

<b>COMPLAINT NUMBER</b>	19/229
<b>APPEAL NUMBER</b>	19/015
<b>COMPLAINANT</b>	S Hughes on behalf of Healthy Auckland Together
<b>APPLICANT</b>	oOH Media
<b>ADVERTISER</b>	Arnott's
<b>ADVERTISEMENT</b>	Tiny Teddy Out of Home
<b>DATE OF MEETING</b>	9 December 2019
<b>OUTCOME</b>	Appeal Allowed Complaint Not Upheld (Under Children and Young People's Advertising Code)

### SUMMARY

The Complaints Board ruled on 13 August 2019 the complaint made by S Hughes on behalf of Healthy Auckland Together about the out of home (bus shelter) and website advertisements for Tiny Teddy biscuits was Upheld in part and Not Upheld in part.

The Media, oOH Media, appealed the Decision in respect of the bus shelter advertisement. The Chairperson considered that the Application raised sufficient grounds for the matter to be reheard by the Appeal Board.

The Appeal Board agreed that based on the content of the appeal application, it was appropriate to narrow the focus of the appeal to a de novo consideration of the bus shelter advertisement under the Children and Young People's Code. Therefore, the Complaints Board decision that the bus shelter advertisement was in breach of the Advertising Standards Code stands.

The Appeal Board agreed the bus shelter advertisement for Tiny Teddy biscuits did not target children or young people. The Appeal Board allowed the Appeal and the bus shelter advertisement was Not Upheld under the Children and Young People's Advertising Code.

A majority of the Appeal Board said that whilst the product appeals to children and the presentation of the advertisement had some appeal to children, the quantity of product being sold and the text "Add a little lunchbox love" meant the advertisement was principally targeted at adults, as household shoppers. The majority considered the location of the bus shelter in conjunction with the audience data provided by the Media and said the advertisement was positioned at locations where children were unlikely to be a significant proportion of the expected average audience as defined by the Code.

The Appeal was Allowed and the Complaint about the bus shelter advertisement, under the Children and Young People's Advertising Code, was Not Upheld.

### **Decision:**

For the bus shelter advertisement, under the Children and Young People's Advertising Code.

Complaint **Not Upheld** Appeal **Allowed**

Please note this headnote does not form part of the Decision.

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## **APPEAL BOARD DECISION**

On 13 August 2019 the Complaints Board ruled by majority decision to Uphold in part the complaint made by S Hughes on behalf of Healthy Auckland Together about the out of home and website advertisements for Tiny Teddy biscuits.

The Media appealed the Decision. The Chairperson accepted the Appeal and said the Application raised sufficient grounds for the matter to be reheard by the Appeal Board.

### **Preliminary Matters**

#### **Defining the focus of the Appeal**

The Appeal Board noted the Complaints Board had Upheld the complaint about a bus shelter advertisement for Tiny Teddy biscuits under both the Children and Young People's Advertising Code and the Advertising Standards Code.

The Appeal Board noted the Complaints Board had Not Upheld the complaint about the website advertisement for Tiny Teddy biscuits under both the Children and Young People's Code and the Advertising Standards Code.

The Media, oOH Media, appealed the decision, in respect of the ruling about the bus shelter advertisement. The appeal application contained new evidence about the demographic profile of the audience for the bus shelter advertisement. The Media said the new data showed that children under the age of fourteen were 20% of the population, well below the 25% referred to in the guidelines for applying Rule 1(i) of the Children and Young People's Code. These guidelines are as follows:

- Advertisers need to demonstrate that care is taken when evaluating the expected average audience composition prior to the placement of occasional food or beverage advertisements to ensure they are not targeted at children
- Measures to determine if children are likely to be a 'significant proportion' of the expected average audience may include one, or a combination of, the following:
  - Where accurate data exists 25% or more of the expected average audience will be children.
  - Child viewing time zones.
  - Content with significant appeal to children such as programmes, artists, playlists, video, movies and magazines.
  - Locations where children gather (eg schools, school grounds, pre-school centres, playgrounds, family and child clinics and paediatric services and during any children's sporting and cultural events).

In light of the above, the Appeal Board agreed it was appropriate to narrow the focus of the appeal to a de novo consideration of the bus shelter advertisement under the Children and Young People's Advertising Code.

#### **Bias against outdoor advertising**

The Appeal Board noted the Media's view that the ASA "displays an inherent and ongoing bias against outdoor advertising."

The Appeal Board disagreed with this view and said it is in the nature of outdoor advertising to have a broad, unrestricted audience and a repetitive audience where people see the billboard many times on a daily or twice daily basis over the time the billboard is on display, and therefore the scrutiny of such advertising is held to a high standard.

#### **Relevant Codes**

The Chairperson directed the Appeal Board to consider the advertisement with reference to the following codes:

## CHILDREN AND YOUNG PEOPLE'S ADVERTISING CODE

**Principle 1: Social Responsibility:** Advertisements targeted at children or young people must not contain anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility.

**Rule 1(e) – Body image** – Advertisements must not provide an unrealistic sense of body image or promote an unhealthy lifestyle.

**Principle 2: Truthful Presentation:** Advertisements must not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.

### Relevant precedent decisions

In considering this complaint the Appeal Board referred to four precedent decisions, Decision 17/545 which was Upheld in part, Decision 18/107 which was Not Upheld, Decision 18/418, which was Not Upheld and Decision 19/102 which was Upheld.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

**Decision 17/545** concerned a Coca-Cola advertisement which appeared on a bus stop in Auckland. The advertisement featured a vintage style Santa Claus riding in a car. He was holding two bottles of Coca-Cola, and one was labelled No Sugar. Santa was doing a peace sign and stating: "IT FEELS GOOD TO GIVE". The bottom of the advertisement included the Youthline and Coca-Cola logos and said: "Join us in giving to Youthline. TXT 'YL' to 5144 to give \$3". The Complaints Board ruled the advertisement was a sponsorship advertisement from Coca-Cola for Youthline which targeted children and young people and included the 'occasional beverage' product, Coca-Cola Classic.

