

Food & Beverages Advertising & Marketing Communications Code

Practice Note

This Practice Note is an attachment to the *AANA Food & Beverages Advertising & Marketing Communications Code* as a guide to interpretation only. The interpretations offered are based on the original intent of the Code, and may be expanded by the AANA Board as considered necessary including on the advice of the Advertising Standards Bureau as informed by the experience of public complaint adjudication by the Advertising Standards Board.

DEFINITIONS & INTERPRETATIONS

Advertising or Marketing Communications - Shall not include material that is exhibited without financial consideration, such as television station promotions of future programs.

Average Consumer - shall include any person who is purchasing goods, whether or not such persons have children or the responsibility of care for others.

Children - shall be regarded as persons of 14 years and under, in accord with the established practice for television, although the Board shall be cognisant that some sectors of the food & beverages industry have adopted the age of secondary school entry as their cut-off point for advertising or marketing communications.

PART 2 – ADVERTISING OR MARKETING COMMUNICATIONS FOR FOOD OR BEVERAGE PRODUCTS

Section 2.1

The Board will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

In testing the requirement that an advertising or marketing communication should be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.

In testing the requirement that a advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Board will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an

advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.

Thus, a advertising or marketing communication may make reference to one or more of the nutritional values or health benefits of a product but such references must be accurate and appropriate to the level of understanding of the target audience, and must not misleadingly represent the overall nutritional or health benefits of the product

Some complaints made under this Code that the Board is better able to determine under the broader aspects of the *AANA Code of Ethics* will be considered under that Code eg complaints about matters such as language, sex and violence.

Section 2.2

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

The Board will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether an advertising or marketing communication undermines the importance of a healthy lifestyle, the Board will consider whether the communication is disparaging of healthy foods or food choices or disparaging of physical exercise.

Such disparagement need not be explicit, and the Board will consider the message that is likely to be taken by the average consumer within the target market of the communication.

- In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.

The Board will also consider the age of the person shown in association with the product, recognising for example, that a teenage male may often consume more than a female or younger child and this may not be a representation that encourages excess consumption in the situation portrayed.

Section 2.3

This provision is intended to be triggered by the Board when considering that an average consumer, acting reasonably, might consider statements made within an advertising or marketing communication as health or nutrition claims.

In testing whether this provision is properly triggered, the Board will apply its view of what an average consumer within the target market, might reasonably take from a communication.

Having considered that statements made within an advertisement might reasonably be taken by an average consumer as health or nutrition claims, the Board will rely on substantiation provided by the advertiser and/or appropriate expert or professional advice as to whether such claims can be properly supported by scientific evidence meeting the requirements of the Food Standards Code.

Complaints upheld on this basis, and where the Board considers the product involves a risk to public safety, may be referred to the appropriate food regulatory enforcement body.

Section 2.4

Rather than a legal test, in testing whether an advertising or marketing communication that it finds likely to be regarded by an average consumer as making a nutritional or health related comparison, either explicitly or by implication, the Board will consider whether, in its view, such comparison is presented in a non-misleading and non-deceptive manner that is clearly understandable by an average consumer.

Section 2.5

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

The Board will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether an advertising or marketing communication includes reference to consumer taste or preference tests in a way implying statistical validity when no statistically valid testing had taken place, the Board will consider whether target audiences of the communication would most likely believe that the communication claimed some statistical validity.
- In testing whether an advertising or marketing communication uses scientific terms to falsely ascribe validity to a claim the Board will consider the probable view of the target audience.
- In testing the validity of any associated claim of endorsement by a scientific, health or other organisation, the Board will rely on substantiation by the advertiser. Use of scientific terms in the name of supporting organisations will not automatically constitute a breach of this section.

Section 2.6

In testing whether any claim is included within an advertising or marketing communication, the Board will consider whether an average consumer, acting reasonably, would consider a statement as constituting a claim (i.e. an assertion or contention about the component, as against a 'claim' as defined under other legislation).

Once a claim relating to a material characteristic of a promoted product is established, the Board will need to determine whether such a claim can be substantiated by the product alone, rather than its consumption in combination with other products.

The Board will also need to consider whether the claim is accurate in its representations about the product, and will usually do so on the basis on information provided on the packaging or otherwise provided by the advertiser.

Visual or textual representation of a 'suggested serving' will not, on its own, represent grounds for finding an advertisement or marketing communication in breach of the Code.

Any taste or nutrition claims relating to the product as consumed with an external ingredient (eg cereal consumed with milk) must be clearly distinguished as being a claim for the product as consumed with such external ingredient/s.

Section 2.7

In testing whether the use of a personality contravenes the Code, the Board will consider whether the target audience would see a clear distinction between advertising and editorial or program content.

In testing the matter of target audience, the Board will not rely solely on the advice of the advertiser, but also consider the placement of the material or, in the case of broadcast media, the program within which it appears.

