex officio* before illicit practices without the need for a complaint to be put forward by an advertiser competitor, consumer or association, as well as to monitor offenders in order to ensure the fulfilment of resolutions. The monitoring system should be implemented as an urgent need as it is one of the main factors that highlight the significant difference in complaint results between the two countries. And, on the other hand, it is necessary in order to reduce the difference between the number of illicit advertisements that are broadcast and those that are actually reported to *Autocontrol*.

Parallel ASR bodies operating in the different regions of Spain, as a consequence of the idiosyncrasy of the country, should be eliminated to avoid conflicts and duplicities. At the same time, *Autocontrol* should be granted higher executive capacity and authority, something that is not possible at the moment due to its structure, organization and funding. Another of the potential improvements that *Autocontrol* should deal with urgently is the matter of complaints, consumer participation and, above all, sanctions as the majority of experts demand penalties that are more effective and severe, including the imposition of fines and penalties (Locke, 1994; Rubin, 2000) for any advertiser at fault, be it a member or not of *Autocontrol*. As indicated by the European Commission, the withdrawal of an advertisement ruled dishonest implies a financial loss and a punishment for the offender. Persistent offenders who refuse to abide to the principles included in the codes and legislation should receive a more coercive and repressive ruling and economic fines may prove an inhibiting factor for unfair and misleading conduct.

Although the advertiser is ultimately responsible for the campaign and the contents of its advertisements, the broadcaster must share the responsibility. Therefore Spain should also

implement pre-clearance or a review of the advertisement before its production. Broadcasters with highest audience levels should specially be penalised for the broadcast of any illicit advertising that attempts against the private sphere of the consumer, as they are the main beneficiaries of advertising investments. This would avoid, for example, the cases where a banned advertisement continues to be broadcast after being sanctioned with a withdrawal order. If the order is not followed, it should be considered a possibility to sanction the offending broadcaster as well.

Autocontrol's activity figures prove that the majority of consumers are unaware not only of the association's purpose but also of its existence. In this respect, it is important to highlight Boddewyn's opinion that states that ASR associations are not sufficiently advertised and promoted (1985, pp. 131-2) and which remains valid over time. We conclude therefore that it would be necessary to carry out a research into the awareness of the Spanish population regarding this body, their reaction towards dishonest advertising, etc. Finally, if we take into account the lack of tradition there is in Spain to defend ones rights and complain against abuses, it would be necessary and beneficial for society in general to be effectively informed of the existence and functions of *Autocontrol* from another point of view, encouraging consumers to report and explaining the ways to do so.

In any case, the main factor that must be changed substantially is *Autocontrol's* funding. As long as the association is funded by the industry, its board and committee members will continue to belong to the main companies of the sector, broadcasters and organizations, and its credibility and independence will always be called into question. It is difficult to maintain the credibility of the institution and the independence of the members of the Committee when one is both judge and judged at the same time. The pillars on which the association is built must be solid in order for its actions and defence of consumer rights to be effective. It is vital to promote a system that involves the public administrations and consumers, as well as advertisers and advertising agencies. Only triangulating all of these resources will it be possible to guarantee an adequate development of the functions particular to *Autocontrol*.

