

Advertising Watchdog Shields De Beers, Abandons Consumers and Victims of Israel's Diamond-Funded Human Rights Violations.

Summary

The Advertising Standards Authority (ASA) (UK) has decided that marketing material published by De Beers which claims diamonds that fund apartheid and suspected war crimes by Israel are conflict free is not misleading and does not breach the Advertising Codes.

The Independent Reviewer, Sir Hayden Philips GCB DL, agreed with the ASA saying "I can find nothing irrational or indefensible in the Council's decision."

Anglo American (AA) shareholders, who [raised concerns](#) during recent AGMs about the ethical credential of diamonds sold by De Beers, believe the ASA did not give due consideration to the carefully documented evidence they presented which shows that De Beers diamond supply chain funds grave human rights violations by Israel and, therefore, cannot be conflict free as described in De Beers marketing material and as understood by the average consumer.

Furthermore, given the unorthodox manner in which their complaint was handled and statements from ASA officials they believe that persons dealing with the case came under pressure to reverse a decision to launch a formal investigation of De Beers marketing claims.

Moreover, the shareholders believe that the Independent Reviewer, Sir Hayden Phyllis GCB DL, rubber-stamped the ASA decision and didn't give adequate consideration to the irregularities or shortcomings of the manner in which the ASA dealt with the case and failed to offer any justification for the inherent contradictions of the ASA's conclusions.

Background

From the outset we were aware that the odds were stacked against our group of AA shareholders (Shareholders Against Blood Diamonds (SABD)) in our David versus Goliath stand against De Beers. The world's largest diamond company has endless resources to defend against the charge that De Beers and Forevermark diamonds aren't conflict free and are in fact blood diamonds.

What we didn't expect was that the ASA would abandon their own rules and procedures with the result that De Beers didn't have to provide evidence to substantiate their "conflict free" claims because the ASA refused to formally investigate the comprehensive, fully referenced, evidence-based complaint.

In June 2020 we [lodged a complaint with the ASA](#) challenging claims by De Beers that their diamonds are conflict free. We cited 4 adverts which state that De Beers diamonds are “...conflict-free not just at the source of origin but throughout their journey to stores ... are 100% conflict-free...every piece of De Beers jewellery is ethically produced and 100% conflict-free.”

The complaint provides evidence showing how companies in De Beers supply chain directly and indirectly fund the Israeli apartheid regime and its military.

We argued that “Taking into account the probable impact of the description of De Beer’s diamonds as “conflict-free” or “100% conflict-free” as a whole and in context...this description is likely to deceive the average consumer and is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.”

The Advertising Codes clearly prohibit the publication of misleading marketing communications.

Marketing communications are misleading if they

- are likely to deceive consumers and
- are likely to cause consumers to take transactional decisions that they would not otherwise have taken.

A "transactional decision" is any decision taken by a consumer, whether it is to act or not act, about whether, how and on what terms to buy, pay in whole or in part for, retain or dispose of a product or whether, how and on what terms to exercise a contractual right in relation to a product.

<https://bit.ly/3LhDu1l>

In May 2021, after an inordinate 315 days deliberation, the ASA informed us they had decided not to formally investigate De Beers marketing claims and could take the case no further.

22. Our turnaround target for 'no additional investigation after Council decision' cases is 20 working days from the receipt of the complaint to notification of the decision.

<https://bit.ly/3ru8zqM>

According to the ASA the term conflict-free “would be understood to apply specifically to the conditions and the presence or absence of violence affecting the people and areas where the diamonds are mined.”

The ASA and Sir Hayden Philips GCB DL reached this conclusion despite the fact that the advertisements that were the subject of our complaint were for cut and polished diamonds at the consumer end of the supply chain – the target audience of De Beers marketing efforts – and not rough diamonds at the mining end.

Most people, especially consumers seeking conflict-free diamonds, would probably consider it irrational, indefensible and fraudulent for a company to claim diamonds that fund gross human rights violations at any point in the supply chain are conflict-free.

