

**Advertising Standards Authority**  
**Annual Report 2009**



**ADVERTISING STANDARDS**  
**AUTHORITY**

## DID YOU KNOW?

- *It is free for consumers to complain about advertisements.*
- *In 2009 over 55 ASA decisions were reported in the media.*
- *Consumers can make a complaint about an advertisement online at [www.asa.co.nz](http://www.asa.co.nz)*
- *The majority of complaints are received via the online complaints form.*
- *The ASA system is similar to that in a number of countries in the world, most of which belong to the European Advertising Standards Alliance International Council, which includes countries from the European Union and Australia, Canada, Brazil, India, South Africa, Chile and Mexico.*
- *Over 1339 complaints were received about 829 advertisements in 2009.*
- *Over 40% of the complaints received in 2009 related to advertisements that may have been misleading.*
- *The ASA has a freephone number for consumers and advertisers, 0800 AD HELP (234 357).*
- *Advertising revenue across all media reached 2.045 billion dollars in 2009.*
- *The ASA has 13 advertising codes, including an overarching Code of Ethics, against which advertisements complained about are measured.*
- *All Decisions of the Complaints Boards are released to the public and the media via the ASA website.*
- *In 2009 the ASA broadened its jurisdiction to receive complaints about the naming, labelling, packaging and promotion of liquor products.*
- *The ASA also has a fast-track competitor complaints service called Adjudication with the Attendance of Parties (AWAP).*

## INDEX

<b>Advertising Standards Authority</b>	
From the Chairman	4
From the Executive Director	5
Members & Officers	6
Board of Directors	6
Important Issues	7 – 9
Relationships with other Agencies	10 – 11
<b>Advertising Standards Complaints Board</b>	
<b>Advertising Standards Complaints Appeal Board</b>	
Complaints Board Members	12
Appeal Board Members	13
Adjudication with the Attendance of Parties (AWAP)	14
ASA Codes of Practice	15
Complaints Process Flow Chart	16
The Most Complained about Ads in 2009	17 – 22
<b>Statistics</b>	
Overview for 2009	23
Complaints By Media	24
Complaints By Product	25
Complaints By Code/Rule	26
New Zealand Advertising Industry Turnover	27 – 28
Financial Performance	29

## FROM THE CHAIRMAN

**The Advertising Standards Authority's (ASA) primary role is to self-regulate advertising in New Zealand, a cost which is funded through industry levies. Advertising Codes of Practice provide the rules by which all advertisements in all media must comply. Members of the public may complain – free of charge – about any advertisement in any media which they believe breaches the Codes.**

Complaints are heard by an independent Advertising Standards Complaints Board (ASCB) and there is a right of appeal to the independent Advertising Standards Complaints Appeal Board (ASCAB). In the event of a complaint being upheld, the advertiser, agency, and media are immediately requested, by the ASA, to withdraw the advertisement. These requests are invariably complied with. All decisions are released to the public via the media and are widely reported.

2009 has been busy year for the ASA and the Complaints Boards, with an increased workload and the development of two news codes: the Liquor Promotions Code and the Children's Code for Advertising Food.

The ASA is fortunate to have high calibre members on both Complaints Boards who do an outstanding job and I would like to take this opportunity to recognise the contribution of **Jenny Robson**, Chair of the Complaints Board and **Euan Abernethy**, Chair of the Appeals Board. I would also like to acknowledge fellow ASA board members, in particular Deputy Chair John McClintock, for their energy and wise counsel in support of industry self-regulation.

And finally, I would like to acknowledge the outstanding contribution of the Executive Director, Hilary Souter, and the hard working team at the ASA.

**Rick Osborne**  
**Chairman**



*“The ASA enjoys strong working relationships with a wide range of government and non-government agencies, and the continued development of these relationships will remain a focus in 2010”.*

With such a robust and transparent system, New Zealanders feel confident in raising issues about advertising that may breach the Codes of Practice in record numbers. In 2009, a total of 1339 formal complaints were received about 829 advertisements. The profile of the codes and complaints system is aided by regular news stories of Complaints Board decisions, a comprehensive website, and the annual distribution of thousands of information booklets.

The ASA enjoys strong working relationships with a wide range of government and non-government agencies, and the continued development of these relationships will remain a focus in 2010.

*Beavers And Bushes Belittle The Modern Woman – The NZ Herald, 15/04/2009*

## FROM THE EXECUTIVE DIRECTOR

### The public face of the Advertising Standards Authority is often via media reports of Decisions of the Advertising Standards Complaints Board or the Advertising Standards Complaints Appeal Board.

While this is a significant driver of work for the ASA Secretariat, in 2009 there was also a detailed focus on the implementation of a new code and complaints system for liquor marketing, along with a comprehensive review of the two existing codes for children and foods.

A panel was established to review the Code for Advertising to Children and the Code for Advertising of Food. In the Government's response to the Report of the Health Select Committee on the Inquiry into Obesity and Type 2 Diabetes in New Zealand, it recommended that the ASA review its Code for Advertising to Children. The ASA agreed to review that Code and the Code for Advertising of Food in 2009. The review included a public consultation process and is referred to elsewhere in this report. The panel discussed at length all the matters raised in the submissions and as a result, recommends a new code be established, the Children's Code for Advertising Food. The panel's recommendations will be placed before the ASA at its meeting in late March 2010.

The Code for Naming, Labelling, Packaging and Promotion of Liquor was released in October 2009 and comes into force between 1 February 2010 and 1 April 2010. It represents a shift into a wider marketing jurisdiction for the Advertising Standards Authority and acknowledges that alcohol, as a restricted product, requires particular care. A new complaints board is being established to hear complaints under this code.

Best practice self-regulation has a range of requirements

including funding and commitment from industry. New Zealand has both, and the support from across the industry in relation to code compliance and decision enforcement is appreciated.

*The panel discussed at length all the matters raised in the submissions and as a result, recommends a new code be established, the Children's Code for Advertising Food.*



I am also grateful for the on-going support of the Chairman of the ASA, Rick Osborne, Deputy Chairman, John McClintock and the ASA Board of Directors.

As those involved in complaints processing are aware, the ASA has a challenging role to play and I acknowledge and thank my staff for their dedication and support in providing a high standard of service to consumers and industry on a daily basis.

**Hilary Souter**  
**Executive Director**

## MEMBERS AND OFFICERS 2009

### Members

- Association of New Zealand Advertisers (Inc)
- Communication Agencies Association of New Zealand (Inc)
- Interactive Advertising Bureau
- Letterbox Media
- Magazine Publishers' Association (Inc)
- Newspaper Publishers' Association (Inc)
- New Zealand Television Broadcasters Council
- New Zealand Community Newspapers Association
- New Zealand Cinema Advertising
- New Zealand Marketing Association (Inc)
- New Zealand Post Limited
- Outdoor Marketing Association of New Zealand
- Pay Television Group
- Radio Broadcasters Association (Inc)

### Officers

**Rick Osborne**, Chief Executive of the Communication Agencies Association was elected as Chairman for the 2009 year. **John McClintock**, Executive Director of the Magazine Publishers' Association was elected as Deputy Chairman.

