Abstract

What should rivals do when they see competitors breaking agreed rules within systems of self-regulation? This study investigates compliant behaviour among UK advertisers to answer this question empirically. It analyses five years of complaints (N=146,062) and adjudications (N=4,832) published by the self-regulatory body for the UK advertising industry. The majority of firms adopt a strategy of indifference and rarely regulate their rivals. Highly engage firms either adopt an angelic strategy as they use their resources to complain about their rivals; a deviant strategy as they are subject to a large number of complaints; or a predatory strategy as they attack their rivals through advertising regulation. This illustrates a unique form of regulatory capture in which a regulatory system becomes an arena of competition for some actors while continuing as a governance mechanism for others.

Keywords: Advertising; rivals; competitor; self-regulation

Introduction

Advertising is one of the most visible business practices. It is estimated that the average inhabitant of a capital city is exposed to between 3,000-5,000 ads each day (Cluley, 2017). Firms use advertisements to communicate product information (Nelson 1974), persuade consumers of the benefits of their products (Becker & Murphy 1993) and to attach cultural meanings to them (McCracken 1989). To do so, advertisers use a range of attention-grabbing rhetorical techniques (Pracejus, Olsen & O'Guinn 2006) and represent a range of cultural values (Pollay & Belk 1985). As a result, advertising has come in for much criticism from commentators, politicians and advocacy groups - not to mention academics who have yet to agree whether advertising is "good" or "bad" (Pollay 1986)

To lessen the real or imagined excesses of advertising, most developed economies have constructed systems of self-regulation (Ginosar 2011). These allow advertisers, agencies and media providers to put aside their competitive differences and ensure that the public can trust *advertising in general* (Boddewyn 1989). Typically, advertisers do this by agreeing to work to shared codes of conduct that respect the '*prevailing social standards'* in their economies (Harker 1998, p. 104). Through trade groups and industry bodies, advertisers then empower independent organizations to police their behaviours (LaBarbera 1983; Boddewyn 1991). Most often, this is achieved by inviting complaints from members of the public, advocacy groups and rival firms (Harker 2004). In some cases, punishments handed out by regulators are backed up by national and transnational public bodies through co-regulatory arrangements (Brown 2006; Cunningham and Cunningham 1997; Galloway 2003).

While the relationship between public and private enforcers has come in for scrutiny, national systems of advertising regulation are typically the sites of regulatory action. Rules might be

designed elsewhere but, as Verbruggnen puts it, the actual 'monitoring and enforcement' of advertising practice is 'strongly decentralized and carried out primarily by national' regulators (2013, p. 516). At this level, the regulation of advertising works, fundamentally, because competing organizations voluntarily police their own advertising practices (Zanot 1985; Boddewyn 1989; Rotfeld 2010). They implement rules, fund regulatory organizations and follow sanctions which often lack the force of law. As such, the relationship between rival firms in advertising regulation has been described as *an accommodation among adversaries* (Kanter, 1974 73). Rival firms sacrifice their ability to gain a competitive advantage in order to ensure that *advertising in general* remains a trusted business function.

Although this relationship between rival firms is a key pillar within the practice and theory advertising governance (Rotfeld & Stafford 2007), it leaves us with a number of unanswered questions (Zanot 1985; Rotfeld & Parson 1989; Rotfeld 2003). In particular, researchers have pondered what firms should do when they observe rivals breaking advertising rules. They might overlook indiscretions to avoid damaging trust in advertising but have an incentive to ensure they are competing on a level playing field. Indeed, research suggests that some firms use breaches by their rivals as an opportunity to undermine their rivals' brands or gain market intelligence (Rotfeld 1992; Harker 2000; Harker and Harker 2002; Kerr and Moran 2002; Harker 2003; Fletcher 2008).

To update and develop the empirical research base on this issue, this study analyses complaint behaviour of rival firms in the UK. The UK advertising regulatory framework is worthy of detailed attention for three reasons. First, the UK regulator – the Advertising Standards Authority (ASA) – provides excellent access to its data. Second, it is a global leader in terms of the level of support it has in industry and policy (Brown 2006). Verbruggen

observes that it is 'commonly seen as having the most developed private regime in the world' (2013, p. 519). Finally, it is a global leader in terms of the volume of complaints it handles (Harker 1998).