For any advertising or marketing communication directed towards children the Board will:

- consider whether children within the target audience would be likely to see a clear distinction between advertising and editorial or program content.
- exercise particular sensitivity in relation to younger children, taking special notice of target audience and time zones, recognising that while an advertisement might be placed between sections of editorial or program content, or between separate editorial material or programs, this might not represent a clear distinction for very young children.

This section does not apply to 'product placement' within films or programs.

Section 2.8

In its determination of whether any advertising or marketing communication portrays a product as suitable as a substitute for a meal when it is not intended or suitable for such use, the Board will consider whether an average consumer, acting reasonably, would consider that the communication presents the product as suitable as a meal replacement. In determining whether such meal is intended or suitable for use as a meal replacement the Board will apply its view of what a reasonable consumer might think.

Section 2.9

In its determination of all complaints, the Board will automatically consider them under the provisions of the *AANA Code of Ethics* and the *AANA Code for Advertising & Marketing Communications to Children* as well as the *AANA Food & Beverages Advertising & Marketing Communications Code*.

PART 3 – ADVERTISING & CHILDREN

Section 3.1

In its determination of whether any advertising or marketing communication is directed towards children, the Board will apply the same criteria as used in considering complaints under the *AANA Code for Advertising & Marketing Communications to Children*.

The Board will consider the advertiser's stated intent but will also make an evaluation based on its own review of the advertising or marketing communication material and the product being promoted.

This section contains a number of separate obligations. Failure to comply with any one will be considered a breach of the Code. Again, the Board will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether a advertising or marketing communication is properly designed and delivered in a manner to be understood by children comprising the target audience, the Board will apply its own view of what it considers a reasonable child of the target audience would understand from the advertisement.

- In testing whether an advertising or marketing communication is misleading or deceptive or seeks to mislead or deceive in relation to any nutritional or health claims, the Board will form its own view on the information likely to be taken from a communication by a reasonable child of the target audience.
- In testing whether an advertising or marketing communication employs ambiguity, the Board will form its own view of what it considers a reasonable child of the target audience would understand from the communication.
- In testing whether an advertising or marketing communication incorporates a misleading or deceptive sense of urgency, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.
- In testing whether a advertising or marketing communication features practices such as price minimisation inappropriate to the age of the intended audience, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.

Section 3.2

In testing whether an advertising or marketing communication improperly exploits children's imagination in ways which might reasonably be regarded as based upon an intent to encourage excessive consumption, the Board need not rely exclusively on evidence of actual intent, but form its own view of what a reasonable child of the target audience would understand from the communication.

Section 3.3

In testing whether a advertising or marketing communication contains an explicit or implied message that ownership or consumption of a particular product would provide particular positive or negative outcomes, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.

Section 3.4

In testing whether an advertising or marketing communication contains information or depictions that would undermine the role of a parent or other responsible adult in guiding a child's diet and lifestyle, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.

Section 3.5

In considering whether a advertising or marketing communication contains an appeal or encouragement to children to urge parents or other adults to buy particular products for them, the Board will form its own view of what a reasonable child of the target audience would understand from the communication and, in addition, will form a view inclusive of the following pointers:

- Although children may be expected to exercise some preference over the foods and beverages they consume, an advertising or marketing communication must be prepared with a due sense of responsibility and should not directly encourage children to urge the purchase of particular products for them.
- An advertising or marketing communication must not give children cause to pester or otherwise make a nuisance of themselves in relation to the promoted products. [As an example, in a

supermarket setting, a child should not be portrayed asking for a particular product or putting it into a shopping trolley without asking, while voice or text messages must not include such urging as “Ask Mummy to buy you one.”]

Section 3.6

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

The Board will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether an advertising or marketing communication features ingredients or premiums that are not an integral part of the product or service, the Board will consider whether the ingredient or premium is given undue prominence by way of being made the dominant feature or otherwise occupies more than half of the advertisement.
- In testing whether an advertising or marketing communication features ingredients that are not an integral element of the product being offered, the Board will consider whether attributes claimed for the product are wholly dependent on its consumption in association with ingredients that are not integral to the promoted product. In determining whether something is an ‘integral’ element of a product, the Board will consider whether the element is necessary to the completeness of the product or service being offered.
- In testing whether an advertising or marketing communication features a premium that is not an integral element of the product being offered, the Board will use the definition of premiums contained in the *AANA Code for Advertising & Marketing Communications to Children*.

In both tests, the Board will consider whether the advertising or marketing communication features inclusions in a manner that accords them undue prominence in relation to the product being promoted, taking account of the fact that it is not the intention of this clause to prohibit legitimate promotion of special offers, but rather to impose a reasonable limit, based on the Board’s representation of prevailing community standards, on the extent to which an average child within the target audience might regard the advertising or marketing communication being for a featured ingredient or premium rather than the product itself.
