

**This Code has been adopted by the AANA as part of advertising and marketing self regulation. The object of this Code is to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing to children in Australia.**

## 1. DEFINITIONS

In this Code, unless the context otherwise requires:

### **Advertising or Marketing Communication** means:

- (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or
- (b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

### **Advertising or Marketing Communications to Children**

means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product.

### **Advertising Standards Board**

means the board appointed by the Advertising Standards Bureau from time

to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

**Alcohol Products** means products which have some association with alcohol including alcoholic beverages, food products that contain alcohol or other Products that are associated in some way with alcohol including in the sense of being branded in that way.

**Children** means persons 14 years old or younger and **Child** means a person 14 years old or younger.

**Excluded Advertising or Marketing Communications** means labels or packaging for Products.

**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct-to-consumer media including new and emerging technologies.

**Premium** means anything offered free or at a reduced price and which is conditional upon the purchase of a regular Children's Food or Beverage Product.

**Prevailing Community Standards** means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to Advertising or Marketing Communications to Children.

**Product** means goods, services and/or facilities which are targeted toward and have principal appeal to Children.

## 2. CODE OF PRACTICE

### 2.1 Prevailing Community Standards

Advertising or Marketing Communications to Children must not contravene Prevailing Community Standards.

### 2.2 Factual Presentation

Advertising or Marketing Communications to Children:

- (a) must not mislead or deceive Children;
- (b) must not be ambiguous; and
- (c) must fairly represent, in a manner that is clearly understood by Children:
  - (i) the advertised Product;
  - (ii) any features which are described or depicted or demonstrated in the Advertising or Marketing Communication;
  - (iii) the need for any accessory parts; and
  - (iv) that the Advertising or Marketing Communication is in fact a commercial communication rather than program content, editorial comment or other non commercial communication.

### 2.3 Placement

Advertising or Marketing Communications to Children must not be placed in Media where editorial comment or program content, in close proximity to that communication, or directly accessible by Children as a result of the communication, is unsuitable for Children according to Prevailing Community Standards.

## 2.4 Sexualisation

Advertising or Marketing Communications to Children:

- (a) must not include sexual imagery in contravention of Prevailing Community Standards;
- (b) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.

## 2.5 Safety

Advertising or Marketing Communications to Children:

- (a) must not portray images or events which depict unsafe uses of a Product or unsafe situations which may encourage Children to engage in dangerous activities or create an unrealistic impression in the minds of Children or their parents or carers about safety; and
- (b) must not advertise Products which have been officially declared unsafe or dangerous by an authorised Australian government authority.

## 2.6 Social Values

Advertising or Marketing Communications to Children:

- (a) must not portray images or events in a way that is unduly frightening or distressing to Children; and
- (b) must not demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability.

## 2.7 Parental Authority

Advertising or Marketing Communications to Children:

- (a) must not undermine the authority, responsibility or judgment of parents or carers;
- (b) must not contain an appeal to Children to urge their parents or carers to buy a Product for them;
- (c) must not state or imply that a Product makes Children who own or enjoy it superior to their peers; and

- (d) must not state or imply that persons who buy the Product the subject of the Advertising or Marketing Communication are more generous than those who do not.

## 2.8 Price

- (a) Prices, if mentioned in Advertising or Marketing Communications to Children, must be accurately presented in a way which can be clearly understood by Children and must not be minimised by words such as “only” or “just”.
- (b) Advertising or Marketing Communications to Children must not imply that the Product being promoted is immediately within the reach of every family budget.

## 2.9 Qualifying Statements

Any disclaimers, qualifiers or asterisked or footnoted information used in Advertising or Marketing Communications to Children must be conspicuously displayed and clearly explained to Children.

## 2.10 Competitions

An Advertising or Marketing Communication to Children which includes a competition must:

- (a) contain a summary of the basic rules for the competition;
- (b) clearly include the closing date for entries; and
- (c) make any statements about the chance of winning clear, fair and accurate.

## 2.11 Popular Personalities

Advertising or Marketing Communications to Children must not use popular personalities or celebrities (live or animated) to advertise or market Products or Premiums in a manner that obscures the distinction between commercial promotions and program or editorial content.