When asked by Professional Jeweller magazine for comment about the case De Beers didn't avail of the opportunity to rebut the charge and chose instead to use the shield provided by the ASA merely saying "[we respect the findings of the independent regulator on this matter.](#)"

How The Complaint Was Handled

The manner in which the ASA dealt with our complaint raises serious questions about the impartiality of the ASA or at least of those in positions of influence within the organisation.

Four months after lodging the complaint, we were still waiting to be contacted by the ASA when we noticed that A.B.T. Diamonds Ltd, one of the companies we cited in the complaint, had been removed from De Beers' [customer directory](#).

I phoned the ASA and was put in touch with a Complaints Executive. She apologised for the delay in handling the case saying she didn't know why nothing had been done for so long. She said the complaint seemed to have gone through "slightly different channels" from normal and that it was now "back on track".

I informed her about the removal of A.B.T. Diamonds Ltd from De Beers' customer directory. When asked if anyone from the ASA had contacted De Beers in relation to the complaint, she said she "didn't think so".

De Beers' website confirmed that A.B.T. Diamonds Ltd and the owner "made significant donations" to the Israeli military. That information was deleted in March 2020 but it can still be seen in an archived copy linked below.

The company and its owner has made significant contributions to the Israel Defense Forces and the Association for the Wellbeing of Israel's Soldiers,

<https://bit.ly/3ruXKVp>

Somewhat fortuitously for De Beers, even though the ASA had, apparently, not informed them about the complaint, A.B.T. Diamonds Ltd. "resigned" their coveted position as a De Beers' customer in August 2020, a few weeks after being cited in the complaint. They did so "for commercial reasons" according to AA chairman Stuart Chambers in response to questions raised by SABD during the 2021 AGM on May 5th.

Of the 36,342 complaints resolved by the ASA in 2020 it was, perhaps, unfortunate that our comprehensive thirty-eight-page complaint challenging the world's largest diamond company happened to go astray.

In 2020, we resolved 36,342 complaints relating to 22,823 ads.

<https://bit.ly/336Qypi>

In phone call a few days later the Complaints Executive indicated that it would be an investigated complaint and a published ruling and warned it would be likely that De Beers' legal people would get involved.

In an email on November 10th she confirmed she had conducted an initial review, that SABD had raised some valid points and that she had passed the complaint to the Investigations team.

Between November 31st 2020 and January 15th 2021, I sent four emails asking for contact details of the Investigations Executive dealing with the case. We were never assigned an Investigations Executive, as would be the norm according to the procedure outlined on the ASA website.

The Complaints Executive replied on 21st January in an email that inaccurately referenced details from the complaint and gave the distinct impression that the ASA were only concentrating on the mining side of De Beers supply chain rather than on the polished diamonds at the retail end which was the focus of our complaint.

The email referred to an example of violence linked to the diamond mining industry in Zimbabwe in 2008 and asked if we could provide "more recent examples" of violence linked to diamond mining – this despite the fact that the complaint explicitly relates to cut and polished diamonds and not to rough diamonds and we had already provided numerous recent examples of violence linked to the Israeli diamond industry.

We were surprised and concerned that the ASA were diverging away from the clear understanding of the issues they appeared to have just a few months earlier.

We replied clarifying our concerns and providing further evidence of human rights violations linked to the Israeli diamond industry.

I tried to contact the Complaints Executive several times to get an update on the progress of the investigation in the two months prior to the AA AGM on May 5th. Despite leaving a number of recorded phone messages and sending several emails I received no response.

During the AGM the AA chairman Stuart Chambers was asked about the ASA investigation. He said they were unaware of any ASA investigation and that they had not been contacted by the ASA.

At that moment we realised that the ASA had misled us. Ten months after we lodged the complaint they still hadn't contacted De Beers.

Despite emphasising a number of times in phone calls and emails that the case was complex the ASA hadn't sought input or answers from De Beers who, presumably, would have the expertise and knowledge to clarify any issues and evidence, which they must hold, to substantiate their marketing claims.

The Advertising Codes require that advertisers hold evidence to prove the claims that they make before they are published or aired. We expect all advertisers to follow the rules when creating their ad campaigns.

