



Submission to

the New Zealand Advertising Standards Authority  
for the  
**Review of the Code for Advertising to Children  
and Children's Code for Advertising Food**

on behalf of

Australian Association of National Advertisers

April 2016

## **Introduction**

The AANA welcomes the opportunity to provide this submission to the New Zealand Advertising Standards Authority for the Review of the Code for Advertising to Children and Children's Code for Advertising Food.

The AANA is the peak body for advertisers in Australia and has represented national advertisers for over 85 years. It represents the common interests and obligations of companies across all business sectors involved in the advertising, marketing and media industry. Given the international and national level of concern for matters addressed by the ASA Codes, particularly in relation to children and food, and the close market relationship between Australia and New Zealand, including a joint regulatory framework for food (*Australia New Zealand Food Standards Code*), AANA considers that industry and consumers are best served by self-regulatory Codes which, if not aligned in every detail, are nevertheless consistent. With this in mind our submission goes into some detail as to how our Codes currently operate.

The AANA has a strong ongoing commitment to self-regulation. The AANA designed and delivers the self-regulatory system advertising and marketing communication in Australia.

The AANA's self-regulatory system applies to all media and virtually all forms of advertising and marketing communication. The AANA protects the rights of consumers by helping to ensure advertising and marketing communication is conducted responsibly, including through its development and administration of industry codes and the overall self-regulatory system.

According to a report by McKinsey & Company in 2012, on a global level advertising has fuelled, on average, about 15 per cent of growth in GDP in the major G20 economies over the previous decade<sup>1</sup>. It is the driver of consumer choice and, by promoting competition, helps consumers get better value for money. It enables innovation to be brought to market and stimulates economic growth and jobs. It provides substantial funding to support media and a variety of media content.

## **The AANA self-regulatory system**

### **A role for self-regulation**

Self-regulation is an essential part of the Australian business landscape and contemporary society. It flourishes through strong leadership, commitment and cooperation across business, government and the community at large. Self-regulation is not the exclusive domain of any one particular body but the collective concern of many players, large and small.

The self-regulatory system for advertising and marketing communication in Australia was established by AANA in 1997. The establishment of the self-regulatory system was in response to advertisers' recognition that they have a responsibility to deliver communication in alignment with agreed and trusted standards.

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<sup>1</sup> *Advertising as an economic growth engine*, March 2012 [http://www.iab-austria.at/wp-content/uploads/2013/03/2012\\_McKinsey\\_advertising-role-in-growth.pdf](http://www.iab-austria.at/wp-content/uploads/2013/03/2012_McKinsey_advertising-role-in-growth.pdf)

Australia and New Zealand are not alone in having an industry self-regulation system for advertising and marketing communication, it is a common feature of many other jurisdictions.

### The benefits of self-regulation

Self-regulation of the advertising and marketing communication industry provides a flexible mechanism to meet the challenges of the ever-evolving advertising, marketing and media industry, along with changing consumer expectations. In Australia this is done via four AANA Codes, various AANA Practice Notes, and a number of industry initiatives.

The industry is experiencing a revolution in that advertisers are no longer exclusively driving consumer demand. There is a growing movement towards consumer driven marketing. This requires a quick and innovative response by companies in their advertising and marketing practices. A self-regulatory system provides the ability for a flexible response through reviews and evolutions of advertising codes, ensuring amendment and refinement to keep pace with the fast moving advertising and marketing environment, as well as changing community expectations.

There are many benefits of self-regulation which have been recognised by governments and consumer advocates alike. These include:

- Costs of the system are borne by advertisers – there is no cost to government
- A self-regulatory system is flexible. It can adapt easily to changes in community attitudes. By contrast, legislation is more costly, time consuming and difficult to amend.
- Resolution time for complaints-handling is faster than for co-regulatory and regulatory schemes.
- Commitment to the self-regulatory system can be seen through almost universal compliance with the Advertising Standards Board's decisions.

### Platform neutral regulation

#### Definition of advertising

In the AANA Codes, **Advertising or Marketing Communication** means any material which is published or broadcast using any medium or any activity which is undertaken by, or on behalf of, an advertiser or marketer, and

- *over which the advertiser or marketer has a reasonable degree of control, and*
- *that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct*

*but does not include*

- *labels or packaging for products*
- *corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like*
- *in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.*

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**Medium** is defined as *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.*

The current definition of "Advertising or Marketing Communication" came into effect on 1 January 2016. The revision to the definition clarified that direct-to-consumer public relations material is included in the definition of advertising and marketing communication and complaints about such communication will be assessed by the Advertising Standards Board ("Board").

### **Platform neutrality**

The definition of "Advertising or Marketing Communication" in the AANA Codes ensures virtually all commercial communication is captured (including third party comments – e.g. user-generated comment - on brand-owned social media sites). This means that the standards specified in the AANA Codes, including in relation to food and beverage marketing and marketing to children, apply equally across all media.