To test the behaviour of rival firms in advertising regulations, this study reviews all complaints logged by the ASA (N=146,062) and all published adjudications by the ASA since the "rule book" governing advertising in the UK was amended in 2010 (N=4,832). It finds that, since the 2010 amendments, the total number of complaints received by the ASA has risen slightly. But the number from rival firms has increased by over 900%. While most firms barely engage with advertising regulations at all and adopt a strategy of *indifference* towards their competitors, a small number of advertisers have significantly increased the number of complaints they submit. Some of these firms are highly engaged and use their resources to ensure that their competitors do not secure unfair advantages through their advertising practices. These firms adopt an *angelic* strategy. Others are highly engaged with regulations but only as the subject of complaints. These firms adopt a *deviant* strategy as they are often accused of breaking the rules. Others still adopt a more competitive strategy towards their rivals. They both submit a large number of complaints and are subject to a large number of complaints from others. In other words, they appear to use advertising regulation as a way to attack their rivals while simultaneously seeking to gain unfair advantages by breaking advertising rules themselves. Such firms adopt a *predatory* strategy towards advertising regulation.

Drawing this analysis together, the paper concludes that the *accommodation among adversaries* at the heart of advertising regulation is not as homogeneous as has previously been thought. It is segmented along two dimensions: *level of engagement* and *level of*

consistency. These findings should interest a range of stakeholders in the governance of advertising. Advertising regulators need to pay attention to the complaints behaviour of rival firms. If advertising regulations are designed to improve advertising practice in general, it is worrying that a small number of firms appear to treat the governance of advertising as a competitive tool to attack their rivals. More theoretically, it begs the question of whether the governance of advertising facilitates a level playing field between rivals or has become a field of competition itself. Indeed, beyond the governance of advertising, the case should interest scholars of self-regulation. It illustrates how a system of regulation can be transformed into an arena of competition for some participants at the same time as it continues to act as a system of governance for others. This suggests that we must refrain from homogenising participants in systems of regulation and consider the range of possible relationships and strategies that they can adopt within their regulatory framework.

The paper proceeds as follows. First, it defines the *accommodation among adversaries* concept and describes its role in the governance of advertising. After noting contextual trends and empirical evidence that calls this concept into question, the paper sets out its methodology and explores the research site. Findings from each dataset are presented in turn. Following this, the paper offers conclusions and implications for practice and further research.

ADVERTISING SELF-REGULATION: AN ACCOMMODATION AMONG ADVERSARIES

Rotfeld and Stafford (2007) divide the governance of advertising into six interrelated areas: consumers, messages, economy, laws/regulations, self-regulation and business. The most

typical form of governance in developed economies is organized around self-regulation (see Boddewyn 1983a; 1983b; 1984a; 1984b; 1985b; 1988; 1992; Gao 2005; 2007; Peltzman 1981). National advertising industries tend to create shared codes of conduct for their members that reflect the prevailing social standards among consumers (Harker 2002). These often integrate rules, laws and policies from other national and transnational bodies (Brown 2006). Individual advertisers then implement internal clearance processes to ensure that their own advertising is socially responsible in the terms set out in the codes (Zanot 1985). Advertising organizations invite consumers, advocacy groups and rival firms to raise complaints against any advertising messages they consider breach their codes of conduct and fund independent bodies to adjudicate the validity of those complaints on a case-by-case basis (Rotfeld 2003). This allows systems of self-regulation to respond flexibly to changing public attitudes and allows advertisers to innovate around their rules (Harker 1998).

Although complaints form a key component of advertising governance in practice, Boddwyenn (1989, p. 23) argues that 'the main purpose of advertising self-regulation is *to have practitioners improve and internalize higher advertising standards* … advertising self-regulation is not primarily about the systematic invitation, collection and handling of complaints'. Indeed, although the governance of advertising relies on a range of stakeholders, ultimately, it works because of support from the advertising industry (Harker 2003). Unless advertisers, agencies and media providers support self-regulation and accept any judgements made by an adjudicator, a system loses legitimacy (Harker 1997; Harker 2002). As Rotfeld (2010, p. 98) explains: 'self-regulation's only power is that of member companies' willingness to voluntarily adhere to its guidelines'. Perhaps responding to the fragility of this power, recent innovations have seen many systems of self-regulation add some form of co-

regulation. In the UK, for instance, the ASA has acquired statutory support from a number of public bodies.