<https://bit.ly/3gyBX8V>

Twenty-four hours after the AGM I received an email from a new person in the ASA, an Operations Manager, Complaints.

She acknowledged that the case had not followed the route outlined on their website without offering an explanation as to why it was treated differently.

She wrote "there is no universally accepted definition of the term 'conflict-free'".

The average consumer doesn't need to consult a dictionary to understand what is meant by the term conflict free. There isn't a definition because it is a self-explanatory, factual statement, something is either free from conflict or it isn't.

She said it is "likely that it would be understood to apply specifically to the conditions and the presence or absence of violence affecting the people and areas where the diamonds are mined" but provided no evidence to back this up.

SABD believe it is more likely to be understood to mean what it says in the advertisements, that the diamonds "are conflict-free not just at the source of origin but throughout their journey to stores."

Advertisements should make any limitation clear and include a qualifying statement to that effect in accordance with Advertising Codes

Qualify claims where necessary

Often, qualifications are necessary to ensure that ads do not mislead. They can provide additional pieces of information that ensure consumers properly understand the headline or primary claims being made.

<https://bit.ly/35XZZsh>

The email then set criteria that would need to be met in order for the ASA to consider the case further.

“With evidence that De Beers were operating in violent conditions affecting the areas directly involved, we could consider whether their use of the term ‘conflict-free’ is likely to mislead UK consumers.”

Many of De Beers’ business partners operate in one of the world’s most protracted conflict zones where revenue for the diamond industry is a significant source of funding for grave human rights violations but the evidence documenting this in the complaint appears to have been ignored or deemed unimportant and irrelevant by the ASA.

Referencing Zimbabwe, the Operations Manager wrote: “While clearly terrible, the violence against the people of Marange is a historical matter that would be difficult for us to use as evidence against any current advertising claim. If you are aware of De Beers operating in a ‘conflict’ area today, however, please let us know.

I regret to tell you that our conclusion is that, without such evidence we’re unable to take the case further.”

Despite the abundance of evidence provided to show that De Beers’ supply chain is inextricably linked to the killing and injury of thousands of innocent men, women and children by Israel that violence, apparently, wasn’t terrible enough for the ASA to consider relevant.

The ASA ignored that evidence-base in glaring contradiction of the facts.

Independence: We will continue to regulate without fear or favour, taking account of the evidence-base at all times.

<https://bit.ly/3Jc2sxv>

In a phone conversation a few days later the Operations Manager told me that they were asked to reconsider their early decision to carry out an investigation and if that was the most appropriate route.

This explained the change in approach which we detected in the email from the Complaints Executive some months earlier.

We were not told who had asked them to reconsider their decision to carry out a formal investigation.

By not carrying out a formal investigation the ASA ensured that De Beers would not have to provide evidence to substantiate the conflict free claim. The details of the complaint and any investigation wouldn't have to be published on the ASA website which, regardless of the outcome, would expose the links between De Beers' diamond supply chain and grave human rights violations by Israel.

During the phone conversation the Operations Manager accepted that De Beers' advertisements claim their diamonds are conflict free from source to store but said they looked at it from a different perspective because the conflict had nothing to do with the mining process.

This skewed logic suggests that war crimes or crimes against humanity in a supply chain some arbitrary distance from a mining area would not be considered conflict and wouldn't be a cause of concern for consumers seeking conflict free diamonds.

She said they have to consider whether the case is one for the ASA, that the issue is too enormous and needs to be tackled via worldwide agreement and not by one isolated regulator.

This signalled the ASA's desired to wash their hands of the case and pass the responsibility for De Beers' advertising claims to the Kimberley Process (KP) which regulates the trade in rough diamonds.

The ASA wasn't asked to apply rules for the diamond/jewellery industry any different to those that apply to all advertisers. It is the responsibility and duty of the ASA to ensure all advertisers abide by the Advertising Codes which clearly stipulate that they must not mislead consumers.