The majority of the Complaints Board said the advertisement was targeting children and young people and the Children and Young People's Advertising Code applied. The Complaints Board ruled the advertisement was in breach of Principle 1, Rule 1(i), Principle 3 and Rule 3(a) of Children and Young People's Advertising Code.

**Decision 18/107** concerned a television advertisement for McDonalds Restaurants which showed a girl in various scenarios in the middle seat in the back of a car. The girl's face lit up when she saw the McDonalds 'golden arches'. She ate a French fry after her father placed a bag of McDonalds in the centre console where only she could reach them. The majority of the Complaints Board said the advertisement was a product advertisement that promoted McDonalds fries. The Complaints Board said French fries were a product with high appeal to children and young people and were an occasional food.

The majority said the presentation of the advertisement, including the humour and the music and brand recognition with McDonalds would also appeal to both children and young people. However, the Complaints Board said as the advertisement was placed where both children and young people were not a significant proportion of the likely audience, there was no breach of Rule 1(i) or 1(j).

**Decision 18/418** concerned multi-media advertising for BP Oil NZ Ltd. The billboard, bus stop, instore and digital marketing advertisements showed the text 'Good Mood Food'. There were ice cream scoops, doughnuts and food plates in place of the double O letters in each of these three words. The majority of the Complaints Board found that the advertising was not likely to mislead or deceive consumers or encourage excessive consumption. It said the advertising had been prepared with a due sense of social responsibility. The majority of the Board said the advertising

was not in breach of Principles 1 or 2 or Guidelines 1(c), 1(d), 2(b) or 2(c) of the Code for Advertising Food. (NB These Codes differ from the Codes being considered in Complaint 19/296. This is due to the introduction of the new Advertising Standards Code in November 2018).

A minority of the Complaints Board said the advertising made an implicit health claim linking food high in fat, salt and / or sugar to well-being. It said the advertising could mislead consumers about the nutritive value of food and images showed excessive serving sizes for children.

**Decision 19/102** concerned Facebook and Instagram advertisements for Cookie Time biscuits which showed breakfast bowls filled with at least eight Cookie Time biscuits, with milk, and the comment: "The struggle is now over to find the perfect breakfast". The Complaints Board agreed the advertisements undermine the health and well-being of individuals. This is because a bowl of biscuits and milk is not a healthy breakfast option and the serving size shown in the photo exceeds the recommended serving size of three biscuits.

### **Summary of Complaints Board Decision, relating to the bus shelter advertisement**

The Complaints Board upheld a complaint about a bus shelter advertisement for Tiny Teddy biscuits because it gave the misleading impression that a packet of Tiny Teddy biscuits is an everyday food and encouraged the addition of a packet of Tiny Teddy biscuits, as part of a balanced school lunch.

A majority of the Complaints Board agreed the bus shelter advertisement did target children. This is because Tiny Teddy biscuits are a product that is principally appealing to children, the presentation of the advertisement content was appealing to children and the placement of the advertisement was at the bus shelter, in an area near a number of locations where children gather.

### **Media's Appeal**

The Media appealed the Complaints Board decision on the grounds that there is new evidence of sufficient substance to affect the decision.

The Media said this new evidence was not available when they prepared their initial response. They said they now use an Audience Measurement System called Calibre, which provides data about the demographic profile of the audience exposed to each of their advertising locations, over a specified campaign period.

The Media said with Calibre they have been able to extract accurate audience data specifically for children (14 and under) for all the locations identified by the complainant. Each location identified in the complaint is well within the 25% limitation as defined by ASA Principle One Social Responsibility.

The Media also said they have reviewed recent ASA decisions and they believe the ASA Complaints Board "displays an inherent and ongoing bias against outdoor advertising."

The Media said the decision should not apply to the out of home locations identified in the complaint.

### **Complainant's response to the Appeal**

The Complainant said the Appeal Board should not consider whether the advertisement was in breach of the Advertising Standards Code, and only consider whether the advertisement was in breach of the Children and Young People's Code. This is because the new evidence provided by the Media only relates to a breach under the Children and Young People's Code.

The Complainant said the new evidence should not affect the original decision as "the Code does not state that all three factors must be breached" - product, presentation and placement. Even

with the new data, obtained from Calibre, having 20% of the audience as children under 14 years old is still close to the 25% threshold.

The Complainant said the expected average audience component in the Code is ineffective and does little to protect the interests of children as children 5-14 years old in Auckland only comprise 19.2% of the total population, so it is unrealistic to expect a higher audience than that.

In addition to this, the absolute numbers of children who saw this advertisement were high, especially at certain times of day, like when they are going to and from school.

The Complainant also questioned whether the data collected by Calibre was taken during the time period the Tiny Teddy campaign was running.

### **Advertiser's response to the Appeal**

The Advertiser said they have no further comments to make regarding this appeal.

## **APPEAL BOARD DISCUSSION**

The Appeal Board carefully considered the complaint, the advertisements, the information provided by the Complainant and the Advertiser, and the Complaints Board Decision. The Appeal Board also considered the complaint with reference to precedent decisions 17/545, 18/107, 18/418 and 19/102.

### **Bus shelter Advertisement under the Children and Young People's Advertising Code**

#### *Consumer takeout*

The Appeal Board agreed the consumer takeout of the bus shelter advertisement was: Tiny Teddy biscuits are a good addition to children's lunch boxes, to show children you love them.

#### *Who is the target audience?*

The first question the Appeal Board had to address was whether the bus shelter advertisement targeted children or young people.

