

Advertising Standards Code

Effective 1st November 2018 for new ads
Effective 1st February 2019 for all ads

Every ad a responsible ad
www.asa.co.nz

Purpose of the Code

The purpose of the Advertising Standards Code (Code) is to ensure that every advertisement is a responsible advertisement.

All advertising must be legal, decent, honest and truthful and respect the principles of fair competition, so that the public can have confidence in advertising.

The Principles and Rules set out in this Code are the standards expected in all advertising. Other ASA Codes may also be applicable and many sectors have their own specific advertising requirements - these must also be taken into account.

Definition of Advertisement

“Advertising and Advertisement(s)” means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

Application of the Code

This Code applies to all advertisements placed in any media.

Ultimately, the responsibility to be aware of and comply with all aspects of advertising regulation is shared between all the parties to an advertisement, including the advertiser, agencies and media organisations.

The Code does not apply to content not controlled by the advertiser or to product labels or packaging. However, when a label or packaging appears in an advertisement it forms part of the advertisement and therefore any visible aspects are covered by the Code.

The Code is made up of three parts:

- Principles: The standards expected in advertising.
- Rules: Examples, by no means exhaustive, of how the principles are to be interpreted and applied.
- Guidelines: Information and examples to explain a rule.

Interpreting the Code

Social responsibility in advertising is embodied in the Principles and Rules of the Code. In interpreting the Code, emphasis must be placed on compliance with both the spirit and intention of the Code. It is possible for advertising to be in breach of one or more of the Principles in the Code without being in breach of a specific Rule.

In determining whether a Principle has been breached, the Complaints Board will have regard to all relevant matters, including:

- generally prevailing community standards;
- previous decisions;
- the consumer takeout from the advertisement;
- the context, medium and intended audience; and
- the product or service being advertised.

Principle 1

Social Responsibility

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

Rule 1 (a)

Privacy

Advertisements may only portray or refer to personal information that is publicly available. Other personal information may only be collected and used with the consent of the individual concerned.

Guidelines

- "Personal information that is publicly available" means information about an identifiable individual that is available to the public e.g. contained in a publicly available publication.
- Publicly available information must not be disclosed if doing so would be unfair or unreasonable in the circumstances.
- When personal information (including images) is collected, it must be clear to the individual how their information will be used in an advertisement.
- Parental or guardian consent must be obtained before personal information (including images) of anyone under the age of 18 is used in an advertisement.

Rule 1 (b)

Consent

Advertisers must have appropriate consent from the consumer before engaging in personalised direct advertising communications.

Guidelines

- Personal information that is publicly available may be used for personalised direct advertising communications providing the information is not accompanied by a statement to the effect the person does not wish to receive such advertising.
- Private personal information may be used for personalised direct advertising communications providing consent has been obtained from the person to collect, store, and use their information for a defined purpose and the information collected is only used for that purpose.
- It must be clear to the recipient of any personalised direct advertising communication how they can unsubscribe or opt-out.

Rule 1 (c)

Decency and Offensiveness

Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.

Guidelines

- Grounds for offence include, but are not limited to: gender; race; colour; ethnic or national origin; age; cultural, religious, political or ethical belief; sexual orientation; gender identification; marital status; family status; disability; occupational or employment status.
- Advertisements must not exploit, degrade, denigrate, demean or objectify any person or group of people or any products, services, objects or places.
- Stereotypes may be used to simplify communication in relation to both the product offered and the intended consumer. However, advertisements must not feature stereotypical roles or characteristics which, through their content and context, are likely to be harmful or offensive to people, particularly children and young people. This includes, but is not limited to, advertisements that:
 - › Mock people for not conforming to gender stereotypes.
 - › Portray an activity or product as being inappropriate for a girl or boy because it is stereotypically associated with the opposite sex.
 - › Portray men or women failing at a task that is stereotypically associated with the opposite sex.
 - › Include irresponsible or offensive depictions of differences including race, body shapes and sizes. For example, suggesting it is desirable to be an unhealthy weight (under or overweight).
- Humorous, satirical treatment of people and groups of people are natural and accepted features of societal relationships and may be acceptable, provided they are not likely to cause harm or serious or widespread offence.
- Advertisers must not use offensive, degrading or provocative copy and/or images to attract attention or promote the sale of products or services.
- Sexual imagery or language must be appropriate to the audience and medium.
- Sexual depictions of people or groups of people may only be used to advertise relevant products and services.

