

**Advertising Standards Authority**  
**Annual Report 2010**



## ▶▶ DID YOU KNOW?

- ▶ It is free for consumers to complain about advertisements.
- ▶ In 2010 the ASA introduced a new code to deal specifically with advertising of food to children.
- ▶ Media coverage continued in 2010 with over 60 stories commenting on Complaints Board Decisions.
- ▶ Most complaints about advertisements are made online at [www.asa.co.nz](http://www.asa.co.nz).
- ▶ 1164 complaints were received about 792 advertisements in 2010.
- ▶ The ASA system is similar to that in a number of countries around the world, most of which belong to the European Advertising Standards Alliance International Council, which includes countries from the European Union, Australia, New Zealand, Canada, Brazil, India, South Africa, Chile and Mexico.
- ▶ There are five public members on the Advertising Standards Complaints Board including the Chairman.
- ▶ The ASA has a freephone number for consumers and advertisers, 0800 AD HELP (234 357).
- ▶ Advertising revenue across all media reached 2.137 billion dollars in 2010.
- ▶ The ASA has 14 codes, including an overarching Code of Ethics, against which advertisements complained about are measured against, and a specialist code to deal with the naming, labelling, packaging and promotion of liquor.
- ▶ All Decisions of the Complaints Boards are released to the public and the media via the ASA website.
- ▶ The ASA also has a fast-track competitor complaints service called Adjudication with the Attendance of Parties (AWAP).

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▶▶ FROM THE CHAIRMAN

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

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

With such a robust and transparent system, New Zealanders feel confident in raising issues about advertising that may breach the Codes of Practice. In 2010 a total of 1164 formal complaints were received about 792 advertisements. The profile of the codes and complaints system is aided by regular news stories of Complaints Board decisions, a comprehensive website, and the annual distribution of thousands of information booklets.

The ASA enjoys strong working relationships with a wide range of government and non-government agencies, and the continued development of these relationships will remain a focus in 2011.

2010 was another significant year for the ASA. The Liquor Promotions Complaints Board was appointed and met to deal with complaints under a new code relating to packaging and promotion of liquor products. The Review Panel reported on the Children and Food Codes and two amended codes were introduced along with a new code, the Children’s Code for Advertising Food. A major review of the Code for Advertising Liquor was also announced in December 2010.

The ASA restructured its staffing in 2010, farewelling Heather McKenzie and welcoming Complaints Manager, Dr Alison Hopkins and Legal Counsel, Clementine Smith.

▶ *The ASA enjoys strong working relationships with a wide range of government and non-government agencies, and the continued development of these relationships will remain a focus in 2011.*

The ASA is fortunate to have high calibre members on all the complaints boards that do an outstanding job and I would like to take this opportunity to recognise the contribution of Jenny Robson, Chair of the Advertising Standards Complaints Board, Penny Mudford, Chair of the Liquor Promotions Complaints Board and Euan Abernethy, Chair of the Appeals Board. I would also like to acknowledge fellow ASA board members, and in particular, Deputy Chair John McClintock, for their energy and wise counsel in support of industry self-regulation.

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

**Rick Osborne**  
**Chairman**

▼  
**Hearing Aid Advertisers Get a Clip Over The Ear** | *Sunday Star Times, 31/01/2010*

## ▶▶ FROM THE CHIEF EXECUTIVE

**Whether or not advertising self-regulation is considered to be effective depends on what you expect it to do. If consumers want a ban on advertising of a certain product category, it will fail their expectations every time. If self-regulation is used to guide the advertising industry with regard to community standards, truthful presentation and a requirement for social responsibility, then it can play an important role for consumers and for the advertising industry – even if there is disagreement with individual decisions from time to time.**

We receive a range of feedback in the ASA office about the complaints process. While it is challenging to satisfy all parties to a complaint, it is pleasing when we receive acknowledgment that regardless of the outcome, consumers appreciated the opportunity to raise concerns about an advertisement, and advertisers appreciated the opportunity to respond to a complaint and often clarify their message.

A major review of the Code for Advertising Liquor began in late 2010 and the 2011 annual report will include further details on this. The consultation document for the review is on the ASA website, [www.asa.co.nz](http://www.asa.co.nz) and further details about the review panel are included in the Important Issues section of this report.

Education is a core part of best practice self-regulation. The Advertising Standards Authority distributes over 5000 copies of the ASA Codes of Practice each year and I have a range of opportunities to speak to consumers, students and the industry about the codes and complaints process. There is often robust discussion about decisions of the complaints boards during these seminars and sometimes surprise expressed at the type of complaints received about advertising. A searchable database of decisions is available on the website for those wishing to read more about complaints.

The annual report provides a summary of the work of the ASA Secretariat and the Complaints Boards for 2010. The ASA employs 5.8 (FTE) staff and all but one staff member work full time on the complaints process.

Misleading advertising continues to lead the way in a breakdown of the complaints statistics for 2010. You will find details on pages 22 to 24 of this report.

Complaints Boards' Decisions are often widely reported and throughout the annual report you will see a range of the more interesting headlines from these stories in 2010.

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Best practice self-regulation has a range of requirements including funding and commitment from industry. New Zealand has both, and the support from across the industry in relation to code compliance and decision enforcement is appreciated. I am grateful for the support of the Chairman of the ASA, Rick Osborne, Deputy Chairman, John McClintock and the ASA Board of Directors. I also want to thank my staff for their dedication and support in providing a high standard of service to the consumers and industry on a daily basis.

**Hilary Souter**  
**Chief Executive**

▼  
**Green's Advertising Complaint Upheld** | Newsquest, 18/02/2010

▶▶ MEMBERS AND OFFICERS 2010

**Members**

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

**Officers**

**Rick Osborne**, Chief Executive of the Communication Agencies Association was elected as Chairman for the 2010 year.

**John McClintock**, Executive Director of the Magazine Publishers' Association was elected as Deputy Chairman.

**Hilary Souter** was the Chief Executive.

**Advertising Standards Authority Board of Directors**

The ASA Board of Directors in 2010 were:

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

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

**Rick Friesen**, Chief Executive, ThinkTV

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

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

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

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

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

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

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

## ▶▶ IMPORTANT ISSUES

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

### Liquor Advertising

#### *Code for Advertising Liquor*

In 2010 the Complaints Board received 96 complaints under the Code for Advertising Liquor, an increase on the 78 complaints received in 2009 and reflective of the current profile of liquor issues. Of the 96 complaints, 49 were accepted to be heard by the Complaints Board, where 27 were upheld or settled, 21 were not upheld and one was ruled no jurisdiction. The Chairman ruled that there were no grounds to proceed with 47 of the complaints.

In analysing the above complaints, 70% were from 5 individuals who engage with our system despite their strong opposition to liquor advertising. Issues raised by these complainants included concerns about beer advertising being unduly masculine, retail alcohol advertisements not carrying health warnings; wording or images suggesting a significant or desirable change in mood; and prices or promotions encouraging immoderate consumption.

The ASA announced a review of the Code for Advertising Liquor this year and a review panel has been appointed.