## 2.12 Premiums

Advertising or Marketing Communications to Children, which include or refer to or involve an offer of a Premium:

- (a) should not create a false or misleading impression in the minds of Children about the nature or content of the Product;
- (b) should not create a false or misleading impression in the minds of Children that the product being advertised or marketed is the Premium rather than the Product;
- (c) must make the terms of the offer clear as well as any conditions or limitations; and
- (d) must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.

## 2.13 Alcohol

Advertising or Marketing Communications to Children must not be for, or relate in any way to, Alcohol Products or draw any association with companies that supply Alcohol Products.

## 2.14 Privacy

If an Advertising or Marketing Communication indicates that personal information in relation to a Child will be collected, or if as a result of an Advertising and Marketing Communication, personal information of a Child will or is likely to be collected, then the Advertising or Marketing Communication must include a statement that the Child must obtain parental consent prior to engaging in any activity that will result in the disclosure of such personal information.

## 2.15 Food and Beverages

- (a) Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits.
- (b) Advertising or Marketing Communications to Children must comply with the AANA Food & Beverages Advertising & Marketing Communications Code.

## 2.16 AANA Code of Ethics

Advertising or Marketing Communications to Children must comply with the AANA Code of Ethics.

An outline of the process by which complaints can be made against this Code follows.

### ADVERTISING STANDARDS BOARD COMPLAINTS PROCESS

#### Receipt of complaints

The Advertising Standards Board (**Board**) will normally only accept written complaints – by post or facsimile or via the online complaints form on the Advertising Standard Bureau (**ASB**) website ([www.adstandards.com.au](http://www.adstandards.com.au)).

All complaints received are promptly assessed as to their appropriateness for submission to the Board for determination. The Secretariat replies to all complainants informing them of the status of their complaint.

If the information provided in the letter of complaint is insufficient (in particular, if it fails to adequately identify the advertiser or marketer, product or nature of complaint) then more information is sought from the complainant.

Complaints are not forwarded to the Board if:

- The commercial communication complained about has been previously considered – however all complaints are referred to the advertiser or marketer for its consideration.
- The commercial communication complained about does not constitute an Advertising or Marketing Communication for the purposes of one of the codes ASB administers being section 2 of the AANA Code of Ethics, the AANA Food & Beverages Advertising & Marketing Communications Code, the AANA Code for Advertising & Marketing Communications to Children or the Federal Chamber of Automotive Industries' Voluntary Code of Practice for Motor Vehicle Advertising (**Codes**).

- The complaint would involve determining questions of law or questions of truth and accuracy (other than as provided for under clause 2.2 of the AANA Code for Advertising & Marketing Communications to Children and under clauses 2.1, 2.4 and 3.1 of the AANA Food & Beverages Advertising & Marketing Communications Code).
- The complaint involves trivial issues.
- The complaint involves public advocacy issues.
- The commercial communication complained about is local advertising.
- The commercial communication complained about is the subject of litigation or an order by a court or government agency.
- The complaint is about unlawful business practices.
- The commercial communication complained about has been withdrawn or discontinued before challenge.
- The complaint is about highly technical issues.
- The complaint is about label directions or basic performance of products and services not related to advertising or marketing claims.
- The complaint involves issues covered by specific industry codes, such as:
  - slimming/weight management products and services;
  - therapeutic goods;
  - alcoholic beverages; except in the case of motor vehicles.

An anonymous complaint is not sufficient to initiate a formal complaint. It can however be included as part of a complaint that has already been raised or is subsequently raised. To facilitate this, anonymous complaints are kept on file.

#### Initiating complaints

A single written complaint is sufficient to initiate a formal complaint.

#### Advising Advertiser/Marketer of complaints

Once a complaint has been accepted by the ASB, the advertiser/marketer is notified about the complaint, provided with a copy of the complaint and is requested to provide a written response and copies of the relevant advertising or marketing communication within sufficient time to allow the complaint to be dealt with at the next meeting of the Board.

If an advertiser/marketer fails to provide a response to the complaint within the specified period or any extension of it, the Board may consider the complaint and the advertising or marketing communication in question without the advertiser/marketer response.