### **How is targeting assessed?**

'Targeting' is defined in the Children and Young People's Advertising Code as follows:

"Targeting" is determined by the context of the advertisement and the relationship between the following three criteria;

1. Nature and intended purpose of the **product** or service being promoted is principally or generally appealing to children or young people.
2. **Presentation** of the advertisement content (e.g. theme, images, colours, wording, music and language used) is appealing to children or young people.
3. Expected average **audience** at the time or place the advertisement appears includes a significant proportion of children or young people."

The Appeal Board noted that assessing targeting involves considering the relationship between three different criteria: the product itself, the presentation of the advertisement and the expected average audience for the advertisement.

### **Product**

The Appeal Board said Tiny Teddy biscuits are a treat food, not an everyday food, and they have high appeal to children. The product being advertised is a box of Tiny Teddy biscuits which contains fifteen packs of biscuits. There are five packs of each of the three flavours - honey, chocolate and choc chip.

The Appeal Board said as the box of Tiny Teddy biscuits contains fifteen single servings it is unlikely to be a product a child would purchase. Due to the size and expense of the product, children are less likely to purchase the product than adults.

### **Presentation**

The Appeal Board noted that, by their nature, out of home advertisements, like bus shelter advertisements, reach a wide, unrestricted public audience. These advertisements are usually displayed for a period of time.

The Appeal Board said the presentation of the advertisement did have some appeal to children because it used bright colours and cartoon images of cute bears, but the lunchbox images and wording were more likely to engage household shoppers.

### **Audience**

The Appeal Board agreed the principal audience for the advertisement was adults, especially those who are household shoppers tasked with preparing packed lunches for their children. The text "Add a little lunchbox love" speaks directly to this group.

The Appeal Board noted the Advertiser's comments about the positioning of occasional treat advertisements near schools, day care centres and playgrounds. The bus shelter advertisements for Tiny Teddy biscuits were located as follows:

- 390m away from Greenwood Medical Centre
- 550m away from Cornwall Park entrance
- 760m away from Royal Oak School
- 1,760m away from Royal Oak Childcare Centre

The Appeal Board noted that these advertisements were a reasonable distance from locations where children were likely to be a significant proportion of the expected average audience.

The Appeal Board also noted the new data provided by the Media which showed that children (defined by the Code as aged 14 and under) made up approximately 20% of the audience at the bus shelters identified by the Complainant. This is below the 25% level referred to in the Code's guidelines.

#### *Did the advertisement target children or young people?*

A majority of the Appeal Board said the bus shelter advertisement did not reach the threshold to target children or young people, taking into account product, presentation and audience. This is because while the advertisement did have some appeal to children, the principal audience was adults, and this was supported by the location of the bus shelters and the audience data provided by the Media.

The majority said the quantity of product being sold and the text "Add a little lunchbox love" meant the advertisement was principally targeted at adults, as household shoppers. The majority said the placement of the advertisement was relevant as the advertisements were not positioned at locations where children were likely to be a significant proportion of the expected average audience.

The majority said as the advertisement did not target children or young people, the Children and Young People's Advertising Code did not apply.

A minority disagreed. The minority agreed with the Complaints Board that the bus shelter advertisement did meet the threshold to target children.

This is because Tiny Teddy biscuits are a product that is principally appealing to children, the presentation of the advertisement content was appealing to children and the placement of the advertisement was at the bus shelter, in an area near a number of locations where children

gather. The minority said outdoor advertisements are readily accessible to children, due to their unrestricted nature.

*Does the advertisement meet a high standard of social responsibility?*

The minority said the advertisement did not meet a high standard of social responsibility. This is because the text in the advertisement “Add a little lunchbox love”, in combination with the picture of the boy holding a packet of Tiny Teddy biscuits in his lunchbox sends the message that if you love your child you will give them Tiny Teddy biscuits, which are a treat food.

**In Summary**

In accordance with the majority, the Appeal Board agreed the complaint about the bus shelter advertisement was Not Upheld under the Children and Young People’s Advertising Code. This is because the bus shelter advertisement was not targeting children.

Note: The bus shelter advertisement is not to be used again as it remains in breach of the Advertising Standards Code.

**Decision:**

For the bus shelter advertisement, under the Children and Young People’s Advertising Code.

Complaint **Not Upheld** Appeal **Allowed**

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## APPENDICES

1. Description of Advertisements
  2. Complaint from Healthy Auckland Together
  3. Summary of the Complaints Board Ruling
  4. Appeal Application from oOH Media
  5. Response to the Appeal Application from Healthy Auckland Together
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### Appendix 1

#### DESCRIPTION OF ADVERTISEMENTS

The bus shelter advertisement showed a photo of a boy in school uniform reaching for a packet of Tiny Teddy biscuits in his lunch box. Also, in the lunch box is a salad sandwich and an apple. Below the photo is the text "ADD A LITTLE LUNCHBOX LOVE". To the right of this text is an image of a box containing 15 x 25g packets of Tiny Teddy biscuits, in three flavours.

The website advertisement shows two lunch boxes containing sandwiches, fruit and a packet of Tiny Teddy biscuits. On the table in front of the lunch boxes is a number of Tiny Teddy biscuits standing upright. The text says "Tiny Teddy biscuits are the delicious treat your kids will love. With no artificial colours, flavours or preservatives, they're sure to put a smile on everyone's face."

### Appendix 2

#### COMPLAINT FROM HEALTHY AUCKLAND TOGETHER

*(The following is a revision of the original complaint, made after the Complainant acknowledged and apologised for an error made in recording the correct bus stop number and location of advertisement. NB All photos of the advertisements have been removed.)*

This complaint is made by the members of Healthy Auckland Together listed in Appendix A ('We'). We consider that two Arnott's advertisements for the product Tiny Teddy breach the Children and Young People's Advertising Code and the Advertising Standards Code. One advertisement is an out of home advertisement located on a bus shelter. The other is a webpage on the Arnott's website.