**Hilary Souter** was the Executive Director.

### Advertising Standards Authority Board of Directors

The Board members in 2009 were:

**Rick Osborne**, Chief Executive, Communications Agencies Association

**John McClintock**, Executive Director, Magazine Publishers' Association

**Daniel Barnes**, Creative Managing Partner, Barnes, Catmur and Friends

**Rick Friesen**, Chief Executive, New Zealand Television Broadcasters Council

**David Innes**, Executive Director, Radio Broadcasters Association

**Jeremy Irwin**, Chief Executive, Association of New Zealand Advertisers

**Lindsay Mouat**, General Manager (Commercial) Association of New Zealand Advertisers

**Keith Norris**, Director of Public Affairs, New Zealand Marketing Association

**Tim Pankhurst**, Chief Executive, Newspaper Publishers' Association

**Tony O'Brien**, Director of Communications, Sky Network Television Ltd (Alternate)

## IMPORTANT ISSUES

The Advertising Standards Authority takes all concerns about advertising seriously and has a comprehensive set of advertising codes of practice to reflect this as well as an efficient and effective complaints system for consumers. However some types of advertising rightly generate more complaints and interest than others. The following section provides an update of progress across a range of categories that have a higher public profile due to the types of products advertised and/or the target audience.

### Liquor Advertising

#### *Code for Advertising Liquor*

In 2009 the Complaints Board received 78 complaints under the Code for Advertising Liquor, a significant increase on the 28 complaints received in 2008. Of these, 36 were accepted to be heard by the Complaints Board, where ten were upheld, six were settled, and 18 were not upheld. In two cases the Complaints Board did not have jurisdiction to consider the complaint. The Chairman ruled that there were no grounds to proceed with 42 of the complaints. The majority of complaints where the Chairman ruled that there were no grounds to proceed, canvassed an issue outside the jurisdiction of the Complaints Board, such as the question of whether or not alcohol advertising should be allowed at all. This body of complaints were largely responsible for the marked increase in complaints under the Code for Advertising Liquor in 2009.

In a unique decision in 2009, it was decided by the Appeal Board that an item on the Living Channel on SKY Television, shown before 8pm and intended to be a promotion for a food and wine magazine, was in breach of the Code for Advertising Liquor. The item, which the Appeal Board found to be an advertisement for the purposes of the code, was found to promote liquor by both product and brand and accordingly breached Principle 4.2 of the Code for Advertising Liquor which says liquor advertisements shall not be played on television between 6am and 8.30pm.

#### *Code for the Naming, Labelling, Packaging and Promotion of Liquor*

The ASA Code for the Naming, Labelling, Packaging and Promotion of Liquor came into force on 1 October 2009 with complaints about liquor promotions to be accepted from 1 February 2010, and liquor packaging from 1 April 2010.

A new self-regulatory complaints system is currently being set up to receive and process complaints about liquor packaging and promotions. A five member Liquor Promotions Complaints Board will be established to hear complaints (three public members and two industry members).

The provisions in the Code for the Naming, Labelling, Packaging and Promotion of Liquor cover:

- All pre-packaged and bulk alcoholic drinks with ABV > 1.5%.
- Naming and packaging, including brand name and product description, labelling and any container and external wrapping.
- All promotions, activities and materials (including dispenser units) generated by the producer, distributor or retailer.

More specific examples are: branded merchandise, press releases, sampling, websites, competitions,

*Catholics Fizz But Watchdog Says Illicit Cola Advert Does No Evil – Newsquest, 18/10/2009*

**IMPORTANT ISSUES CONTINUED**

emails, sponsorship, point of sale, product displays, text messages, advergaming, word of mouth marketing and user generated content.

This system will run alongside the current complaints system for liquor advertisements.

*Law Commission Review*

The ASA has had the opportunity to meet with members and staff of the Law Commission involved in the review of the Sale of Liquor Act. The ASA has also made submissions via the public consultation process and Rt Hon. Sir Geoffrey Palmer and a member of the review team attended an Advertising Standards Complaints Board meeting in 2009 as observers.

**Food Advertising**

Sixteen complaints were received about food advertising in 2009, a decrease on the 26 complaints received in 2008. Of the 13 complaints considered by the Complaints Board in 2009, seven of these were upheld, and six were not upheld.

The ASA is also involved with the wider industry in supporting the Government's aims for healthy eating and healthy action.

**Therapeutic Advertising**

In 2009, 47 complaints were dealt with under the Therapeutic Products Advertising Code and the Therapeutic Services Advertising Code, a small increase on the 40 complaints received in 2008. Twenty one complaints were upheld or settled by the Complaints Board. Seven were not upheld, 13 were deemed to have no grounds to proceed and three complaints were withdrawn.

The ASA is committed to ensuring that advertising of therapeutic products and services meet the required standards which will ensure the appropriate level of protection for consumers and responsible advertising from the industry.

In particular, advertisers are encouraged to use the expertise of the Therapeutic Advertising Pre-vetting Service to assist with code compliance.

**Review of the Code for Advertising of Food and the Code for Advertising to Children**

Throughout 2009, a seven member panel met to review the above codes.

The panel was chaired by Lincoln Gould, Chief Executive, Booksellers New Zealand Ltd. Public members were Bindy Barclay, Social Researcher with special interest in Children's media issues, Cynthia Maling, National Programme Manager, HEHA (to June 2009) and Manager, Research and Effective Practice (from June 2009) Ministry of Health, and Jenny Robson, Chairman, Advertising Standards Complaints Board. The industry was represented by Jeremy Irwin of the Association of New Zealand Advertisers, Rick Friesen of the Television Broadcasters Council, and Rick Osborne of the Communication Agencies Association.

Terms of reference and a consensus approach were agreed and the review advertised. Thirty five submissions were received from a range of public health organisations, industry bodies, advertisers, academics, and representatives from consumer and children's organisations.

*Watchdog Happy With Jacko Billboard: Yeah Right – Sunday Star Times, 06/12/2009*

## IMPORTANT ISSUES CONTINUED

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 to receive positive feedback from submitters on the new code specifically addressing food advertising and children. It is expected that the draft revised codes and the new code will be considered by the ASA at its meeting in late March 2010.

## JUDICIAL REVIEW

In 2009 a complainant initiated proceedings in the High Court for judicial review of a 2008 Complaints Board decision. The advertisement was by the advertiser Preventing Violence in the Home, and was entitled "Biggest Morning Tea". It encouraged people to hold a fundraising morning tea to raise money for the organisation. The advertisement contained an image of a cake which was decorated with four small figurines of adult males, assaulting children. The complainant complained that the advertisement presented a biased view of family violence.

