



ADVERTISING STANDARDS AUTHORITY

**FINAL REPORT ON THE REVIEW
OF THE
CODE FOR ADVERTISING TO CHILDREN
AND THE
CODE FOR ADVERTISING OF FOOD**

March 2010

Summary of recommendations:

- That the ASA adopt the amended Code for Advertising to Children, the Code for Advertising of Food and the new Children's Code for Advertising Food included in Appendix A to this report. (p.8)
- That the ASA put in place a process to address code coverage of broader marketing communications for marketing of HFSS food with significant appeal to children. (p.9)
- That the following wording be included in the two revised codes, and the new Children's Code for Advertising Food to provide further context to the term "social responsibility". (p.10)

““Social Responsibility” is embodied in the principles and guidelines of the Code and is integral to the consideration of the Advertising Standards Complaints Board. Previous decisions of the Complaints Board also guide its determinations, as do generally prevailing community standards.”

And

“In interpreting the code emphasis will be placed on compliance with both the principles and the spirit and intention of the code. The guidelines are examples, by no means exhaustive of how the principles are to be interpreted and applied. Upon considering a complaint, the ASCB is vested with discretion to ensure a commonsense outcome.””

- That the ASA invite all media members to consider establishing a policy similar to “Getting It Right for Children” (currently an initiative of the NZ Television Broadcasters Council) where relevant to their audiences. (p.12)
- That the Association of New Zealand Advertisers (ANZA) be invited to consider the need for a service to pre-vet advertising of HFSS foods. (p.13)
- That the ASA consider setting up a process to monitor a sample of HFSS advertising to test for code compliance. (p.13)
- That the ASA consider developing additional resources to publicise and explain the complaints process in more detail.
- That the ASA consider developing a resource to assist with the understanding of the costs of compliance in relation to self-regulation. (p.14)
- That there be no change to the definition of “children” but that a reference to young persons (aged 14 to 17 years) is included in the Code for Advertising of Food with regard to a particular duty of care to those young persons. (p.15)

Background to the review

The Code for Advertising to Children and the Code for Advertising of Food were last reviewed in 2006. As a result of that review a number of changes were made to the codes and specific guidelines introduced for the advertising of food high in fat, salt and / or sugar. In August 2007, the Health Select Committee tabled its report on the Inquiry into Obesity and Type 2 Diabetes in New Zealand. The Committee's recommendations included a range of matters relating to the advertising of foods and drinks high in fat, salt and sugar. The Committee's report is available at www.parliament.nz.

In the Government's response to the Select Committee Report, it encouraged industry consideration of a number of recommendations including revision of the Code for Advertising to Children. In 2009, the ASA decided to review this Code and the Code for Advertising of Food. The recommendations in the Government response also included the coverage of product placement, sponsorship and sales promotions. The Government's response to the Select Committee Report is also available on www.parliament.nz

Terms of Reference for the Code Review

1. To examine the operation and content of the existing Codes
2. To receive and review submissions on the two Codes
3. To recommend any amendments of the Codes to the ASA

Review Panel

The ASA appointed a seven member panel with three public members and three ASA members. The Panel was chaired by a former Chairman of the ASA, Lincoln Gould.

The panel members are:

Chairman:

Lincoln Gould Chief Executive, Booksellers New Zealand Ltd

Public members:

Bindy Barclay Social Researcher with special interest in
Children's media issues

Cynthia Maling National Programme Manager, HEHA (to June 2009)
Manager, Research and Effective Practice (from June 2009)
Ministry of Health

Jenny Robson Chairman, Advertising Standards Complaints Board

Industry members:

Jeremy Irwin	Executive Director, Association of New Zealand Advertisers
Rick Friesen	Executive Director, Television Broadcasters Council
Rick Osborne	Chief Executive, Communication Agencies Association

Process

The panel met and agreed the terms of reference and the process to be followed. The panel agreed that a consensus approach was appropriate and acknowledged that this was likely to require a level of compromise from all panel members.

The review was then advertised in a range of media as well as letters inviting submissions which were sent to a wide-range of organisations that the panel was aware had an interest in advertising of food and advertising to children. The consultation document was also published on the ASA website. Thirty five submissions were received from a range of public health organisations, industry bodies, advertisers, academics, and representatives from consumer and children's organisations.

The panel met a number of times in 2009 to consider the current content of the codes, review the submissions received and also note recent relevant decisions of the Advertising Standards Complaints Board (ASCB). While the review of the codes was intended to be complete by October 2009, the importance of the matters under discussion, and the challenges of co-ordinating a panel with a range of commitments, meant that the review process took longer than originally planned. Draft revised codes were sent to submitters for further comment in November 2009. The panel also asked submitters to comment on a new draft code, the Children's Code for Advertising Food. This new code was developed by the panel directly in response to the issues raised by submitters which particularly focused on food advertising that impacts on children.

Eleven submitters provided comments on the revised and new codes following the second round of consultation. The panel was pleased that submitters who commented in the second round of consultation clearly supported the development of a specific code addressing food advertising and children. The Panel considered this level of support recognised the importance of a level of protection for children from a broad spectrum of representative submitters.

A list of submitters from both rounds of consultation is attached in Appendix B.

The panel is very appreciative of the time and effort put into the submissions which were of great assistance in identifying issues of concern and providing guidance to the panel in its work to review the codes.

Following the second round of consultation, the panel met again in January 2010 to discuss the feedback on the codes from submitters and to consider any further amendments.

The draft revised codes and the new code were finalised by the panel along with this report and referred to the Advertising Standards Authority for its consideration and adoption in March 2010.