We submit that the advertising campaign breaches the following principles and rules of the Codes:

Bus Shelter Advertisement:

1. **Principle 1 of the Children and Young People's Advertising Code:** we contend the out of home advertisement promotes unhealthy eating behaviours for children, causing harm.
2. **Rule 1 (e) of the Children and Young People's Advertising Code:** it promotes an unhealthy lifestyle to children by promoting biscuits as part of a healthy school lunch.
3. **Principle 2 of the Children and Young People's Advertising Code:** the out of home advertisement is likely to mislead children that biscuits are part of a healthy school lunch.
4. **Principle 1 of the Advertising Standards Code:** it does not uphold a due sense of social responsibility, with the consumer takeout being the promotion of an unhealthy product and relationship with food.
5. **Rule 1(h) of the Advertising Standards Code:** it undermines the health of individuals by promoting a packet of biscuits as a school lunch food to children and parents/caregivers.

## Website Advertisement:

**Principle 1 of the Advertising Standards Code:** it does not uphold a due sense of social responsibility, with the consumer takeout being the promotion of an unhealthy product and relationship with food.

**Rule 1(h) of the Advertising Standards Code:** it undermines the health of individuals by promoting a packet of biscuits as a school lunch food to children and parents/caregivers.

### A The advertisements

The out of home bus shelter advertisement was viewed on Tuesday February 12th 2019 at 1.00pm on Manukau Road, Royal Oak, Auckland (Bus stop number 8719). The advertisement shows a smiling young boy, wearing what looks to be a school uniform, holding a packet of Tiny Teddy Chocolate biscuits next to a salad sandwich and an apple. On the packet of biscuits are the words, "*Happy hastily heaped cocoa powder into a bucket and made a big cloudy powder puff*". Next to this image are the words, 'ADD A LITTLE LUNCHBOX LOVE' and an image of a box containing 15 x 25g packets of Tiny Teddy biscuits in three flavours (honey, chocolate and choc chip). The box has three cartoon teddies on the front.

The digital advertisement was viewed on Thursday April 11<sup>th</sup> 2019 at 11.00am on the Arnott's website (<https://www.arnotts.com/products/tiny-teddy/>). The webpage shows three varieties of Tiny Teddy biscuits standing in front of two lunchboxes. There is a pink lunchbox containing a wholemeal sandwich, apple and packet of Tiny Teddy Chocolate biscuits and a blue lunchbox containing a wholemeal sandwich, grapes and a packet of Tiny

Teddy Honey biscuits. Below the image it states 'Tiny Teddy biscuits are the delicious treat your kids will love. With no artificial colours, flavours or preservatives they're sure to put a smile on everyone's face.'

### B Detailed Analysis of Breaches to the Children and Young People's Advertising Code:

#### Principle 1:

Advertisements targeted at children or young people must not contain anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility.

#### Rule 1(e):

Advertising must not provide an unrealistic sense of body image or promote an unhealthy lifestyle.

#### Analysis

The out of home advertisement does not observe a high standard of social responsibility. It appeals to children and is likely to result in harm due to promoting the regular consumption of a sometimes food and the normalisation of an unhealthy relationship with food.

Furthermore, the advertisement targets children. The product being advertised is principally for children, the presentation is appealing to children and it is placed in a location where a large number of children can be exposed to the advertisement. Tiny teddies are appealing to children due to their size and 'fun' shape. The advertisement is near a playground, a school and a childcare centre. It appeals to young children because it features a young boy and contains literacy and visual techniques that appeal to children. It uses bright colours, cartoon images and a story about one of the Tiny Teddies named Happy ("*Happy hastily heaped cocoa powder into a bucket and made a big cloudy powder puff*"). The story uses alliteration, a literary device

commonly used in children’s story books because it is catchy, repetitive and memorable. Alliteration has been shown to hold greater appeal for consumers than non-alliterative messages<sup>1</sup>. When considering the audience for this advertisement there is a need to err on the side of caution and take a common sense approach due to the unrestricted nature of out of home mediums as previously noted by the Complaints Board in their decision for complaint number 17/454.

The advertisement promotes an unhealthy lifestyle by promoting an unhealthy diet. It shows a child, wearing a school uniform, holding a 25g packet of Tiny Teddy biscuits next to two foods that are commonly recognised as healthy lunch foods. In New Zealand, children eat lunch at school on five days per week. The advertisements promote a packet of Tiny Teddy biscuits being added to children’s school lunches, promoting regular consumption of biscuits and the addition of biscuits to a healthy school lunch.

Tiny Teddy biscuits are not a food to be consumed regularly. The 25g packet advertised is classified as a Sometimes food under the Food and Beverage Classification System. It is also worth noting that the biscuits are classified as a sometimes food not an occasional food simply due to the small serving size. The small serving size is not always likely to be adhered to by parents. Therefore, the amount of biscuits consumed by children may be higher. Biscuits are not included in any sample meal plans for children provided in the Ministry of Health Food and Nutrition Guidelines for Healthy Children and Young People<sup>2</sup>.

The advertisement also depicts Tiny Teddy biscuits as a mood enhancer and normalises an unhealthy relationship with food as contended on page 5.

Principle 2:

Advertisements must not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.

Analysis

The out of home advertisement portraying Tiny Teddy biscuits as part of a healthy lunch is likely to be misleading to children. As discussed above the advertisement shows a 25g packet of biscuits in a lunch alongside healthy lunch foods. A 25g packet of biscuits does not belong in a healthy lunch.

Table 1 compares images of school lunches used in the campaign with an image of a school lunch on the Ministry of Health funded programme Fuelled 4 Life website. The images used in the campaign go against the Ministry of Health’s Food and Nutrition Guidelines and undermine the work being undertaken to support healthy eating and lifestyles for school children.