The accepted theorisation of the links between advertisers in the governance of advertising is best represented through Kanter's concept of an *accommodation among adversaries* (1974). It tells us that competing firms must constrain their individual advertising practices for the benefit of *advertising in general*. The benefit of this constraint is twofold. First, trust in *advertising in general* has a significant impact on the effectiveness of individual advertising campaigns. Second, there is a fear that without effective self-regulation, other organizations and public bodies may enforce more draconian constraints on advertisers (Fletcher 2008; Hériter & Eckert 2008)

But this emphasis on the links between rival firms leaves us with unanswered questions about how they actually behave within advertising governance – especially when they have observed a rival breaching their shared codes of conduct. Such instances might allow the rival to gain an unfair competitive advantage by, for instance, publicizing misleading product or price information to "bait" consumers. Clearly, competitors have an incentive to stop this and should issue complaints to a regulatory body if it happens. But this risks undermining public trust in *advertising in general*. Raising additional complaints may highlight indiscretions that might otherwise have gone unnoticed. For this reason, Rotfeld (2003) argues that education within the industry may be the best way for advertisers to proceed rather than complaints. So, it makes theoretical sense for rival firms to both complain and not complain about each other.

Rotfeld (2010) argues that many of the foundational ideas about advertising regulation make sense but lack empirical scrutiny. Such scrutiny is needed, Rotfeld and Taylor (2009, p. 6)

tell us, to fulfil the pragmatic research need for 'information that can guide public policy'. For example, the growth of digital advertising has introduced a new element to the governance of advertising that, simply, was not considered in the established models. Several online advertising platforms operate their own advertising guidelines. Moreover, as online platforms are less geographically-bounded than many traditional media, they have prompted advertising practitioners and regulators to integrate their codes and practices with international and transnational bodies (Woods 2008).

In this vein, numerous researchers have called for empirical studies to compare real complaint behaviour against the theorised relationships (LeBarbera 1980; Wotruba 1997; Harker & Harker 2002; Bodey and Grace, 2007; Wirtz and Lwin 2009; Rotfeld 2010). It is notable, then, that empirical research on complaint behaviour among rival advertisers is limited to Australia between 1986-2000. Here, Harker and Harker (2000) observe a significant increase in complaints from rival advertisers between 1986-1994 ($r = 0.68$). In their (2002) later study, they find that this trend accelerated over an unspecified ten year period ($r = 0.79$). These findings are confirmed by Kerr and Moran (2002). Importantly, these studies show us that rival advertisers in Australia not only issue more complaints, their complaints are qualitatively different from those submitted by other stakeholders. Their complaints are upheld far more frequently than complaints from members of the public or advocacy groups; they tend to involve large submissions of technical data prepared by legal experts; and they take up a disproportionate amount of regulatory resources. As a result, Harker and Harker (2002) to conclude that rival advertisers may have changed their relationship towards each other within advertising self-regulation. They no longer seem to treat regulations as an *accommodation* but see the system as a competitive tool.

These findings sit uneasily with the conceptualisation of an *accommodation among adversaries*. This concept tells us that the governance of advertising works because rival advertisers voluntarily adhere to shared codes of conduct when designing their campaigns and overlook breaches on the part of their competitors. In practice, though, it seems to be the case that rival advertisers are increasingly demanding that breaches by their competitors are punished and that rival advertisers are willing to use their resources to ensure this happens. Whatever the motivation for such actions, Harker and Harker (2000, p. 290-291) conclude that 'a thorough review, or audit, of the system' is needed to alert 'regulators to the trends' and prompt 'further investigation about why that behaviour had changed'. This is the motivation for this study.

Before setting out the approach adopted in the study, it is worth considering why calls for continued empirical research into advertising governance have remained largely unanswered. Three explanations make sense. First, in practical terms, while the relationship between advertisers and media providers has altered dramatically with the rise of digital media, there has been a tendency among these innovative media providers to see themselves as "space brokers" who simply populate spaces on web pages. In place of formal governance, they grant individual users the power to edit the adverts they see. Second, academic marketing research has increasingly focused on the psychological processes that influence the effectiveness of advertising. There has been less concern for social, political or philosophical issues. Finally, the stability and growing popularity of self-regulation as a model for governance may have led to an assumption that – beyond empirical and contextual concerns – the theoretical questions relating to advertising governance had been answered.