References

- ARMSTRONG, Gary M., OZANNE, Julie L., “An Evaluation of NAD/NARB purpose and performance”, *Journal of Advertising*, vol. 12, nº 3, 1983, pp. 15-26.
- ASA, CAP, “Responsive regulation for an evolving industry. Annual Report 2009”, *Advertising Standards Authority and The Committee of Advertising Practice*, 2010, [http://www.cap.org.uk/About-Us/~media/Files/ASA/Annual%](http://www.cap.org.uk/About-Us/~media/Files/ASA/Annual%20Report%202009.pdf), retrieved June 2010.
- ASA, CAP, “Involve, Evolve. Annual Report 2010”, *Advertising Standards Authority and The Committee of Advertising Practice*, 2011, <http://www.asa.org.uk/About-ASA/Annual-Report.aspx>, retrieved May 2011.
- ASA, CAP, “Celebrating 50 years. Legal, decent, honest and truthful. Annual Report 2011”, *Advertising Standards Authority and The Committee of Advertising Practice*, 2012, http://asa.org.uk/About-ASA/~media/Files/ASA/Annual%20reports/AR%20ONLINE_FINAL280512.ashx, retrieved June 2012.
- AUTOCONTROL DE LA PUBLICIDAD, “Trabajamos por una publicidad responsable”, *Asociación para la Autorregulación de la Comunicación Comercial*, 2010, <http://www.autocontrol.es/pdfs/balance%2009%20AUTOCONTROL.pdf>, retrieved June 2010.
- AUTOCONTROL DE LA PUBLICIDAD, “Trabajamos por una publicidad responsable”, *Asociación para la Autorregulación de la Comunicación Comercial*, 2011, <http://www.autocontrol.es/pdfs/balance%2010%20AUTOCONTROL.pdf>, retrieved May 2011.
- AUTOCONTROL DE LA PUBLICIDAD, “Trabajamos por una publicidad responsable”, *Asociación para la Autorregulación de la Comunicación Comercial*, 2012, <http://www.autocontrol.es/pdfs/balance%2011%20AUTOCONTROL.pdf>, retrieved March 2012.
- AZNAR, Hugo, “Publicidad y ética: la vía de la autorregulación”, *Revista Latina de Comunicación* 25, 2000, <http://www.ull.es/publicaciones/latina/aa2000yen/148hugoaznar.html>, retrieved March 2012.
- BODDEWYN, Jean J. “Advertising Self-Regulation: True Purpose and Limits”, *Journal of Advertising*, vol. 18, nº 2, 1989, pp. 19-27.
- BODDEWYN, Jean J., “Advertising Self-Regulation: Private Government and Agent of Public Policy”, *Journal of Public Policy & Marketing*, nº 4, 1985, pp. 129-141.
- BODDEWYN, Jean J., “Outside Participation in Advertising Self-Regulation: The Case of the Advertising Standards Authority (U.K.)”, *Journal of Consumer Policy*, vol. 6, nº 1, 1983, pp. 77-93.
- EDELSTEIN, Jeffrey S., “Self-Regulation of Advertising: an Alternative to Litigation and Government Action. IDEA”, *The Journal of Law and Technology*, vol. 43, nº 3, 2003, pp. 509-543.
- EUROPEAN ADVERTISING STANDARDS ALLIANCE, (2012) “European trends in advertising complaints, copy advice and pre-clearance. Statistics Report 2011”, *EASA*, 2012, http://www.easa-alliance.org/binarydata.aspx?type=doc&sessionId=ubtbsh55sxfauy550x43feir/2011_Stats_report-final.pdf, retrieved November 2012.
- EUROPEAN COMMISSION, “Self-Regulation in the EU Advertising Sector: A report of some discussion among Interested parties”, *Health & Consumer Protection Directorate-General*, 2006, <http://www.asa.co.nz/pdfs/Madelin%20Report.pdf>, retrieved June 2011.
- EL PUBLICISTA, “España tiene un bajo índice de conflictividad en materia publicitaria”, *El Publicista*, nº 229, 2010, pp. 8-10.
- FERNANDO-MAGARZO, M^a del Rosario, “La consolidación de la autorregulación publicitaria en España: fomento normativo y reconocimiento jurisprudencial”, *Estudios sobre consumo*, nº 84, 2008, pp. 71-83.