Table 1. Comparison between lunch meals advertised and a recommended lunch

Out of home advertisement	Arnott’s website	Sample lunch*
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<sup>1</sup> <https://www.sciencedaily.com/releases/2016/02/160212130139.htm>

<sup>2</sup> Ministry of Health. 2012. Food and Nutrition Guidelines for Healthy Children and Young People (Aged 12-18 years): A background paper. Partial revision February 2015. Wellington: Ministry of Health.



\*Fuelled 4 life website <http://www.fuelled4life.org.nz/parents/parents-lunch-boxes>

## C Detailed Analysis of Breaches to the Advertising Standards Code:

### Principle 1:

Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

### Rule 1(h):

Advertisements must not undermine the health and well-being of individuals.

### Analysis

The advertisements have not been prepared or placed with a due sense of social responsibility to children, parents/caregivers or to society. They promote biscuits as part of a healthy school lunch, and a way of increasing positive emotions. These are irresponsible messages for both children and parents/caregivers and do not align with the spirit of the code.

The corresponding guideline in the Code which elaborates on Rule 1(h) states that advertisers must not undermine the food and nutrition policies of the Government and the Ministry of Health, such as the Food and Nutrition Guidelines or the Eating and Activity Guidelines. The images used in the out of home advertisement communicate to children and parents/caregivers that Tiny Teddy biscuits are part of a healthy school lunch. This message undermines the health of children and the food and nutrition policies of the Government and the Ministry of Health. The Ministry of Health Food and Nutrition Guidelines for children do not recommend biscuits as a lunch, morning tea or afternoon tea food. Furthermore biscuits are not listed in any of the sample meal plans for children of any age or gender.<sup>3</sup>

Both advertisements depict Tiny Teddy biscuits as a way of increasing positive emotions. They play on the concept that eating food such as biscuits makes you feel good, a concept that needs to be dispelled. The out of home advertisement shows a boy smiling while holding a packet of Tiny Teddy biscuits. The website states Tiny Teddy biscuits are “*sure to put a smile on everyone’s face*”. The out of home advertisement gives children and parents the takeout message that Tiny Teddy biscuits make you happy and both advertisements give parents the takeout message that Tiny Teddy biscuits make children happy. Research shows the consumption of occasional food

<sup>3</sup> Ibid.

products can actually have a long lasting negative influence on general mood and mental wellbeing as it impairs the function and structure of the brain<sup>4</sup>.

The out of home advertisement uses the quote 'ADD A LITTLE LUNCH BOX LOVE'. This quote normalises an unhealthy relationship with food because it promotes the concept that giving Tiny Teddy biscuits for lunch are a way of demonstrating love.

The out of home advertisement was on a bus shelter on a main arterial road in Auckland. This placement exposes a large number of people to the advertisement and potentially a large number of children. Not only was it placed on a main arterial road, it was also placed near facilities that children frequent. It was located:

300m from Greenwood Medical Centre  
350m from the Cornwall Park Playground  
600m from Royal Oak Primary School  
950m from the Royal Oak Childcare Centre

## Summary

The Arnott's Advertisements have not been prepared or placed with a due sense of responsibility. They undermine the health and wellbeing of society and government efforts to reduce the rates of obesity in New Zealand by promoting and normalising unhealthy eating behaviours to children and parents/caregivers. Therefore, we believe the out of home advertisement is in breach of both codes and the website advertisement is in breach of the Advertising Standards Code.

## Appendix A: Healthy Auckland Together signatories

Healthy Auckland Together is a coalition of organisations within the Auckland region that aims to: improve nutrition, increase physical activity and halt rising rates of obesity among Aucklanders. A priority focus within these aims is equitable outcomes for Māori, Pacific and lower-socioeconomic communities. With a broad range of coalition partners - including health, central government (including Ministry of Health and New Zealand Transport Agency), local government (including Auckland Council and Auckland Transport), sport, iwi, and non-government organisations - Healthy Auckland Together's aim is to encourage change in the regional environment so it contributes to Aucklanders' health and does not impede it. Healthy Auckland Together made a submission to the review of the Children's Code for Advertising Food and the Code for Advertising to Children. Marketing to children is a key component of the environmental work undertaken by Healthy Auckland Together.

This complaint is made by the following members of the Healthy Auckland Together coalition:

- Asian Network (TANI)
- Auckland Dental Association
- Auckland District Health Board
- Auckland War Memorial Museum
- Auckland Regional Public Health Service
- Counties Manukau Health
- Diabetes Project Trust
- Disability interest groups
- Hāpai Te Hauora Tapui Limited
- Health Promotion Agency
- Healthy Families Manukau, Manurewa-Papakura
- Healthy Families Waitakere

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<sup>4</sup> <https://www.mentalhealth.org.nz/assets/resourcefinder/feeding-minds.pdf>

- Heart Foundation
- Pacific Heartbeat
- Primary Health Organisations (7)
- Te Rūnanga o Ngāti Whātua
- Stroke Foundation
- Toi Tangata
- University of Auckland
- Waitemata District Health Board

### **Appendix 3**

#### **SUMMARY OF COMPLAINTS BOARD DECISION 19/229**

##### **Summary of the Complaint**

The Complainant was concerned the advertisements were likely to result in harm due to promoting the regular consumption of a sometimes food and the normalisation of an unhealthy relationship with food.

##### **Issues Raised**

- Social Responsibility
- Health and Well-being
- Truthful Presentation
- Unhealthy lifestyle

##### **Summary of the Advertiser's Response**

The Advertiser said the advertisements target the main grocery buyer, not children, as their primary audience. The bus shelter advertisement was taken down on 17 February 2019, at the end of the advertising campaign.

The Advertiser said they do not suggest a packet of Tiny Teddy biscuits be included with every school lunch and they refer to them (in the website advertisement) as a "treat".

