

Consultation on the standards for Advertising and Promotion of Alcohol

The Role of the Advertising Standards Authority

The [Advertising Standards Authority](#) (ASA) sets the standards (the Codes) for responsible advertising in New Zealand. The advertising Codes cover truthful presentation and matters of social responsibility. The [Advertising Standards Code](#) sets the standards for all ads in all media. There are also specialist codes for advertising to children and young people and for categories including alcohol, gambling, financial advertising and therapeutic and health advertising.

The ASA runs a complaints process to support compliance. The ASA dealt with 1,338 enquiries during 2018, including 820 formal complaints about 425 advertisements from a range of products and services.

The ASA member organisations represent advertisers, agencies and media organisations and is funded primarily through an advertiser levy.

The review of the standards for Advertising and Promotion of Alcohol

The ASA Codes Committee is responsible for reviewing and updating the Codes to support robust advertising standards. All codes are subject to a regular review. The ASA Codes Committee includes advertiser, agency, media and public representatives.

The Codes Committee work plan for 2019 includes a routine review of the standards for alcohol advertising and promotion. This code review will ensure these standards are fit for purpose in 2019 and beyond. The current code is the [Code for Advertising and Promotion of Alcohol](#).

Prior to embarking on a code review, the Codes Committee considers information including relevant Complaints Board decisions. The drivers for a review of the standards for alcohol advertising and promotion include changes to legislation since the current standards were developed and it was scheduled work for the Codes Committee in 2019. The Codes Committee has appointed two additional representatives to support the review process (see Appendix 2).

The ASA Governance Board is responsible for approving the Codes Committee work plan, review process and the final code.

Issues outside the scope of this review

It is currently legal to advertise and promote alcohol in New Zealand. The ASA Codes, in conjunction with legislation, food standards (labelling), broadcast standards (content) and national guidelines, govern responsible and legal alcohol advertising and promotion. This review is limited to the ASA Code and the Codes Committee is not able to consider aspects in submissions that raise issues outside this scope. See Appendix 1 for more background information on some issues outside the scope of this review.

The draft Alcohol Advertising and Promotion Code

To assist with the review process, the Codes Committee has developed a draft Alcohol Advertising and Promotion Code (see Appendix 4), which is consistent with the new codes format adopted by the ASA in recent years. Codes now include principles, rules and guidelines.

The ASA's [Advertising Standards Code](#) applies to all advertisements in all media, including alcohol advertisements. The draft Alcohol Advertising and Promotion Code has additional rules that also apply to alcohol advertising and promotion. There is a particular emphasis in this code on protecting children and young people and other vulnerable audiences. Alcohol advertisements and promotions must be targeted at adults and a high standard of social responsibility is required.

We are seeking your views on the draft code

The Codes Committee is interested in your views on the draft code and any evidence you have to support your position. Your feedback will inform possible changes to the draft code to be sure we meet the objectives outlined above.

Submissions are due by 23 August 2019 to Claire Hofer (claire@asa.co.nz). If you are not the right person in your organisation to respond, we would be grateful if you could please forward this request on.

The Codes Committee may release submissions to the public at the conclusion of the review. **Please advise if you do not want your submission to be released.**

Help spread the word

If you know of other individuals or organisations who would also be interested in providing a submission, please forward this information to them.

Questions to consider in your submission

It would be helpful to the Codes Committee if you would consider answering the following questions in your submission.

1. Do you think there are any inconsistencies between the draft code and the current legislation that applies to the advertising and promotion of alcohol? Please provide details.
2. Do you agree with the wording of the draft code? If not, please outline the part or parts you disagree with and explain why.
3. Are there any aspects of alcohol advertising and promotion standards that are not captured in this draft code? Please outline any additions you believe are required and why. (Please check Appendix 1 for issues outside the scope of this Code)
4. Please include any current alcohol advertisements or promotions you consider are problematic and explain why. It would be helpful for you to include a copy of the advertisement or promotion or information on where and when you saw it so that we can source it if you are not able to provide a copy.

Next Steps

The Codes Committee has directly invited submissions from a range of organisations and has advertised for submissions from the public via media and its website and social media platforms. The committee will consider all issues raised in submissions that relate to the draft code and that are within the scope of this review.

A further period of consultation may be undertaken. The Codes Committee may also consider oral presentations from some submitters if there is a need to better understand any of the issues raised.

A finalised code is expected to be released in mid-2020.

Appendix 1

Issues outside the scope of the ASA Codes

From time to time issues that are outside the scope of the ASA and its codes are raised during a code review process. These issues will be referred on to the relevant government and non-government organisations, however, to assist submitters, it is noted that this review is **not** able to assist in the following areas.