The Complaints Board decided to not uphold the complaint, ruling, in part, that the advertisement was an advocacy advertisement, and that accordingly Rule 11 of the Code of Ethics allowed for robust expression of the advertiser's message. The complainant submitted an out of time appeal of the decision, which was declined.

The complainant, who describes himself as a "political busker" and is a promoter of interests of heterosexual men and fathers, disagreed with the Complaints Board's decision to not uphold the advertisement. The complainant filed an application for judicial review of the Complaints Board's decision, alleging, in part, that the complaint should have been considered under provisions from the Code for Advertising to Children.

The case was heard at the High Court on 28 January 2010 before Dobson J. The Judge ruled that the complainant had not met any of the grounds for judicial review (illegality, unfairness, or unreasonableness in decision making) and accordingly dismissed his application. Commenting on the decision of the Complaints Board which was the subject of the complainant's application, the Judge said "I consider the matters to which the Board had regard...reflected an entirely reasonable appreciation of the content of, and message conveyed by, the advertisement."

Summarising the Electoral Commission v Cameron [1997] 2 NZLR 421 case, the Judge reflected on the Court of Appeal's ruling that "...the Board carries out a public regulatory role in accordance with powers conferred by a private organisation but...[exercises] a public power which [is] reviewable on public law principles".

## RELATIONSHIPS WITH OTHER AGENCIES

### New Zealand

#### Ministry for Culture and Heritage

The ASA meets regularly with the Ministry of Culture and Heritage to discuss issues of mutual interest. This monitoring relationship began as a result of an agreement set out in a Cabinet Minute (CAB (92) M 10/14) with regard to jurisdiction over broadcast advertising.

The ASA is also pleased to take part in the monthly meetings between the Ministry and a range of Crown Agencies in the Arts, Culture and Heritage portfolio area.

#### Ministry of Consumer Affairs

The support of the Minister of Consumer Affairs is much appreciated. There is regular informal contact on a variety of issues of mutual interest, particularly consumer protection and industry regulation. The Ministry and the ASA also have a Memorandum of Understanding about on-going co-operation.



*“The ASA has contact with the Ministry of Health over a range of issues, but most recently, public health issues relating to the advertising of alcohol and advertising of food have been the focus of the working relationship”.*

#### Commerce Commission

The ASA is in regular contact with the Fair Trading Division of the Commerce Commission to discuss code compliance and recent Complaints Board decisions in relation to misleading and deceptive advertising. From time to time the Commerce Commission has complained

to the Complaints Board about advertising that is of concern. Similarly, the ASA raises issues of concern in relation to rogue advertisers with the Commission.

#### Securities Commission

The ASA has contact from time to time with the Securities Commission staff on issues relating to financial advertising and their assistance is appreciated.

#### Ministry of Health

The ASA has contact with the Ministry of Health over a range of issues, but most recently, public health issues relating to the advertising of alcohol and advertising of food have been the focus of the working relationship. The ASA and the Ministry are to meet on a regular basis to discuss issues relating to Complaints Board decisions and Code compliance on food advertising. The Ministry is one of a number of Ministries and Government Agencies that are invited to nominate public members for the Advertising Standards Complaints Board and the Complaints Appeal Board.

#### Medsafe

The ASA's relationship with Medsafe centres around compliance relating to therapeutic advertising. The relationship is based on finding effective ways via the Therapeutic Products Advertising Code to deal with advertising not covered by the Medicines Act or not easily addressed under current legislation.

#### Broadcasting Standards Authority

The ASA and the BSA are in regular contact on a number of issues including matters relating to jurisdiction over

*Double Entendre Falls Flat With Advertising Watchdog – Newsquest, 17/03/2009*

## RELATIONSHIPS WITH OTHER AGENCIES CONTINUED

certain types of advertising promotions. Both Authorities are members of an informal group of organisations that provide disputes investigation or resolution services for consumers.

### Disputes Investigation Group

The Disputes Investigation Group is an informal group of organisations that have a role in disputes investigation and resolution. A key initiative of the group has been the development of a website, [www.complaintline.org.nz](http://www.complaintline.org.nz) which provides a central point of information about organisations that receive consumer complaints.

### International

The European Advertising Standards Alliance (EASA) has 26 self-regulatory organisations from 24 countries as members, as well as six Non-European corresponding members of which New Zealand is one. The challenges facing advertising self-regulation in New Zealand are also common internationally.

The ASA also has regular contact with the Advertising Standards Bureau in Australia, the Advertising Standards Authority in the United Kingdom and the Advertising Standards Authority in Ireland.

*Kiwi Marmite Advert Jars With Ocker Vegemite-Lovers – Sunday Star Times, 04/10/2009*

## COMPLAINTS BOARDS

### 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:

- To adjudicate on complaints received about advertisements, which may be in breach of the Codes of Practice.
- To advise the ASA on the interpretation of the Codes and possible improvements to the Codes.
- 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.

#### Members of the Advertising Standards Complaints Board (ASCB) were:

##### Public Members

**Ms Jenny Robson** (Chairman) (Consultant, Manawatu)

**Mr Philip Broughton** (Deputy Chair) (Chartered Accountant, Dunedin)

**Dr Greg Simmons** (Public Health Physician, Taranaki)

**Ms Margaret McKee** (Chief Executive, Queen Elizabeth the Second National Trust, Wellington)

**Mr Alex Handiside** (Youth Senior Policy Analyst, Mental Health Foundation, Wellington)

##### Industry Members

**Ms Alison Sykora** (Corporate Affairs Manager, Vodafone New Zealand, Auckland)

**Mr Paul Elenio** (General Manager, Fairfax Central Region, Wellington)

**Mr Nigel Keats** (Managing Director, OMD, Wellington)

**Ms Sharon Daly** (General Manager, Research and Insights TVNZ Ltd, Auckland)

##### Public Member Alternate

**Ms Susan Taylor**, Deputy Banking Ombudsman, Office of the Banking Ombudsman.

A number of industry member alternates are available to take the place of the appointed industry members if required.

*Watchdog Rules Against Thin Lizzy's 'Toxic' Comment – NZ Herald 11/06/2009*

## Advertising Standards Complaints Appeal Board

**The Advertising Standards Complaints Appeal Board (ASCAB) was established in 1994 to adjudicate on appeals about decisions of the ASCB. Any party may appeal.**

The main grounds for appeal include the availability of new evidence, it is in the interests of natural justice that the appeal be accepted, the decision was against the weight of evidence, evidence before the Complaints Board was misinterpreted, and proper procedures were not followed.