##### **Summary of the Complaints Board Decision**

The Complaints Board upheld a complaint about a bus shelter advertisement for Tiny Teddy biscuits because it gave the misleading impression that a packet of Tiny Teddy biscuits is an everyday food and encouraged the addition of a packet of Tiny Teddy biscuits, as part of a balanced school lunch.

The Complaints Board did not uphold the complaint about a website advertisement for Tiny Teddy biscuits.

The full version of this decision can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

## Appendix 4

### APPEAL APPLICATION FROM OOH MEDIA

#### *Summary of the Complaints Board Decision:*

The Complaints Board believe that a bus shelter advertisement for Tiny Teddy biscuits gave a misleading impression that a packet of Tiny Teddy biscuits is an everyday food and encouraged the addition of a packet of Tiny Teddy biscuits, as part of a balanced school lunch.

The Complaints Board did not uphold the complaint about a website advertisement for Tiny Teddy biscuits.

#### *Relevant ASA Codes of Practice*

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

#### ADVERTISING STANDARDS CODE

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(h): Health and Well-being: Advertisements must not undermine the health and well-being of individuals

#### CHILDREN AND YOUNG PEOPLE'S ADVERTISING CODE

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

Rule 1(e) – Unhealthy Lifestyle – Advertisements must not provide an unrealistic sense of body image or promote an unhealthy lifestyle.

Principle 2 – Truthful Presentation - 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.

#### *Relevant precedent decisions*

In considering this complaint the Complaints Board referred to a precedent decision, Decision 17/454 which was Upheld in part.

Decision 17/454 concerned an advertisement for Coca Cola which appeared on a bus stop. It featured a vintage style Santa Claus riding in a car holding two glass bottles of Coca-Cola. The Complaints Board confirmed that sponsorship advertisements for occasional food or beverage products must not target children or be placed in any media where children are likely to be a significant proportion of the expected average audience. It ruled the advertisement was in breach Principle 1 and Rule 1(i) and Principle 3 and Rule 3(a) of Children and Young People's Advertising Code.

oOh!media notes that there are five grounds upon which an appeal is able to proceed, listed at Clause 6(c) of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures:

- i. The proper procedures have not been followed.
- ii. There is new evidence of sufficient substance to affect the decision.
- iii. Evidence provided to the Chairman of the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- iv. The decision is against the weight of evidence.
- v. It is in the interests of natural justice that the matter be reheard.

It is on grounds *ii* and *v* that oOh!media wish to appeal the decision by the ASA.

### Grounds for appeal: New evidence

oOh! media is currently onboarding an Audience Measurement System for out-of-home media called Calibre.

Because of this onboarding process we have access to new evidence which was not available to us when we submitted a response to Complaint 19/229. This new information provides us with accurate data about the demographic profile of the audience exposed to each of our advertising locations over a specified campaign period.

Specifically, the Calibre platform delivers three key outputs:

- 1) audience reach and frequency measures
- 2) behavioural and demographic audience insights
- 3) customised planning dashboard that allows agency strategists to design and plan their out-of-home media campaigns across billboards and street furniture.

Calibre works by blending traffic data with aggregated, anonymised people movement data to calculate Audience Reach and Frequency at an out-of-home media campaign level. This is enriched by segmentation tools, modelled purchasing behaviour and demographic characteristics. There is more than one billion data points in the Calibre Audience Measurement System.

Media Agency planners can select from a range of demographic and behavioural audiences, to develop a campaign which best targets their desired audience.

A report will then be generated showcasing standard media metrics, reach, frequency, investment value (rate card) as well as rich audience insights. Campaigns can also be depicted in a geo spatial way i.e. a map.

The future roadmap for Calibre entails additional data sources that will provide more insight at a category, expenditure and brand level. At a representative level, approx. 67% of the out-of-home media sector are currently utilising Calibre, and the sector has an ambition for this to become industry currency for out-of-home media measurement in NZ.

Whilst we are currently onboarding Calibre we have been able to extract accurate audience data from the system and specifically for Children (14 and under) for all of the locations identified by the complainant.

Calibre results are below:

panel_id	alias	Pct Year 14 and Under
bus-34812	34812,110149I,	20.2%
bus-34813	34813,110149O,	20.2%
bus-34878	34878,110185I,	20.4%
bus-34879	34879,110185O,	20.4%
bus-34896	34896,110196I,	20.2%
bus-34897	34897,110196O,	20.2%
bus-35447	35447,110491O,	20.4%
bus-35453	35453,110494O,	20.8%

These numbers skew slightly to the data from Stats NZ (based on estimates) that tells us that the population of people 14 and under in Auckland is 19.2% of total.

Given the broad distribution of the 14 & under audience v population then to demonstrate that an advertiser is using an out-of-home advertising location to target children would require a much more prominent skew to the population distribution.

Despite that each location identified within the complaint is well within the 25% limitation as defined by ASA within Principle 1, Social Responsibility and Rules pertaining to food and Beverage advertising, Rule 1 (i) Targeting Children - where accurate data exists, 25% or more of the expected audience will be children.

As a result, we believe that the out-of-home locations identified by the complainant have in no way contributed to the breach of the ASA codes / principles / rules and as such should be retracted from the decision as released by ASA.

### **Grounds for appeal: Natural justice**

#### ***Introduction***

In its simplest terms, natural justice is fairness of procedure. Long enshrined in New Zealand law and practice, the requirements of natural justice depend on the circumstances of each particular situation and the subject matter under consideration.

As the Law Commission pointed in the context of societies (in its Report 129, A New Act for Incorporated Societies, NZLC R129, June 2013, para 8.17), the two basic components of natural justice are:

1. the person complaining or complained about has a fair opportunity to be heard on the matters in issue; and
2. the decision-maker is free from bias (including apparent bias) or pre-determination.

