



Briefing Note on the Self-Regulation of Commercial Advertising in Ireland and the EU

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27th June 2018

1. An Explanation of Self-Regulation in Advertising

What is advertising self-regulation?

Advertising self-regulation is a system by which the advertising industry actively polices itself. The three parts of the industry – the advertisers who pay for the advertising, the advertising agencies responsible for its form and content, and the media which carry it – agree standards of practice and set up a system to ensure that advertisements which fail to meet those standards are quickly removed or corrected.

This is achieved by means of a code or principles of best practice, by which the advertising industry voluntarily agrees to be bound. They are enforced by an organisation set up for the purpose and funded by the industry itself.

Advertising self-regulation exists in almost all the Member States of the European Union; in some of them it has been operating for several decades (e.g. in Italy since 1964, in the UK since 1962). It takes widely varying forms in different countries, but its underlying ethos is always the same: that advertising should be legal, decent, honest and truthful, prepared with a sense of social responsibility to the consumer and society and with proper respect for the principles of fair competition.

The role of self-regulation is acknowledged in various EU initiatives, including the revised Audiovisual Media Services Directive (AVMS), the DG Sanco Advertising Roundtable Report¹ (2006) and the European Commission's White Paper - A Strategy for Europe on Nutrition, Overweight and Obesity related health issues (2007)². Most recently the role of the self-regulatory authorities has been underlined in the regulatory systems established for Online Behavioural Advertising. The countries of the "new" Europe were quick to appreciate the benefits of self-regulation for both industry and consumers: some have already set up systems and others are in the process of doing so. In several of these countries, the important role of advertising self-regulation has already been formally recognised by government.

Self-regulation and legislation

Self-regulation is an alternative to detailed legislation, but not to *all* legislation. It is now widely accepted that self-regulation works best within a legislative framework. The two complement each other, like the frame and strings of a tennis racquet, to produce a result which neither could achieve on its own.

The law lays down broad principles, e.g. that advertising should not be misleading, and provides a last resort in the rare cases where all else has failed. However, the law can be slow to act, is often difficult for consumers to understand and too expensive for many to consider using, so the theoretical protection it provides may be less readily available in practice. Also, legislation can be less effective when dealing with the varied content of advertising which, although important to consumers, may not be of sufficient significance to warrant intervention using statutory powers.

¹ report at http://ec.europa.eu/consumers/overview/report_advertising_en.htm

² Full text at http://ec.europa.eu/health/ph_determinants/life_style/nutrition/documents/nutrition_wp_en.

By contrast, self-regulation is specifically designed to deal with these matters. It offers consumers a quick, uncomplicated and (because it is funded by the advertising industry) cost-free means of having their complaints addressed. Because it has the support of the advertising industry, advertisers and agencies are often more ready to cooperate with a self-regulatory system than with one which relies on judicial enforcement. In the context of the EU, discussions between European Advertising Standards Alliance (EASA) and the Commission about self-regulation have explored the concept of co-regulation. This is a form of regulation which involves a degree of co-operation between government regulators and self-regulation and combines both statutory and self-regulatory elements.

How self-regulation works

The advertising industry agrees a code of standards and practice, which it formally adopts and undertakes to support, financially, morally and practically. Then it sets up an independent body to apply the code and ensures that it has sufficient resources to do so. This body is called a self-regulatory organisation (SRO). An SRO usually consists of three parts:

1. The code-making body
Responsible for writing the code and for its subsequent revision to ensure that it stays up-to-date. The code-making body represents the constituent parts of the industry – advertisers, agencies and media – because it is the industry's own code and the whole industry agrees to be bound by it;
2. The code-applying body (usually called the complaints committee or the jury)
Responsible for interpreting the code in specific cases and deciding on the appropriate action. The chairman and some of the members of the complaints committee are usually independent of the advertising industry – they might for example, include academics, members of the medical profession or representatives of consumer organisations;
3. The permanent secretariat
The professional staff responsible for the day-to-day running of the SRO. The secretariat is headed by a chief executive, who usually also acts as secretary to the code-making and code-applying bodies.