Each of these perspectives is open to question. We see many media providers being to discuss issues of censorship including advertising. The rise of critical marketing studies has opened up new spaces for marketing researchers to return to the social, political, ethical and philosophical foundations of marketing (Tadajewski and Cluley, 2013). Finally, shifting practices of self-regulation have already begun to alter the nature of self-regulation. The rise of co-regulation is one example here. Accordingly, it seems pertinent to return to some of the foundational assumptions at the heart of the dominant views of advertising governance.

METHODOLOGY AND CASE SELECTION

To examine the behaviours of rival firms within systems of self-regulation in the advertising industries, the current study focuses on the *accommodation among adversaries* in the UK. Given the national specificity of advertising regulations (Verbruggen, 2013), empirical studies of advertising regulations tend to develop holistic accounts focused on particular national contexts (see Boddewyn 1992, 1991, 1985b, 1984a, 1984b, 1983a, 1983b). The UK was chosen as the research site for this study for three reasons. First, the UK regulator offers excellent access to its data. Second, the UK system of self-regulation is considered as a best practice example of complaints-driven self-regulation (Brown, 2006). Finally, existing research suggests that UK system is founded on a strong *accommodation among adversaries*. Indeed, comparing the UK framework to four other national systems, Harker (1998, p. 113) argues that the UK is "more proactive in its efforts" to recruit advertisers, agencies and media providers into the system than other leading regulators.

In brief, the framework of self-regulation in the UK comprises two key organizations. The Committee on Advertising Practice (CAP) is a body made up of advertising industry

representatives. They produce two rulebooks for advertising in the UK – known as the CAP & BCAP Code. The Advertising Standards Authority (ASA) is an independent body that is financed by a voluntary levy on the cost of placing advertising in media outlets. It judges whether any rules have been broken. For historical reasons, all broadcast adverts must be vetted against the BCAP Code prior to transmission. However, this is not true for other media. Adverts on billboards, the internet and print media are only subject to occasional reviews by the ASA against the CAP Code. Instead, the ASA relies on complaints made by members of the public, advocacy groups and rival firms.

Overtime the ASA has entered into co-regulatory relations with other bodies (see Brown, 2006 for a full discussion of the context around these changes). Often this has represented an accommodation of policy changes at the domestic and international level – in particular EU regulations (Verbruggnen, 2013). For example, through the Control of Misleading Advertisements Regulations (1988), the ASA can refer repeat offenders to the Office of Fair Trading. Likewise, thanks to the Communications Act (2002), OFCOM, the regulatory body for broadcast media in the UK, became a legal backstop to the ASA for broadcast advertising. Brown (2006) describes this as a process of *contracting out* regulatory responsibilities from the UK State to the advertising industry. He argues that the co-regulatory arrangements allow the industry to define its own rules but rely on statutory bodies to enforce them and monitor the work of the ASA itself.

The UK system has also developed over time in response to technical changes in the delivery of advertising. Notably, in 2010, the CAP Code was amended to include new guidelines for online advertising. Interestingly, these position online advertising as a non-broadcast media. More recently, the ASA has issued advisories for vloggers concerning sponsorship and

product placement. They have also responded directly to shifts in public opinion and social attitudes. Currently, they are working to integrate their rules with the UK Equality Act 2010.

The ASA Transparency Team has supplied seven years of complaints data (N = 178,615). This covers complaints received from 2009-2015. From this, five full calendar years (2010-2014) are available for study (N = 146,062). The data for 2009 is limited to the final six months of the year and has been discounted as the code of conduct was amended in 2010. The data for 2015 is limited to the first six months of the year and has also been discounted to allow for year-on-year comparisons. The complaint data recorded by the ASA lists the name of the advertiser; the sector the advertiser operates in; the date the complaint was received by the ASA; the type of enquirer; the issues raised; the media the advert was distributed through; and the resolution. Out of this dataset, all complaints by competitors (N = 1,591) have been extracted and analysed using descriptive statistics and correlations following Harker (2000), Harker and Harker (2002) and Kerr and Moran (2002).

