

**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 food and beverage products 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 a Children's Food or Beverage 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.

**Average Consumer** means a regular adult family shopper able to compare products by label-listed definition.

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

### **Children's Food or Beverage Product**

means any food or beverage product other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code, which is targeted toward and has principal appeal to Children.

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

### **Food or Beverage Products**

means any food or beverage products other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code.

**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 the advertising or marketing of Food or Beverage Products taking into account, at a minimum, the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health & Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.

## 2. ADVERTISING OR MARKETING COMMUNICATIONS FOR FOOD OR BEVERAGE PRODUCTS

2.1 Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.

- 2.2 Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.
- 2.3 Advertising or Marketing Communications for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.
- 2.4 Advertising or Marketing Communications for Food or Beverage Products which include nutritional or health related comparisons shall be represented in a non misleading and non deceptive manner clearly understandable by an Average Consumer.
- 2.5 Advertising or Marketing Communications for Food or Beverage Products shall not make reference to consumer taste or preference tests in any way that might imply statistical validity if there is none, nor otherwise use scientific terms to falsely ascribe validity to advertising claims.
- 2.6 Advertising or Marketing Communications for Food or Beverage Products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits, shall be specific to the promoted product/s and accurate in all such representations.

- 2.7 Advertising or Marketing Communications for Food or Beverage Products appearing within segments of media devoted to general and sports news and/or current affairs, shall not use associated sporting, news or current affairs personalities, live or animated, as part of such Advertising and/or Marketing Communications without clearly distinguishing between commercial promotion and editorial or other program content.
- 2.8 Advertising or Marketing Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such.
- 2.9 Advertising or Marketing Communications for Food and/or Beverage Products must comply with the AANA Code of Ethics and the AANA Code for Advertising & Marketing Communications to Children.

### **3. ADVERTISING AND CHILDREN**

- 3.1 Advertising or Marketing Communications to Children shall be particularly designed and delivered in a manner to be understood by those Children, and shall not be misleading or deceptive or seek to mislead or deceive in relation to any nutritional or health claims, nor employ ambiguity or a misleading or deceptive sense of urgency, nor feature practices such as price minimisation inappropriate to the age of the intended audience.
- 3.2 Advertising or Marketing Communications to Children shall not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered, acting reasonably, as excessive quantities of the Children's Food or Beverage Product/s.

- 3.3 Advertising or Marketing Communications to Children shall not state nor imply that possession or use of a particular Children's Food or Beverage Product will afford physical, social or psychological advantage over other Children, or that non possession of the Children's Food or Beverage Product would have the opposite effect.
- 3.4 Advertising or Marketing Communications to Children shall not aim to undermine the role of parents or carers in guiding diet and lifestyle choices.
- 3.5 Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular Children's Food or Beverage Products for them.
- 3.6 Advertising or Marketing Communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Product/s being offered.

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

## AANA Code of Ethics

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

- (a) 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.

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 Secretariat, 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 on a monthly basis between February and December 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 Secretariat and submitted to the Chair for approval. Following receipt of Chair approval, the Secretariat notifies the advertiser/marketer of the outcome and sends the advertiser/marketer a copy of the draft case report. This usually occurs within 8 to 10 business days of the Board's 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 (this time limit may be waived by the Independent Reviewer). The non-refundable cost of a review is \$500 for complainants, \$1000 for complainants who are Incorporated Associations and \$2000 for advertisers/marketers.

All 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.