The growth of mobile gaming shows little sign of slowing down. The UK market was worth £995 million in 2016, with revenue generated rising by 16.9% over the previous year.

So the rewards for mobile games developers could be great. But those looking to take advantage are often smaller players, who may not have a comprehensive (or indeed any) advertising compliance program in place. And even the most sophisticated operators can struggle to apply traditional advertising rules to the new world of mobile gaming. It's no surprise then, that games have attracted the attention of advertising regulators throughout the world.

Over the coming years, AI, virtual and augmented reality and new revenue models are likely to provide new challenges to developers, regulators and lawyers alike. But a recent ruling by the Advertising Standards Authority (ASA), upholding a complaint against the mobile game "Liberators", shows that at least some developers are still struggling to address the basics.

The ASA ruling on Liberators

The ASA received complaints regarding three ads for the computer game Liberators, a turn-based strategy game set during World War II, which is owned by Mutant Box Interactive Ltd. One of these ads was a banner ad on Facebook and the other two were paid-for Facebook posts. The ads showed images of a sniper, a tank on a battlefield and German, American and Soviet soldiers and included copy such as "Storm the field in this FREE Strategy epic today! Liberate cities and defeat the Nazis!"
The complainant, who believed the ads contained images from games not made by the advertiser, challenged whether the ads were misleading. Mutant Box Interactive Ltd did not respond to the ASA's enquiries, and the complaint was upheld - the ASA considered that consumers were likely to believe that the ad visuals were taken from the actual gameplay for the "Liberators" game. As the ASA had not seen any evidence that that was the case, it concluded that the ads were likely to mislead. This was a breach of the CAP Code, rule 3.1, which states that marketing communications must not materially mislead or be likely to do so.

This ruling is not particularly surprising - ignoring the ASA's enquiries is always a doomed strategy. Meanwhile, the temptation to bring games to life, to tell the 'story', through the use of visuals more grounded in reality than the actual gameplay experience is ever present. But what the ruling does highlight, is that even a simple banner ad or Facebook post can attract complaints, leading to sanctions and bad PR and damaging players' trust in the claims developers make about games and gameplay experience. In the case of Liberators, these negative consequences could easily have been avoided, perhaps simply by stating 'Not actual gameplay footage' in the ad.

**Other relevant ASA rulings**

As the market for mobile gaming has grown, so has the number of complaints received by the ASA, be they from members of the public or competitors.

**Machine Zone Inc.**

In April 2017 the ASA ruled that a YouTube ad for smartphone game Mobile Strike, a military themed combat game, owned by Machine Zone Inc., must not appear again in its current form as it was likely to cause offence. The relevant ad featured women in bikinis playing the game. The ASA received a complaint from an individual who believed the imagery objectified women and was offensive.

In response, Machine Zone argued that the ad showed that the game could be played anywhere and that "the juxtaposition between what people normally did by the pool (i.e. relax and lounge) with the visuals of the players battling it out with jets and tanks was what made the ad so striking." Machine Zone also claimed concern that the complaint had more to do with the use of "real-sized" women (rather than stick-thin models) and noted that the ad had run for months without attracting any other complaints. Machine Zone said its intention was to "reference mythical warrior women like Amazons and Wonder Woman". YouTube confirmed that the ad did not contravene its guidelines.
Nonetheless, the ASA ultimately decided to uphold the complaint, concluding that the ad objectified women and was therefore offensive, in breach of CAP Code rule 4.1, which states that marketing communications must not contain anything that is likely to cause serious or widespread offence.

This Machine Zone decision is far from the first time that the ASA has ruled on the objectification of women in video games advertising and, given the way in which female characters have often been portrayed in gaming in the past, it is unlikely to be the last. Sexual content and violence also regularly trigger complaints, even where the developer has sought to act responsibly - the ASA has upheld complaints about behaviourally targeted ads intended for adults but viewed, on a shared device, by children.

**Mind Candy Ltd.**

In August 2015, the ASA ruled that an ad for the online game Moshi Monsters, where users create, name and nurture virtual pets, owned by Mind Candy Ltd, must not appear again in the form complained about, as it contained a direct exhortation to children to buy a product.

The ASA considered that the game would have particular appeal to, and was targeted at, young children. While it was possible to play the game without spending money, certain activities required participation in a paid-membership system. "JOIN NOW" messaging in the game encouraged players to subscribe.