The ASA publishes all of its adjudications on its website (https://www.asa.org.uk/). These cases have been harvested from 2010-2014 using a bespoke computer programme that collated search results from the ASA website. This produced a second dataset of 4,830 published cases. These list details such as the name of complainants, the relevant codes and rules at stake and the advertiser's response to the complaints. A published case can be based on a single complaint or multiple complaints and can cover a single advert or a campaign. For the purpose of this analysis, each instance in which a competitor was named as a complainant was treated as a separate unit of analysis. Manually reviewing this dataset revealed that 629 cases named at least one competitor as a complainant. As each case can list multiple complainants, the total number instances in which a competitor is named as a complainant is

slightly higher as some cases involved more than one competitor complainant. This sample (N = 671) produced over 3,000,000 units of textual and numeric data and amounted to many thousands of pages. It has been analysed using descriptive statistics and correlations following Harker (2000), Harker and Harker (2002) and Kerr and Moran (2002).

FINDINGS: COMPLAINTS MADE TO THE ASA

Who Complains to the ASA?

Competitors accounted for relatively a small percentage of the overall population of complaints received by the ASA. The mean number of complaints logged by competitors within a single year is 318 (S.D. 170). These account for 1% of the total. The vast majority of the complaints received by the ASA come from the public (96%). The mean number of complaints from members of the public within a year is 28,069 (S.D. 2,111). Non-public bodies accounted for 3% of the overall complaints. The mean number of complaints from non-public bodies within a year is 825 (S.D. 385).

However, while competitors make fewer complaints than other stakeholders, there is a clear increase in the relative number of complaints they make. Figure 1 presents an index of complaints received by the ASA from the public, competitors and non-public organizations using 2010 as a baseline. By the end of 2014, complaints from the public stood at 117% of their 2010 level ($r = 0.765, N = 6, p = 0.76$); non-public bodies stood at 54% of their 2010 level ($r = -0.349, N = 6, p = 4.98$); complaints from competitors stood at 969% of their 2010 level ($r = 0.883, N = 6, p = 0.02$).

INSERT FIGURE 1 HERE

What Kinds of Adverts Do Competitors Complain About?

Adverts promoting leisure offerings are subject to most complaints from the public (18%). They are followed by retail (14%), health (9%), food (9%) and financial services (9%). For non-public complainants, the top five sectors are business services (21%), health (15%), leisure (9%), non-commercial (8%) and financial services (6%). For complaints by competitors, we see slightly different results. Here, adverts for business services are subject to most complaints (25%). This is followed by health (19%), retail (9%), leisure (8%) and property (8%).

In terms of the media channels which are subject to complaints, television (44%) and the internet (26%) are the most prominent among complaints from members of the public. They are followed by newspapers (6%), multi-channel campaigns (5%) and posters (4%). For non-public complainants, most complaints are made against internet adverts (41%). This is followed by complaints against press (12%), campaigns across multiple media (12%), television (8%) and magazines (6%). When we look at complaints by competitors, again, notable differences emerge. The internet is the dominant media (57%). This is followed by campaigns across multiple media (13%), press (10%), magazines (4%) and leaflets (3%). Television accounts for just 3% of complaints by rival advertisers.

What Issues do Competitors Complain About?

Concerns about misleading adverts are the most prominent cause of complaints from public complainants (51%). This is followed by concerns about offensive material (30%) and potentially harmful effects (5%). Complaints addressing multiple issues accounted for 8% of

the public complaints. In terms of complaints from non-public complainants, the most frequent issues are misleading adverts (77%), offensive adverts (5%) and harmful adverts (4%). Complaints raising multiple issues accounted for 7% of the complaints from non-public complainants. In contrast, the sample of competitors' complaints is heavily skewed towards concerns about misleading adverts (94%). Concerns relating to offensive materials and potentially harmful effects of adverts account for less than 1% of the competitor complaints each. Complaints addressing multiple issues accounted for 3% of the total population of competitors' complaints.

Are Competitor's Complaints Valid?

The ASA records 47 potential outcomes of a complaint. These detail whether a complaint was resolved (which includes the advertiser accepting the complaint or the ASA judging the complaint to be valid); whether it was dismissed (which includes the ASA not investigating the complaint or investigating it and deciding it was invalid); or whether it was referred to another body. In broad terms, 68% of complaints for from the public dismissed, 22% are resolved and 10% are referred to other organizations. For non-public complainants, 48% are resolved, 36% are dismissed and 16% are referred to other bodies. However, for the sample of complaints by competitors, 64% are resolved, 27% are dismissed and 9% are referred to other bodies.