The Office of the NZ Ombudsman has previously outlined the particulars of natural justice as it pertains to procedural fairness in civil matters. Specifically, that two key indicators of the absence of natural justice are:

1. Prejudgment of a contested issue by something that was earlier said by the decision-maker; or

2. An ingrained opposition on the part of the decision-maker to one party to a dispute. It is this interpretation of natural justice that oOh!media wish to rely upon to as part of our appeal to the Complaints Board.

***Bias against Out of Home Advertising***

In preparing this appeal, oOh!media undertook a survey of recent ASA decisions pertaining to out of home advertising. Excluding instore displays and private posters, as well as cases that were settled prior to being fully assessed by the Complaints Board, every decision contained adverse commentary on the reach and visibility of outdoor ads. For example:

Complaint Number	Complaints Board findings
15/183, Burger Fuel Billboard	“However, while it said the word “bastard” may be acceptable in a more targeted medium when used in light-hearted manner, it said <b>the word was more problematic when it appeared on a billboard</b> . It noted the billboard was located on a main city street which meant the advertisement was highly visible to a wide cross-section of the general public – including children. The Complaints Board said such <b>indiscriminate exposure</b> to the word “Bastard” was not socially responsible.”
15/184, Access Solutions Billboard	“When considering the image and the medium in which it appeared, the Chairman acknowledged <b>the high visibility and indiscriminate reach of billboards as a medium.</b> ”
15/377, Access Solutions Billboard	“When considering the image and the medium in which it appeared, the Chairman acknowledged <b>the high visibility and indiscriminate reach of billboards as a medium.</b> ”
15/412, Gillman Wheelans Billboard	“The <b>Complaints Board expressed concerns about the medium</b> . It said <b>the high visibility of the billboard medium</b> meant the advertisement was highly visible to a wide cross-section of the general public.”
16/061, 2 Cheap Cars Billboard	<i>The complainant noted that they would no longer be advertising on billboards, but would use the same creative on a different medium – a clear indication that the bias against outdoor advertising demonstrated by the ASA in the complaints handling process is influencing the marketing decisions of companies and steering them away from purchasing out of home.</i>
17/111, Frucor Beverages Ltd	“...the <b>use of an untargeted medium</b> to promote a beverage with a term that could refer to a dangerous practice was not socially responsible and in light of generally prevailing community standards would cause serious or widespread offence.”

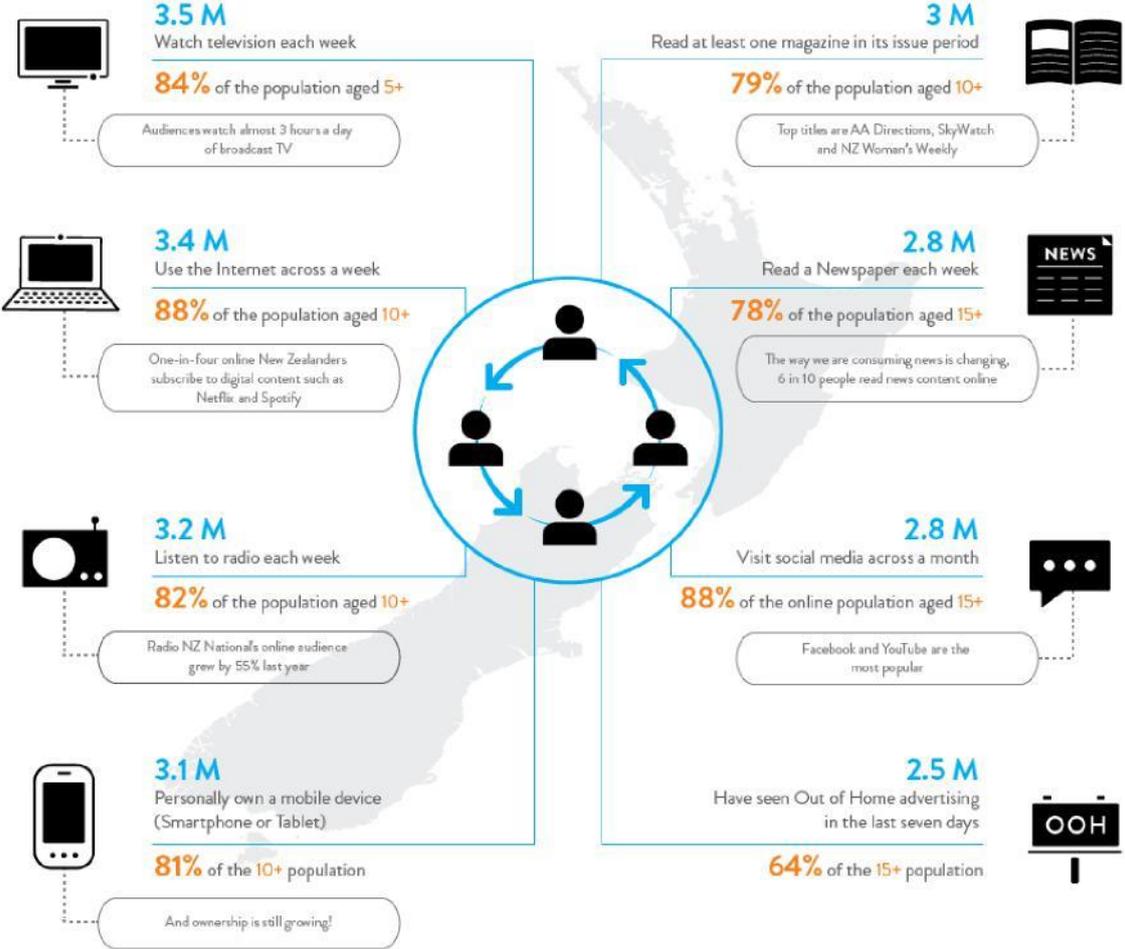
17/221, World Press Photo Exhibition NZ	“The Appeal Board considered all the matters afresh and agreed that whether those viewing the image could recall the event or not, it depicted the immediate aftermath of an assassination. The use of such an image to promote an exhibition in a poster advertisement to an <b>unrestricted audience</b> did offend against generally prevailing community standards. The Appeal Board agreed taking the image out of an exhibition context and placing it in an advertisement in an <b>outdoor medium where it is difficult to restrict who would see it</b> was in breach of the Code.”
17/454, Coca Cola Oceania	<b>“It noted that out of home mediums had an elevated risk for Advertisers who have an intention to target a specific audience due to their unrestricted nature.”</b>