The ASA considered that the "JOIN NOW" statement was phrased as a command instructing the player to immediately subscribe to the membership scheme. The "JOIN NOW" messaging was significantly more prominent than the option to close the message. The ASA also noted that there was no indication that players could return to gameplay without taking out membership. The ASA also ruled that phrases such as "The Super Moshis need YOU" and "Members are going to be super popular" put pressure on young players to purchase the subscription.

Overall, the ASA ruled that the ad breached CAP Code rules 5.4.2 and 5.5. Rule 5.4.2 states that marketing communications addressed to or targeted directly at children must not include a direct exhortation to children to buy an advertised product, while rule 5.5 states that marketing communications that contain a direct exhortation to buy a product via a direct response mechanism must not be directly targeted at children. The ad was also found to be in breach of rule 1.3 of the CAP Code, which states that marketing communications must be prepared with a sense of responsibility to consumers and to society. Mind Candy was later added to the ASA's
published list of non-compliant online advertisers (though it has since been removed).

This ruling demonstrates the close scrutiny that the ASA places on ads that target children. In the field of mobile gaming, many games are developed with a young audience in mind, while the mobile literacy of children today makes their engagement with games and accompanying advertising more widespread than ever, even where they are not targeted directly. Games developers need to be aware of the high standard that the regulators will hold them to, if children are a significant proportion of their market. Specific rules apply (like those around direct exhortations to buy) but general rules are also applied more restrictively - children are considered to be less able to distinguish advertising from other forms of content, more credulous in relation to potentially misleading claims and more susceptible to harm from distressing or sexual content.

The ASA guidance

The ASA has provided guidance specifically in relation to in-game purchases and 'direct exhortations to buy', with the aim of protecting children. The guidance suggests including clear information for parents/carers when the app is initially downloaded, so they know what kind of paid-for elements are on offer. The guidance clarifies that there is nothing wrong with including paid-for elements within a game as long as they are not presented as being essential. Developers are advised that a game is less likely to run into problems if an option to purchase a subscription is offered as an added benefit, alongside the option to continue to play for free, giving equal prominence to both routes.

When communicating with children, the guidance suggests using brief statements that children can easily understand and avoiding imperatives, such as JOIN NOW! The guidance emphasises the need to be particularly careful about using nouns that could be read as verbs; for example 'SHOP' might be interpreted by children as an imperative. It also suggests avoiding emotive statements such as 'your game characters need YOU!', as children are more susceptible to emotional pressure.

Outside of the UK

Advertising issues linked to mobile games are not confined to the UK - mobile gaming is high on the agenda of regulators across the globe and issues to do with misleadingness, offence and in-app purchases are relatively common.

The game Mobile Strike also received media attention in the US when an ad for the game was shown during the Super Bowl. The ad, which featured Arnold Schwarzenegger, portrayed a
game with augmented reality explosions and target indicators which viewers noted did not resemble the real game at all. This advertising reportedly cost $5 million.

In Germany, the courts have ruled against in-game advertising, considering that the message ‘add that certain something to your armour and weapons’ in the game Runes of Magic, amounted to a direct exhortation to children to make an in-game purchase. In-game advertising that is a nuisance, such as unreasonably long advertising slots or pop-ups which cannot be clicked away, can also fall foul of unfair competition laws in Germany.

Conclusion

The stakes have never been higher. Once a complaint is upheld by the ASA in the UK, the ASA rules that the advert subject to the complaint cannot be shown again in its current form. This can be a powerful sanction as spend directed to ads for mobile games increases. The protection of children will always be high on the regulatory agenda and issues with in-game ads and in-game purchases have, in the past, attracted the attention of the Competition and Markets Authority, a body with powers to launch criminal prosecutions in the UK, along with equivalent bodies around the world. Negative PR can also be particularly harmful in this market, where parents will be reluctant to allow their children to download a game that has been ruled against by the ASA. Augmented reality mobile gaming, such as Pokémon Go, brings a raft of additional legal concerns, from players wandering into dangerous situations or committing trespass to new risks of intellectual property infringement. With all that in mind, developers would be well advised to establish robust clearance processes for their games and game ads, if they are not to find a regulatory investigation or legal claim bringing them crashing back into the real world.

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