#### ***The Chairman of the Review is Hon Sir Bruce Robertson and the other members are:***

**Sonya Crosby**, General Manager, AffinityID (industry nominee)

**Paul France**, Director (Broadcasting Standards Authority nominee)

**Rick Friesen**, Chief Executive, ThinkTV (industry nominee)

**Dr Mark Jacobs**, Director of Public Health, Ministry of Health (Ministry of Health nominee)

**Jenny Robson**, Chairman, Advertising Standards Complaints Board (ASCB Public Member)

**Val Sim**, Barrister, former Law Commissioner involved with the Law Commission Review of the Sale of Liquor Act (Alcohol Advisory Council nominee)

The review panel met twice prior to the end of 2010 and a consultation paper on the review was issued in December. The closing date for submissions was 25 February 2011. Included in the consultation paper was a request for comment on whether there should be one code or two for liquor advertising and promotion and whether there should be a specialist liquor complaints board.

The Alcohol Reform Bill was introduced to Parliament in 2010 and submissions were called for. The ASA made a submission commenting on a number of clauses in the Bill that could undermine advertising self-regulation.

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

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

The Liquor Promotions Complaints Board (LPCB) has dealt with a small number of complaints to date and work is underway to raise awareness of this new code. All decisions of the LPCB are on the ASA website, [www.asa.co.nz](http://www.asa.co.nz), and statistics on the complaints received to date are on page 10 of this report.

ASA Slams Superette Ads | *The National Business Review*, 19/02/2010

IMPORTANT ISSUES CONTINUED

### Food Advertising

The report of the Review Panel on the Children and Food Codes was released in May 2010 and resulted in a new code, the Children's Code for Advertising Food and amendments to the Code for Advertising of Food and the Code for Advertising to Children.

The ASA undertook a number of seminars for advertisers, agencies and the media in 2010 to educate all sectors about the code changes and new requirements. Amongst the changes, new guidelines have been introduced restricting the use of terms such as "low fat" and "fat free" in advertising for products that are high in sugar with a parallel restriction around the use of "low in sugar" or "sugar free" in advertising for products that are high in fat.

Acknowledgment of the work of the ASA in this area and reference to the above code changes was made at the World Health Assembly in May by New Zealand Ministry of Health Representatives.

### Therapeutic Advertising

In 2010, 61 complaints were dealt with under the Therapeutic Products Advertising Code and the Therapeutic Services Advertising Code, an increase on the 47 complaints received in 2009. Thirty four complaints were upheld or settled by the Complaints Board. Ten were not upheld, seven were deemed to have no grounds to proceed and 10 other complaints were either withdrawn, resolved or ruled to be outside the jurisdiction of the Complaints Board.

► *The ASA undertook a number of seminars for advertisers, agencies and the media in 2010 to educate all sectors about the code changes and new requirements.*

Some minor amendments were made to the Therapeutic Products Advertising Code as part of a reprinting of the Codes of Practice booklet. These amendments were made to address some errors in the code along with a revision of language referencing the Trans-Tasman harmonisation process, which did not proceed.

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

▼  
*Drink Maker Censured* | Newsquest, 19/02/2010



## ▶▶ RELATIONSHIPS WITH OTHER AGENCIES

### New Zealand

#### **Ministry for Culture and Heritage**

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

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

#### **Ministry of Consumer Affairs**

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

#### **Commerce Commission**

The ASA is in regular contact with the Fair Trading Branch of the Commerce Commission to discuss code compliance and recent Complaints Board decisions in relation to misleading and deceptive advertising. From time to time the Commerce Commission has complained to the Complaints Board about advertising that is of concern. Similarly, the ASA raises issues of concern in relation to rogue advertisers with the Commission. The ASA and the Commerce Commission have also undertaken joint industry training in the past and are looking into opportunities to work together again in this area.

#### **Securities Commission**

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

#### **Ministry of Health**

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

▶ *The ASA and the BSA are in regular contact on a number of issues including matters relating to jurisdiction over certain types of advertising promotions.*

#### **Medsafe**

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

#### **Broadcasting Standards Authority**

The ASA and the BSA are in regular contact on a number of issues including matters relating to jurisdiction over certain types of advertising promotions. Both Authorities are members of an informal group of organisations that provide disputes investigation or resolution services for consumers.

#### **Disputes Investigation Group**

The Disputes Investigation Group is an informal group of organisations that have a role in disputes investigation and resolution. The group developed a website in 2009, [www.complaintline.org.nz](http://www.complaintline.org.nz) which is a central port of information to assist consumers in getting to the right organisation to help them with their concerns.

▼  
**Billboard Slammed** | *Newsquest, 20/02/2010*

RELATIONSHIPS WITH OTHER AGENCIES CONTINUED

**International**

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

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

The ASA Chief Executive attended the EASA General Assembly in Sofia, Bulgaria, in 2010 to ensure the ASA is up-to-date on international best practice initiatives and to share with colleagues the approach to advertising self-

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

regulation in New Zealand. In addition, while running an industry seminar in Sydney in the later part of the year, she attended a meeting of the Australian Advertising Standards Board as an observer and provided information about the similarities and differences between the two countries' codes and complaints processes. Finally, the Chief Executive was a guest speaker at the Asia Pacific Forum of the International Center for Alcohol Policies in Singapore – to speak to the system of self-regulation of liquor advertising and promotion in New Zealand.

▼  
**Violent Ads Deemed A Fashion Faux Pas** | Newsquest, 21/02/2010

## ► COMPLAINTS BOARDS – ADVERTISING STANDARDS COMPLAINTS BOARD

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

### Advertising Standards Complaints Board

The Advertising Standards Complaints Board (ASCB) is an independent Board. It was established by the ASA in March 1988 to adjudicate on complaints about advertisements which complainants believe breach the Advertising Codes of Practice.

Its three main functions are:

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

The ASCB meets monthly and in the event of urgent complaints is able to meet at short notice.

### **Members of the Advertising Standards Complaints Board (ASCB) IN 2010 were:**

#### **Public Members**

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

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

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

**Miss Margaret McKee** (Chief Executive, Queen Elizabeth II National Trust, Wellington)

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

### **Industry Members**

**Ms Rachel Prince** (Advertising Manager, New Zealand Transport Agency, Wellington)

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

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

**Ms Sharon Daly** (Director of Strategy, Mediaworks, Auckland)

**Ms Susan Taylor**, Chief Executive Officer, Financial Services Complaints Limited, was the Public Member alternate. A number of industry members alternates are available to take the place of the appointed industry members if required.

A breakdown of complaints statistics dealt with by the Advertising Standards Complaints Board is on page 21.



**Anti-Smoking Group Drops Oral Sex Ad** | Newsquest, 27/02/2010

▶▶ COMPLAINTS BOARDS – LIQUOR PROMOTIONS COMPLAINTS BOARD

**The Liquor Promotions Complaints Board (LPCB) was established in 2010 to receive complaints under the Code for Naming, Labelling, Packaging and Promotion of Liquor (Liquor Promotions Code).**

The main functions of the Board are:

- To determine complaints received about promotions which may be in breach of the Liquor Promotions Code
- To advise the ASA on interpretation of the Liquor Promotions Code and possible improvements to the Code
- To maintain an effective system of self-regulation in respect to liquor promotions, naming, labelling and packaging
- To report to the ASA on any aspect of liquor marketing which is causing concern.