2. Introduction to the ASAI



The ASAI

The Advertising Standards Authority for Ireland (ASAI), which was founded in 1981, is the self-regulatory body set up by the advertising industry to maintain the highest standards in commercial advertising and sales promotions in the public interest. Membership of the ASAI consists of advertisers, agencies and all strands of the media including companies representing broadcast, print, outdoor and digital. These interests are represented on the ASAI Board. The role of the media is particularly important as “the gatekeepers” and they will refuse to publish a commercial advertisement which contravenes the Code. Specifically, advertising self-regulation means the strict adherence by the advertising industry to standards drawn up and enforced on behalf of all advertising interests. It involves the enforcement of those standards through the commitment and co-operation of advertisers, agencies and media.

In Ireland the rules to ensure that these standards are met are set out in the Code of Standards for Advertising and Marketing Communications, based on the principles established by the International Chamber of Commerce and drawn up by the ASAI following detailed consultation with all relevant interests and bodies including the public, consumer representatives, and government departments/agencies.

The current Code, the 7th Edition, was launched in September 2015 and speaking at the launch, the then Minister for Communications, Energy and Natural Resources, Alex White, TD, said

“Through its Code of Standards, the ASAI promotes best practice in advertising with the aim of serving the interests of the whole community. With the launch of the 7th edition of the Code, the ASAI seeks to champion these interests in an ever more interconnected and fast-paced age. I commend the Authority on the work it has done on updating the Code and wish it well in its future endeavours.”

The Code applies to advertising in all Irish media including broadcast and electronic media. Formal decisions on complaints are made by our Complaints Committee and details of the membership of the Committee are set out in Appendix A.

A copy of our Code is available on our website at www.asai.ie.

ASAI Membership

ASAI has five categories of membership: 1. Advertisers, 2. Agencies, 3. Media, 4. Representative bodies and 5. General Members.

1. Advertisers:

Advertisers pay a levy of 0.2% on their media spend. They are represented through the Association of Advertisers in Ireland, who nominate four members to the ASAI Board.

2. Agencies:

The levy is collected and remitted to the ASAI by the media buying agencies in membership of the Institute of Advertising Practitioners in Ireland (IAPI). The IAPI members are represented through the IAPI, who nominate four members to the ASAI Board.

3. Media

The main media are members of ASAI, either individually or through Representative Membership, for example, Radio Telefis Eireann are members of the ASAI and nominate one member to the ASAI Board. There are five other media members on the ASAI Board.

4. Representative

Representative bodies for Advertisers, Agencies and Media, for example, the Independent Broadcasters of Ireland are members of ASAI and nominate another member to the ASAI Board.

5. General Members

General Members are appointed by the Board to membership of the ASAI because their position or contribution is desirable for the ASAI to have within membership.

Media and Representative Members are:

Association of Promotional Marketing Consultants www.apmc.is

Broadcasting Authority of Ireland www.bai.ie

IAB Ireland www.iabireland.ie

Independent Broadcasters of Ireland www.ibi.ie

Institute of Advertising Practitioners in Ireland www.iapi.ie

Irish Pharmaceutical Healthcare Association www.ipha.ie

Magazines Ireland www.magazinesireland.ie

Newsbrands Ireland www.newsbrands.ie

Outdoor Media Association www.oma.ie

RTE www.rte.ie

TV3 www.tv3.ie

Regional Newspaper individual memberships: 33

THE ASAI'S SERVICES AND SUPPORTS

Complaints Investigation and Adjudication

The ASAI accepts complaints from any person or body who considers that a marketing communication may be in breach of the Code and such complaints are investigated free of charge. Initially a complaint is evaluated by the Secretariat, the ASAI Executive, and, where appropriate, comments are then sought from the advertiser, the advertising agency or sales promoter. Where, in the light of the response, there is a case for adjudication the ASAI Executive prepares a report with a recommendation for the independent Complaints Committee and sends a copy to the complainant and the respondent who have an opportunity to express further views in the matter before adjudication.

The ASAI Complaints Committee decides whether or not Code rules have been contravened. Details of the case including the names of the advertiser, advertising agency or sales promoter involved together with the Committee's adjudication are set out in a case report which is issued to the parties involved and released for publication. A marketing communication which breaks the rules must be promptly withdrawn or amended. A monitoring service carried out by the Secretariat ensures that this actually happens.

The investigation procedure may be accelerated where circumstances warrant and if a case is particularly grave the ASAI Executive may request interim action, including withdrawal of the advertisement, pending completion of the investigation.