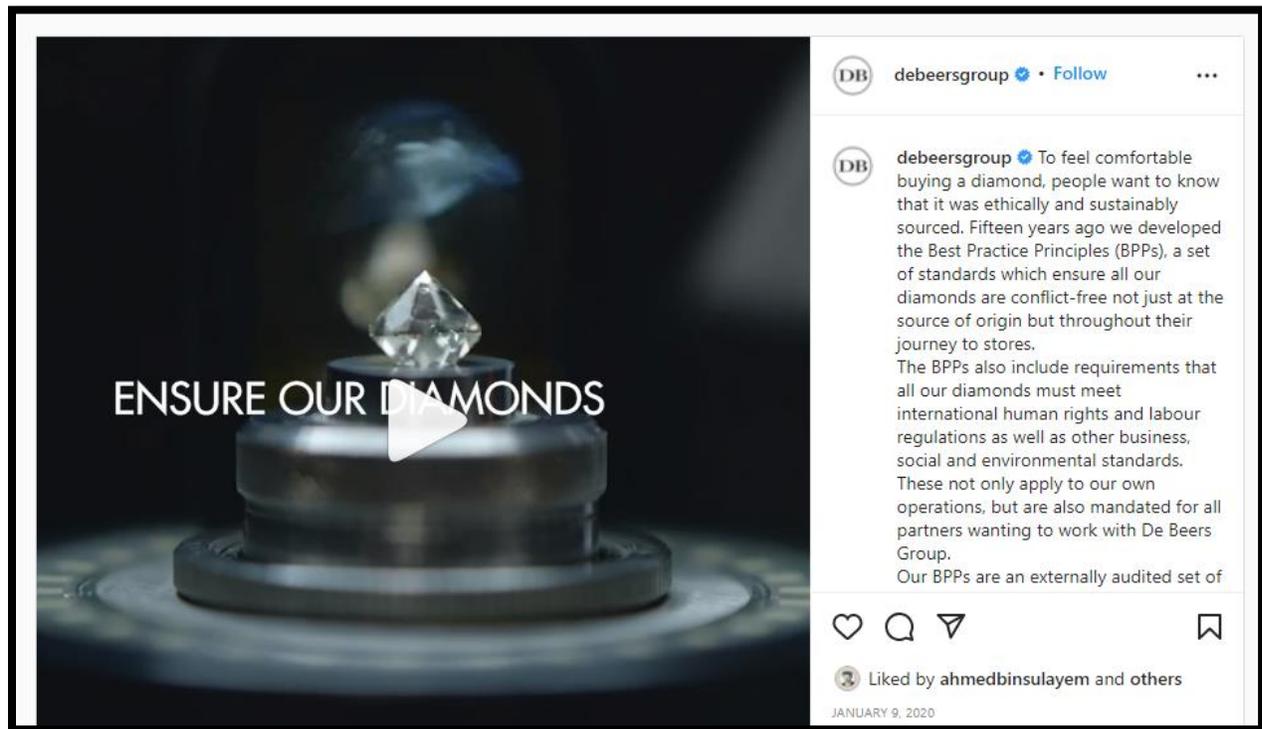
3.3 Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

<https://bit.ly/35XZZsh>

She then suggested SABD could seek a review of the decision and said it should be restricted to just two pages.

We lodged an [application for review](#) of the ASA decision on 26th May 2021.

Consideration of that application took the ASA a further 134 days after which they rejected the appeal. The case summary presented to the ASA Council was replete with inaccuracies and a shadow of the robust case we had submitted. Two advertisements, including the one posted below, were omitted from the summary presented to the Council even though they are still live on De Beers Instagram page.



https://www.instagram.com/p/B7GR_qSFg8k/

Following this SABD lodged an [application for an “Independent Review”](#) of the Council decision on 25th October.

The Independent Reviewer, Sir Hayden Phillips GCB DL sided with the ASA Council saying: “Whether or not you and your colleagues in the Shareholders Against Blood Diamonds group are right about de Beers diamonds being associated with human rights atrocities committed by the Israeli authorities, the ASA took the view that was not relevant to the claims in the ads as the Council considered they would be understood by the average consumer.”