The self-regulatory system has evolved to cope with the rise of digital advertising including social media. There will be future evolutions of technology that may give rise to perceived self-regulatory challenges but these can be met by future evolutions of the codes and their application to new media. In terms of consumers, again there is no need for a distinction in their minds between traditional and digital advertising. The platform neutral self-regulatory model provides for the Advertising Standards Bureau to receive all complaints without the consumer having to consider the medium in which the relevant advertisement appeared.

In an industry that operates across platforms, and particularly where consumers can access the same or similar material across a range of platforms, it is not appropriate for communication regulation or self-regulatory codes to address different industry sectors in different ways. Self-regulatory codes can continue to evolve as new technology and means of communication evolve so that they remain relevant and universal.

Last year the AANA welcomed FreeTV Australia's recognition of the role of the AANA Codes and role of self-regulation of marketing communications as the preferred model for managing marketing communication in Australia as part of the review of the Australian Commercial Television Industry Code of Practice. Many advertising associations also refer to, or incorporate by reference, the AANA Codes including the Australian Subscription Television and Radio Association; Commercial Radio Association; Outdoor Media Association and Alcohol Beverages Advertising Code.

When determining what combination of regulatory interventions might be needed in the future, it is important to recognise the evidence that shows brand owners already, in the vast majority of instances, recognise their responsibility to meet community expectations in terms of advertising and marketing communication standards, across all media.

In dealing with an industry that operates across a range of media, and particularly where consumers can access the same or similar material across a range of platforms, it is an expensive and unnecessary burden to impose on industry different regulatory requirements depending on the media used, the product category or the geographical location of the material.

We note that the Consultation Paper refers to specific guidelines in relation to sponsorship. Such guidelines should be consistent with the spirit and intent of the provisions contained in the overarching ASA Codes so that messages delivered through sponsorships also meet community expectations.

We do not believe that there is evidence of reduced negative health impacts to support the introduction of any major restrictions to brand sponsorship of major sports and cultural events. On the other hand, sponsorship restrictions are highly likely to have a significant effect on sports, music and cultural events that already struggle to source funding, along with a consequential impact on overall participation and potential price increases to participants. In contrast, allowing sponsorship by food companies to continue is an opportunity to encourage positive behaviours through appropriate health promotion programmes.

### Advertising to children

In the AANA Codes, ***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 goods, services and/or facilities which are targeted towards and have principal appeal to Children. Children means persons 14 years old or younger.*

In addition to the requirements relating to food and beverage advertising discussed below, the AANA Codes require that advertising to children must not:

- mislead or deceive children;
- employ ambiguity or deceptive sense of urgency to buy the product;
- feature practices such as price minimisation (using “only” or “just”) which are inappropriate to the age of the intended audience;
- state or imply that a product makes children who own or enjoy it superior to their peers;
- undermine the authority, responsibility or judgment of parents or carers;
- contain an appeal to children to urge their parents, carers or another person to buy a product for them; or
- use popular personalities or celebrities to endorse, recommend or promote products in a manner that obscures the distinction between commercial promotions and program content.

These requirements align with those of the International Chamber of Commerce Code of Advertising Practice as well as the codes in New Zealand and the United Kingdom.

The Australian Food & Grocery Council Responsible Children's Marketing Initiative and Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (AFGC Initiatives) provide an additional self-regulatory system for advertising and marketing to children for food and beverages promoted by signatory brand owners<sup>2</sup>. The AFGC Initiatives also apply to advertising or marketing communications directed primarily to children as well as advertising or marketing communication that are placed in a medium that is directed primarily to children and/or where children represent 35% or

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<sup>2</sup> <http://www.afgc.org.au/our-expertise/industry-codes/advertising-to-children/>

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more of the relevant audience. These requirements align with those of the EU Pledge<sup>3</sup> and International Food & Beverage Alliance Pledge<sup>4</sup>.

Under the AANA Codes, whether an advertisement or marketing communication is “directed primarily to children” is an objective test based on a range of factors. The application of the definition of “directed primarily to children” recognises that particular types of advertising and marketing communication engage and resonate with children in such a way as to bring about a response, reaction and action.

The AANA believes there is an important and valid distinction to be made between advertising directed primarily to children and advertising or marketing communication that may be seen by children, but is not directed primarily to them. Marketing communication which is directed to adults should not be subject to the same limitations.

### **Food & beverage advertising**

Some pressure groups argue society would be better off without advertising, particularly when it comes to food and beverages, despite compelling evidence that responsible advertising is not the problem.

This is particularly true when it comes to children. As discussed above, advertisers acknowledge that their licence to advertise goes hand in hand with a responsibility to ensure advertising is in line with community expectations and does not undermine the role of the parent or guardian.

An Ipsos ASI survey of 500 Australian parents, conducted on behalf of the AANA in 2012, revealed that the top influences on in-home purchasing decisions by parents for food are nutritional value (32%), price (26%) and taste (16%), rather than advertising.

The survey showed that the Australian community accepts that parents are the biggest influencer of children's diets and that factors which reduce physical exercise - such as concerns about children's safety when playing outdoors and the rise of sedentary pastimes, such as electronic games, are by far the most profound causes of the rising levels of obesity among children. The very strong view of the parents surveyed was that they accept and want responsibility for making health, nutrition and exercise decisions for their children and only one in four believed this should be shared with the Government.