Copy Advice

ASAI provides a valuable pre-publication copy advice service on proposed marketing communications' compliance with the Code. This service is available to all those involved with advertising – advertisers, their agencies and the media.

Copy advice is free and given on a confidential basis. The advice is non-binding on both the requester and on the ASAI; while the requester does not have to accept the advice of the ASAI Executive, neither does the Independent Complaints Committee, should the marketing communication subsequently come before them for adjudication. However, where the service has been utilised, marketing communications are less likely to contravene the Code in any substantial way.

Monitoring

The ASAI regularly conducts monitoring exercises of individual marketing communications to assess compliance with the Code requirements. Such exercises can be conducted on specific media or a mix thereof. They can also be focussed on a particular industry or area of economic activity. Initially, this is carried out on an informal basis with the advertiser/promoter being asked for comments within a specific time frame. Failure to respond to the Compliance Monitor's request for information may result in the matter being escalated to a formal investigation. The ASAI Monitoring Service also monitors compliance with the adjudications of the Complaints Committee.

Education

In order to ensure that there is a high level of awareness of the role of and importance of standards in advertising, the ASAI Executive is available to present to advertisers, agencies and media on the provisions of the ASAI Code and how they are applied.

Advisory Services

The ASAI periodically participates on external projects and contributes to developing and reviewing advertising standards in various sectors.

3. The Status of Self and Co-Regulation in Ireland



The self-regulation of advertising in Ireland is well supported and the ASAI receives virtually total co-operation from all strands of the industry including advertisers, agencies and the media, both traditional offline and new online media. If advertisers refuse to co-operate or seriously breach the Code, they will either be subjected to compulsory copy advice or referred to the Competition and Consumer Protection Commission (CCPC).

We ensure that consumers are aware of our services through the publication of case reports and advertising that is provided free of charge by our media members.

ASAI already has a number of arrangements with state agencies, etc., and details are provided below.

Alcohol Marketing Communication Monitoring Body

In December 2005 the Minister for Health and Children set up the Alcohol Marketing Communications Monitoring Body (the Monitoring Body) to oversee the implementation of, and adherence to, the Voluntary Codes of Practice to limit the exposure of young people to alcohol advertising. These Codes were agreed between the Department of Health and Children and representatives of the advertising, drinks and media communications industries. ASAI provides secretarial/executive services to the Monitoring Body and in addition, the Secretariat of ASAI examine and report on complaints made in relation to breaches of the Voluntary Codes.

Competition and Consumer Protection Commission (CCPC).

The ASAI has had a long and positive relationship with the Office of the Director of Consumer Affairs and we look forward to continuing our good working relationship with the CCPC.

ComReg

ASAI liaise with ComReg on telecommunications advertising issues and share information on trends that arise in this area. ComReg staff have been very helpful in providing technical guidance to the ASAI Executive. In addition, they also refer complaints on advertising issues to ASAI.

The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs and the Department of Communications, Climate Action and Environment

Mobile Phone and Broadband Taskforce

The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs and the Department of Communications, Climate Action and Environment established a Mobile Phone and Broadband Taskforce to identify measures that could deliver significant improvements in access to high quality mobile and broadband services throughout Ireland. The Taskforce reported in December 2016¹ and made 40 recommendations across a number of areas. Recommendation no 32 recommended that the Advertising Standards Authority review advertising in this area. That Review was carried out in 2017 and a Report submitted to the Taskforce in January 2018. Arising out of that Review, the ASAI has undertaken to prepare guidance for the mobile phone and broadband provider in relation to speed and availability advertising claims.

Department of Communications

OnDemand AudioVisual Media Services Code of Conduct

The ASAI is part of the On-Demand Audiovisual Services Group (ODAS) which drew up a Code of Conduct for On-Demand Services. This Code was drawn up arising out of Section 13.(1) of S.I. No. 258/2010 - European Communities (Audiovisual Media Services) Regulations 2010. The ASAI provides a complaint handling service in relation to certain areas of the Code and attends the annual ODAS briefing with Department of Communication Officials.

Department of Health

The ASAI was a key stakeholder in the development of the Department of Health Voluntary Codes of Practice for Non-Broadcast Media Advertising and Marketing of Food and Non-Alcoholic Beverages, including Sponsorship and Retail Product Placement, introduced earlier this year.