So, if the average consumer has been hoodwinked by false and misleading marketing claims the advertiser can continue to publish misleading advertisements because the consumer believes the false and misleading claims to be true.

This is the situation the ASA and the Independent Reviewer have endorsed.

The independent Reviewer echoed the hand-washing alluded to by the ASA saying “It seems to me that your disagreement is not really with the ASA and its Council but with the narrowness of the wording of the Kimberley Process standard which fails to capture some of the process by which cut and polished diamonds reach consumers; and does not deal with alleged violations of human rights committed by governments rather than rebel forces.”

He acknowledges that KP certification doesn't exclude diamonds linked to human rights violations by governments but doesn't see a problem with De Beers claiming their diamonds are conflict free based on compliance with the KP.

Conclusion

If De Beers had been asked and could provide evidence to substantiate their claims the complaint could have been resolved in a matter of days.

Anyone familiar with the facts might well believe the ASA didn't formally investigate the complaint because the evidence presented was so damning that the inevitable publicity would likely be very damaging for De Beers, AA shareholders and the Israeli economy which is heavily reliant on the diamond industry.

SABD believe the ASA failed to act to correct publication of what we believe are grossly misleading, possibly fraudulent, advertisements. We believe they acted to protect corporate and state interests rather than protect victims and consumers.

The diamond industry has significant influence with decision makers in Israel and under the spotlight of publicity the government would have had to consider the potential consequences for the country's No.1 export industry before committing grave human rights violations.

Had the ASA acted in accordance with their prioritisation principles and considered the harm caused by diamond-funded human rights violations, including the 11 day bombardment of Gaza in May 2021 during which Israel Killed 313 Palestinians including 71 children then, perhaps, the ASA Council would have reached a different conclusion.

Complaints are assessed against our prioritisation principles to determine the most appropriate course of action. Under these principles we will:

- consider what harm or detriment has occurred or might occur;
- balance the risk of taking action versus inaction;
- consider the likely impact of our intervention; and
- consider what resource would be proportionate to the problem to be tackled.

<https://bit.ly/3J4ja1G>

On July 27th Human Rights Watch issued a report accusing Israel of carrying out attacks that “[apparently amount to war crimes](#)”.

It is therefore difficult to understand how the ASA, which claims to act without fear or favour, can credibly justify not carrying out a formal investigation of De Beers marketing claims when the evidence presented clearly demonstrates direct linkage to the Israeli military.

They refused to do so because they “were asked to reconsider” their initial decision. We believe the evidence suggests that the Complaints Executive who recommended a formal investigation came under pressure to reverse that decision and may have been removed from the case.

Despite repeatedly saying the case was complex and not straight forward the ASA didn’t consult with any experts outside the organisation who would be knowledgeable about the issues under consideration.

Under the **advertising rules**, it is the responsibility of advertisers to ensure they hold appropriate evidence to back up claims made in their ads. Sometimes that evidence is of a highly technical or specialised nature, particularly in fields such as health or engineering.

When the ASA or CAP is asked to assess that evidence, they may, if necessary, appoint an independent expert to give an impartial and confidential view on whether it supports the claim that is being made. We always aim to find the most appropriate expert to review that evidence, either from the group of experts we use regularly or by seeking out someone new with the relevant expertise.

<https://bit.ly/3Lax3NE>

The flaws of self-regulation so evident in the diamond industry in the guise of the discredited Kimberley Process are compounded for diamond buyers by self-regulation in the advertising industry which provides an additional layer of cover for the trade in blood diamonds that fund government forces.

When self-regulation becomes selective-regulation society loses.

We welcome the fact that De Beers no longer source diamonds from A.B.T. Diamonds Ltd and will continue to pressure the company to cut ties with other companies in their supply chain that fund apartheid and grave human rights violations by Israel.

As Valentine's Day approaches those seeking to provide a loved one with a symbol of their love should be mindful of the bloodshed and violence that continues to be funded by so-called "conflict free" diamonds.

Jenny Hall
Shareholder Against Blood Diamonds