



ADVERTISING STANDARDS AUTHORITY

**CONSULTATION ON THE REVIEW OF THE
CODE FOR ADVERTISING TO CHILDREN
AND THE
CHILDREN'S CODE FOR ADVERTISING FOOD**

February 2016

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Background and Scope of the Review

The ASA has 14 Codes and reviews them on a regular basis. As part of its strategy to make the codes and complaints process more accessible, we are working on a project to reduce the number of codes to six. As part of that project, a review was planned for the two children's advertising codes.

In 2015, the ASA agreed to move that review forward to coincide with the work being undertaken across a number of sectors as part of the childhood obesity plan (initiative nine). <http://www.health.govt.nz/our-work/diseases-and-conditions/obesity/childhood-obesity-plan>

The review will consider the operation and content of the Code for Advertising to Children (a general code) and the Children's Code for Advertising Food. The Children's Code for Advertising Food includes specific requirements about portion size, treat and snack food, nutrient and health claims, promotion of unhealthy lifestyles, the type of audience and the nutritive value of foods.

While marketing food to children is a key part of the review, it is important to note that equal attention will be given to the more general code which covers any product or service marketed to children with guidelines about pester power, anti-social behavior, unsafe depictions, sexual imagery, gaming and gambling and clear information about what the advertised offer or product includes.

If there are matters raised outside the jurisdiction of the ASA or the scope of this review (e.g. matters set out on page 15), the Panel has agreed to refer these to the appropriate organisations or authorities.

The Panel will take an evidence-based approach to requests for change or amendment.

As part of the review, the Panel will be asked to consider a move to a single code for advertising to children including a section on food advertising.

How to Comment

We welcome all views on the codes and complaints process and any suggested amendments.

The deadline for responses is **Wednesday 13 April 2016**. This paper is available online at www.asa.co.nz

All submissions should be sent via email to asa@asa.co.nz with Children's Codes in

the subject line.

Or submissions may be posted to:
Codes Review Panel, ASA Secretariat
P O Box 10675, WELLINGTON
Ph (04) 472 7852

PLEASE NOTE: Video submissions are also welcome.

Thank you for engaging with the review process.

Submissions to be made public

The Panel will discuss whether or not submissions are to be made available via the ASA website on completion of the review. If you do not wish for your submission to be made public – please advise us when submitting.

Hearings

The Panel has not yet determined whether it will hear oral submissions. If you wish to request an opportunity to present to the Panel if oral submissions are heard, please state this clearly in your written submission along with your daytime phone number. Once decisions have been made with regard to hearings you will be contacted by the secretariat.

The Review Panel

The Panel has six members and is chaired by a former Court of Appeal Judge, Hon Sir Bruce Robertson. The other panel members are:

Philip Broughton	Deputy Chair and public member of the Advertising Standards Complaints Board
Rob Hoar	General Manager, ThinkTV and Television Commercial Approvals Bureau
Sally Hughes	Public Health Strategic Advisor, Heart Foundation
Paula Martin	Group Manager, Sector and Services Policy, Ministry of Health
Jude Walter	Director, Seen&Heard and marketing, corporate communications specialist

Questions

The Panel welcomes comment from submitters about the operation and content of the Codes and related matters. Please give reasons why changes may be necessary / unnecessary and what, if any, restrictions could be implemented. Please cite evidence that supports your views. In particular the Panel would appreciate comments on the following questions:

1. What are the strengths and weaknesses of the two current Children's Codes?
2. What are the strengths and weaknesses of the current complaints process?
3. What changes, if any, are necessary to protect the rights of children and their health / wellbeing?
4. Please comment on any concerns you have with different media formats in relation to advertising to children (for example: magazines, television, social media, websites).
5. If the content of advertisements is a concern, can you please give examples and / or supporting evidence? A product name and ad description would be helpful so we can source the advertisements.
6. If the placement of advertisements is a concern, can you please give examples and / or supporting evidence? For broadcast media it would be helpful to have the time / date / channel or programme, for other media, a link / publication title / outdoor location would be appreciated.
7. The Children's Codes currently define a child as under the age of 14. Do you support or oppose this definition? Why?
8. Is there a role for a nutrient profiling system such as the health star rating system in the Children's Codes? If yes, in what way and which system would you suggest?
9. Do you support or oppose a specific guideline on sponsorship? Why?
10. Do you support or oppose the introduction of independent monitoring and evaluation of the codes? How would this work?
11. What is your view of the sanctions imposed by the ASA when a complaint is upheld?
12. Are there environments where you consider it to be inappropriate to advertise to children?
13. Do you support or oppose combining the two current codes? Why?

THE CURRENT CODES

CODE FOR ADVERTISING TO CHILDREN 2010

INTRODUCTION

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

Reference should be made to the Interpretation section of the Codes of Practice.