Food Safety Authority for Ireland

The ASAI agreed with the Food Safety Authority for Ireland to use their guidance on food marketing terms to assist ASAI where claims for craft or similar foods are made.

4. European and International Self and Co-Regulation



ASAI is a founder member of the European Advertising Standards Alliance (EASA) which was set up in 1992 as the single voice for advertising self-regulation in Europe. EASA promotes responsible advertising through best practice in self-regulation for the benefit of consumers and business. Its work is vital to the continuation of advertising self-regulation. The ASAI is closely involved through participation on various EASA committees.

EASA is uniquely placed to represent advertising self-regulation at European level. Its members are 27 European self-regulatory organisations (SROs) and European industry associations representing the advertising industry – advertisers, agencies and the media.

EASA's objectives are five-fold:

1. to promote and support self-regulation
2. to develop and promote best practice in the field of self-regulation
3. to manage cross-border complaints
4. to provide information and research
5. to promote convergence amongst national self-regulatory systems

A variety of initiatives and programmes are conducted by EASA staff and members of its Executive Committee in areas of information and training so that effective advertising self-regulation can be developed and strengthened throughout Europe.

EASA engagement with EU Commissioners and officials has resulted in greater understanding of the benefits of advertising self-regulation being part of the regulatory mix, for example, Robert Madelin, then Director General of DG Sanco, said a personal report on "Self-Regulation in the E.U. Advertising Sector"³ that *"My hope is that this report will provide a useful input to ongoing reflection across the E.U. and self-regulation. **This is not so much a debate about self-regulation against hard law, but rather a debate about how law and self-regulation can and should react in modern Europe**". [our emphasis]*

Other developments in recent years include:

- In March 2012 at a conference in Brussels entitled "Advertising We Care" the then Commissioner for Health and Consumer Policy, Mr. John Dalli praised advertising self-regulation and the strengthening of advertising self-regulation mechanisms. Mr. Dalli underlined the EU's brief that *"self-regulation can be a useful tool, amongst others, and one that can usefully complement the work of public enforcers"*.
- In January 2013 Mr. Robert Madelin, Director General of DG Connect was the headline speaker at the ASAI workshop on Responsibility in Marketing Communications. He again supported the self-regulatory model, particularly in the new digital media, and in reply to a question said that *"In Ireland it was likely that the advertising industry had to be more successful at selling the concept to government."*
- With the support of Mr. Madelin, EASA developed a Best Practice Recommendation for Online Behavioural Advertising. Along with other SROs, the ASAI extended its remit in September 2013 and introduced rules to ensure that consumers can exercise choice in relation to the advertising that is delivered to them based on their browsing habits.
- In October 2016, EASA'S International Council, which included Australia, Brazil, Canada, India New Zealand, and South Africa, was set up as a separate global organisation, the International Council of Advertising Self-Regulation (ICAS). ICAS is a global platform promoting responsible ads through the effective implementation of self-regulatory standards. ICAS members include Self-Regulatory Organizations (SROs) and other national,

³ http://ec.europa.eu/consumers/overview/report_advertising_en.pdf

regional and international bodies working to ensure that adverts and marketing communications are legal, honest, truthful and decent.

- In October 2017, at an EASA conference held in Brussels titled 'Advertising and the Consumer Experience of Tomorrow: Self-Regulation Ensuring Responsible Advertising in the Digital Age.' keynote speaker Claire Bury, Deputy Director-General, DG CONNECT, highlighted in her speech that the European Commission appreciates the value of self-regulation and stressed the need for self-regulation and regulation to work together to ensure a swift responsiveness to the rapidly changing digital marketing landscape: *"The digital revolution brings substantial changes to the advertising industry. In this dynamic landscape, we must proactively seize new opportunities and tackle emerging challenges. I believe that the Digital Single Market Strategy and the strands of work that I outlined including, where appropriate, self and co-regulation, will help in this process by making the regulatory framework fit for the digital age, and maintaining sufficient flexibility to stimulate innovation while preserving core European values."*

EASA Membership

EASA's membership consists of self-regulatory organisations and industry organisations supportive of advertising self-regulation. These members are represented throughout the main EASA structure on a 50/50 basis.