**Members of the Liquor Promotions Complaints Board (LPCB) in 2010 were:**

**Public Members**

**Ms Penny Mudford** (Chairman) (Arbitrator and Mediator, Wellington)

**Dr Ruth Richards** (Public Health Physician, Regional Public Health, Wellington)

**Mr Paul Stanley** (Public Health and senior management background, Tauranga)

**Industry Members**

**Mr John Macdonald** (Founder and Director Mac2 Management Ltd)

**Ms Erica Crawford** (Exporter and Marketer)

**Ms Deborah Rundle**, Independent Chairman of the Discipline and Complaints Committee of the Insurance Brokers Association of New Zealand, was the Public Member alternate. Ian McAteer (Agency Importing Company) is available to take the place of the appointed industry members if required.

The Liquor Promotions Complaints Board was established in 2010 to receive complaints under the Code for Naming, Labelling, Packaging and Promotion of Liquor (Liquor Promotions Code). The Board was open to receive complaints about sponsorship and promotions from 1 February 2010, and complaints about naming, labelling and packaging of liquor products from 1 April 2010.

There were five complaints lodged during the 2010 year. Of the complaints received, one was ruled No Grounds to Proceed as there was no apparent breach of the code, while four were accepted to proceed to the Liquor Promotions Complaints Board for their deliberation. Following detailed consideration of these complaints, for a variety of reasons, all four complaints were Not Upheld. These decisions are all available on the ASA website, [www.asa.co.nz](http://www.asa.co.nz).



## ▶▶ COMPLAINTS BOARDS – ADVERTISING STANDARDS COMPLAINTS APPEAL BOARD

**The Advertising Standards Complaints Appeal Board (ASCAB) was established in 1994 to adjudicate on appeals about decisions of the ASCB (and from 2010, the LPCB). Any party to a complaint may appeal.**

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

There were 65 appeal applications lodged during the 2010 year. Of the total appeal applications received, 40 did not meet the grounds for appeal. Of the applications that were declined, the majority of these restated the original concerns of the Complainant. Rulings on these applications noted that disagreement with a decision of the Complaints Board was not, in itself, a ground upon which an application for appeal could be accepted.

Eleven appeals were accepted to proceed to, or be reheard by, the Complaints Board, and 14 were referred to the Appeals Board. The most common grounds upon which applications were accepted were that evidence before the Complaints Board may have been misinterpreted, and it was in the interests of natural justice that the appeal be allowed. Of the appeals heard by the Appeals Board, four of these were dismissed, six were allowed and one was allowed in part and dismissed in part. Three remaining appeals are being heard in early 2011 by the Appeals Board and two by the Complaints Board.

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

▶ **There were 65 appeal applications lodged during the 2010 year. Of the total appeal applications received, 40 did not meet the grounds for appeal.**

### **Members of the Advertising Standards Complaints Appeal Board (ASCAB) in 2010 were:**

#### **Public Members**

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

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

#### **Industry Member**

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

**Mr Alan Haronga** (Company Director, Wellington) is the public member alternate and **Mr Martyn Turner** (former Chief Executive, Ogilvy & Mather, currently Chisel Communications, Wellington), the industry member alternate.

▼  
**Tip Top Ad Bites Off More Than It Can Chew** | Newsquest, 14/03/2010

## ▶▶ ADJUDICATION WITH THE ATTENDANCE OF PARTIES (AWAP)

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

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

In 2010 complainants paid a fee for the adjudication of up to \$10,000 plus GST. After a decision has been made, advertisers against whom a complaint has been upheld are requested to refund the complainant this fee. It is a requirement within the AWAP process, as with all complaints accepted into the ASCB process, that complainants waive their right to pursuing the same complaint in a different jurisdiction. Parties are not able to appeal AWAP rulings.

### **AWAPS in 2010**

In 2010, there were 14 AWAPS, down from 37 in 2009. Five of these proceeded to a hearing, where four were upheld, and one was upheld in part.

### **Supermarkets**

Two out of the five AWAPS in 2010 were between two major supermarket companies, operating in a robust advertising environment where price is of particular importance and significance to consumers. The complaints were from Progressive Enterprises Limited

challenging pricing statements made in advertisements for various Pak'n Save supermarkets around New Zealand. The complaints required the Panel to consider various pricing claims, including statements such as "SURPRISE, SURPRISE WE'RE STILL THE LOWEST" (which appeared in in-store advertisements for South Island Pak'n Save supermarkets) and "Palmerston North's Lowest Overall Food Prices" and "PAK'n SAVE Totally unbeatable" (in a newspaper advertisement for Palmerston North Pak'n Save). The Panel said that these statements were in breach of the Codes for Advertising given the strength of the claims and the lack of sufficient substantiation to support them could potentially result in the consumer being misled. The Panel said given the strength of the claims a robust level of substantiation was required.

### ***Nurofen vs Paracetamol***

One of the most complex AWAPS in 2010 involved certain claims made by the Advertiser of Nurofen being challenged by the Advertiser for Paracetamol products. The complaint involved a number of different claims across a number of different advertisements which saw Nurofen being directly compared with Paracetamol. The Panel found claims such as "More effective than paracetamol" and "Faster than paracetamol for relief from tension headaches" and "Lasts longer than paracetamol for relief from tension headaches" to be in breach of the Advertising Codes given the absolute nature of the claims and inadequate level of substantiation which could potentially mislead the consumer. The Panel upheld the complaint and considered it appropriate to reiterate its position that where substantiation is not available because it is commercially sensitive and the Panel would have difficulty in determining code compliance, the claim should not be made.

▼  
***Rhys Is Pure Magicker*** | Newsquest, 18/04/2010

## ▶▶ ASA CODES OF PRACTICE

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

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

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

The function of the Codes is to complement, not to replace, New Zealand legislation.