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

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

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

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

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

For the purposes of this Code:

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

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

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

Guidelines

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

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

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

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

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

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

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

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

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

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

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

Guidelines

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

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

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

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

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

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

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

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

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

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

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

CHILDREN'S CODE FOR ADVERTISING FOOD 2010

Introduction

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

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

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

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

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

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

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

For the purposes of this Code:

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

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

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

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

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

Guidelines

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

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

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

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

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

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

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

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

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

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

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

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

Guidelines

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

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

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

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

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

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

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

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

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

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

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

Additional information

Resources

Copies of the codes are included in this booklet. The Codes booklet, the ASA Annual Report and a booklet entitled *The Case for Advertising Self-Regulation* are also available on the ASA website, www.asa.co.nz or by contacting the ASA office (0800 AD HELP).

Useful website links:

http://www.commercialapprovals.co.nz/cf_code.php

<https://www.netsafe.org.nz/advice/parenting/>

<http://www.youronlinechoices.co.nz/>

<http://www.foodsafety.govt.nz/industry/general/labelling-composition/health-star-rating/>

<http://www.foodstandards.govt.nz/consumer/labelling/nutrition/Pages/default.aspx>

Definition of Advertisement

The Advertising Standards Complaints Board and the Advertising Standards Complaints Appeal Board are the final arbiters of the interpretation of the ASA Codes in our process.

The definition of “advertisement” applied in interpreting the codes is set out below:

For the purposes of the Codes, “advertisement” is to be taken in its broadest sense to embrace any form of advertising or marketing communication which promotes the interest of any person, product or service, imparts information, educates, or advocates an idea, belief, political viewpoint or opportunity.

It includes material which is published or broadcast using any medium or activity which is undertaken by, or on behalf of an advertiser or marketer, and over which the advertiser or marketer has a reasonable degree of control.

Definition of media

Advertising mediums covered by the Codes include but are not limited to:

Television

Online, including:

- banner and display ads
- paid-for (sponsored) search
- Company or brand websites
- Social Media
- Mobile
- Commercial e-mail and SMS texts

Newspapers

Radio

Magazines

Billboards, posters and other outdoor media (stationary and mobile)

Leaflets and brochures

Cinema

Advergaming and advertising within apps

Direct mail (advertising sent through the post and addressed to you personally)

Unaddressed mail (advertising in the letter box without your name on)

Neck labels or promotions additional to product labels

Point-of-sale material

Advertorial and other paid content such as native advertising

Advertising Standards Authority

The Advertising Standards Authority was established in 1973 to support standards in advertising content and placement.

Since the early 1990's the ASA has had jurisdiction over all advertising in all media. In recent years, it has received around 800 complaints about 700 advertisements annually. The most complained about categories are therapeutic, consumer products and retail advertising. The most complained about advertising mediums are television and advertiser websites followed by outdoor advertising and newspapers.

If a complaint is upheld by the Complaints Board, the ASA request the advertisement be removed and there is a high level of compliance. All the media sectors are members of the ASA and support the removal of advertisements. Advertisers and communications agencies are also members.

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:

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

The ASCB meets twice a month and in the event of urgent complaints meets at short notice. The average time to deal with a complaint is now 13 days. About 58% of the complaints considered by the Board are upheld.

All decisions are released to the media and are available on the ASA website, www.asa.co.nz.

There are five public members on the Complaints Board and four industry members. The Complaints Board carefully considers all complaints put before it and all complaints received about advertisements are the subject of a Chairman's Ruling or a Complaints Board Decision.

In interpreting the principles and guidelines of the codes, the Complaints Board considers both the spirit and intent. All codes operate with the over-arching Code of Ethics (available at www.asa.co.nz)

Matters currently outside the jurisdiction of the ASA and the Codes of Practice.

In previous code reviews, submitters raised a number of issues that are outside the scope of the ASA and its codes. While these matters were referred on to the relevant government and non-government organisations, it is noted that this review is **not** able to consider the following areas. Agencies that deal with these matters are referred to in brackets.

- Screening trailers for adult television programmes when children may be watching (Covered by the Broadcasting Standards Authority / Television Broadcasters)
- Television or radio programme content (Broadcasting Standards Authority)
- News and current affairs content on television and radio websites (Online Media Standards Authority)
- Editorial content in newspapers and magazines including their websites (New Zealand Press Council)
- Film, Video, Games and Publications classification (Office of Film and Literature Classification)

- The Children's Food Classification for television advertisements (Commercial Approvals Bureau or ThinkTV)
- The Health Star Rating system (Ministry of Primary Industries, Food Standards Australia New Zealand (FSANZ))
- Labelling and packaging of products (unless featured in an advertisement in which case the image and wording in the advertisement can be considered by the ASA. Misleading packaging may be dealt with under the Fair Trading Act by the Commerce Commission).

Submitters may also have views that advertising to children should be subject to Government regulation, however that is outside the jurisdiction of the ASA.

Any issues raised by submitters that are outside the jurisdiction of the ASA or the scope of this review will be referred to the appropriate organisation or authority.