Background information noted by the panel

Current definition of “advertisement”

The Advertising Standards Complaints Board and the Advertising Standards Appeal Board are the final arbiters of the interpretation of the ASA Codes in our system. The current definition of advertisement is set out below.

For the purposes of the Codes:

- The word "advertisement" is to be taken in its broadest sense to embrace any form of advertising and includes advertising which promotes the interest of any person, product or service, imparts information, educates, or advocates an idea, belief, political viewpoint or opportunity.
- The word “product” includes goods, services and facilities whether paid or given free.
- The word “consumer” refers to any person to whom an advertisement is addressed or is likely to be reached by it whether as a final consumer or as a trade customer or user.
- The definition includes advertising in all traditional media and new media such as online advertising, including websites. Emails and SMS messaging that are selling or promoting a product, service, idea or opportunity are also covered by the codes, as are neck labels and promotions attached to a product. Other examples include posters, pamphlets and billboards (whether stationary or mobile) and addressed or unaddressed mail.
- Where complaints have been received concerning advertisements placed in publications, programmes or interactive media, which
 - i. originate outside New Zealand; and
 - ii. are intended primarily for audiences outside New Zealand but also reach New Zealand audiences

the ASCB and ASCAB will take into account the following guidelines:

1. Compliance with the advertising rules in the country of origin.
2. The size and composition of the New Zealand audience.
3. Whether the advertising is targeted at New Zealand consumers.
4. The accessibility of the product to New Zealand consumers.
5. Whether best endeavours have been made to exclude advertisements which would clearly breach the Advertising Codes of Practice. This could be particularly relevant in the case of live presentations of overseas events to a substantial number of New Zealanders.

The role and composition of the Advertising Standards Complaints Board

The Advertising Standards Complaints Board (ASCB) is an independent Board. It was established by the ASA in March 1988 to adjudicate on complaints about advertisements which complainants believe breach the Advertising Codes of Practice.

Its three main functions are:

1. To adjudicate on complaints received about advertisements, which may be in breach of the Codes of Practice.
2. To advise the ASA on the interpretation of the Codes and possible improvements to the Codes.
3. To report to the ASA on any aspect of advertising which may be causing concern.

The ASCB meets monthly and in the event of urgent complaints is able to meet at short notice.

There are five public members on the Complaints Board and four industry members. The Complaints Board carefully consider all complaints put before it and all complaints received about advertisements are the subject of a Chairman's Ruling or a Complaints Board Decision, which are sent to all parties to the complaint and also released to the public and the media via the ASA website, www.asa.co.nz.

Summary of recent ASCB decision statistics

2007	Upheld	Not Upheld	No Grounds	Withdrawn	Total
Food Code	6	10	7	1	24
Children's Code	3	3	3	0	9

2008	Upheld	Not Upheld	No Grounds	Withdrawn	Total
Food Code	7	7	11	1	26
Children's Code	1	1	4	0	6

2009	Upheld	Not Upheld	No Grounds	Withdrawn	Total
Food Code	5	5	1	1	12
Children's Code	1	1	1	0	3

Advertising codes of practice complementary to legislation

The panel also noted that while the Advertising Standards Authority exercises a "public function" in relation to the self-regulation of advertising content, it does not undertake this role in isolation. The panel is aware of the range of primary and secondary legislation that provides a range of consumer protections. This legislation includes the Fair Trading Act, which governs matters relating to misleading and deceptive conduct in trade; and the Consumer Guarantees Act, which gives consumers support for the receipt of goods and services that are fit for purpose. In addition, the Broadcasting Act governs the Broadcasting Standards Authority in relation to programme standards on radio and television and the Films, Videos and Publications Classification Act which governs the work of the Classification Office.

Key Issues raised by submitters

The panel appreciates the detailed comments provided by submitters, and found the comments on the specific principles and guidelines in the existing codes very helpful.

The panel also appreciates the broad range of submissions it received from government and non-government agencies, the advertising and food industries, and advocates for children and healthy eating. It acknowledges the constructive approach taken by all submitters in specifically addressing the code wording and the matters set out in the consultation document. The panel recognises it takes engagement from both advertisers and consumers to ensure effective advertising self-regulation.

The panel notes that some submitters question the value of advertising self-regulation with regard to restricting food advertising, particularly to children. The panel is aware that a number of groups have concerns with regard to the codes and complaints system run by the Advertising Standards Authority.

However, in the context of the review the panel has been asked to conduct, it focused on submissions in relation to the content of the current codes and the matters raised by submitters in response to the consultation document.

In doing so, the Panel identified the 10 key issues. In no particular order, these issues are discussed below, with recommendations for action.

1. Submitters' focus on advertising food to children

In reviewing the submissions received on the two codes, it became clear that although the Code for Advertising to Children covers a wide range of matters and the Code for Advertising of Food covers food advertising to people of all ages, the weight of submissions focused on the marketing of food to, and for, children.

In addition, in reviewing recent ASCB Decisions the panel noted there were challenges around the application of parts of the existing codes with regard to whether or not advertising with a level of appeal to children was actually directed to them.

The panel accepted that ASCB had a level of discretion under the current codes in assessing whether or not advertising was directed at, or had significant appeal to, children. However, it also recognised that children have access to a wide range of media, and concern was expressed by a number of submitters about food and beverage advertising that children were exposed to, outside of specific media to children (children's magazines, children's viewing times on television). The panel, early in its deliberations, decided that a new code specific to food advertising and children would provide clearer guidelines to the advertising industry and the public about limits in relation to this type of advertising.

As part of this initiative, the panel debated wording that would accurately reflect the intent of the code to cover advertising that children may see and be influenced by, whether it was overtly targeted at them or not. The ASCB is vested with the discretion to ensure commonsense outcomes and the panel noted that it is not the intent of the new code to restrict every advertisement for food a child may happen to see. However, an advertisement for a product with significant appeal to children will

have to take the new code into account with regard to its advertising content and media placement to ensure code compliance. The new code therefore applies to “all advertisements for food and beverages that influence children”.