1. Legislation

The Sale and Supply of Alcohol Act has a specific section on alcohol advertising ([s237](#));

The Sale and Supply of Act covers the safe and responsible sale, supply, and consumption of alcohol and the minimisation of harm caused by its excessive or inappropriate use.

The legislation provides the following advertising and promotion restrictions:

- Alcohol promotions are controlled so they don't encourage excessive alcohol consumption or drinking by people under-18.
- Regulations may be made to ban some alcohol products.
- Supermarkets and grocery stores are required to limit the display and advertising of alcohol to a single non-prominent area of their store.

The legislation bans all advertising and marketing that promotes excessive alcohol consumption or has special appeal to minors (s237). Except within licensed premises, you also can't:

- advertise free alcohol
- promote discounts of 25% or more
- offer customers free goods, services or opportunities to win prizes if they buy alcohol.

The penalty is a fine of up to \$10,000. A business's licence may also be suspended or cancelled.

The Gambling Act 2003 allows for regulations to restrict or prohibit certain products or services being offered or used as a prize for gambling.

The [Gambling \(Prohibited Property\) Regulations 2005](#) states that alcohol must not be offered as a reward for, or used to reward a winner of, gambling.

The definition of Gambling from this act is as follows;

gambling—

(a) means paying or staking consideration, directly or indirectly, on the outcome of something seeking to win money when the outcome depends wholly or partly on chance; and

(b) includes a sales promotion scheme; and

(c) includes bookmaking; and

(d) includes betting, paying, or staking consideration on the outcome of a sporting event; but

(e) does not include an act, behaviour, or transaction that is declared not to be gambling by regulations made under [section 368](#).

With regard to the practice of offering significant price discounts on alcohol products, Section 237 of the Sale and Supply of Alcohol Act includes restrictions relating to price advertising. The Advertising Standards Complaints Board (ASCB) has been advised that a decision of the ASCB made solely around the level of discounting, would likely be seen as a restrictive trade practice and could breach the Commerce Act 1986.

The intention of the draft code is not to repeat aspects of legislation that apply to the advertising and promotion of alcohol. The code will apply in conjunction with the current legislation.

2. Health warnings on alcohol products

The regulation of health warnings on alcohol products is a matter covered by Food Standards Australia New Zealand – see their websites www.fsanz.govt.nz / www.fsanz.gov.au.

3. Broadcasting Standards Authority

Attention is drawn to the Broadcasting Standards Authority Codes of Broadcasting Practice which include a Standard on alcohol with regard to the content of broadcast programmes and programme promotions along with sponsorship of broadcast programmes. See their website, www.bsa.govt.nz.

4. National guidelines on alcohol promotions

A number of Government agencies and industry representatives were involved in the development of national guidelines on alcohol promotions. See: <https://www.alcohol.org.nz/management-laws/nz-alcohol-laws/advertising-alcohol>

Appendix 2

ASA Codes Committee for the review of the Code for Advertising and Promotion of Alcohol

Malcolm Swan:	Chair and Advertiser Representative
Nick Bulmer:	Advertising Agency Representative
Ashleigh Harding:	Media Representative
Marj Noble:	Public Representative
Lindsay Mouat:	ASA Governance Board Representative
Dr Harriette Carr:	Deputy Director, Public Health, Ministry of Health
Jude Walter:	Director, Seen & Heard, marketing and corporate communications specialist
Hilary Souter:	ASA Chief Executive
Claire Hofer:	ASA Secretariat

Appendix 3

Complaints to the ASA about alcohol advertisements and promotion

Between 2012 and 2018 there have been 151 complaints, 46 have been upheld or settled with 21 of these decisions in the last two years. From a total of 151 complaints, 57 or 38% were ruled no grounds to proceed. The most common breach relates to social responsibility including placement issues, followed by implied or explicit therapeutic benefit claims. Further details about each complaint can be viewed on the ASA website [Decisions](#) page.

	2018	2017	2016	2015	2014	2013	2012
Total # Complaints (all ads, all media)	820	603	586	707	871	792	1067
Total # Alcohol Complaints	33	12	17	12	14	27	36
% of Total Complaints	4.0	2.0	2.9	1.7	1.6	3.4	3.4
Decisions							
No Grounds to Proceed	9	4	5	5	8	11	15
Upheld / Settled	16	5	6	4	2	6	7
Not Upheld	8	2	6	3	4	9	10
Other		1				1	4

Appendix 4

DRAFT Alcohol Advertising and Promotion Code

DRAFT ALCOHOL ADVERTISING AND PROMOTION CODE

Purpose of the Code

The purpose of the Alcohol Advertising and Promotion Code (Code) is to ensure that alcohol advertising and promotion is conducted in a manner that demonstrates a high standard of social responsibility. All alcohol advertising and promotion must be legal, decent, honest and truthful and respect the principles of fair competition.