There were 90 appeal applications lodged during the 2009 year, 26 of which related to an identical matter in a single magazine publication. Of the total appeal applications received 69 did not meet the grounds for appeal. Of the applications that were declined, the majority of these restated the original complaint.

Rulings on these applications noted that disagreement with a decision of the Complaints Board was not, in itself, a ground upon which an application for appeal could be accepted.

Ten appeals were accepted to proceed to the Complaints Board or be reheard, and 11 were referred to the Appeals Board. The most common grounds upon which applications for appeal were accepted were that evidence before the Complaints Board may have been misinterpreted, or that it was in the interests of natural justice that the appeal be accepted. Of the appeals heard by the Appeals Board, seven of these were dismissed and four were allowed.

### Members of the Advertising Standards Complaints Appeal Board (ASCAB)

The ASCAB comprises three members, two of whom are public representatives with no connection or background with the media or advertising industry, the third being an industry member.

#### The members of the Board in 2009 were:

##### Public Members

**Mr Euan Abernethy** (Chairperson) (Lawyer, former Chairman, Securities Commission, Wellington)

**Ms Judi Jones** (Lawyer, Electricity and Gas Complaints Commissioner, Wellington)

**Mr Alan Haronga** (Alternate) (Company Director, Wellington)

##### Industry Members

**Mr Bob Moffat** (former advertising agency executive, Wellington)

**Mr Martyn Turner** (Alternate) (former Chief Executive, Ogilvy Mather, currently Chisel Communications, Wellington)

***The success of our self-regulatory system is largely due to the excellent work of the two Boards and we are deeply appreciative of their contribution.***

## Adjudication with the Attendance of Parties (AWAP)

**When accepting a complaint into the complaints process, the Chairman of the Complaints Board will sometimes rule that the complaint be heard at an adjudication with the attendance of parties (AWAP). The AWAP system is designed to process complaints made by one competitor against another, and to respond to the requirements of complaints in a competitive environment. Its focus is on providing parties with a speedy and efficient extrajudicial process and decision, based on the Advertising Codes of Practice.**

Following receipt of a written complaint, all parties to the complaint are invited to submit a written response. Two people representing each party are then invited to attend a hearing, where they may speak to their written submissions, answer questions put to them by a Panel, and respond to issues raised by other parties. The submissions are heard by a Panel comprised of two public members and one industry member, drawn from the Advertising Standards Complaints Board (ASCB) and the Advertising Standards Complaints Appeal Board. When the decision of the Panel is distributed to all parties shortly after the hearing, if a complaint is upheld, the advertiser is requested to immediately remove the offending advertisement.

In 2009 complainants paid a fee for the adjudication of up to \$8,500 plus GST. After a decision has been made, advertisers against whom a complaint has been upheld are requested to refund the complainant this fee. It is a requirement within the AWAP process, as with all complaints accepted into the ASCB process, that complainants waive their right to pursuing the same complaint in a different jurisdiction. Parties are not able to appeal AWAP rulings.

### AWAPS in 2009

In 2009, there were 37 AWAPS, up from 22 in 2008. Twelve of these proceeded to a hearing, where six were upheld, and four were upheld in part.

#### *Telecommunications*

Telecommunication companies made good use of the AWAP process in 2009, with seven of the 37 AWAPs being between competing telecommunication providers in an ever growing and competitive market. Complaints from providers big and small covered a range of subjects, requiring the Panel to consider such issues as the definition of 'anyone' in relation to the offer of a free mobile phone, the provider of New Zealand's best global roaming service, and the question of when is free broadband not free? Late in 2009 newcomer Two Degrees laid a complaint against Telecom's promotion of their one second billing rates. The Panel found part of the advertisement to be both misleading and disparaging to competing services, and the complaint was upheld in part.

#### *Readership and popularity*

Readership and website popularity were the subject of two AWAPs earlier in 2009. TradeMe challenged Auto Trader's claim to be "New Zealand's No. 1 automotive website", and Fairfax Media challenged community newspaper Mainland Press's claims about readership. A central issue in both complaints was industry practice when calculating the popularity of the medium containing the advertisement, with the Panel acknowledging in one of its deliberations the importance of this figure in attracting advertising revenue, and the benefit of having an industry wide standard for the calculation of these figures. The Panel ruled that both advertisements subject to complaint were likely to deceive and mislead, and both complaints were upheld.

*Not So Fast With That Broadband Claim – Sunday Star Times, 08/11/2009*

## ASA CODES OF PRACTICE

The Codes are developed by the ASA to cover the entire range of advertising activity, and amended whenever there is an issue that requires review or updating. Where appropriate, mainstream consumer groups, government departments, government agencies, industry and other interested parties are also involved in the process.

The Codes include a Code of Ethics, which is the overall philosophy covering fairness, respect for people, and honest practice, plus a number of Codes covering either particular issues (eg. Advertising to Children) or product areas (eg. Financial Services).

All of the Codes are to be applied in the spirit, as well as the specific requirements.

The function of the Codes is to complement, not to replace, the laws of the land.

- Advertising Code of **Ethics**
- Code for Advertising to **Children**
- Code for **Comparative** Advertising
- Code for **Environmental** Claims
- Code for **Financial** Advertising
- Code for Advertising of **Food**
- Code for Advertising **Gaming** and **Gambling**
- Code for **Advertising Liquor**
- Code for **People** in Advertising
- **Therapeutic Products** Advertising Code
- **Therapeutic Services** Advertising Code
- Code for Advertising **Vehicles**
- Code for Advertising of **Weight Management**
- Code for Naming, Labelling, Packaging and **Promotion of Liquor**

*Smith & Smith Ads Not All They're Cracked Up To Be – Newsquest, 10/06/2009*



## THE MOST COMPLAINED ABOUT ADS IN 2009

1

### 09/536 Hell Pizza Billboard Advertisement

*62 Complaints - Upheld*

**Complainants bite back.**

The advertisement for a new product, “gluten free brownies”, showed a man about to bite into a piece of brownie cake, and said “At least our brownie won’t eat your pet dog”.

Complainants found it offensive.

The advertisement had been created in partial response to a recently reported news story, and the term “brownie” in that social context, referred to a broad group of people based on their skin colour. The Complaints Board said the advertisement did not meet a due sense of social responsibility to consumers and to society, was distasteful, offensive and reasonably likely to cause serious or widespread offence in the light of generally prevailing community standards.

2

### 09/236 Appeal 09/026 STIHL Limited Television Advertisement

*52 Complaints – Not Upheld*

**Is a deathbed scene appropriate to include in a product advertisement?**

In this television advertisement a doctor and family members stand around the bedside of a dying man who says to one of his sons “look after your mother”. However, the son reports after the father dies, that his father said he could have his chainsaw.

Complainants found it to be in bad taste, lacking in sensitivity and disrespectful of death. Others said it promoted lying for material gain and undermined family values.