The new code is named the “Children’s Code for Advertising Food”. The panel recognised that while submitters raised a range of issues about food advertising, the main concerns were about advertising of food and beverages high in fat, salt and / or sugar that had appeal to or influenced children in their food choices. While a due sense of social responsibility is required in all advertising – a higher standard is required of advertising that may influence children, taking into account content, audience, medium and product. (See also Issue 3, page 9)

The phrase “foods high in fat, salt and / or sugar” (HFSS) is mentioned above and also referred to in a number of guidelines in the two food codes. The panel discussed this wording at length and accepts that both the industry and consumers may have preferred a clear definition of what foods this wording covers.

However, the panel considered that as there was no universally accepted system of identifying HFSS foods, it was not appropriate to provide more arbitrary guidelines on this issue in the advertising codes. It will be clear from this report and from the Children’s Code for Advertising Food that it’s content, spirit and intent is to guide the advertising of foods to children that are energy dense and have little or no nutrient value.

The panel noted that the Ministry of Health’s Food Classification System of “everyday, sometimes and occasional food” is used to guide the application of the Children’s Food rating system used in television advertising. The Panel considered this may be one of the tools used by the advertising industry in assessing their products in relation to HFSS content. In addition, the panel noted that major food manufacturers and advertisers have highly skilled staff in the area of nutrition. Whether or not a food fits into the HFSS category and therefore the relevant guidelines apply, is a matter that can be tested via complaints to the ASCB, as it is under the current codes. Finally in retaining the HFSS wording, the panel noted that it had been in common use for a number of years and included in the previous codes, with no significant issues raised.

Following the development of the new code as outlined above, there were consequential amendments to the two codes under review. References to food advertising have been removed from the Code for Advertising to Children, and this code now applies to all products and services advertised to children, excluding food and beverages. Further, the Code for Advertising of Food has been amended to remove the principle that specifically covered food advertising directed at children, and this is now covered by the Children’s Code for Advertising Food.

Recommendation: That the ASA adopt the amended Code for Advertising to Children, the Code for Advertising of Food and the new Children’s Code for Advertising Food included in Appendix A to this report.

2. Breadth of code coverage and addressing “below the line” promotion

The Panel noted the issues raised by submitters about the scope of the code coverage. Discussion included product placement, adver-gaming, digital media, ambient and experiential advertising, nano-targeting and avatars as shadow

consumers, along with the wider promotion of products, including packaging and sponsorship.

The current definition of “advertisement” used by the ASCB in addressing jurisdiction was noted and the panel agreed that it was reasonably wide. It also noted issues relating to the proportion of New Zealand generated content versus overseas content, particularly with regard to broadcast media in relation to product placement. The panel was advised that the ASCB regularly dealt with complaints about internet advertising, and the only limitation related to the intended audience, as per the definition on page 5 of this report.

The Panel noted that the ASA was currently in the process of putting in place a Liquor Promotions Code to cover naming, labelling, packaging and promotion of liquor products. The Panel also noted that best practice self-regulation recommends the application of self-regulatory codes to all marketing communications for products and services.

Consensus was reached to recommend to the ASA that serious consideration be given to addressing the issues of labelling, packaging and promotion not currently covered by the advertising codes specifically in relation to HFSS food with significant appeal to children.

Recommendation: That the ASA put in place a process to address code coverage of broader marketing communications for marketing of HFSS food with significant appeal to children.

3. Definition of “social responsibility”

The Panel noted that a number of submitters requested clarification for a number of definitions – and in particular, clear parameters for what is meant by the term “social responsibility”.

The Panel discussed this matter at length. The Panel agreed that the word “responsibility” was an important word to use about the content and context of advertising. A range of issues were considered – including the use of the terminology across all of the ASA codes of practice. One submitter recommended that the wording be removed and replaced with a requirement for advertising to be “in line with community expectations” as this could be a more easily quantifiable measurement. The panel agreed that this term did not necessarily acknowledge the diversity of communities. The panel was advised that as part of its consideration of complaints, the Advertising Standards Complaints Board (ASCB) regularly takes the communities likely to be affected by the advertising into account and the panel notes that these communities differ, depending on the context, medium, audience and product.

The Panel acknowledged the challenges for both complainants and the industry around the lack of a definition of “social responsibility”. However, it also acknowledged there is a substantial body of precedent decisions from the Advertising Standards Complaints Board (ASCB) providing context for the interpretation of both a due sense and a high standard of social responsibility.

It was noted that one of the benefits of the principle and rule approach in the Advertising Codes of Practice is that the interpretation of the codes can move in response to what the community may find more, or less, acceptable. A simple

example is that society today is more tolerant of certain words such as ‘bugger’ and ‘bloody idiot’, which would not have been acceptable 20 years ago in advertising. On the other hand, tolerance of violence in advertisements has become more conservative over the same time period.

The panel considered that the following statement, to be included in the codes, provides some context for all users on the application of the codes and the value of a level of discretion for the ASCB in its decision-making.

“In interpreting the code emphasis will be placed on compliance with both the principles and the spirit and intention of the code. The guidelines are examples, by no means exhaustive, of how the principles are to be interpreted and applied. Upon complaint, the ASCB is vested with discretion to ensure a commonsense outcome.”

The panel acknowledged that while a number of guidelines are included in the codes to illustrate the principles of a due sense or high standard of social responsibility – the ASCB is not restricted in its interpretation of the principle to the actual listed guidelines as indicated above. It is also possible for an advertisement to be in breach of the principle without being in breach of a specific guideline.