This Code recognises that alcohol advertising and promotion must be responsible and moderate in merchandising and consumption, and not undermine the need for the prevention and minimisation of alcohol-related harm, with particular regard for the need to protect children, young people and other vulnerable persons.

All alcohol advertising and promotion must adhere to the Principles and Rules set out in this Code. In addition, the Principles and Rules set out in the [Advertising Standards Code](#) describe the standards expected in all advertising, including alcohol advertising. Attention is drawn to the;

- [Sale and Supply of Alcohol Act 2012](#) (particularly [section 237 Irresponsible Promotion of Alcohol](#));
- [Gambling Act 2003](#) (particularly [section 17 Regulations may restrict or prohibit prizes](#));
- [Gambling \(Prohibited Property\) Regulations 2005](#) (particularly [section 4 Prohibited property for gambling](#));
- [National guidelines on alcohol promotions](#); and
- [Standard Drink Guidelines](#).

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 alcohol advertisements and promotions placed in any media. For the avoidance of doubt, this Code applies to the naming, labelling and packaging of alcohol products.

This code does not apply to content not controlled by the advertiser or to any advertisements whose purpose is solely and clearly to educate people about alcohol-related harm.

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 is made up of three parts:

- Principles: The standards expected in advertising and promotion.
- 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 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 or promotion 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 advertising or promotion;
- the context, medium and intended audience; and
- the product or service.

NOTE: Approval of alcohol advertising and promotion by the Liquor Advertising and Promotion Pre-vetting Service (LAPPS) is strongly recommended. LAPPS is a user-pays service available to all alcohol advertisers and promoters to help minimise the risk of breaching the ASA Codes as well as other industry codes and relevant legislation. Information about LAPPS is available at <http://www.anza.co.nz>.

Definitions for the purposes of this Code

“Alcohol Product” means a consumable product which contains 1.15% or more ethanol by volume or weight.

NOTE: A consumable product which contains between zero and less than 1.15% ethanol by volume or weight is also considered an alcohol product for the purposes of this code when it is either;

- marketed as a non-alcoholic variant of a product that would otherwise be an “Alcohol Product” (such as non-alcoholic beer); or
- by virtue of its appearance, is so synonymous with a category of “Alcohol Product” that it ought to be considered an “Alcohol Product” for the purposes of this code.

“Alcohol Advertiser” means an advertiser that markets or sells alcohol. This may include, but is not limited to; all alcohol producers, importers, distributors, wholesalers, licensing trusts, clubs, retailers and premises.

“Alcohol Advertisement” means an advertisement for an alcohol product, brand, producer, importer, distributor, wholesaler, licensing trust, club, retailer or premises.

“Alcohol Promotion” means the naming, labelling and packaging of alcohol products. Other activities and materials generated by an alcohol advertiser may also be considered “Alcohol Promotion”. Examples may include, but are not limited to; dispenser units, media releases, branded merchandise, competitions, word of mouth marketing, adver-gaming, product display and sampling.

“Alcohol Sponsorship Advertisement” means an advertisement from an alcohol advertiser that clearly indicates their support/sponsorship of a sponsored party. Any advertisement that indicates sponsorship and does not comply with Principle 3 of this Code is deemed to be an alcohol advertisement. For the avoidance of doubt, an alcohol sponsorship advertisement must not include an alcohol product, label or packaging.

“Alcohol Sponsorship Agreement” means any agreement or part of an agreement involving payment, or other consideration in lieu of payment, by an alcohol advertiser to support/sponsor another party. Examples of a ‘sponsored party’ may include, but not limited to;

- Sporting or cultural property
- Individual or team
- Charity
- Competition
- Event or activity
- Building structure

In return, the sponsored party agrees to be associated with and / or promote the sponsor’s brand, products or outlet.

“Age-Restricted Environment” means either:

- A designated restricted area which does not permit entry by children or young people; or
- A designated supervised area which children or young people are permitted to enter providing they are accompanied by a parent or guardian; or
- A website that provides online retail sales of alcohol and / or promotes alcohol products or brands providing all reasonable steps are taken to verify that purchasers / visitors are at least 18 years of age. Registration and login with the provision of full date of birth is required; or
- An age-restricted digital platform which uses all reasonable steps, including available tools, to hide the existence of any alcohol-related pages, sites and content such that they are not visible other than to a user who appears to be, or has registered on the platform as being, at least 18 years of age.