- ▶ Advertising Code of **Ethics**

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- ▶ **Children's** Code for **Advertising Food**

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- ▶ Code for Advertising to **Children**

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- ▶ Code for **Comparative** Advertising

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- ▶ Code for **Environmental** Claims

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- ▶ Code for **Financial** Advertising

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- ▶ Code for Advertising of **Food**

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- ▶ Code for Advertising **Gaming** and **Gambling**

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- ▶ Code for **Advertising Liquor**

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- ▶ Code for **People** in Advertising

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- ▶ **Therapeutic Products** Advertising Code

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- ▶ **Therapeutic Services** Advertising Code

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- ▶ Code for Advertising **Vehicles**

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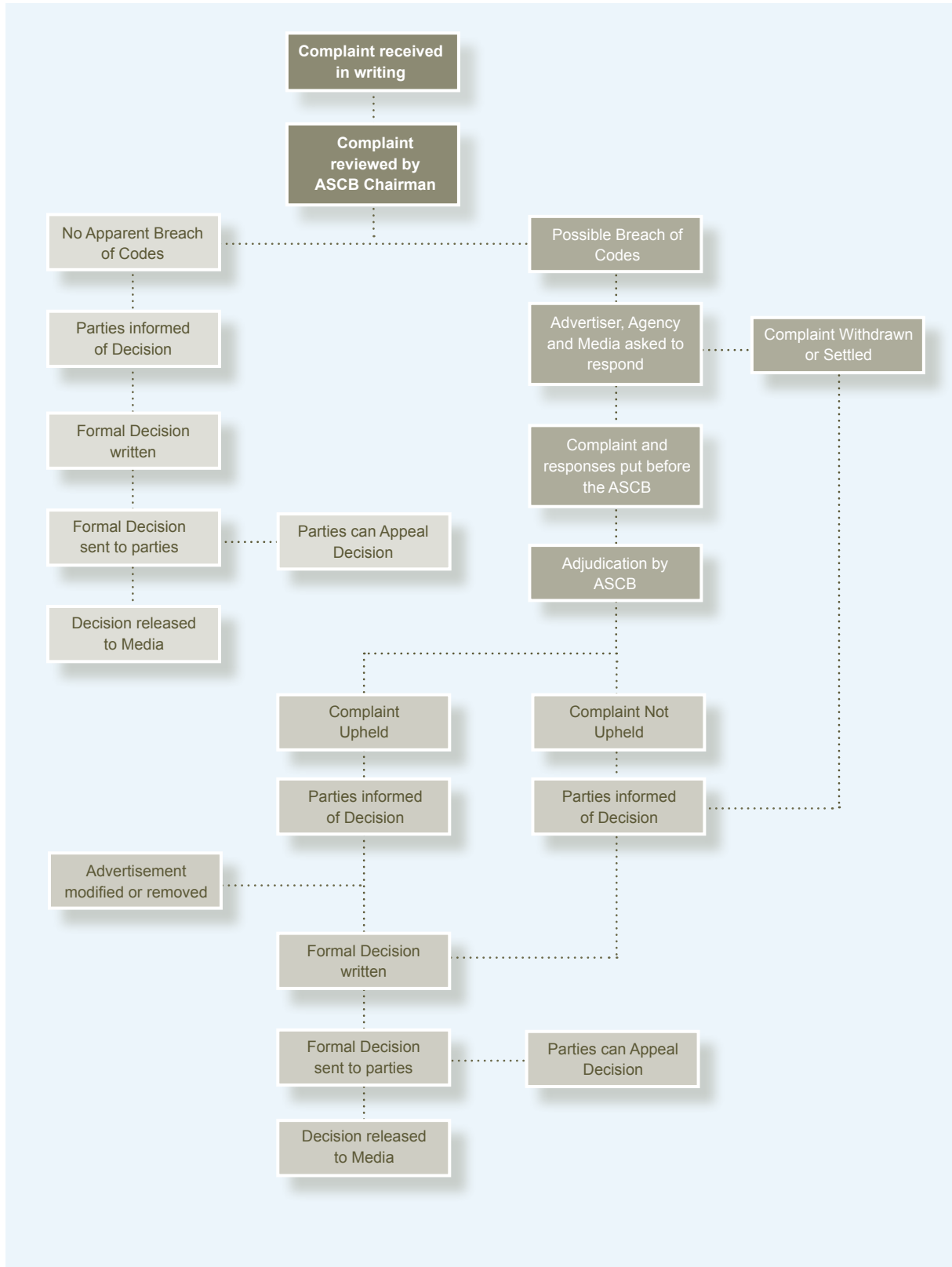
- ▶ Code for Advertising of Weight **Management**

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- ▶ Code for Naming, Labelling, Packaging and **Promotion of Liquor**

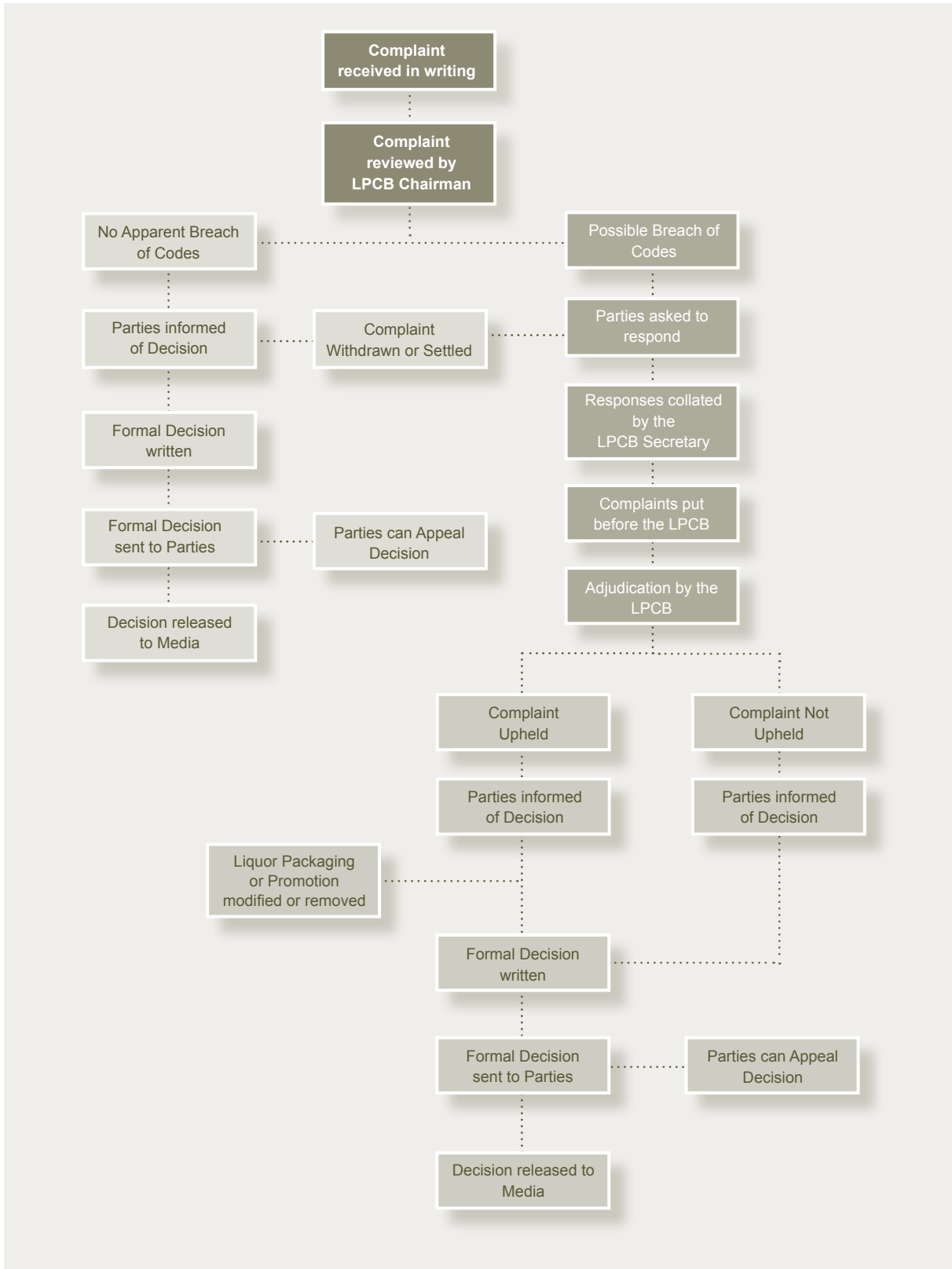
▼  
*Safety Fears Axe Store's Treadmill Ad | Newsquest, 18/04/2010*