The panel noted that when the ASCB is looking at a complaint with regard to social responsibility, they consider a multitude of factors based on the matters it raises. These can include the nature of the advertisement, product, medium, timing, demographics of the intended audience, number and nature of complaints received and the requirements of the specific rules and guidelines in the ASA Codes of Practice. In addition, the panel noted that overlaying these considerations are the views of the ASCB members themselves consisting of public and industry representatives, from a wide range of backgrounds who all bring their views to bear on the consideration as to whether an advertisement is socially responsible. It agreed with the intention to vest a level of discretion with the ASCB.

Recommendation: that the following wording be included in the two revised codes, along with the new Children’s Code for Advertising Food to provide further context to the term “social responsibility”.

““Social Responsibility” is embodied in the principles and guidelines of the Code and is integral to the consideration of the Advertising Standards Complaints Board. Previous decisions of the Complaints Board also guide its determinations, as do generally prevailing community standards.”

And

“In interpreting the code emphasis will be placed on compliance with both the principles and the spirit and intention of the code. The guidelines are examples, by no means exhaustive of how the principles are to be interpreted and applied. Upon complaint, the ASCB is vested with discretion to ensure a commonsense outcome.””

4. Code clarity and role of self-regulation in wider regulatory environment

The discussion under this heading focused on the need for the codes to be simple and clear for the advertisers, agencies and the media in ensuring code compliance **and** for consumers in relation to the complaints process.

Suggestions included being clear about the purpose of the codes and what outcome is expected in relation to the content of the advertisements they apply to.

The Panel has reviewed and amended the purpose of each code to give clarity. In reviewing the codes the Panel noted that some submitters queried the use of the word “should” where, in their view, the word “must” was more appropriate. The Panel was advised that as the principles of self-regulation are based on voluntary involvement and compliance, the use of the word “must” was not appropriate. However, it was also noted that where the word “should” is used, in practice, both the industry and the ASCB treat it as a requirement under the codes – not as an optional choice.

The panel also noted under this heading that self-regulation does not exist in isolation. It is complementary to any relevant legislation, both acts and regulations. In addition, both advertisers and a number of media organisations also have internal rules and guidelines about advertising to children. It was noted that the Television Broadcasters’ Council supports the Getting it Right for Children Guidelines including the Children’s Food rating system which prevents the advertising of “occasional” foods in children’s viewing times on free-to-air television. For further commentary on this see point 5 below.

5. Volume, timing, placement of advertising

A number of submitters commented on the restrictions on television advertising not applying to times outside of acknowledged television programming for children. In addition recommendations were received with regard to the broadcasters approach of “Getting It Right for Children” to apply to all media.

The overall volume of advertising for HFSS foods was also raised.

The Panel noted that a number of submitters made specific recommendations about this issue. These recommendations included limits on the number of advertisements played on television across a broader range of programme times. The Television Broadcasters Council confirmed that a number of limits were currently in place in relation to advertising played during children’s programmes and that these included:

- Advertisements during school-age children’s programming will not be repeated excessively.
- No advertisement may be played more than twice within an hour per channel per day.
- No advertisement may be played more than three times within each specified school-age children’s programming time period per channel, per day.

The panel noted that these restrictions had been initiated by the Broadcasters as part of their “Getting It Right for Children” policy. It noted that this policy also included the CF (Children’s Food) rating which restricted products high in fat, salt and / or sugar advertising during children’s programmes. The panel noted that some submitters had referred to the “Getting It Right for Children” policy and queried whether or not other media also had guidelines for advertising in environments where children are

likely to see advertisements. The panel agreed that all ASA media members should be invited to consider development of a similar policy, if one was not already in place. The panel accepted that some media have limited exposure to children, for example, some adult magazine titles and some radio stations with an older listener demographic. On the other hand, media including interactive and outdoor may have a higher level of exposure and this should be taken into account with regard to frequency and location for advertising that influences children.

A number of submitters called for advertising restrictions around television viewing times to be included in the codes under review. The panel noted that the only code containing a timing restriction was the Code for Advertising Liquor, a product with a legal purchase age.

It was noted that the ASA codes of practice apply to all advertisements in all media. Concern was expressed by some panel members that it would not be appropriate to include specific restrictions on one medium in the codes. The panel also spent some time discussing the relevance of such restrictions in an environment where a range of format shifting devices, including on-demand programming, is now available.

The panel acknowledged the serious and sincere concerns expressed by a number of submitters on the issues of volume, timing and placement. The panel considers that the introduction of the new Children's Code for Advertising Food, which will impact on the overall content of advertising that influences children is the best way to address these concerns at this time. In addition, the panel agreed that the ASA invite all its media members to review and or establish a policy similar to "Getting It Right for Children" where relevant to their likely readers / viewers.

Recommendation: That the ASA invite all media members to consider establishing a policy similar to "Getting It Right for Children" where relevant to their audiences.

6. Pre-vetting and monitoring

The Panel noted that a number of submitters considered there should be a pre-vetting system to approve advertisements for foods high in fat, salt and sugar (HFSS). It was noted that systems are already in place to pre-vet liquor advertising and advertising that makes therapeutic claims or promotes therapeutic services.

It was confirmed that all television advertising is currently pre-approved by the Commercial Approvals Bureau, the same body that administers the "Children's Food" rating system for television advertising.

It was confirmed to the panel that the ASA is not directly involved in formal pre-vetting of advertisements, and that the Association of New Zealand Advertisers coordinates the current pre-vetting services using independent adjudicators.

The panel also discussed an option of monitoring advertisements – in response to issues raised about the complaints system being reactive not proactive. The panel agreed that the ASA has a role in promoting the codes and complaints system, to ensure a high level of consumer and industry awareness (see point 7 for recommendation).