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

“Young People” means all persons who are at least 14 years but under 18 years.

“Adult” means all persons over the legal age to purchase alcohol i.e. at least 18 years of age.

PRINCIPLE 1: SOCIAL RESPONSIBILITY

Alcohol advertisements and promotions must be prepared and placed with a high standard of social responsibility to consumers and to society.

Rule 1 (a) Targeting Adults	Guidelines
<p>The content and placement of alcohol advertisements and promotions must target adult audiences.</p>	<ul style="list-style-type: none"> • The extent to which an advertisement or promotion content and placement does or does not target adults is determined by having regard to context and the following criteria: <ol style="list-style-type: none"> 1. The nature and intended purpose of the product, brand or promotion. The following examples may have appeal to children or young people; <ul style="list-style-type: none"> ○ Sweet, colourful, mild-tasting products that may appear to be for children or young people or products that may cause confusion with confectionery or soft drinks. ○ Product names similar to beverages that appeal to children or young people. 2. The presentation of the advertisement or promotion content (e.g. theme, images, colours, wording, music and language used). The following examples may have appeal to children or young people; <ul style="list-style-type: none"> ○ Animation, bright colours, toys, music, animals, cartoons, play scenes / playgrounds, juvenile or adolescent behaviour ○ Presence of designs, motifs, items or activities connected to youth culture ○ Presence of real or fictitious characters including but not limited to; Santa, Easter Bunny, super heroes, sports stars and celebrities. 3. The expected average audience at the time or place the advertisement appears is predominantly adults. <p>Advertisers need to demonstrate that care is taken when evaluating the expected average audience composition prior to the placement of alcohol advertisements and promotions to ensure they target adults. Measures to determine if children or young people are likely to be a ‘significant proportion’ of the expected average audience may include one or a combination of the following;</p> <ul style="list-style-type: none"> ○ Where accurate data exists, 25% or more of the expected audience will be children and / or young people; ○ Content with significant appeal to children and / or young people such as programmes, artists, playlists, video, movies, and magazines;

	<ul style="list-style-type: none"> ○ Locations/events where children and / or young people gather. ● Children or Young People may appear in alcohol advertising and promotion but only in situations where they would naturally be found, for example, a family meal, provided there is no direct or implied suggestion they will consume the alcohol. ● Adults who are visually prominent in alcohol advertisements and promotions placed in non-restricted environments must; <ul style="list-style-type: none"> ○ Be at least 25 years of age ○ Appear to be at least 25 years of age ○ Demonstrate behaviour and appearance clearly appropriate for people of that age or older <p>Taking into consideration the;</p> <ul style="list-style-type: none"> ○ Producer, distributor, retailer, brand, product or premises; and ○ Overall presentation; and ○ Time and placement. <ul style="list-style-type: none"> ● Adults who are 18 to 24 years of age may be visually prominent in alcohol advertisements and promotions if; <ul style="list-style-type: none"> ○ They are not a paid model or actor (i.e. real people in real situations); and ○ The advertisement or promotion has been placed within an age-restricted environment. ● Current cultural icons, sporting heroes (individuals or teams) or celebrities that are easily recognisable and / or popular with children and young people may only be used in alcohol advertisements and promotions placed in age-restricted environments. ● Broadcasted alcohol advertisements on linear television and on radio must not appear to dominate the viewing or listening period. <p>Alcohol advertisements broadcast on television must not;</p> <ul style="list-style-type: none"> ○ Be broadcast between 6:00am and 8:30pm. ○ Exceed six minutes per hour ○ Broadcast more than two alcohol advertisements in a single commercial break.
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Rule 1 (b) Alcohol Consumption	Guidelines
<p>Alcohol advertisements and promotions must demonstrate responsibility and moderation in alcohol consumption.</p>	<ul style="list-style-type: none"> • Alcohol advertisements and promotions must not portray or represent as irresponsible, harmful or excessive the amount of alcohol consumed or the way drinking is portrayed. For example; <ul style="list-style-type: none"> ○ Rapid or frequent consumption ○ Peer pressure to consume ○ Refusal of alcohol is portrayed as a weakness
Rule 1 (c) Alcohol Effects	Guidelines
<p>Alcohol advertisements and promotions must not portray or represent anything that will, or is likely to, suggest that the effects of consuming alcohol can improve or enhance or contribute to personal, professional, sporting, physical, relationship, lifestyle, sexual or social success.</p>	<ul style="list-style-type: none"> • Alcohol must not be portrayed or represented as indispensable or that it should take priority in life. • Alcohol must not be portrayed in a way that enhances confidence, popularity or attractiveness. • Consumption of alcohol may be portrayed in an advertisement or promotion as incidental to a friendly and happy social environment. For example; social settings such as a dinner party / BBQ or other occasion where the responsible serving of alcohol would not be unexpected. People may be portrayed as relaxing or unwinding whilst consuming alcohol (in moderation).
Rule 1 (d) Safety	Guidelines
<p>Alcohol advertisements and promotions must not encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.</p>	<ul style="list-style-type: none"> • Advertisements and promotions must not link alcohol consumption with behaviour that is risky, unsafe or with the use of potentially dangerous machinery or equipment or driving or any other hazardous or unsafe practices. • Sporting or other physical activities may be represented in alcohol advertisements and promotions providing there is no implication that alcohol will be consumed before or during the activities. • Alcohol advertisements and promotions must not associate alcohol with, or acceptance of, or allusion to, tobacco, illicit drugs or volatile substances such as glue and petrol, explosives and weaponry.