The Advertiser said the advertisement was directed at mature owners of outdoor equipment, the message being that Stihl produced a chainsaw that would “last a lifetime” and people would go to great lengths to obtain or inherit one.

The Complaints Board accepted that there had been no intent to offend viewers and said the advertisement was saved from crossing the threshold to be likely to cause widespread offence by the darkly humorous and satirical presentation of a deathbed wish.

## THE MOST COMPLAINED ABOUT ADS CONTINUED

3

**09/577 Erotica Lifestyles Expo Billboard Advertisement****45 Complaints - Not Upheld****Is it socially acceptable to promote the sale of tickets to an “erotica expo” using religious figures?**

The advertisement showed a nun praying next to the text “GOOD BY DAY”. Next to her was another nun in a seductive pose, next to the text “NAUGHTY BY NIGHT”.

Complainants said it was offensive to all members of the public including children, and morally and religiously offensive to members of the Christian faith and it ridiculed nuns.

The Complaints Board noted that a billboard was not able to confine an advertisement to the intended audience. It accepted that the advertisement was provocative in nature and that it could be offensive to a range of people, but said the obvious hyperbole and stereotypic depiction did not cross the threshold to be likely to cause serious or widespread offence, in the light of generally prevailing community standards.

4

**09/216 Kimberly Clark New Zealand U Tampon Television Advertisement****44 Complaints - Not Upheld****What is a beaver?**

The “Ultimate Care Down There” television advertisement for the product U tampons showed a woman going about her daily routine accompanied by an animated beaver. At the end of the advertisement, the woman handed the beaver a gift wrapped parcel, which it opens finding a packet of U tampons. The voice-over says, “You’ve only got one, so for the ultimate care make it U Tampons”.

Complainants found the advertisement offensive in its use of an animated beaver as a euphemism for a vagina, said that it objectified women in a degrading manner, stereotyped men and was inappropriate to show on television between 6 and 7pm when children and teenagers would see it.

The Complaints Board noted the advertisement had screened in compliance with the rating given to the advertisement, GXC (General Except during programmes directed at children).

The Complaints Board said the advertisement did not reach the threshold to be likely to cause serious or widespread offence in the light of generally prevailing community standards and in terms of the content and the time shown, met the due sense of social responsibility required. In its view the implied humour saved the advertisement from breaching the Advertising Codes.

THE MOST COMPLAINED ABOUT ADS CONTINUED

## 5 09/708 ASB Bank Limited Website, Billboard, Newspaper, In-store & Bus Advertisements

*25 Complaints - Not Upheld*

### What is a Kiwi Bank?

The advertisement said: "WE'VE BEEN A KIWI BANK SINCE 1847. ASB Keeping NZ one step ahead."

Complainants said it was likely to mislead consumers as to the identity of the Advertiser, and created the false impression that the ASB bank was New Zealand owned.

The Complaints Board acknowledged that ownership of a bank was an important issue to consumers. However, in its view, the advertisement did not imply New Zealand ownership and did not meet the threshold to mislead or deceive the consumer with regard to this issue. It said the wording, "We've been a Kiwi bank since 1847" provided context to the "kiwi bank" reference. It noted that the ASB Bank brand only operated in New Zealand and had a long established history of involvement in New Zealand.

The Complaints Board observed the advertisements represented ASB through the use of a unique colour range, font, and logo, and said the ASB brand was clearly recognisable. It also noted that the words 'Kiwi bank' were two words forming part of a sentence, as distinguishable from the brand name "Kiwibank" which stood for Kiwibank Limited.

The Complaints Board ruled that the advertisement was not in breach of the Advertising Codes.

## 6 09/734 Accident Compensation Corporation (ACC) Newspaper Advertisement

*20 Complaints - Not Upheld*

### Levies advertising creates a stir.

The ACC advertisement was headed "ACC explains proposed motorcycle levies". It set out information in a question and answer format and included a web address for information on how to make a submission.

Complainants said various claims in the advertisement were misleading including the claim that other motor vehicle drivers were subsidising motorcyclists by \$77 per vehicle, and the claim that motorcyclists were 16 times more likely to have a claim related accident.

The Complaints Board took into account that the Advertiser was an expert body charged by Government with a particular responsibility to educate and consult with the public prior to setting new levies each year. It confirmed that Appeal Court judgment *Electoral Commission v L. A. Cameron and Others* applied and as such the Complaints Board was required to "tread lightly" and ensure that it did not substitute its opinion for that of an expert body. It considered each issue in turn, and ruled by a majority that the advertisement was not misleading to the consumer.

## THE MOST COMPLAINED ABOUT ADS CONTINUED

**7 09/458 Widex Hearing Aids Billboard Advertisement****19 Complaints - Not Upheld****Giving hearing aids a sexy image.**

The advertisement showed a seated woman wearing a long black coat which was open down the front revealing that she is only wearing stockings and high heeled shoes. The message says: "TO HEAR NO EVIL WOULD BE A BIT OF A SHAME." - "WIDEX® HEARING AIDS".

Complainants said the highly visible billboard advertisement was offensive to women and to society.

The Complaints Board said the image "pushed the limit" as it gave an impression of nudity, although no intimate body parts were visible. However, it said the Advertiser had sufficiently explained use of the image in the advertisement and in its view, the advertisement did not meet the threshold to be said to employ sexual appeal in a manner exploitative and degrading of any individual or group of people in society. Nor, in the majority view, did the advertisement portray people in a manner which used sexual appeal simply to draw attention to an unrelated product, or cross the threshold to be likely to cause widespread offence in the light of generally prevailing community standards.

**8 09/789 Sky Network Television Advertisement****19 Complaints - Not Upheld****Should you laugh at a shark attack?**

The television advertisement was based on the concept that regardless of challenges encountered during the day, a viewer is able to "escape" at the end of the day into a world of entertainment through the use of MYSKY. To the tune of "Que Sera Sera" a number of scenarios depicting people in unfortunate situations were shown, including one where a man had his hands bitten off by a shark. Two versions of the advertisement played.

Complainants found the advertisement offensive, were concerned about the violence shown within it, and the time at which it played.

Taking into account the light-hearted and obviously hyperbolic, dark, and ironic humour contained in the advertisement, the majority of the Complaints Board said the advertisement did not meet the threshold to cause serious or widespread offence in the light of generally prevailing community standards, and said it was prepared and shown with a due sense of social responsibility. The Complaints Board was unanimous in its decision that humour saved the advertisement from a breach of provisions from the Code for People in Advertising.

## LAST BUT NOT LEAST...

Four advertisements each had 10 complaints made about them.

9

### 09/150 Cadbury Confectionary Limited Television Advertisement

#### 10 Complaints - Not Upheld

The advertisement for “New Zealand’s fourth favourite bar - Moro” contained a visual of the horse “Wonderfoot” mating with a mare.