The panel was advised that there are a number of international examples monitoring a sample of advertising in specific sectors. The panel agreed to invite the ASA to consider setting up a similar process in New Zealand.

Recommendation: That the Association of New Zealand Advertisers (ANZA) be invited to consider the need for a service to pre-vet advertising of HFSS foods.

Recommendation: That the ASA consider setting up a process to monitor a sample of HFSS advertising to test for code compliance.

7. Review and tighten definitions in the codes

The Panel noted the points made from a range of submitters about the lack of clarity in the definitions in the codes and also a number of terms that are not defined. Discussion on this issue has also been covered under points 1 and 3 for HFSS foods and social responsibility.

The panel acknowledged that a more prescriptive approach may be preferred by some submitters, both from a consumer perspective and from industry. However, on balance, it accepted that the general principle and guideline approach works better in a self-regulatory environment and provides a level of discretion to the ASCB given the wide range of applications the codes have.

8. Stop Ads on complaint

A number of submitters raised issues with regard to the process of considering complaints and recommended that the process be changed to require advertisements to cease being displayed, published or broadcast once a complaint had been received.

The Panel discussed this matter at length and noted the concerns of submitters with regard to the length of time taken to deal with complaints. The panel was advised that the average time to deal with complaints from receipt of complaint to notification of decision was 24 working days, although some complaints took longer depending on when they were received in relation to the ASCB meeting dates.

The Panel also noted that the ASCB had from time to time met via phone conference at short notice to consider complaints around some-high profile advertising or where there was a concern about the likelihood of a code breach. This process is initiated by the ASCB Chairman at their discretion. It was also noted that a similar 'fast track' process is applied from time to time to ensure prompt review by the ASCB and an example of this may be requesting a response from the advertiser, agency and media in less than the normal 14 days to place the complaint on an upcoming ASCB agenda.

As with all adjudications, natural justice is an important part of the process and it must be fair to all parties including the complainants. The Panel also discussed the possibility of competitors exploiting a policy to stop the advertisements on complaint.

Some submitters raised the issue that the time taken to deal with complaints could mean that a particular advertisement had been removed prior to the finished in the marketplace prior to a decision being made (eg a billboard advertisement on display for one month). The panel accepted that addressing this issue was a challenge in

the current system but noted that an upheld Decision of the ASCB meant that the advertisement would not be able to be used again (as some advertisers used material more than once in a campaign) and that a precedent is created for when advertisers, agencies and the media may consider using a similar creative execution in the future.

The Panel discussed a number of options including publicising the complaints process, consideration of clear parameters around a fast track option; every effort being made to expedite the process; an undertaking to hear complaints about advertising where the main issue of the complaint relates to children at the earliest possible meeting.

Recommendation: That the ASA consider developing additional resources to publicise and explain the complaints process in more detail.

9. Cost of compliance with self-regulation

The Panel was advised that the ASA was in the process of gathering information to help educate the industry and the public on the cost of an upheld decision for the industry. This was in response to concern from the public that withdrawal of the advertisement is not a substantive penalty.

The Panel agreed that there was a need to provide better resources about advertising self-regulation and noted that the cost of compliance could include the time to respond to the complaint, unused air time or space in media schedules if an advertisement was withdrawn, the cost of the actual advertisement itself, lost sales following a gap in the marketing strategy and damage to reputation via media coverage.

The Panel agreed that these costs should be considered in context – in relation to food advertising, taking into account the wider issues in society about the long-term costs of an unhealthy diet.

However, it may be helpful to provide case studies to illustrate costs to the industry under self-regulation as this is an area that is often commented on.

Recommendation: That the ASA consider developing a resource to assist with the understanding of the costs of compliance in relation to self-regulation.

10. Age definition of “children”

Submitters also raised the definition of “children” in the two codes under review.

Under the Code for Advertising to Children and the Code for Advertising of Food the term “children” meant all persons below the age of 14. A number of submitters referred to the United Nations Convention on the Rights of the Child (UNCRC) and noted that under that convention, a child is defined as any human being under the age of 18 years.

There was a wide-ranging discussion on this issue. The panel noted that relevant legislation in New Zealand gives different legal rights at a number of ages including the age of 16 where a young person can leave school, enter employment, leave home or have sex. The minimum age to obtain a restricted driver’s licence is 15. In

the Children, Young Persons and their Families Act, a child is defined as “a boy or girl under the age of 14 years” with a boy or girl over the age of 14 but under 17 years being defined as a “young person”. The Care of Children Act defines a child as being under 18 years of age. The panel also noted that the Broadcasting Standards Authority defines a child as being below the age of 14 years.

Some submitters supported extending the definition to match the UNCRC definition and others supported a move to 16 years of age.

The panel accepts that the reference to the UNCRC in the introduction of the code is limited by the subsequent definition of “children” in the codes. However, in an area where there are a range of inconsistencies and on-going debate about the age that one should be to undertake a range of activities, the panel did not consider a change in the definition of “children” was required at this time.

It did however acknowledge that young persons could also be a vulnerable group in society and it has included a requirement for advertisers to recognise this under the revised Code for Advertising of Food. The “Introduction” of this code requires that advertisers exercise a particular duty of care in advertising to young persons between the age of 14 and 17 years of age.

Recommendation: That there is no change to the definition of “children” but that a reference to young persons (aged 14-17 years) is included in the Code for Advertising of Food with regard to a particular duty of care to those young persons.



ADVERTISING STANDARDS AUTHORITY

CHILDREN'S CODE FOR ADVERTISING FOOD 2010

Introduction

All advertisements for food and beverages ("food") that influence children, whether contained in children's media or otherwise, shall adhere to the Principles and Guidelines set out in this Code.