- HARKER, Debra, "Towards effective advertising self-regulation in Australia: the seven components", *Journal of Marketing Communications*, vol. 9, nº 2, 2003, pp. 93-111.
- HARKER, Debra, "Achieving Acceptable Advertising: an Analysis of Advertising Regulation in five countries", *International Marketing Review*, vol. 15, nº 2, 1998, pp. 101-118.
- HARKER, Debra, HARKER, Michel "Dealing with complaints about advertising in Australia: the importance of regulatory self-discipline", *International Journal of Advertising*, nº 21, 2002, pp. 23-45.
- HARKER, Debra, HARKER, Michael, "The Role of Codes of Conduct in the Advertising Self-Regulatory Framework", *Journal of Macromarketing*, vol. 20, nº 2, 2000, pp. 155-166.
- HARKER, Debra, WIGGS, Glen, "Three Generations of Advertising Self-Regulation: Learning from our Forefathers", *Marketing Bulletin*, vol. 11, nº 1, 2001, http://marketing-bulletin.massey.ac.nz/V11/MB_V11_C1_Harker.pdf, retrieved May 2011.
- LOCKE, Stephen, "Self-regulation in advertising", *Consumer Policy Review*, vol. 4, nº 2, 1994, pp. 111-117.
- MEDINA, Mercedes, AN, Soontae, "Advertising Self-Regulatory Activity. A Comparison between Spain and US", *Zer*, vol. 17, nº 33, 2012, pp. 13-29.
- MUELA-MOLINA, Clara, PERELLÓ-OLIVER, Salvador, "Misleading advertising: a study of radio spots in Spain", *Convergencia. Revista de Ciencias Sociales*, vol. 20, nº 62, 2013, pp. 13-43.
- MUELA-MOLINA, Clara, PERELLÓ-OLIVER, Salvador, "La publicidad con pretendida finalidad sanitaria en la radio española. Un análisis empírico por tipo de emisora", *Comunicación y Sociedad*, vol. XXIV, nº 2, 2011a, pp. 334-371.
- MUELA-MOLINA, Clara, PERELLÓ-OLIVER, Salvador, "La publicidad desleal en la radio española: un análisis empírico", *Doxa Comunicación*, nº 12, 2011b, pp. 107-128.
- OBERMILLER, Carl, SPANGENBERG, Eric, MACLACHLAN, Douglas L., "Ad Skepticism. The Consequences of Disbelief". *Journal of Advertising*, vol. 34, nº 3, 2005, pp. 7-17.
- PATIÑO, Beatriz, *La autorregulación publicitaria: especial referencia al sistema español*, Bosch, Barcelona, 2007.
- PETTY, Ross D., "Advertising Law in the United States and European Union", *Journal of Public Policy & Marketing*, vol. 16, nº 1, 1997, pp 2-13.
- RAMOS, Fernando, "Autorregulación, mediación y consulta previa, la nueva frontera de la ética publicitaria", *Zer*, vol. 6, nº 11, 2001, pp. 203-226.
- ROTFELD, Herbert, "Power and Limitations of Media Clearance Practices and Advertising Self-Regulation", *Journal of Public Policy & Marketing*, vol. 11, nº 1, 1992, pp 87-95.
- RUBIN, Paul H., "Information Regulation (Including Regulation of Advertising)", in, BOUCKAERT, Boudewijn, GEEST, Gerrit de, (Eds.), *Encyclopedia of Law and Economics 3: The Regulation of Contracts*, Edward Elgar Publishing, Northampton, 1999, pp. 271-295.
- SCHUTZ, Howard G., "Consumer Perceptions of Advertising as Misleading", *Journal of Consumer Affairs*, vol. 15, nº 2, 1981, pp 340-357.
- SIMONSON, Alexander, "Unfair advertising and the FTC: Structural evolution of the law and implications for marketing and public policy", *Journal of Public Policy & Marketing*, vol. 14, nº 2, 1995, pp. 321-327.
- TAYLOR, Ronald E., "Inside The Asociación de Autocontrol de la Publicidad: A Qualitative Study of Advertising Self-Regulation in Spain", *Journal of Intercultural Communication Research*, vol. 31, nº 3, 2002, pp. 181-190.