Summary

Three key findings emerge from the complaints submitted to the ASA concerning the behaviour of competitor firms. First, there is a significant increase in the number of

complaints made by competitors in comparison to the level of complaints received from other sources. Second, rival advertisers make complaints about specific media and specific issues. Unlike other groups, they focus on online media and factual issues and inaccuracies. Finally, a greater proportion of complaints from competitors are investigated and upheld than is true for other sources of complaints. This suggests that competitors' behaviour, as a whole, is qualitatively and quantitatively different to other complainers.

FINDINGS: PUBLISHED ADJUDICATIONS

Who complains about whom?

While the complaints data provides a picture into broad trends, the adjudications published by the ASA allow us to drill down into the behaviour of individual firms. Within the sample of cases involving complaints from competitors (N = 671), 437 different firms are named as complainants. As Table 1 illustrates, the majority of competitors issue a small number of complaints. 353 firms were named as complainants in a single case. Just 14 firms were listed as complainants in five or more cases. The mean number of cases in which a rival advertiser was listed as a complainant in this sample was 1.53 (S.D. 2.33).

Similarly, 576 different firms were subject to at least one complaint from a rival. As Table 1 illustrates, 413 firms were named as the advertiser in a single case raised by a rival. Ten firms were named as advertisers in five or more cases involving complaints from competitors. The average number of cases involving a competitor as the advertiser was 1.38 (S.D. 1.74). Interestingly, there is a great deal of similarity between the top complainants and the top

advertisers in the published cases involving rival firms. As Table 2, illustrates five firms (BT, Virgin, Sky, Tesco, ASDA) rank highly in both lists.

INSERT TABLE 1 HERE

Are competitor complainants effective?

Among the 14 rival firms who were named as complainants in five or more cases, the average proportion of cases that are upheld in part or in full is 82% (S.D. 15%). The firm with the lowest proportion of upheld cases saw 56% of the cases involving their complaints upheld in part or in full. Four firms saw 100% of the cases involving their complaints upheld in part or in full. In comparison, the 79 firms named as competitor complainants in more than two but less than five cases saw an average of 81% of their cases upheld in part of in full (S.D. 30%). Of those making a single complaint, this figure decreases to 74% (see Table 1). Although this reveals a slight increase in success for those who make the most complaints, the relationship is weak and not significant. In other words, the most regular complainers are not necessarily the most effective.

INSERT TABLE 2 HERE

Across the ten rival advertisers named in five or more cases based on competitor complaints, the average proportion of cases that are upheld in part or in full is 78% (S.D. 14%). Of these ten advertisers, the advertiser with the lowest proportion of successful cases against them saw

56% of the cases against them upheld in full or in part. Two firms saw 100% of their cases upheld in part or in full. In comparison, the 63 firms named as advertisers in more than two but less than five cases with competitor complainants saw an average of 76% of their cases upheld in part of in full (S.D. 32%). So, although we might suspect that firm who are subject to the most investigations would see more of those investigations upheld, this is not the case. Indeed, given that nearly all complaints from rivals refer to misleading ads, any variance cannot be explained solely in terms of the issues that rivals complain about.

Summary

Three key findings emerge from the ASA's published cases concerning the behaviour of individual firms within advertising governance. First, the overall increase in complaints from competitors seems to be driven by a small group of firms who make regular complaints to the ASA. Second, regular complainers are not necessarily more effective in their complaints. Those firms who make the most complaints appear to have developed, at best, marginally specialist skills in highlighting breaches and compiling their complaints. Finally, among the heavy-users of the regulatory system there is a great deal of inconsistent behaviour. In a number of cases, those firms who submit the most complaints are also most frequently complained about.

DISCUSSION

The current study seeks to quantify the *accommodation among adversaries* at the heart of advertising governance. It pays particular attention to the ways competitors use the system of

advertising self-regulation in the UK. To achieve this, it explores complaints submitted to the ASA and published cases detailing the outcomes of the ASA's investigations.