The Code recognises that children are not a homogeneous group but have varying levels of maturity and understanding. Care should be taken to ensure that the product and style of advertisement is appropriate for the intended audience.

The Code recognises the need to extend a duty of care to protect children pursuant to the United Nation's Convention on the Rights of the Child ("Convention"). Special notice is to be taken of Article 3 of the Convention, which states, "the best interests of the child shall be a primary consideration". Article 13 recognises the child's right to freedom of expression. "This right shall include the freedom to seek, receive and impart information and ideas of all kinds." Children therefore have the right to receive all kinds of information, including advertisements. However, Article 17(e) calls for "appropriate guidelines for the protection of the child from information and material injurious to his or her well-being." This Code provides the "appropriate guidelines" for food advertisements that influence children.

It is noted that the Convention defines the age of a child as under 18. This Code defines the age of a child as under 14 in line with the Children, Young Persons and their Families Act 1989 and aligns with the Broadcasting Standards Authority definition of a child. The Code for Advertising Food specifically makes reference to young people aged 14 – 18.

Food advertisements should not undermine the food and nutrition policies of Government, the Ministry of Health Food and Nutrition Guidelines nor the health and wellbeing of children. Advertisements for nutritious foods important for a healthy diet are encouraged to help increase the consumption of such foods. However, advertisements should not encourage over-consumption of any food.

In interpreting the code emphasis will be placed on compliance with both the principles and the spirit and intention of the code. The guidelines are examples, by no means exhaustive of how the principles are to be interpreted and applied. Upon considering a complaint, the ASCB is vested with discretion to ensure a commonsense outcome.

Advertisements should comply with the laws of New Zealand and appropriate industry codes including the New Zealand Television Broadcasters code "Getting It Right for Children" available on www.nztbc.co.nz. Attention is also drawn to the "CF" rating system applied by the Commercial Approvals Bureau to all food advertising that is to be screened during children's television programming times.

For the purposes of this Code:

"Children" means all persons below the age of 14.

"Food and Nutrition Guidelines" are the current version of the Food and Nutrition Guidelines for Healthy Children (aged 2-12 years): A background paper, published by the Ministry of Health.

"Social Responsibility" is embodied in the principles and guidelines of the Code and is integral to the consideration of the Advertising Standards Complaints Board. Previous decisions of the Complaints Board also guide its determinations, as do generally prevailing community standards.

"Treat food" is food high in fat, salt, or sugar intended for occasional consumption. Food high in fat, salt, or sugar is also known as energy dense and nutrient poor food (refer to Ministry of Health's 'Food and Nutrition Guidelines for Healthy Children (aged 2-12 years): A background paper.')

Principle 1 - All advertisements should be prepared with and observe a high standard of social responsibility to consumers and to society.

Guidelines

1(a) Advertisements should not undermine the role of parents in educating children to have a balanced diet and be healthy individuals.

1(b) Children should not be urged in advertisements to ask their parents, guardians or caregivers to buy particular products for them.

1(c) Advertisements for treat food, snacks or fast food should not encourage children to consume them in excess.

1(d) Advertisements for treat food, snacks or fast food should not encourage children to consume them in substitution for a main meal on a regular basis, nor should they undermine the Food and Nutrition Guidelines for Healthy Children.

1(e) Advertisements for food should not portray products as complete meals unless they are formulated as such.

1(f) The quantity of the food depicted in the advertisement should not exceed serving sizes that would be appropriate for consumption by a person or persons of the age depicted.

1(g) Benefits of foods for a nutritious diet should not be exaggerated and should not imply that a single food should replace a healthy diet nor undermine the importance of consuming a variety of foods.

1(h) Nutrient, nutrition and health claims (when permitted) should comply with the requirements of the Food Standards Code*. Such claims should not mislead or deceive the consumer.

1(i) Advertisements should not promote inactive or unhealthy lifestyles nor should they show people who choose a healthy active lifestyle in a negative manner.

1(j) Advertisements for slimming products or foods sold as an aid to slimming should not be directed at children.

*Note: The regulation of nutrition, health and related claims is currently under review. Please refer to the Food Standards Australia New Zealand (FSANZ) website www.foodstandards.govt.nz for details. The Food Standards Code is available on the FSANZ website.

Principle 2 - Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children, abuse the trust of or exploit their lack of knowledge or without reason play on fear.

Guidelines

2(a) Advertisements should be clearly recognisable as such by children and separated from editorial, programmes or other non-advertising content.

2(b) Advertisements should take into account the level of knowledge, sophistication and maturity of the intended audience.

2(c) Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and/or salt, especially those marketed to and/or favoured by children, should not be portrayed in any way that suggests they are beneficial to health.

2(d) Food advertisements containing obvious hyperbole, identifiable as such by the intended audience, are not considered misleading.

2(e) Advertisements should not claim or imply endorsement by any government agency, professional body or independent agency unless there is prior consent, the claim and the endorsement are verifiable and current and the agency or body named. An endorser represented as an expert should have qualifications appropriate to the expertise depicted.

2(f) Care should be taken with advertisements promoting a competition, premium or loyalty/continuity programme to ensure that advertisements do not encourage frequent repeat purchases of foods high in fat, salt and sugar.

2(g) Advertisements for foods high in sugar should not claim to be “low fat” or “fat free” which could mislead the consumer to believe the food is low in energy or beneficial to health.

2(h) Advertisements for food high in fat should not claim to be “low in sugar” or “sugar-free” which could mislead the consumer to believe the food is low in energy or beneficial to health.