oOh!media is deeply concerned that the Complaints Board is not platform-neutral, but rather displays an inherent and ongoing bias against outdoor advertising. This is demonstrated through the consistent use of phrases such as “indiscriminate reach”, “untargeted medium”, “problematic” use, “unrestricted audience” and – perhaps most troubling – the positioning of out of home as being an “elevated risk” to advertisers.

Frustratingly, there is no evidence to suggest that the bias demonstrated against outdoor advertising is based on fact. All media platforms have value in reaching consumers with content and advertising, and oOh!media is proud of its reach and impact as well as the value for money it provides for clients. However, to suggest that our medium carries a higher risk than any other is simply inaccurate. A recent survey of media reach by Nielsen shows the number of New Zealanders who are impacted by advertising on various mediums, and clearly demonstrates that outdoor advertising is not deserving of reputation that the Complaints Board has assigned to it.



# MORE CONNECTED, MORE CONTENT



Source: Nielsen

## Appendix 5

### RESPONSE TO THE APPEAL APPLICATION FROM HEALTHY AUCKLAND TOGETHER

This appeal should cover the Complaints Board decisions under the Children and Young People's Code. The breaches regarding the Advertising Standards Code (Principle 1 and Rule 1(h)) should not be re-examined as the new evidence relating to oOh! Media's Calibre Audience Measurement system does not impact these breaches.

**We uphold our position that the advertisement breaches Principle 1 and Rule 1(e) of the Children and Young People's Code. We uphold our position that the advertisement does not meet a high standard of social responsibility.**

The definition of 'targeting' within the Children and Young People's Code is determined by the context of the advertisement and the relationship between the following three criteria: product, presentation and placement (expected average audience).

A majority of the Complaints Board agreed that the bus shelter advertisement did not meet a high standard of social responsibility, taking into account context, medium, audience and product. When re-examining the breaches under the Children and Young People's Code the Appeal Board must take into account the Code's definition and that the Code does not state that all three factors must be breached. If the product and presentation are highly appealing to children, the expected average audience should not be an overriding factor in decisions. Harm cannot be mitigated simply by the placement of an advertisement.

This particular advertisement includes a product with high appeal to children and the presentation includes enticing imagery directed towards children. It was placed close to a playground, a school and a childcare centre. Although the new evidence presented suggests that the average audience is only 20 percent of children aged under 14 years, this is close to the 25 percent threshold. Also, we do not know the dates that the audience information was gathered.

We believe that the expected average audience component within the Code is ineffective and does little to protect the best interests of children. Children aged 5-14 years in Auckland comprise only about 19.2 percent of the total population so it is unrealistic to expect much higher audience numbers for an out of home advertisement such as a bus shelter. The absolute numbers of children who viewed this advertisement is likely to be high, and there are likely to be times throughout the day that the number of children viewing the advertisement was greater than 25 percent, for example when children are making their way to and from the nearby school.

**We uphold our position that the advertisement breaches Principle 2 of the Children and Young People's Code.**

Regardless of the expected average audience the advertisement gave the misleading impression to children and adults that Tiny Teddy biscuits are an everyday food and part of a balanced school lunch.

#### **Out of home advertising**

It is important to acknowledge the impact that out of home advertising has on children going about their everyday lives. Out of home advertising is highly visible and placed in heavily trafficked areas in order to attract as many viewers as possible. People tend to view the same

advertisement regularly, thereby achieving repeated brand exposure.<sup>5</sup> In fact, outdoor advertising is growing faster than most traditional media for these reasons.<sup>6</sup>

Outdoor food and drink advertising is a marketing strategy that has the potential to influence the commercial food and drink landscape of children<sup>7</sup>. Children cannot exercise their choice to view or ignore advertisements displayed in the public space, as may be possible with other mediums. New Zealand's Kids Cam research shows children were exposed to approximately seven unhealthy outdoor food advertisements on their way to or from school each week, not including advertisements in food outlets.<sup>8</sup>

### **Calibre platform**

We acknowledge that the Calibre Audience Measurement system is likely to provide more detailed demographic profiles for future campaigns. We question whether the data that has been provided in this appeal was taken from the duration that the Tiny Teddy campaign in question was running or whether it was collected at a later date. If collected once the campaign had finished we believe that the information is not useable for the appeal.

We cannot comment on the methodology of the Calibre Audience Measurement system. However, we do have some questions regarding the specifics around data collection and how long the data has been gathered for in these particular locations.

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<sup>5</sup> Kelly, B., Cretikos, M., Rogers, K., & King, L. (2008). The commercial food landscape: outdoor food advertising around primary schools in Australia. *Australian and New Zealand Journal of Public Health*, 32(6), 522-528

<sup>6</sup> <http://www.billboardsnz.co.nz/about/news/31-8-6-growth-for-oooh-industry>

<sup>7</sup> Sustain and Food Active (2019). Taking down junk food ads: How local areas are taking action on outdoor advertising [http://www.foodactive.org.uk/wp-content/uploads/2019/04/Taking\\_Down\\_Junk\\_Food\\_Ads.pdf](http://www.foodactive.org.uk/wp-content/uploads/2019/04/Taking_Down_Junk_Food_Ads.pdf)

<sup>8</sup> Barr M. Quantifying Children's Exposure to Outdoor Food Advertising. University of Otago, 2018.