SRO members

Currently 27 self-regulatory bodies (SRO's) from 25 European countries are in EASA membership.

Austria	Hungary	Slovenia
Belgium	Ireland	Spain
Bulgaria	Italy	Sweden
Cyprus	Lithuania	Switzerland
Czech Republic	Luxembourg	The Netherlands
Finland	Poland	Turkey
France	Portugal	United Kingdom
Germany	Romania	
Greece	Slovakia	

Industry members

EASA has 14 industry members which can be subdivided under Advertisers, Agencies, Media and others.

Advertisers

World Federation of Advertisers (WFA)

Agencies

European Association of Communications Agencies (EACA)

Media

Association Européenne des Radios (AER)
Association of television and radio sales houses (EGTA)
European Magazine Media Association (EMMA)
European Newspaper Publishers' Association (ENPA)
European Publishers Council (EPC)
Federation of European Direct and Interactive Marketing (FEDMA)

FEPE International
Interactive Advertising Bureau Europe (IAB - Europe)
News Media Europe
Search & Information Industry Association (SIINDA)

Other

Tripartites:

Advertising Information Group
International Advertising Association (IAA)

ICAS Members

SRO / SRO Association Members

Australia	Peru	The Netherlands
Belgium	Philippines	South Africa
Brazil	Portugal	Sweden
Canada	El Salvador	Spain
Chile	France	United Arab Emirates
Colombia	Ireland	United Kingdom
EASA	India	USA
Mexico	Italy	
New Zealand	Romania	

Industry Members

European Publishers Council
FEPE International Out of Home Advertising
International Advertising Association
World Federation of Advertisers

5. Digital Media and Online Behavioural Advertising (OBA)



The role of ASAI in relation to the above is strongly influenced by practices and policies developed by the European Advertising Standards Alliance (EASA), quite often at the prompting of the EU officials with related policy responsibility. The Best Practice Documents for both areas are included as appendices to this note.

Digital Media Remit

The remit of ASAI in this area has been expanded at a planned rate. This approach has allowed the industry an opportunity to adopt their practices at an orderly pace in order to remain compliant with the ASAI Code.

Prior to 2009 the remit included marketing communications in emails and paid-for space and commercial classified. In 2009 the remit was extended to include advertisers' own websites. From 2012 the remit was expanded further to include non-paid for space online and this involves a range of new areas particularly in social media.

In 2013 the ASAI's remit was extended further to encompass Online Behavioural Advertising (OBA). These new rules provide for a high level of consumer transparency and choice regarding OBA.

Practical example of the benefit to consumers of ASAI's extensive digital remit

A key element of the ASAI Code is that advertising should be clearly recognisable as such, and regardless of the medium, the Code applies when material is commercial marketing communications. In recent years, brands and advertisers have started collaborating with bloggers and social media influencers. Brands choose to work with them because of the influence they have on their followers. ASAI has been reaching out to both brands and bloggers to ensure that they identify material that is marketing communications, so that consumers will know when they are being advertised to, and that when material is marketing communications, they comply with the Code rules for example, truthfulness and honesty.

ASAI held an event in April 2018, attended by over 100 bloggers, brands and interested parties where we set out what was expected when commercial collaborations take place. Speakers from EASA, Facebook and Mindshare (a media buying agency) also explained the importance of transparency in this relatively new form of marketing communications.

FAQ's for Consumers/Users

Can I use e-mail?

We provide an online complaints form for ease of submission of complaints. This helps to ensure that we have the relevant information for us to decide if we can investigate or assist you with your complaint.

Will I know that you have received my complaint?

All complaints are acknowledged in writing. If for any reason we cannot be of assistance we will seek to direct you to the appropriate body that can be of assistance.

Will I be advised of my progress?

As advised above you will receive an acknowledgement and will always be advised of the outcome of your complaint. If however, progress on your complaint is delayed, either due to work pressures or the complexity of the complaint, we will issue interim responses.

Is there a time limit on making a complaint?

Complaints must be made within six months of the marketing communication's last appearance.

Why do I need to provide you with my full contact details?

We require your name, address and other relevant contact details so we can record your complaint properly and correspond with you. We also need to ensure that complaints are genuine and not made for malicious reasons. We do not disclose the name of complainants to advertisers unless absolutely necessary and in those circumstances we will ask for your permission first.