Principle 3 - Persons or characters well-known to children shall not be used in advertisements to promote food in such a way so as to undermine a healthy diet as defined by the Food and Nutrition Guidelines for Healthy Children.

3(a) Persons or characters well known to children may present factual and relevant statements about nutrition and health.

3(b) Persons or characters well known to children should not be used to endorse food high in fat, salt and /or sugar.



ADVERTISING STANDARDS AUTHORITY

CODE FOR ADVERTISING TO CHILDREN 2010

INTRODUCTION

All advertisements in all forms of media that influence children whether contained in children's media or otherwise shall adhere to the principles and guidelines set out in this Code. Food and beverage advertisements that influence children are subject to the Children's Code for Advertising Food. Reference should be made to the Interpretation section of the Codes of Practice.

The Code recognises that children are not a homogeneous group but have varying levels of maturity and understanding. Care should be taken to ensure that the product and style of advertisement are appropriate for the intended audience.

The Code recognises the need to extend a duty of care to protect children pursuant to the United Nation's Convention on the Rights of the Child ("Convention"). Special notice is to be taken of Article 3 of the Convention, which states, "the best interests of the child shall be a primary consideration". Article 13 recognises the child's right to freedom of expression. "This right shall include the freedom to seek, receive and impart information and ideas of all kinds." Children therefore have the right to receive all kinds of information, including advertisements. However, Article 17(e) calls for "appropriate guidelines for the protection of the child from information and material injurious to his or her well-being." This Code provides the "appropriate guidelines" for advertisements that influence children.

It is noted that the Convention defines the age of a child as under 18. This Code defines the age of a child as under 14 in line with the Children, Young Persons and their Families Act 1989 and aligns with the Broadcasting Standards Authority definition of a child.

In interpreting the code emphasis will be placed on compliance with both the principles and the spirit and intention of the code. The guidelines are examples, by no means exhaustive of how the principles are to be interpreted and applied. Upon considering a complaint, the ASCB is vested with discretion to ensure a commonsense outcome.

Advertisements should comply with the laws of New Zealand and appropriate industry codes including the New Zealand Television Broadcasters code "Getting It Right for Children" available on www.nztbc.co.nz.

For the purposes of this Code:

“Children” means all persons below the age of 14.

“Social Responsibility” is embodied in the principles and guidelines of the Code and is integral to the consideration of the Advertising Standards Complaints Board. Previous decisions of the Complaints Board also guide its determinations, as do generally prevailing community standards.

Principle 1 - Advertisements should be prepared with and observe a high standard of social responsibility.

Guidelines

1(a) Children should not be urged in advertisements to ask their parents, guardians or caregivers to buy particular products for them.

1(b) Advertisements should not portray violence, undue aggression, or menacing or horrific elements likely to disturb children.

1(c) Advertisements should not encourage anti-social behaviour or depict children behaving in an anti-social manner, eg. vindictiveness and bullying, unless the purpose of the advertisement is to discourage such behaviour.

1(d) Advertisements should not suggest to children that they are inferior or will lack social acceptance for not having the advertised product.

1(e) Advertisements, except safety messages, should not contain any statement or visual presentation that could have the effect of portraying children in unsafe acts, showing them in unsafe situations, encouraging them to consort with strangers, or behaving in an unsafe way.

1(f) Advertisements, except safety messages, should not show products being used in an unsafe or dangerous manner, or which would be unsafe if used by children without proper supervision.

1(g) Advertisements should not depict toy weapons which are realistic (in size, shape and colour) and can be confused with real weapons.

1(h) Advertisements should not include sexual imagery and should not state or imply that children are sexual beings and /or that ownership or enjoyment of a product will enhance their sexuality.

1(i) Advertisements should not include images that are degrading to any individual or group.

1(j) Advertisements to children should not promote gambling or gaming. However, the responsible use of sales promotions schemes to children is permitted. (Refer to the Code for Advertising Gaming and Gambling)

Principle 2 - Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children, abuse their trust or exploit their lack of knowledge or without reason play on fear.

Guidelines

2(a) Advertisements should be clearly recognisable as such by children and separated from editorial, programmes or other non-advertising content.

2(b) Advertisements should be understood by children to whom they are directed, not be ambiguous, and not mislead as to the true size, value, nature of the advertised product

2(c) If extra items are needed to use the product (eg. batteries) to produce the result shown or described (eg. paint, dolls clothes) this should be made clear. A product that is part of a series should be clearly indicated as such as well as the method of acquiring the series.

2(d) In the case of a product that must be assembled, this should be made clear, and where appropriate, the source of power and performance should be indicated.

2(e) If price is mentioned, the complete price of the product should be made clear, and advertisements should clearly indicate the cost of those items that constitute the original purchase and additional items that must be purchased separately.

2(f) Where reference is made to a competition the rules should be made clear and the value of prizes and the chances of winning should not be exaggerated.

2(g) Any reference to a premium (eg. an additional product or service offered free, at a reduced price or as a prize) should be clearly displayed and conditions relating to it should be clearly represented.

2(h) Advertisements soliciting responses incurring a charge should state, "Children ask your parents first" or similar words.

2(i) Extreme care should be taken in requesting or recording the names, addresses and other personal details of children to ensure children's privacy rights are fully protected and the information is not used in an inappropriate manner.*

2(j) Care should be taken with advertisements promoting a competition, premium or loyalty/continuity programme to ensure that advertisements do not encourage excessive repeat purchase.

***Note: Notice should also be taken of Principle 3 of the Privacy Act 1993.**



ADVERTISING STANDARDS AUTHORITY

CODE FOR ADVERTISING FOOD 2010

Introduction

The purpose of the Code is to ensure that advertising of food will be conducted in a manner that is socially responsible and does not mislead or deceive the consumer.