▶▶ ADVERTISING STANDARDS COMPLAINTS BOARD DECISION PROCESS





▶▶ LIQUOR PROMOTIONS COMPLAINTS BOARD DECISION PROCESS



▶▶ THE MOST COMPLAINED ABOUT ADVERTISEMENTS IN 2010

1 ▶ 10/448 Erotica Expo Outdoor Advertisement

*71 Complaints – Upheld*

**Fresh Fruit**

**A mobile billboard that advertised the erotica lifestyles expo was towed around the streets of central Auckland. The billboard contained an image of a woman’s naked pelvic area covered with a halved melon. The woman’s finger was positioned inside the melon.**

Complainants felt that the image, which simulated a woman with her fingers in her vagina, was indecent, offensive, discriminatory and “dehumanising” - reducing women to their genitalia.

In the Complaints Board’s view, the public and highly visible campaign, was intended to cause maximum

outrage and receive maximum exposure with the associated ripple effect of media and public attention.

The Board said the advertisement not only offended against generally prevailing community standards, it was also unanimous in the view that the advertisement was degrading to women.

2 ▶ 10/703 ASB Bank Television Advertisement

*39 Complaints – Not Upheld*

**No Ordinary Risk and Reward - Is it appropriate for a bank to loan money for IVF treatment?**

**This television advertisement depicted the story of a couple’s attempts to have a baby. The man sells his vintage car to fund a round of IVF treatment, which is also unsuccessful. The man applied for a loan with ASB to continue the IVF treatment which resulted in the woman giving birth to triplets.**

Complainants found the advertisement offensive for many reasons, among them that the television advertisement exploited a vulnerable group; was socially irresponsible; and promoting the accumulation of debt to start a family is not productive in an era that encourages saving.

The majority of the Complaints Board found that the spirit and the intent of the advertisement was one of hope and renewed opportunity for people seeking another round of IVF treatment rather than one of exploitation, and like

many financial matters, there was risk and reward and the advertisement had shown both unsuccessful and successful outcomes of IVF.

The majority reiterated that the Advertiser was entitled to promote the possibility of financial assistance to fund IVF treatment to consumers and that the advertisement, despite the emotive elements involved, was not exploitative, nor misleading.



### 3 ▶ 10/545 Durex® Bus & Billboard Advertisement

**24 Complaints – Settled**

#### The Condom Conundrum - Are Condom Advertisements Offensive?

**The advertisement for Durex® condoms, which appeared on the back of buses and on billboards, featured a naked man and a woman in an embrace.**

Complainants were of the view that the advertisement was offensive and especially inappropriate in such a public forum where children could see it.

The Advertiser said while it was not their intention to embarrass or offend anyone, they felt that informing consumers about Durex® condoms and condom usage

encourages safe sex practices and therefore was a health benefit that served the public interest.

However, in light of the complaints, the Advertiser agreed to remove the advertisement from the buses and billboards.

### 4 ▶ 10/255 Fresh-Up Television Advertisement

**17 Complaints – Not Upheld**

#### Bad Rub for Thirsty Masseur

**The television advertisement portrayed a man being massaged by a male masseur. Because the masseur is thirsty, his lips stick to his gums, exposing his teeth and making him sound odd.**

The masseur's expression and the way he sounded made the man on the table uncomfortable and he looks around at the masseur who told the man: "You just try and relax, if you can". At the end of the scene the words "Thirst is Creepy" were superimposed on the screen.

Complainants thought the advertisement made a joke out of sexual harassment.

The Complaints Board agreed that the massage scenario

was uncomfortable to watch and was somewhat "creepy".

However, it also said that the focus on the masseur's mouth was rather obscure and the message about him being thirsty was not immediately apparent. While the Complaints Board acknowledged that the advertisement presented a quirky incident in keeping with the "creepy" theme of the advertisement, it did not consider that it contained the sexual behaviour or implications suggested by the Complainants.

▼  
**Watchdog Chokes On Rental Van Slogan** | Newsquest, 05/05/2010

THE MOST COMPLAINED ABOUT ADVERTISEMENTS CONTINUED

## 5 ▶ 10/379 Whittakers Television Advertisement

**16 Complaints – Not Upheld**

### Chocolate Lovers’ Naked Dip Doesn’t Cause Offence

**The television advertisement showed a naked dark skinned male and a naked pale skinned female jumping into pools of chocolate and peppermint from rope swings. After they met at the side of the pools, the female runs her finger across the peppermint covered chest of the male and licks it. The male runs his finger across the chocolate covered cheek of the female and licks it.**

Complainants said that it was inappropriate to see two naked people in an advertisement when children were watching while others objected to the way the couple touched each other and raised issues relating to the timing of the advertisement as well as its suggestiveness and overtly sexual content.

The Complaints Board said that the advertisement had been carefully created to ensure that any nude views had been fleeting and not gratuitous and it unanimously

agreed the advertisement was not likely to cause serious and widespread offence.

Addressing the concerns of the Complainants about the times the advertisement had played, the Complaints Board noted that the advertisement had been given a GXC rating which was defined as: “General Except Children”. The Board also agreed that the Advertiser had taken care to ensure the advertisement had been prepared with a due sense of social responsibility.

## 6 ▶ 10/616 Tui Website Advertisement

**15 Complaints – Settled**

### Tui Settle Complaints About Website Advertisements

**The Tui website advertisement featured a woman standing dressed only in her lacy underpants. She had her arm covering her right breast and the viewer could see part of her breast. The text which read “DISTRACTING THE BOYS FROM THE TASK AT THE HAND SINCE 1889” featured at the bottom of the advertisement.**

Complainants objected that the advertisements were sexually provocative.

Two other Tui website advertisements (10/620 and 10/621) that also featured scantily-dressed women drew 15 complaints each.

The Advertiser, DB Breweries Limited, said that the user-generated copy appeared on the “live” website

as a result of a computer error and that “live” access is not normally available for material deemed inappropriate.

Once the Advertiser was made aware of the error, access to the images on the website was immediately blocked. All three complaints were settled, as of the advertisements had been removed.