Complainants found the advertisement offensive and unsuitable to be shown at times when children were likely to be watching television.

The Complaints Board considered the advertisement to be light hearted and irreverent, noted the mating incident was only three seconds long, partially obscured, and didn’t depict anything not seen on a daily basis on farms throughout the country. In its view there was no apparent breach of the Advertising Codes.

10

### 09/180 Coca-Cola Oceania Limited Television Advertisement

#### 10 Complaints - Settled

The Coke Zero advertisement portrayed a “break up as it should be”. A group of women wearing short dresses, bikini tops and shorts, dance round a newly single man who says “You don’t want to be with one women, when there are so many women out there”. Text on screen says, “A taste of life as it should be”.

Complainants said it was discriminatory towards women and encouraged irresponsible behaviour.

Coca-Cola Oceania Ltd, their agency and the media, said they had decided to self regulate and withdraw the advertisement from air after receiving complaints from the public. The Chairman said the matter had been settled.

*Watchdog Clears Dancing Condoms – Dominion Post, 21/12/2009*

LAST BUT NOT LEAST CONTINUED

11

**09/238 Appeal 09/025 D. Vice New Zealand Billboard Advertisement**

**10 Complaints - Upheld**

The advertisement for D. Vice Designer Sex Gear showed four people kneeling in prayer in a church. One woman was smiling. A caption said: "ANAL BEADS FROM \$55.99".

Complainants said it was offensive to Catholics and other religious groups such as followers of Islam, were concerned that the advertisement had been on display in the week prior to Easter, and concerned regarding the locations of the billboards.

The Complaints Board noted that a billboard advertisement was not able to confine the message to the intended audience and said the religious imagery was provocative and unnecessary. The majority said the combination of the product and the context portrayed people in a manner reasonably likely to cause serious or widespread offence, and the intended humour did not save the advertisement from breaching the Advertising Codes.

12

**09/303 Mediaworks NZ Ltd Radio Advertisement**

**10 Complaints - Settled**

The advertisement for the TV3 News website contained a recording of David Bain's call to 111 after finding his family dead. The tagline said: "A lot can happen in 30 seconds, that's why we update our website 'round the clock ... Visit 3News.co.nz. New Zealand's continuous news desk."

Complainants said playing the highly personal recording in an advertisement was offensive.

Mediaworks withdrew the advertisement because of the reaction of some listeners, and said that they would ensure care was taken with the use of sensitive material in the future. The Chairman, noting these self-regulatory undertakings, said the matter had been settled.

## 2009 Complaints Overview

### Number Received and Processed

In 2009 the ASCB received 1339 formal complaints, about 829 advertisements. This compares with 1246 complaints about 703 advertisements in 2008.

### Of the 1339 formal complaints

510 were duplicates

366 were deemed to have “no grounds to proceed” for a variety of reasons, but usually “previous decision”, “no jurisdiction” or “no prima facie case.”

89 were withdrawn, resolved, no adjudication or adjourned.

There were therefore 374 substantive advertisements dealt with by the ASCB.

93 were upheld.

92 were settled. The parties accepted that there was a breach and the advertisement was withdrawn.

189 were not upheld.

### Upheld Rate

The upheld/settled rate was 49%.

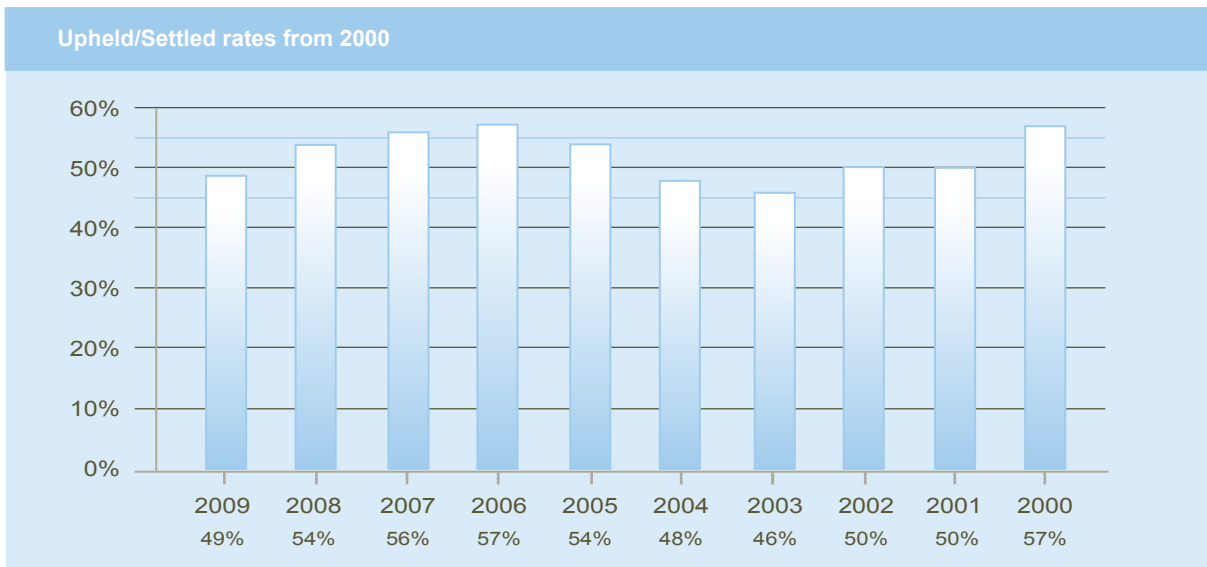
This compares with: **2008** – 54%, **2007** – 56%, **2006** – 57%, **2005** – 54%, **2004** – 48 %, **2003** - 46%, **2002** - 50%, **2001** - 50%, **2000** - 57%

See chart below.

### Source of complaints

Complaints are received via post, email, our online complaints form on [www.asa.co.nz](http://www.asa.co.nz) and by referral from other agencies.

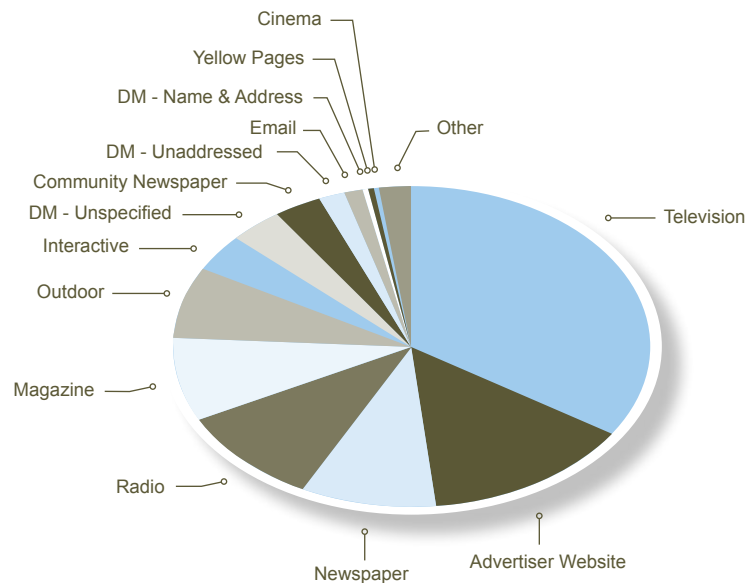
In 2009 62% of complaints were received via our online complaints form. 28% percent were received by post and 6% by email. The remaining 4% were referred by agencies including the Broadcasting Standards Authority and radio and television stations.