The empirical assessment of complaints by competitors provides three key findings. First, there is a significant 900% increase in the number of complaints made by competitors in comparison to the level of complaints received from other sources. This suggests that firms are taking an increasingly proactive role in enforcing rules. Second, the rise in complaints from competitors focuses on advertising messages on online media and addresses a limited range of concerns relating to misleading claims. This may explain why the number of complaints submitted by rival advertisers increased after 2010. In 2010, the CAP Code was amended to include rules for online media. However, full comparative data is lacking to substantiate this claim. Finally, a greater proportion of complaints from competitors are investigated and upheld than is true for other sources of complaints. This could be because competitors make more justified complaints – perhaps because they have better working knowledge of the rules, are able to make more compelling arguments, or have greater business intelligence to call on. It could also be due to the focus on misleading ads among competitors' complaints. But it could also be because the ASA places more weight on complaints from competitors than other sources. Certainly, the varying rates of successful complaints among individual firms suggest that there are multiple factors at play.

The analysis of published cases provides three additional key findings concerning individual firms' behaviour. First, the increasing number of complaints submitted from rival advertisers is driven by a small group of firms. Among the most engaged firms, the top three come from the telecommunications and media sector (BT, Virgin Media and Sky); four more come from the retail and fast-moving consumer goods sectors (Tesco, ASDA, Procter and Gamble, and B&Q); two come from the health sector (Optical Express and High Tech Health). It is a fair assumption that several of these firms are in direct competition with each other. So it is

possible that there is an element of retaliation at work. Indeed, the majority of firms who complain make single or occasional complaints. Just 14 firms made five or more complaints. This suggests that rather than reject the *accommodation among adversaries* concept completely, we may need a more nuanced idea to summarise the relationship between businesses in systems of self-regulation. Second, while we might expect those firms whose adverts are investigated by the ASA most frequently lack internal resources to prepare acceptable advertising, those firms who are named as advertisers in the most number of cases do not see a significant rise in the number of complaints upheld against them. Equally, while we might expect that firms which make the most complaints would develop capacities and produce more effective complaints, those firms who are listed most frequently as the complainants in published cases do not have significantly greater successes in identifying breaches. So, this expectation has not been supported. Finally, the cases indicate a great deal of inconsistent behaviour among firms. Many of the firms who make the most complaints are also the most complained about. This suggests that for a small group of rivals the terms of their *accommodation* may have altered. Rather than police their own behaviour and allow others to breach the rules, these firms seem happy to both break rules themselves and complain when others do so.

Put together, the findings revealed through this study suggest that rival advertisers are developing a range of strategies towards advertising regulation. Firms can be distinguished along two dimensions. Most simply, there is *the level of engagement* with the regulatory system. Some firms engage as complainants and advertisers – others rarely come into contact with the regulator at all. Firms can also be distinguished in terms of the *level of consistency* displayed in their engagement with the regulatory system. Some firms act consistently. They may be subject to a high number of complaints or issue a high number of complaints. But, many of the most highly-engaged firms act inconsistently. They are both subject to a high

number of complaints and issue a high number of complaints. This suggests they are both willing to break the rules yet insist others follow them.

INSERT FIGURE 2 HERE

These two axes mark a strategic space that firms can position themselves in (see Figure 2). It is fair to say that most firms have a low level of engagement with advertising self-regulation. They adopt a strategy of *indifference* toward their rivals. There are several possible reasons for this. They might be following the terms of an *accommodation of adversaries* that is specific to their sector, they might see advertising regulation as ineffective or unimportant or they might be unaware of the processes for complaining. In contrast, there is a smaller group of highly engaged firms. They employ their resources and use regulatory resources to complain about their rivals. Among these firms, some behave consistently towards their rivals. They may adopt an *angelic* strategy or a *deviant* strategy. The angelic strategy means they are subject to few complaints but are willing to use their resources to ensure that their rivals who break the rules are punished. In contrast, those who adopt a *deviant* strategy are subject to frequent complaints but issue few complaints against others. They might not necessarily break the rules more than others but they are more likely to be called into question. Finally, there are firms who are highly-engaged but also inconsistent in their behaviour. They adopt a *predatory* strategy. They are both subject to a large number of complaints from their rivals and issue a large number of complaints against their rivals. In other words, they appear willing to break rules while insisting others follow them. Returning to the concept of the *accommodation among adversaries*, then, we can see that in the UK context at least, it has opened up a space for rival firms to adopt a range of strategies towards self-regulation.