Rule 1 (d)

Exploitation of Children and Young People

Advertisements must not portray or represent anyone who is, or appears to be, under 18 years old in any way that is exploitative or degrading or inappropriate for their age.

Guidelines

- Advertisements whose principal function is to promote the welfare of, or to prevent harm to, under 18 year olds, may include sexual portrayal or representation, provided it is not excessive. For example, safe sex campaigns.
- Advertisements targeting Children or Young People must comply with the ASA's Children and Young People's Advertising Code.

Rule 1 (e)

Safety

Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.

Guidelines

- Obvious hyperbole may be acceptable. Advertisements showing impossible but unsafe scenes may be acceptable, provided this context is likely to be clearly understood.
- Examples of unsafe practices may include, but are not limited to:
 - › Reckless activity on roads;
 - › The absence of approved safety equipment such as helmets, seatbelts and lifejackets;
 - › Alcohol consumption in unsafe situations such as driving or sports;
 - › Glorifying excessive speed; or
 - › Activity that does not reflect current workplace health and safety requirements..
- Advertisements for products that have legal restrictions for use must include appropriate statements that highlight specific responsibilities to the end user. For example, the use of drones (Civil Aviation Authority Rules), weapons (Arms Act 1983), raw milk (Food Act 2014).
- Safety claims must not exaggerate the benefit to consumers.

Rule 1 (f)

Violence and anti-social behaviour

Advertisements must not, unless justifiable on educational or social grounds, contain anything that condones, or is likely to show, violent or anti-social behaviour or damage to property.

Guidelines

- It may be acceptable to show violent or anti-social behaviour or damage to property where the purpose of the advertising is to promote safety or to educate in prevention.

Rule 1 (g)

Fear and distress

Advertisements must not cause fear or distress without justification.

Guidelines

- If it can be justified, for example on educational grounds, the fear or distress must not be excessive.
- Advertisers must not use a shocking claim or image merely to attract attention.
- Advertisements must not exploit superstitious or vulnerable audiences.

Rule 1 (h)

Health and well-being

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

Guidelines

- 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.
- Advertisements for food or beverages must not:
 - › Condone or encourage excessive consumption or show a quantity of food or beverage that exceeds the portion size that would be appropriate for consumption by the person or people of the age depicted in the advertisement; or
 - › Promote inactive or unhealthy lifestyles, or portray people who choose a healthy, active lifestyle in a negative manner.
- Advertisements promoting a competition, premium or loyalty/continuity programme must not encourage excessive repeat purchases of foods high in fat, salt or sugar.
- Advertisements for therapeutic or health products and services must also comply with the ASA's Therapeutic and Health Advertising Code.
- Advertisements for alcohol must also comply with the ASA's Code for Advertising and Promotion of Alcohol.
- Advertisements for gaming and gambling must also comply with the ASA's Code for Advertising Gaming and Gambling.

Rule 1 (i)

Protecting the environment

Advertisements must not depict or encourage environmental damage or degradation.

Guidelines

- Care must be taken when areas of significant conservation value are featured in an advertisement. These include, but are not limited to, beaches, dunes, riverbeds, wetlands, tussock lands, lake margins or estuaries.

Principle 2

Truthful Presentation

Advertisements must be truthful, balanced and not misleading.

Rule 2 (a)

Identification

Advertisements must be identified as such.

Guidelines

- Content controlled, directly or indirectly, by the advertiser must not be disguised as something other than an advertisement. It must be obvious to, and well understood by, the audience that they are engaging with an advertisement regardless of the form the advertisement takes or the platform where it appears.
- Disclaimers and other qualifying statements must be clearly visible and easily understood.
- Additional guidelines are provided in the ASA's Guidance Note on the Identification of Advertisements.

Rule 2 (b)

Truthful presentation

Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise.

Obvious hyperbole identifiable as such is not considered to be misleading.