Rule 1 (e) Violence and anti-social behaviour	Guidelines
<p>Alcohol advertisements and promotions must not contain anything that condones, or is likely to show, violent or anti-social behaviour or damage to property.</p>	<ul style="list-style-type: none"> Alcohol advertisements and promotions must not link alcohol or consumption with behaviour that is brave, tough, daring, aggressive, unruly, irresponsible or antisocial.
Rule 1 (f) Decency and offensiveness	Guidelines
<p>Alcohol advertisements and promotions 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.</p>	<ul style="list-style-type: none"> Alcohol advertising and promotions shall not cause serious or widespread offence, taking into account generally prevailing community standards, context, audience, medium and product. See the Advertising Standards Code, Principle 1, Rule 1 (c) Guidelines.

PRINCIPLE 2: TRUTHFUL PRESENTATION	
Alcohol advertisements and promotions must be truthful, balanced and not misleading.	
Rule 2 (a) Truthful presentation	Guidelines
<p>Alcohol advertisements and promotions 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.</p> <p>Obvious hyperbole identifiable as such is not considered to be misleading.</p>	<ul style="list-style-type: none"> ● Alcohol advertisements and promotions must not include therapeutic, health, fitness, weight-control or weight-management claims. For example, alcohol: <ul style="list-style-type: none"> ○ Is necessary or required for relaxation. ○ Positively changes mood, physical condition or behaviour. ○ Enhances mental or physical capabilities such as contributing to professional or sporting achievements. ○ Is a source of nourishment. ● Factual information about a product’s contents may be included providing the claim is able to be substantiated. For example; “reduced energy”, “low carb”, “low calorie”, “reduced alcohol” or “low alcohol”.

PRINCIPLE 3: ALCOHOL SPONSORSHIP ADVERTISEMENTS	
Alcohol sponsorship advertisements must clearly and primarily promote the sponsored party.	
Rule 3 (a)	Guidelines
The content and placement of alcohol sponsorship advertisements must target adult audiences.	<ul style="list-style-type: none"> • To ensure alcohol sponsorship advertisements target adults, alcohol producers, distributors and retailers should not engage in sponsorship agreements where children and / or young people are likely to comprise 25% or more of the sponsored party, participants or spectators. • Sponsors shall only permit sponsored parties to feature alcohol branding on adult size replica sports clothing and accessories. Alcohol branding should not feature on any other promotional material that may be appealing to or distributed to children. Examples include (but not limited to); <ul style="list-style-type: none"> ○ Model toys or children’s size equipment. ○ Children or young people’s lunch boxes or drink bottles.
Rule 3 (b)	Guidelines
Alcohol sponsorship advertisements may feature the sponsor, the sponsorship and items incidental to them, only in a subordinate manner.	<p>Alcohol sponsorship advertisements must not;</p> <ul style="list-style-type: none"> • Contain a sales message. • Show an alcohol product or product label or packaging. • Imitate or use any parts of alcohol advertisements or promotions from any media. • Portray consumption of alcohol. <p>Alcohol sponsorship advertisements must;</p> <ul style="list-style-type: none"> • Only mention or portray the sponsor’s name and / or brand name and / or logo, orally and / or visually, briefly and in a subordinate way i.e. as a guide 15% of the space / time available. • Focus on the clear association between sponsor and sponsored party. Examples of words that may appear in a sponsorship advertisement that indicates a sponsorship agreement include, but are not limited to; <ul style="list-style-type: none"> ○ ‘proud sponsors of’ ○ ‘supportingfor the last 10 years’ ○ ‘official sponsor of’ ○ ‘official partner of’ ○ ‘helping to help you’ ○ ‘working together with for a.....’