**Authority Weighs Up Quality, Quantity Of Kiwis’ Sperm** | Newsquest, 05/05/2010

## 7 ► 10/273 Burger King Television Advertisement

### 13 Complaints – Not Upheld

#### Vegetarians' Beef With Burger King

**Burger King promoted the “Rebel Burger” with images of the product on-screen and the voiceover which said: “The Rebel, from Burger King. Onion Rings, cheese, smoky barbeque sauce and a 100% chicken breast fillet. It’s so good, even the most dedicated vegetarian could turn.”**

Complainants thought that the advertisement belittled vegetarianism. They stated that they were vegetarian for ethical reasons, and were offended by the Advertiser’s implication that ‘committed vegetarians’ could be swayed by their product, and found the reference to vegetarians offensive, insulting and discriminatory.

The Complaints Board noted the strong objections to the wording from the Complainants and their sincere concerns that their choice to be a vegetarian was being undermined and vegetarians overall were being insulted

by such a statement. However, the Board noted the actual wording in the advertisement which said “It’s so good, even the most dedicated vegetarian could turn” and agreed that the advertisement had used a level of humour and satire to exaggerate the desirability of a food product, with a sense of the ridiculous.

While recognising the advertisement had been offensive to the Complainants, the Complaints Board ruled that the advertisement was not reasonably likely to cause serious or widespread offence to vegetarians.

## 8 ► 10/630 DB Export Beer Television Advertisement

### 13 Complaints – Not Upheld

#### Historical Context Saves Morton’s Quote

**The television advertisement for DB Export Beer was about Finance Minister Sir Arnold Nordmeyer’s infamous ‘Black Budget’ and the introduction by Morton Coutts of DB Export Beer in response to the tax. The advertisement featured a screen-shot at the end of the advertisement with the text “LET NOTHING COME BETWEEN A MAN AND A GREAT BEER.”**

Complainants said that the advertisement had an “unduly masculine theme” and was thus in breach of the Code for Advertising Liquor.

The Complaints Board accepted the Advertiser’s explanation that the story speaks of Morton’s vision to ensure great quality beer was affordable again to all New Zealanders. It noted that the advertisement was about an era that was celebrating when drinking

in a public bar closed at 6pm and as such, the advertisement was the Advertiser’s account of the events that took place at that time.

The Board further acknowledged that beer had a predominate appeal to men and there was a level of acceptance that advertisements about beer would be more likely appeal to men rather than implying unduly masculine themes.

▼  
**Another Camper Slogan Slammed** | Newsquest, 08/05/2010

THE MOST COMPLAINED ABOUT ADVERTISEMENTS CONTINUED

**9** ▶ **10/161 Hampsta Radio Advertisement**

**12 Complaints – Upheld**

**Radio Jingle Jangles**

The radio advertisement for Hampsta featured a child-like cartoon voice singing a jingle, which included encouraged listeners to join the Hampsta savings scheme. The jingle included the line:

“But now my mum’s joined Hampsta cause it’s the smartest way to save a little bit each week to pay for Christmas Day. Now when we get to Christmas life won’t be a bitch. I get heaps of toys and food cause we’ll be Hampsta rich.”

Complainants said they were shocked to hear the word “bitch” in the advertisement.

The majority of the Complaints Board were of the view that the child-like voice and rhyming jingle style of the

advertisement would have evident appeal to children who heard the advertisement and noted the concerns about the normalising of such expletives. The Board noted that the word “bitch” was in the 2009 survey “The Acceptability of Words on Television and Radio” undertaken by the Broadcasting Standards Authority and that 26% of the people surveyed had found it offensive. The majority of the Complaints Board ruled that the advertisement did not observe a due sense of social responsibility.

**10** ▶ **10/639 Sanitarium Weetbix Television Advertisement**

**12 Complaints – Upheld**

**Challenges Around Controlled Conditions Filming**

The television advertisement for Weet-bix showed a group of children snowboarding down the mountain and then long-boarding through fields and paddocks, then skate-boarding and biking on the open road and around a blind corner.

Some of the children were on both sides of the road at various times. A safety message was featured at the bottom centre of the screen for part of the scene which read “Filmed on closed roads under controlled conditions”.

Complainants were shocked and disturbed to see children skateboarding in the middle of a road on a bend and said the size of the warning on the screen that stated the scene was “filmed on a closed road under controlled conditions” was too small and unlikely to be noticed by a child or young person.

The Complaints Board said that the depiction of the children skate-boarding on the open road was realistic, achievable by children, and showed an unsafe practice that children may try to re-enact.

The Complaints Board was of the view that the safety message, even in light of the amended version, was insufficient given the realistic depiction of the scene and the risk of copy-cat behaviour by young viewers. Therefore, the Board was of the view that the advertisement had not been prepared with a high standard of social responsibility.



▶▶ 2010 COMPLAINTS OVERVIEW

**Number Received and Processed**

In 2010 the ASCB received **1164** formal complaints, about **792** advertisements. This compares with **1339** complaints about **829** advertisements in 2009.

**Of the 1164 formal complaints**

**372** were duplicates

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

**69** were withdrawn, resolved, no adjudication or adjourned.

There were therefore **380** substantive advertisements dealt with by the ASCB.

**105** were upheld.

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

**181** were not upheld.

**Upheld Rate**

The upheld/settled rate was 52%.

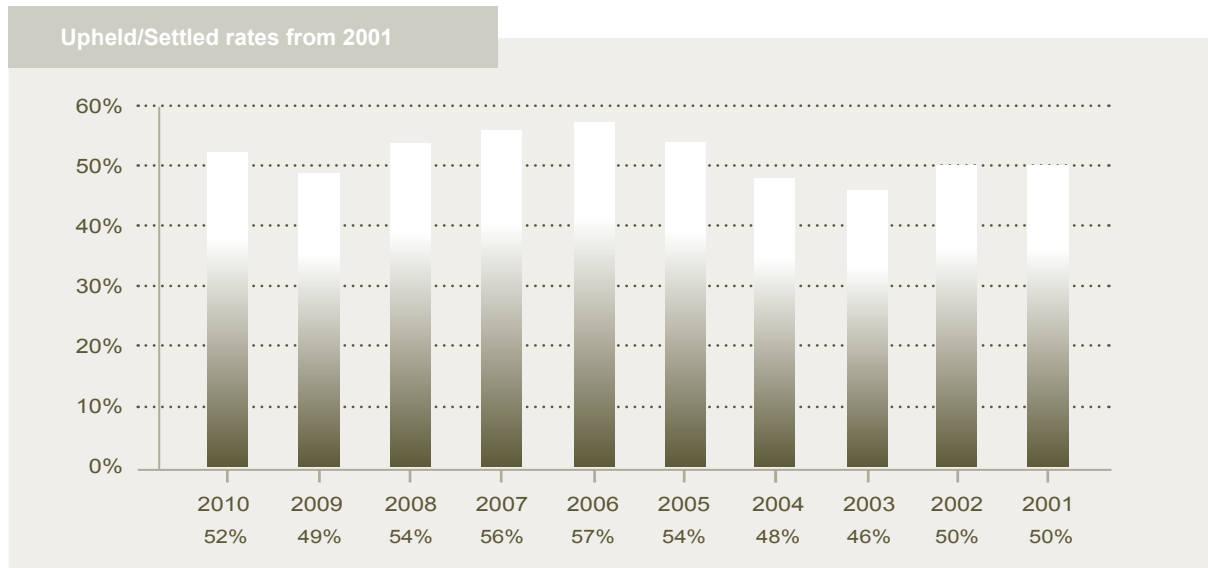
This compares with:

**2009** - 49%    **2008** - 54%    **2007** - 56%    **2006** - 57%,  
**2005** - 54%    **2004** - 48%    **2003** - 46%    **2002** - 50%,  
**2001** - 50%    **2000** - 57%    **1999** - 49%    **1998** - 53%,  
**1997** - 47%    **1996** - 48%    **1995** - 41%    **1994** - 52%,  
**1993** - 42%    **1992** - 44%    **1991** - 31%.