### Complaints by Media

Television again attracted the largest number of complaints in 2009 with 292 complaints received (33%), a slightly less percentage share than 35% in 2008. Newspapers attracted 95 or nearly 11% of complaints, the same percentage share as 2008. Complaints about addressed and unaddressed mail dropped from a 9% share in 2008 to a 6% share in 2009, with 53 complaints received about items of addressed and unaddressed mail. Complaints about magazine advertisements grew from nearly 4% in 2008 to 8% of all complaints in 2009. Complaints about advertisements on advertiser websites made up 14% of complaints, compared with 13% in 2008

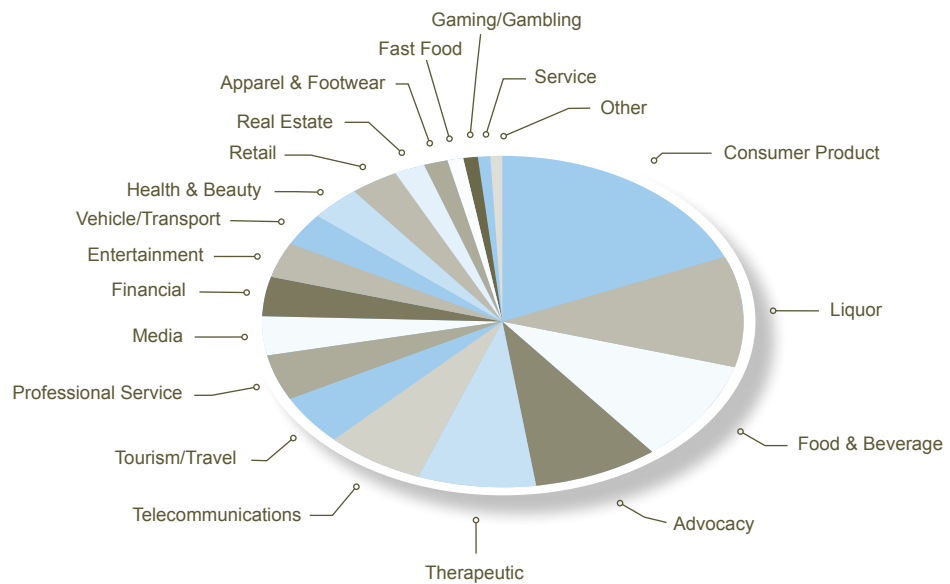
	2009	2008	2007	2006	2005
Television	292	256	241	167	176
Newspaper	95	72	85	62	62
Outdoor	58	58	42	53	41
Radio	80	52	55	57	41
DM - Unaddressed to box	18	10	5	14	38
Website	124	96	80	33	23
Interactive	38	34	29	19	9
Magazine	70	29	23	23	33
Community Newspaper	28	19	27	19	32
DM - Addressed	3	9	6	6	9
DM - Unspecified	32	48	49	39	5
Cinema	1	1	0	2	4
Yellow Pages	3	2	5	5	4
Email	9	9	7	3	2
Other	18	31	45	27	25
<b>TOTAL</b>	<b>869</b>	<b>730</b>	<b>699</b>	<b>533</b>	<b>509</b>



### Complaints by Product

Complaints were received about a wide range of products. The largest category was consumer products with 159 complaints (19%), compared with 115 complaints (16%) in the previous year. The second highest category of products was liquor advertising with 83 complaints or just over 10%. This was closely followed by complaints about food and beverage advertising, which with 80 complaints made up 9% of the total complaints received.

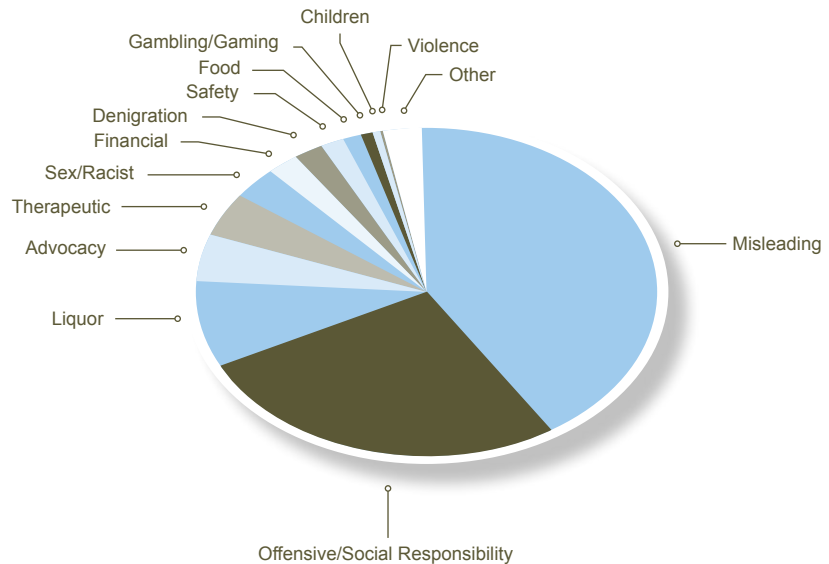
	2009	2008	2007	2006	2005
Consumer Product	159	115	82	87	58
Advocacy	69	68	44	43	54
Food & Beverage	80	81	67	49	45
Liquor	83	35	31	30	40
Telecommunications	51	32	74	37	29
Entertainment	30	38	38	20	28
Therapeutic	68	34	38	30	25
Apparel & Footwear	12	9	16	14	24
Financial	32	35	27	25	19
Vehicle/Transportation	29	38	29	26	18
Fast Food	8	11	33	22	16
Health & Beauty	29	23	19	13	16
Media	33	29	37	27	10
Retail	28	46	40	14	9
Tourism/Travel	46	33	29	18	9
Professional Service	38	36	9	16	7
Service	6	12	18	7	7
Gaming/Gambling	7	9	6	4	6
Real Estate	15	5	18	11	6
Other	6	14	13	0	35
<b>Total</b>	<b>829</b>	<b>703</b>	<b>668</b>	<b>493</b>	<b>461</b>



### Complaints by Code / Rule

Misleading advertising again made up the highest category of complaints in 2009, with 348, or 41% of complaints received relating to misleading advertising. This was a 3% increase compared to 2008. The second highest category of complaints related to offensiveness and issues of social responsibility. However, consumers appeared to be markedly less offended by advertising in 2009 than in 2008. In 2008, 33% of all complaints fell into this category, compared with only 24%, or 205 complaints in 2009.