Guidelines

- Obvious untruths, exaggeration, puffery or deliberate hyperbole that are unlikely to mislead may be acceptable.
- Advertisers must hold evidence to substantiate all claims made in an advertisement.
- When evidence is included in an advertisement, it must be easily understood.
- Advertisers must not suggest that their claims are universally accepted if there is a significant division of informed or scientific opinion.
- Disclaimers, asterisked, footnoted or "small print" information must not contradict the claims that they qualify. The information must be obvious, and located and presented in such a way as to be clearly and easily read and / or heard. Where appropriate, the information must be linked to the relevant part of the main message.
- Advertisers must be able to meet any reasonable demand created by their advertising.
- Pricing information in an advertisement must be clear, accurate, unambiguous and must not mislead. For example:
 - › Where price is stated, it must match the price of the product shown or specified in the advertisement.
 - › Price comparisons must only compare 'like-for-like' equivalent products or services.
 - › The full price of the products or services must be shown. Unavoidable additional charges must be clearly identified.
 - › Discounts off the 'usual' price must be genuine. The usual price must be the price at which the products or service are commonly sold at.
 - › The terms 'sale', 'clearance', 'special' or 'special offer' must be used for a short duration of time and represent a price below the usual price.
 - › 'Lowest' and 'cheapest' claims must be accurate and able to be substantiated.
 - › Advertisements for sales must not exaggerate the savings or how many items are on sale.

Rule 2 (c)

Use of data

Advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner which is misleading or deceptive.

Guidelines

- Tests used to support a claim must be conducted or verified by an independent and objective body using industry-accepted methodology so there is no doubt as to the veracity of the test.
- Test results must be either current or accepted historical evidence that has not been superseded by new evidence and must support the claims in the advertising. Partial results or differences that are not statistically significant must not be used.
- Claims must not overstate the significance of any results.
- The use of scientific language may be acceptable provided that it is appropriate to, and readily understood by, the intended audience.

Rule 2 (d)

Comparative advertising

Comparative advertisements, or advertising that identifies a competing product or service, must be factual, accurate, make clear the nature of the comparison, must not denigrate competitors and must be of 'like' products or services available in the same market.

Guidelines

- Competitor businesses, products and services must be fairly and properly identified and must not be discredited or denigrated in any way. They must not be used to 'upgrade by association' or for 'passing off' purposes or to take unfair advantage of the goodwill associated with them. This includes through the use of trademarks, trade names or other distinguishing identifiers.
- An advertisement must not appear to look like another as this is likely to mislead or cause confusion.
- Advertisements that do not identify a specific competitor can still be considered a comparative advertisement, e.g. if a comparison is made against all competition within an industry or with specific aspects of an unnamed competitor product or service.
- Comparative advertisements must only compare "like with like". The basis of selection for a comparison must be clear and the elements compared must not be selected in a way that gives the advertiser an artificial or unfair advantage. Only identical products should be compared if price is the only comparative claim used in the advertisement.
- The basis for any claim that any product or service is superior to others, for example, "number one", "leading", "largest", "best value", "cheapest" or similar, must be made clear in the advertisement.

Rule 2 (e)

Advocacy advertising

Advocacy advertising must clearly state the identity and position of the advertiser.

Opinion in support of the advertiser's position must be clearly distinguishable from factual information.

Factual information must be able to be substantiated.

Guidelines

- Evidence (e.g. academic studies, expert opinion) in support of factual information must be appropriate and robust and must be readily available and obtainable.
- The identity of the advertiser must be obvious and easily recognised. Where an advertiser is not well known, additional information such as a physical address, website address or phone number may be appropriate to include.

Rule 2 (f)

Use of testimonials and endorsements

Advertisements must not contain or refer to any personal testimonial unless permission to use the testimonial has been obtained and it is verifiable, genuine, current, and representative of the typical not the exceptional.

Advertisements must not claim or imply endorsement by any individual, government agency, professional body or independent agency unless there is prior consent and the endorsement is current and verifiable.

Guidelines

- Use of testimonials with exceptional outcomes may be acceptable, provided this is made clear in the advertisement.
- Advertisers must not publish testimonials or endorsements for products or services unless written permission is obtained in advance.
- Advertisers must be able to provide documentation to support any testimonial or endorsement they use.
- Testimonials and endorsements do not constitute substantiation for claims made in an advertisement.
- Advertisements must not display a trust mark, quality mark or equivalent signs or symbols, without the necessary authorisation or approval. Advertisements must not claim that the advertiser (or any other entity referred to) or the advertised product has been approved, endorsed or authorised by any public or other body (i) if it has not, or (ii) without complying with the terms of the approval, endorsement or authorisation.

Rule 2 (g)

Food and Beverage Claims

Food and Beverage claims must be factual and able to be substantiated and must not be misleading.