### **Impact of advertising and consumption on obesity**

The AANA believes that it is important to recognise that the problem is one of unhealthy diets and lifestyles rather than a problem of inherently ‘unhealthy’ foods. The AANA notes that the evidence to support the influence of advertising on the food choices of children and frequency of consumption is

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<sup>3</sup> <http://www.eu-pledge.eu/>

<sup>4</sup> <https://ifballiance.org/>

inconclusive at the present time. What the research does show is that advertising is only one factor influencing food choices and far from a determining one.

When it comes to advertising and health impacts, the recent UK *Literature Review of Research on Online Food and Beverage Marketing to Children*<sup>5</sup>, notes that the evidence from research on the relationship between food marketing and childhood obesity is not conclusive and, despite claims that there is an emerging consensus on a relationship existing, reviewers of the research disagree in their overall conclusions. The review notes that some evidence is correlational but generally fails to establish causal relationships between exposure to advertising and phenomena like obesity, explaining that much of the research measures children's reported exposure to media rather than their exposure to advertising specifically.

This is problematic as there are many possible ways in which media use might be associated with obesity, for example, watching television and surfing the internet are sedentary activities, which do not burn many calories. In addition, people who spend a lot of time in front of a screen tend to exercise less and are more likely to prefer other sedentary activities.

Similarly, recent research in the United States by Cornell University Food and Brand Lab indicates that "soda, candy and fast food" are not likely to be a leading cause of obesity<sup>6</sup>. The research reviewed a nationally representative sample of adults in the United States and found that, except for the 5% of the population at the extreme ends of the BMI range, that is, "chronically underweight" and "extremely morbidly obese", consumption of soda, candy and fast food is not linked to Body Mass Index (BMI) for 95% of the population. The consumption of those foods and beverages was not significantly different when the habits of healthy weight and overweight individuals were compared.

Empowering consumers through education to drive motivation and providing information to guide choice is the key to healthy eating. Advertising has a role to play, and can be very effective, in providing information and choice for consumers. Ultimately consumers (or their guardians) decide what to eat, and so are responsible for their diets, and indeed other lifestyle behaviours which can have positive and negative effects on health. Policies which result in better education and better information for consumers, including via advertising, are likely to be the most effective in bringing about a change in consumer diet and activity levels.

## **Monitoring & sanctions**

The ASB has an active agenda including undertaking research testing the decisions of the Board against the perspective of the broader community.

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<sup>5</sup><https://www.cap.org.uk/News-reports/Media-Centre/2015/~media/Files/CAP/Reports%20and%20surveys/Family%20Kids%20and%20Youth%20Literature%20Review%20of%20Research%20on%20Online%20Food%20and%20Beverage%20Marketing%20to%20Children.ashx>

<sup>6</sup> [http://foodpsychology.cornell.edu/OP/fast\\_food\\_science](http://foodpsychology.cornell.edu/OP/fast_food_science)

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The AANA has a policy that all Codes must be assessed for effectiveness at least every five years and that a full public consultation and review of Codes must occur every seven years. As two halves of the self-regulatory system, the AANA and the ASB promote effective advertising regulation, provide training and code awareness to all sectors of the industry including creative agencies, media agencies and other members of industry peak bodies, liaise with government and raise community awareness of the advertising complaint adjudication system.

An analysis of advertising complaints received by the Advertising Standards Bureau (ASB) against the AANA Codes in regards to food and beverage advertising directed to children shows a very low level of cases assessed - less than 0.02% of total cases. Similarly the volume of complaints to the ASB in relation to the AFGC Initiatives is very low with a total of 64 complaints in the last 5 years. Over the past three years, complaints in relation to the AFGC Initiatives have amounted to less than 1% of all complaints received by the ASB in each year.

In relation to complaints against the AANA Children's Code there has been a reduction in the number of complaints over the last 5 years, from 2.34% of all complaints to 0.05%. In contrast, the proportion of complaints over the same period in relation to discrimination or vilification; sex, sexuality and nudity; and violence have averaged 26.3%, 17.4% and 11.5% respectively. Given the high level of awareness within the community of the ability to make a complaint to the ASB, these figures indicate a low level of community concern when it comes to advertising directed to children, including advertisements for food & beverages. We understand there are similar findings in New Zealand.

An advertiser found to be in breach of an AANA Code must cease to use the advertisement or modify it so that it is no longer in breach. The media supports these breach findings and will act to remove the advertisement in the highly unlikely scenario that the advertiser does not (there is a 99.5% overall average compliance rate with ASB's determinations during its 16 year history). Resulting consequences of breaching the Code constitute commercial deterrent, including the direct and indirect costs of withdrawing an advertisement and the reputational cost when a non-compliant decision is made public, including possible adverse media coverage. There can be significant public backlash for campaigns which breach community standards.

Where there is an environment of low complaints and high compliance, as there is in Australia and New Zealand, the AANA does not support the introduction of independent monitoring or code evaluation because they impose an unnecessary and unproductive impost.