Advertisements for food and beverages consumed by humans ("food") shall adhere to the Principles and Guidelines set out in this Code. The Code for Advertising Food applies to food advertising to persons 14 years and over. However, Advertisers are also required to exercise a particular duty of care for food advertisements directed at young people aged 14 to 17 years of age.

Food advertisements that influence children are subject to the Children's Code for Advertising Food. Children are defined in the ASA Codes as persons below the age of 14 years.

Advertisements should not undermine the food and nutrition policies of Government, the Ministry of Health 'Food and Nutrition Guidelines' nor the health and wellbeing of individuals. Advertisements for nutritious foods important for a healthy diet are encouraged to help increase the consumption of such foods. However, no advertisement should encourage over-consumption of any food.

In interpreting the code emphasis will be placed on compliance with both the principles and the spirit and intention of the code. The guidelines are examples, by no means exhaustive of how the principles are to be interpreted and applied. Upon considering a complaint, the ASCB is vested with discretion to ensure a commonsense outcome.

Advertisements should comply with the laws of New Zealand and appropriate industry codes.

For the purposes of this Code:

"Appropriate industry codes" includes the Infant Nutrition Council "Code of Practice for the Marketing of Infant Formula" and any other industry code recognised by the ASA.

"Food and Nutrition Guidelines" are a series of nutrition policy papers aimed at specific population groups published by the Ministry of Health.

"Social Responsibility" is embodied in the principles and guidelines of the Code and is integral to the consideration of the Advertising Standards

Complaints Board. Previous decisions of the Complaints Board also guide its determinations, as do generally prevailing community standards.

Principle 1- All food advertisements should be prepared with a due sense of social responsibility to consumers and to society. However food advertisements containing nutrient, nutrition or health claims*, should observe a high standard of social responsibility.

Guidelines

1(a) Nutrient, nutrition and health claims (when permitted) should comply with the requirements of the Food Standards Code*. Such claims should not mislead or deceive the consumer.

1(b) Advertisements for food should not portray products as complete meals unless they are formulated as such.

1(c) The quantity of the food depicted in the advertisement should not exceed serving sizes that would be appropriate for consumption by a person or persons of the age depicted.

1(d) Advertisements should not encourage excessive consumption or depict inappropriately large portions of any particular food.

1(e) Benefits of foods for a nutritious diet should not be exaggerated and should not imply that a single food should replace a healthy diet or undermine the importance of consuming a variety of foods.

1(f) Advertisements should not promote inactive or unhealthy lifestyles nor should they show people who choose a healthy active lifestyle in a negative manner.

***Note:** The regulation of nutrition, health and related claims is currently under review. Please refer to the Food Standards Australia New Zealand (FSANZ) website www.foodstandards.govt.nz for details. The Food Standards Code is available on the FSANZ website.

Principle 2 - Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

Guidelines

2(a) All nutrient, nutritional and health claims should be factual, not misleading, and able to be substantiated. Claims should comply with the Food Standards Code*.

2(b) Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and / or salt should not be portrayed in any way that suggests they are beneficial to health.

2(c) Food advertisements containing obvious hyperbole, identifiable as such by the intended audience are not considered misleading.

2(d) Claims in an advertisement should not be inconsistent with information on the label or packaging of the food.

2(e) Advertisements should not claim or imply endorsement by any government agency, professional body or independent agency unless there is prior consent, the claim and the endorsement are verifiable, current and the agency or body named. An endorser represented as an expert should have qualifications appropriate to the expertise depicted.

2(f) Care should be taken with advertisements promoting a competition, premium or loyalty/continuity programme to ensure that advertisements do not encourage excessive repeat purchases of foods high in fat, salt and sugar.

2(g) Advertisements for foods high in sugar should not claim to be “low fat” or “fat free” which could mislead the consumer to believe the food is low in energy or beneficial to health.

2(h) Advertisements for food high in fat should not claim to be “low in sugar” or “sugar-free” which could mislead the consumer to believe the food is low in energy or beneficial to health.

***Note:** The regulation of nutrition, health and related claims is currently under review. Please refer to the Food Standards Australia New Zealand (FSANZ) website www.foodstandards.govt.nz for details. The Food Standards Code is available on the FSANZ website.

Submitters – first round of consultation – April 2009

Ministry of Social Development
New Zealand Food and Grocery Council
Whanganui DHB
Anonymous
Benjamin Easton
Taranaki DHB
Foundation for Advtg Research
Australia New Zealand Obesity Society
Association of NZ Advertisers
Obesity Action Coalition
Cancer Society of New Zealand
New Zealand Food Safety Authority
Restaurant Brands NZ
Australian Assoc of National Advertisers
Consumer New Zealand
Simpson Grierson
McDonald's Restaurants (NZ) Ltd
Action for Children and Youth
Agencies for Nutrition Action
Coca Cola Oceania Ltd
Ministry of Pacific Island Affairs
Communications Agencies Assoc.
Peter Shuttleworth
Prof Janet Hoek and Prof Jim Mann
NZ Dietetic Association
National Heart Foundation of NZ
Food Industry Group
Fight the Obesity Epidemic
Nestle New Zealand Ltd
Waikato DHB
NZ Nutrition Foundation
Canterbury DHB
Commerce Commission
Green Party
Ministry of Health

Submitters - Second round of consultation – November 2009

New Zealand Food and Grocery Council
Taranaki DHB
Foundation for Advtg Research
Simpson Grierson
McDonald's Restaurants (NZ) Ltd
Action for Children and Youth Aotearoa
Fight the Obesity Epidemic
Nestle New Zealand Ltd
NZ Nutrition Foundation
Commerce Commission
Infant Feeding Association of NZ
Ministry of Health
National Council of Women