CONCLUSIONS

These findings combine to present an empirical challenge to the theorisation of advertising self-regulation as an *accommodation among adversaries* and illustrate that a system of regulation can be used both to provide governance for an industry and to act as a competitive arena. To some extent, the study confirms the overall findings of Harker (2000), Harker and Harker (2002) and Kerr and Moran (2002). But it contributes significant detail. Importantly, the current study adds international contextualisation to the existing research base and explores a European case. Notably, it also delves beneath the headline trends. It finds that rival advertisers are not acting in consistent or homogenous ways. Some are adopting more aggressive approaches to complaining but not all. Moreover, some individual firms act inconsistently.

These findings have practical implications for marketers and advertising regulators. First, marketers might seek to formally internalise higher moral standards for their advertising to reduce the likelihood that they will be subject to complaints. Yet, we do not know what level of knowledge exists among practitioners. Most research focuses on consumer education not practitioner education. Clearly, though, marketers need to be familiar with regulatory demands. This could be addressed through professional training or marketing education. While many regulatory bodies including the ASA – and EASA at the European level – already perform such activities, a review of the presence of advertising regulations in university marketing degrees and professional qualifications is needed. Second, these findings suggest that marketers should investigate whether they are the victim of predatory behaviours on the part of competitors. If other firms in their sector have become more proactive in issuing successful complaints, they may wish to assess whether this is strategy they want to follow as well. Finally, regulators themselves need to develop a better understanding of the implications of new rules and frameworks on complaint behaviour. This

is all the more pertinent as advertising regulations are changing. Regulatory bodies could assist researchers here by making data available and structuring that data effectively. In this study, a significant amount of time was taken cleaning the data provided by the ASA to rectify input errors.

In so doing, though, regulators might be forced to confront some inconvenient truths. They might, for example, have to acknowledge that some firms no longer see the regulation as a form of governance but, rather, a form of competition. By way of speculation, some some obvious solutions do present themselves here. Most extreme, we could scrap self-regulation and delegate regulation fully to an independent body or further separate the rule creation and rule enforcement through co-regulation. This remedy is not supported by this study. Among the most engaged and most inconsistent firms, we see examples from sectors that are already regulated by independent statutory bodies such as telecommunications or are subject to specific legislations such as health. This suggests that simply shifting the responsibilities for rule creation or enforcement may not be sufficient. Instead, the behaviours uncovered in this study can be seen as a result of using complaints as the primary mechanism of regulation. Relying on complaints opens up a space for game-playing. It means that firms with resources, knowledge and incentives can direct regulatory scrutiny onto their rivals – who may not retaliate. It also means firms can act inconsistently. In place of complaints, regulators could take a more pro-active role in reviewing advertising themselves.

If an alternative to complaint-driven regulation is not possible, one solution would be to disincentive spurious complaints from rival firms. For example, a levy could be placed on firms when they complain about their rivals. This could be scaled to take account of a firm's previous behaviours as an advertiser. Alternatively, acknowledging the different strategies used by rival firms, regulators could formally take account of a firm's behaviours as both a complainant and advertiser when looking at complaints by rival firms. Finally, given that

most of the behaviours noted in the study occur in a small number of sectors – notably the telecommunications, media, retail and fast-moving consumer goods sectors – regulators could adopted a targeted approach in these areas. Whether or not any of these solutions will work is, of course, not something this study can directly support but, hopefully, the evidence presented here can at least make practitioners, firms and regulators aware of the changing nature of firms' behaviours with regulatory systems.

But beyond the governance of advertising, what can we learn from this case? There are two important and interrelated question raised by these findings for wider discussions about self-regulation. First, the case illustrates that governance of a business practice can subtlety shift into an arena of competition. This challenges the idea that self-regulation depends on cooperation between rivals who want to minimise the power of other bodies to regulate their industries. If we accept that self-regulation can facilitate, rather than restrict, predatory behaviours, we must turn again to this foundational assumption. Second, the case suggests that we should be wary of homogenising participants in a system of self-regulation. In this case, we have seen how participants across, and within sectors, have adopted entirely different strategies towards self-regulation. Put together, these two insights suggests a novel form of regulatory capture in which a system of regulation can function both as a form of governance and, simultaneously, an arena of competition.

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