**Source of complaints**

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

In 2010 67% of complaints were received via our online complaints form. Nineteen percent were received by post and 10% by email. The remaining 4% were referred by the Broadcasting Standards Authority (3%) or TVNZ (1%).



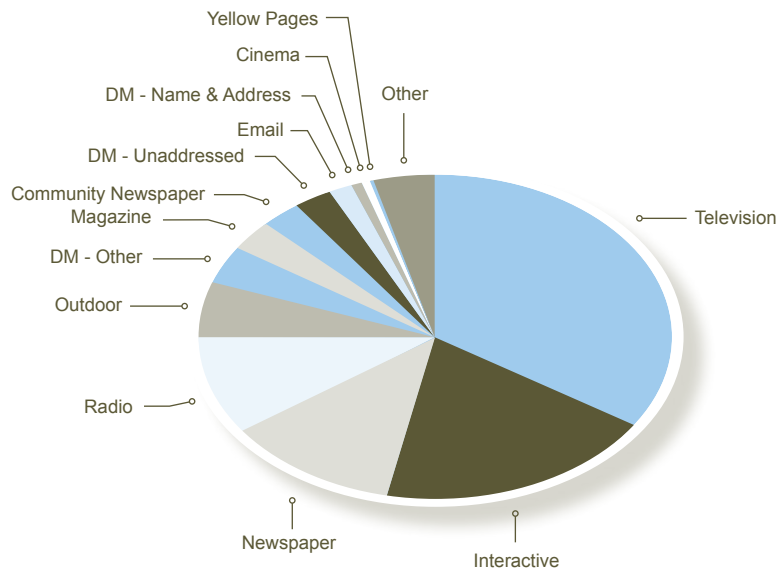
►► COMPLAINTS BY MEDIA

**As in previous years, television was the most complained about medium with regard to advertisements.**

In 2010 30.3% of the complaints were about television advertisements. This is a decrease from 33% in 2009. Newspapers accounted for 12.3% or 105 of the complaints received in 2010, slightly higher than the 11% from 2009. Interactive media, including advertisements on third party sites (6.6%) as well as advertiser websites (16.4%) attracted 23% of the complaints.

	2010	2009	2008	2007	2006
Television	263	292	256	241	167
Interactive	196	177	134	109	56
Newspaper	105	95	72	85	62
Radio	74	80	52	55	57
Outdoor	45	58	58	42	53
Other	39	18	31	45	27
DM - Unspecified	32	32	48	49	39
Magazine	29	70	29	23	23
Community Newspaper	26	28	19	27	19
DM - Unaddressed to box	18	18	10	5	14
Email	15	8	9	7	3
DM - Addressed	4	3	9	6	6
Cinema	3	1	1	0	2
Yellow Pages	1	3	2	5	5
<b>TOTAL</b>	<b>850</b>	<b>883</b>	<b>730</b>	<b>699</b>	<b>533</b>

\* Complaints may be in more than one media



**Machete Violent And Irrelevant, ASA Rules** | Newsquest, 09/06/2010

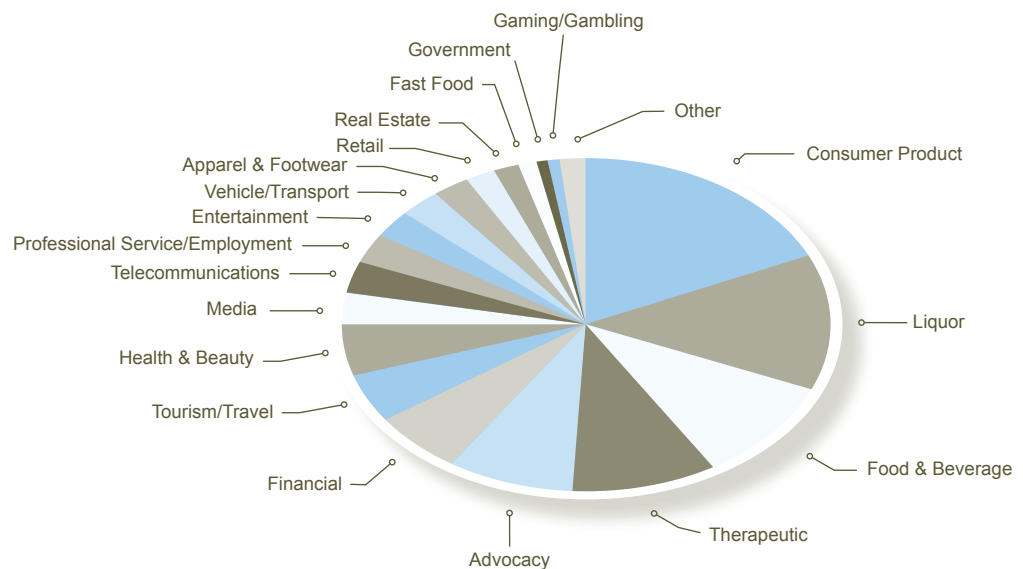


►► COMPLAINTS BY PRODUCT

The category of consumer products accounted for 17.3% of the complaints in 2010, a small decrease from 19% in 2009.

Other significant categories included Liquor (14.4%), Food and Beverage (10.9%), Therapeutic Products and Services (8.5%) and Advocacy (8.1%).

	2010	2009	2008	2007	2006
Consumer Product	141	159	115	82	87
Liquor	114	83	35	31	30
Food & Beverage	86	80	81	67	49
Therapeutic	67	68	34	38	30
Advocacy	64	69	68	44	43
Financial	45	32	35	27	25
Tourism/Travel	40	46	33	29	18
Health & Beauty	38	29	23	19	13
Media	32	33	29	37	27
Telecommunications	30	51	32	74	37
Professional Service	30	38	36	9	16
Entertainment	27	30	38	38	20
Vehicle/Transportation	18	29	38	29	26
Other	15	6	14	13	0
Apparel & Footwear	13	12	9	16	14
Retail	11	28	46	40	14
Real Estate	10	15	5	18	11
Fast Food	7	8	11	33	22
Gaming/Gambling	4	7	9	6	4
Service	0	6	12	18	7
<b>Total</b>	<b>792</b>	<b>829</b>	<b>703</b>	<b>668</b>	<b>493</b>