Interested parties/competitive complaints

We may ask you to supply information about the type of organisation you work for; this is because the complaints process differs for individuals, competitors and organisations with obvious business or professional interests. We identify complainants who have an interest in the matter if they wish to proceed with their complaint.

Who decides whether or not the complaint should be upheld?

The Complaints Committee is the independent jury that is responsible for deciding if the advertising Code has been breached. This Committee has a majority of lay members and details of membership are provided on our website at <http://www.asai.ie/about-us/complaints-committee/>

What are the rules for marketing communications?

The Code of Standards for Advertising and Marketing Communications in Ireland sets down rules for advertisers, agencies and media owners to follow. They include general rules that state advertising must be responsible, must not mislead or offend, and specific rules that cover advertising to children and advertising for food, alcohol, health, slimming and a range of other areas. A copy of the Code rules are available at:

<http://www.asai.ie/asaicode/>

What types of marketing communications do you deal with?

We regulate the content of advertising, sales promotions and direct marketing in Ireland. We cover virtually all media including broadcast, print, outdoor, online, on-demand and direct mail.

How many complaints do you receive each year?

In 2017, we received 2,101 complaints. Our complaints statistics for other years can be found in our Annual Reports at <http://www.asai.ie/reference-documents/>

Do you need to receive a minimum number of complaints before acting?

No – we only need one admissible complaint to begin an investigation. Our approach is to then check if the Code has been breached.

Why should I consider the complaints system?

The advertising self-regulatory system provides consumers with a free, flexible informal system for dealing with complaints in relation to advertising. It is normally faster than going to court with the related costs.

FAQ's for Industry

Why does industry seek to regulate itself?

A company's brand value contributes significantly to earnings and is directly related to the company's reputation with consumers. It is therefore necessary that advertising is responsible and trusted by consumers.

Advertisers, agencies and the media demonstrate their ethical approach via effective self-regulation that involves compliance and financial support.

What is the value added for contributing to and supporting the system?

- Helps to protect brand value.
- Through systems of competitor complaints and monitoring by ASAI it helps to protect responsible advertisers against rogue traders.
- Reduces the need for legal actions with consumers and competitors with related savings on costs.
- Can reduce the pressure for the introduction of additional statutory regulation.

What is the difference between self-regulation and the law?

Self-regulation

Rules can be amended quickly

→

Adjusts rapidly to change

→

Free for the consumer and less expensive than the courts for industry →

Quicker decision making

→

The law

Rules are generally slower to amend

Harder to keep up-to-date

Expensive to enforce

Even with recent improvements cases will normally take longer to process

Why is the ASAI system of value as opposed to other regulators?

The ASAI is the only regulatory body for marketing communications that operates across all media.

Note

Additional information on ASAI, our Code and procedures are available at www.asai.ie

Appendix A

The Complaints Committee

The Complaints Committee comprises an independent Chairperson, six persons with a background in the advertising business and seven other independent members. The seven independent members are drawn from a range of backgrounds and currently include past senior public servants and a social worker who specialises in the welfare of children.

The Complaints Committee June 2018

Independent Chairperson

Prof. Bairbre Redmond

CMsoc Sc, CQSN, PhD,
Provost, Universitas 21.

Non Advertising Industry Background

Barbara Dooley

*Vice Principal Teaching and Learning,
College of Human Sciences, UCD*

Lisa Garavan

*Social Worker in Child Protection and
Welfare.*

Les Kennedy

*Past: Public Servant, Department of
Transport*

Mary McLoughlin

*Past Senior Civil Servant, the
Department of Children & Youth
Affairs*

Michael O'Keeffe

*Chief Executive, Broadcasting Authority
of Ireland.*

Tom Morgan

*Senior Investigator, Office of the
Ombudsman.*

Dermot Walls,

*Associate Professor, Department of
Biotechnology, DCU*

Advertising Industry Background

Declan Fahy

*Head of Digital Sales, Independent
News and Media*

Finbarr Hayes

Account Director, Javelin Advertising

Ann Marie Lenihan

Chief Executive, Newsbrands Ireland

Denise Manning

Adclearance, RTE

Edel McCabe

Client Service Director, Publicis D

Kate Scott

*Senior European Marketing Manager, ,
Goldstar Pens Europe*