	2009	2008	2007	2006	2005
Offensive/Social Responsibility	205	234	231	148	135
Misleading	348	270	280	207	142
Therapeutic	44	40	23	21	21
Sexist/Racist	27	17	12	11	12
Finance	15	19	13	15	10
Liquor	78	31	23	25	34
Safety	11	12	15	8	14
Advocacy	47	33	13	22	53
Violence	1	0	6	6	1
Children	3	3	1	11	7
Food	10	25	20	14	17
Denigration	14	1	0	3	14
Gaming/Gambling	5	2	5	2	1
Other	21	16	26	0	0
<b>Total</b>	<b>829</b>	<b>703</b>	<b>668</b>	<b>493</b>	<b>461</b>



## NEW ZEALAND ADVERTISING INDUSTRY TURNOVER

Explanatory notes for the year ended 31 December 2009

1 JANUARY - 31 DECEMBER 2009										
	2009		2008		2007		2006		2005	
	\$ M	%	\$ M	%	\$ M	%	\$ M	%	\$ M	%
NEWSPAPERS	623	30.5	760	32.8	826	35.4	810	36.4	830	37.2
TELEVISION	570	27.9	647	27.9	654	28.0	641	28.8	666	29.9
RADIO	236	11.5	268	11.6	274	11.7	269	12.1	256	11.5
MAGAZINES	217	10.6	249	10.7	257	11.0	251	11.3	260	11.7
INTERACTIVE	214	10.5	193	8.3	135	5.8	65	2.9	44	2.0
OUTDOOR	68	3.3	74	3.2	78	3.3	79	3.6	72	3.2
UNADDRESSED MAIL	58	2.8	61	2.6	65	2.8	64	2.9	56	2.5
ADDRESSED MAIL	53	2.6	56	2.4	36	1.5	35	1.6	34	1.5
CINEMA	6	0.3	9	0.4	10	0.4	10	0.4	11	0.5
<b>TOTAL</b>	<b>2045</b>	<b>100.0</b>	<b>2317</b>	<b>100.0</b>	<b>2335</b>	<b>100.0</b>	<b>2224</b>	<b>100.0</b>	<b>2229</b>	<b>100.0</b>

### Newspapers:

This figure includes all cash revenue, including agency commission, excluding GST, from all daily, Sunday and community newspaper titles in New Zealand. The revenue includes display, retail, classified and insert advertising. The figures are sourced from the member newspapers of the Newspaper Publishers' Association of New Zealand and the Community Newspapers Association of New Zealand. NOTE: Newspapers advise the figure reported is not a comparative measure with other main media revenue sources.

### Television:

This figure includes all cash revenue, including agency commission, excluding GST, from free to air (including Prime) and pay television. The figures are independently

collected for the New Zealand Television Broadcasters Council and reported to the ASA as a total revenue figure.

### Radio:

This figure includes all cash revenue, including agency commission, excluding GST, from members of the Radio Broadcasters Association (RBA). Actual returns comprised 97% of the total radio advertising revenue for 2009. The total also includes an estimate for non-RBA members, iwi and student radio based on direct industry knowledge and projections based on market share. The figure is sourced from the Radio Broadcasters Association.

### Magazines:

This figure includes cash revenue, including agency commission, excluding GST, from the majority of

**NZ AD INDUSTRY TURNOVER CONTINUED**

members of the Magazine Publishers' Association (MPA). For some MPA member and non-member publications, an estimate has been made. The figure does not include revenue from classified advertising. It is estimated that MPA members represent 65% of magazine advertising revenue in New Zealand. The figure is sourced from the Magazine Publishers' Association.

**Interactive:**

This figure is comprised of cash revenue including agency commission, excluding GST. The 2009 figures include General Display Advertising, which includes revenues from Display such as banner advertisements of many different sizes and formats, affiliate marketing programmes, partnerships, sponsorships and emails; Classifieds, which includes revenues from ads placed to buy or sell an item or service and Search & Directories Advertising which includes revenues from online Directories and search engine listings. The figures are supplied via an independently audited process established by the Interactive Advertising Bureau on behalf of the interactive industry.

**Outdoor:**

This figure includes all cash revenue, including agency commission, excluding GST, from members of the Outdoor Media Association of NZ (OMANZ) which represents over 95% of all Outdoor media revenue. The

revenue data is independently collected for OMANZ. The figure also includes actual returns from five other companies involved in outdoor or ambient advertising.

**Unaddressed Mail:**

This figure includes all cash revenue excluding GST, from the letterbox media companies. These companies are Reach Media and PMP Distribution. The revenue recorded is drawn from the cost of delivery. This total represents 95 % of the unaddressed mail advertising revenue in New Zealand.

**Addressed Mail:**

This figure is an estimate based on the cost of delivery only. It does not include production or associated costs. It is compiled using volume and expenditure estimations from Nielsen Media Research's MailPix system. The Nielsen estimations (at standard postage rates) are validated and adjusted using New Zealand Post's own volume and expenditure data taking discounting into account to produce the final market revenue estimation. The figure is sourced from New Zealand Post.

**Cinema:**

This figure includes all cash revenue, including agency commission, excluding GST, from the two major companies involved in cinema advertising in New Zealand.

## Statement of Financial Performance

Advertising Standards Authority of New Zealand Inc.

	2009	2008
<b>EXPENDITURE</b>		
Complaints Boards	157,199	170,446
Operational	165,655	206,640
Premise	59,121	57,043
Staffing	339,573	345,596
<b>TOTAL EXPENSES</b>	<b>721,548</b>	<b>779,725</b>
<b>INCOME</b>		
Subscriptions	330,045	271,550
Arbitration Fees and Sundry	63,126	75,444
Levies	351,343	382,257
Interest Received	6,030	15,931
<b>TOTAL INCOME</b>	<b>759,544</b>	<b>745,182</b>
<b>SURPLUS AFTER TAX</b>	<b>36,335</b>	<b>(39,110)</b>

Ground Floor, 79 Boulcott Street, PO Box 10 675, Wellington  
Telephone (04) 472 7852 | Free Phone 0800 AD HELP (234357) | Facsimile (04) 471 1785  
Email [asa@asa.co.nz](mailto:asa@asa.co.nz) | Website [www.asa.co.nz](http://www.asa.co.nz)

  
**asa**  
ADVERTISING STANDARDS  
AUTHORITY