#### Complaint resolution

The Board meets twice a month to consider complaints received. The Board also meets between meetings, usually by teleconference, if the Secretariat considers that a matter should be considered as a matter of urgency.

The position of Chair is rotated among Board members on a meeting by meeting basis. The Chair for each meeting during a year is generally determined at the beginning of each year but can be varied to accommodate changes in individual schedules.

Board members must disclose any personal interest in a matter that is the subject of a complaint. The member concerned must withdraw from contributing to the debate and decision or case report approval in relation to those complaints.

If a Board member's duties to another board or organisation require that they breach their duty of loyalty or confidentiality to the Board for a period of time, then the member must disclose this position to the Board.

A general conflict with the Board would require that the member withdraw from their duties to the Board during the period that the conflict continues.

The Board reaches its decision by way of simple majority. In the event of a tied vote, the Chair has a casting vote.

In relation to individual complaints, Board members will consider:

- the complaint(s) received;
- all relevant advertising/marketing communications submitted by the advertiser/marketer;
- the advertiser/marketer's response (if any);
- all relevant provisions of the Codes; and
- any other relevant supporting materials or other representations or submissions.

The Board considers complaints in light of all of the Codes and accordingly may apply any part of those Codes in reaching a determination. The Board is not limited, in its considerations, to issues raised by the complaint.

If the Board is unable to reach a decision until it is in possession of additional information, it can defer its determination until a future date.

## Decisions the Board can make

### Determination – complaint upheld

A complaint is upheld if the Board determines there is a breach of one of the Codes.

### Determination – Complaint dismissed

A complaint is dismissed if the Board determines there is no breach of any of the Codes.

## Notifying advertisers/marketers and complainants of the Outcome of the Board's decision

Following the Board's determination, a draft case report is promptly prepared by the ASB and submitted to the Chair for approval. Following receipt of Chair approval, the ASB notifies the advertiser/marketer of the outcome and sends the advertiser/marketer a copy of the draft case report. This usually occurs between 8 and 10 business days of the Board decision. The advertiser/marketer is requested to advise the Board whether it agrees to modify or discontinue the advertising or marketing communication (**Advertiser Statement**) within 5 business days of the covering letter advising of the outcome and enclosing the draft case report. The advertiser/marketer is also advised of the opportunity to include an Advertiser's Statement in the case report.

If an advertising or marketing communication is found to breach a provision of the Codes and the advertiser/marketer does not respond to the opportunity to modify or discontinue the advertising or marketing communication within the allowed time frame, the Board will:

- If appropriate, refer the case report to the appropriate government agency;
- Include the advertiser/marketer's failure to respond in the case report;
- Forward the case report to media proprietors; and
- Post the case report on the ASB's website.

## Publish case report

Within 10 business days of the Board's decision, all finalised case reports are made publicly available.

## Review

If a complaint is upheld, the advertiser/marketer can ask for a review of the Board's decision. If a complaint is dismissed, the original complainant can ask for a review of

the Board's decision. There are 3 grounds on which a request for review may be made:

- Where new or additional relevant evidence which could have a significant bearing on the decision becomes available;
- Where there is a substantial flaw in the Board's decision; or
- Where there was a substantial flaw in the process by which the decision was made.

Any request for review should contain a full statement of the grounds, be addressed to the Independent Reviewer of ASB decisions c/o the ASB and be sent within 10 business days of the date of the ASB's letter of notification of a decision. The non-refundable cost of a review is \$500 for complainants, \$1000 for complainants who are Incorporated Associations and \$2000 for advertisers/marketers.

Requests for review will be considered by the Independent Reviewer. If the Independent Reviewer accepts the request for review, the Independent Reviewer will invite further comments on the review from the party who did not request the review.

Unless exceptional circumstances apply, within 10 business days of receipt of the request, the Independent Reviewer will make a recommendation (including reasons for the decision/recommendation and copies of any material relevant to the recommendation) to the Board, stating whether the decision should be reviewed, amended or confirmed. This recommendation will remain confidential until the Board's decision is published.

The Board must consider, but is not obliged to accept the Independent Reviewer's recommendation. Following reconsideration by the Board a new case report will be prepared. The Board's decision in the new case report is final and not capable of further review.

August 2009