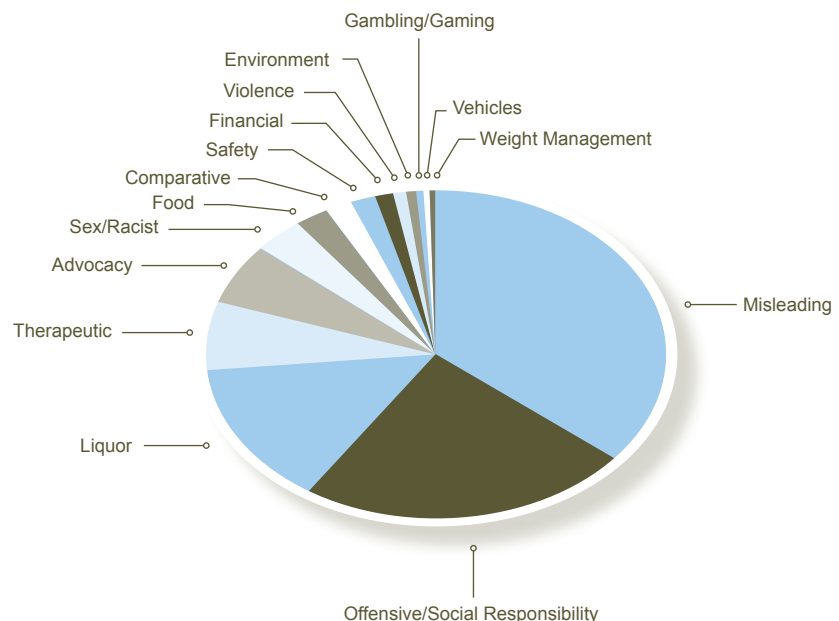


►► COMPLAINTS BY CODE / RULE

Issues complained about are reflected in the breakdown of the primary code or rule under which a complaint was considered.

In 2010, 35.5% of all complaints raised issues about misleading advertising, compared with 41% of complaints in 2009. The second highest area of complaint relates to offensiveness and / or social responsibility with 24.4% of complaints in 2010. This is a similar share to 2009. Requirements under the Code for Advertising Liquor, the Therapeutic Products and Services Codes and the Advocacy Rule under the Code of Ethics, are the other significant areas of complaint.

	2010	2009	2008	2007	2006
Misleading	281	348	270	280	207
Offensive/Social Responsibility	193	205	234	231	148
Liquor	103	80	31	23	25
Therapeutic	62	44	40	23	21
Advocacy	52	47	33	13	22
Sexist/Racist	31	27	17	12	11
Food	18	10	25	20	14
Safety	17	11	12	15	8
Denigration	16	14	1	0	3
Finance	8	15	19	13	15
Violence	5	1	0	6	6
Other	4	19	16	26	0
Gaming/Gambling	2	5	2	5	2
Children	0	3	3	1	11
<b>Total</b>	<b>792</b>	<b>829</b>	<b>703</b>	<b>668</b>	<b>493</b>



**Misleading Car Ad Censured** | Newsquest, 07/05/2010

## ▶▶ NZ ADVERTISING INDUSTRY TURNOVER

	2010		2009		2008		2007		2006	
	\$ M	%	\$ M	%	\$ M	%	\$ M	%	\$ M	%
NEWSPAPERS	627	29.5	623	30.5	760	32.8	826	35.4	810	36.4
TELEVISION	607	28.6	570	27.9	647	27.9	654	28.0	641	28.8
INTERACTIVE	257	12.1	214	10.5	193	8.3	135	5.8	65	2.9
RADIO	241	11.3	236	11.5	268	11.6	274	11.7	269	12.1
MAGAZINES	219	10.0	217	10.6	249	10.7	257	11.0	251	11.3
OUTDOOR	70	3.3	68	3.3	74	3.2	78	3.3	79	3.6
UNADDRESSED MAIL	55	2.4	58	2.8	61	2.6	65	2.8	64	2.9
ADDRESSED MAIL	53	2.5	53	2.6	56	2.4	36	1.5	35	1.6
CINEMA	8	0.4	6	0.3	9	0.4	10	0.4	10	0.4
<b>TOTAL</b>	<b>2137</b>	<b>100.0</b>	<b>2045</b>	<b>100.0</b>	<b>2317</b>	<b>100.0</b>	<b>2335</b>	<b>100.0</b>	<b>2224</b>	<b>100.0</b>

The ASA provides a collection point for the above figures and the information below about how each sector reports its total revenue. The figures are issued once a year, and are for calendar years. Any queries about the figures should be directed to each media sector.

Explanatory notes for the year ended 31 December 2010

### Newspapers:

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

### Television:

This figure includes all cash revenue, including agency commission, excluding GST from free to air (including

Prime) and pay television. The figures are independently collected for the ThinkTV and reported to the ASA as a total revenue figure.

### Interactive:

The online advertising expenditure figure is based on gross amounts charged to advertisers and inclusive of any applicable agency commissions. The 2010 figures include Display Advertising which includes banners, buttons, skyscrapers, rich-media, streaming advertising, email, online video and other forms of interactive Display advertising; Classifieds, which includes revenues from ads placed to buy or sell an item or service and Search & Directories Advertising which includes revenues from online Directories and search engine listings. The figures are supplied via PwC an independent auditor on behalf of the Interactive Advertising Bureau (IAB NZ). For further info visit [www.iab.org.nz](http://www.iab.org.nz)

▼  
**Jetstar Strikes Advertising Turbulence** | *Newsquest, 08/07/2010*

NZ ADVERTISING INDUSTRY TURNOVER CONTINUED

**Radio:**

This figure includes all cash revenue, including agency commission, excluding GST from members of the Radio Broadcasters Association (RBA). Actual returns comprised 98% of the total radio advertising revenue for 2010. The total also includes an estimate for non-RBA members, iwi and student radio based on direct industry knowledge and projections based on market share. The figure is sourced from the Radio Broadcasters Association.

**Magazines:**

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

**Outdoor:**

This figure includes all cash revenue, including agency commission, excluding production, installation and GST from members of the Outdoor Media Association of NZ (OMANZ). The revenue data is independently collected for OMANZ. The figure also includes actual returns from four other companies involved in outdoor or ambient advertising.

**Unaddressed Mail:**

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

**Addressed Mail:**

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

**Cinema:**

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

## ▶▶ STATEMENT OF FINANCIAL PERFORMANCE

## Advertising Standards Authority of New Zealand Inc.

	2010	2009
<b>EXPENDITURE</b>		
Complaints Boards	184,504	157,199
Operational	192,418	165,655
Premises	58,178	59,121
Staffing	415,637	339,573
<b>TOTAL EXPENSES</b>	<b>850,737</b>	<b>721,548</b>
<b>INCOME</b>		
Subscriptions	337,408	330,045
Arbitration Fees and Sundry	38,000	63,126
Levies	366,180	351,343
Interest Received	5,053	6,030
<b>TOTAL INCOME</b>	<b>746,641</b>	<b>759,544</b>
<b>SUPLUS AFTER TAX</b>	<b>(104,096)</b>	<b>36,335</b>



*Fly Buys In Hot Water Over Coffee Maker* | Newsquest, 09/07/2010







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