Guidelines

- Advertisements must not mislead as to the nutritional value of any food or beverage. Products high in sugar, fat and / or salt must not be portrayed in any way that suggests they are beneficial to health. For example, foods high in sugar must not claim to be "low fat" or "fat free" and foods high in fat must not claim to be "low sugar" or "sugar free".
- Food or beverages must not be portrayed as complete meals unless they are formulated as such.
- Benefits of food and beverages from a nutritious diet must not be exaggerated. Advertisements must not imply a single product may replace a healthy diet or undermine the importance of consuming a variety of foods.
- Advertisers who make nutrient, nutrition or health claims about a food or beverage in an advertisement must adhere to the requirements of the Australia and New Zealand Food Standards Code, specifically Food Standard 1.2.7.
- Advertisers of Infant and Follow-on Formula must take into account the requirements of the Infant Nutrition Council Code of Practice for the Marketing of Infant Formula in New Zealand and the Infant Nutrition Council New Zealand Follow-on Formula Marketing Guidelines, respectively.
- Food or beverage advertisements targeting Children or Young People must also comply with the ASA's Children and Young People's Advertising Code.

Rule 2 (h)

Environmental Claims

Environmental claims must be accurate and able to be substantiated by evidence that reflects scientific and technological developments.

Guidelines

- The environment includes ecosystems and their constituent parts, including people and communities, natural and physical resources, and the qualities and characteristics of locations, places and areas.
- An "environmental claim" means any statement, symbol or graphic that indicates an environmental aspect of a service, product, component or packaging, and includes references to sustainability, recycling, carbon neutrality, energy efficiency, use of natural products or impact on animals and the natural environment.
- Absolute environmental claims will be assessed on the complete life-cycle of the product and its packaging, taking into account any effects on the environment of its manufacture, distribution, use, disposal, etc. Examples include: environmentally friendly / safe / kind.
- Qualified claims such as "environmentally friendlier / safer / kinder" require an ability to prove a meaningful environmental advantage over competitors or a meaningful improvement on previous formulations, components, packaging or method of manufacture or operation.
- Environmental benefit claims must be genuine and must meet relevant local or international standards as appropriate for claims, such as 'biodegradable' and 'organic'.
- Environmental claims based on the absence of a harmful chemical or damaging effect are not acceptable if no other products in the category include the chemical or cause the effect.

About the Advertising Standards Authority (ASA)

The ASA is the organisation that sets the standards (Advertising Codes) for responsible advertising in New Zealand. The ASA also runs the advertising complaints processes. The ASA is funded by the advertising industry and has 14 member organisations representing advertisers, agencies and the media.

Making a complaint

Anyone can complain about any advertisement.

All complaints must be received using our online complaints form, via email or via post. Our process requires that we deal with the consumer's concerns in their own words. Our online complaint form is available at www.asa.co.nz. Complaints can be emailed to asa@asa.co.nz or posted to PO Box 10675, Wellington 6143.

Competitor complaints

Competitor complaints are dealt with via a user-pays process with adjudication hearings. Costs for a hearing range from \$5,500 to \$10,000 excluding GST. The process aims to give fast and thorough consideration to conflicts between competitors. .

Responding to a complaint

All parties associated with an advertisement are expected to respond to the ASA following a complaint. This includes the advertiser and may also include the agency and the media where the advertisement was placed. The ASA website www.asa.co.nz provides guidance on how to respond to a complaint.

Decisions

The Advertising Standards Complaints Board makes decisions about complaints following responses from parties. Decisions may be

appealed and if there are grounds for an appeal, the Appeal Board will re-consider the complaint. The ASA membership has no involvement in the work of the Complaints and Appeal Boards.

Decision outcomes have the following meanings:

No Grounds to Proceed: This means the Chair of the Complaints Board has reviewed the complaint and has ruled a Code has not been breached, and there are no grounds for the complaint to proceed. This outcome may occur when a complaint is based on an extreme interpretation or is trivial or vexatious, or if there is a precedent decision that relates to the same or similar advertising.

Upheld: This means the Complaints Board agreed with the issues raised by the complainant and the advertiser is asked to amend or remove the advertisement.

Settled: When an advertiser either withdraws an advertisement or makes immediate changes (that the Chair considers satisfactory) to address the issues raised by the complainant the complaint can be settled by the Chair. A settled decision achieves the same outcome as an upheld decision – removal or amendment of the advertisement.

Not Upheld: This means the Complaints Board does not find the advertisement in breach of the Advertising Codes in relation to the complainant's concerns.

No Jurisdiction: Sometimes a complaint is outside the jurisdiction of the ASA. The ASA deals with complaints about any advertisement that is targeted at NZ audiences. Matters of law or complaints about advertisements from outside of NZ, which are not targeting NZ consumers, are outside the ASA's jurisdiction.



All ads, all media