

AANA



**FOOD & BEVERAGES
ADVERTISING CODE
PRACTICE NOTE**

From 1 June 2019

OBJECTIVES

This Practice Note is provided as a guide to interpretation to assist advertisers, their agencies and the community. The interpretations in this Practice Note are based on the AANA's intent in relation to the Code and relevant determinations of the Ad Standards Community Panel.

This Practice Note must be applied by the Ad Standards Community Panel in making its determinations. In the event of any ambiguity the provisions of the Code prevail. The Practice Note may be amended by the AANA from time to time.

INTERPRETATION

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

Children –The Community Panel shall be cognisant that some sectors of the food & beverages industry have adopted different ages, and included media, with regard to advertising or marketing communications directed primarily to children. The RCMI and QSRI will only apply where material is considered to be advertising or marketing to children according to the definitions contained in those initiatives.

PART 2

ADVERTISING OR MARKETING COMMUNICATION FOR FOOD OR BEVERAGES PRODUCTS

SECTION 2.1

The Community Panel 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 Community Panel 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 an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Community Panel 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, an 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 Community Panel is better able to determine under the broader aspects of the AANA Code of Ethics will be considered under that Code e.g. 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 Community Panel 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 Community Panel 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 Community Panel 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 Community Panel will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.

The Community Panel 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 Community Panel 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 Community Panel 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 Community Panel 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 Community Panel 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 a 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 Community Panel 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 Community Panel 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 Community Panel 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 Community Panel 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 Community Panel 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 a advertising or marketing communication,

the Community Panel 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 Community Panel 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 Community Panel will also need to consider whether the claim is accurate in its representations about the product, and will usually do so on the basis of 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 Community Panel 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 Community Panel 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 Community Panel 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 Community Panel 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 Community Panel 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 Community Panel will apply the same criteria as used in considering complaints under the AANA Code for Advertising & Marketing Communications to Children.

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

- In testing whether an advertising or marketing communication is properly designed and delivered in a manner to be understood by children comprising the target audience, the Community Panel 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 Community Panel 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 Community Panel 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 Community Panel will form its own view of what a reasonable child of the target audience would understand from the communication.
- In testing whether an advertising or marketing communication features practices such as price minimisation inappropriate to the age of the intended audience, the Community Panel 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 an 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 Community Panel 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 Community Panel 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 an advertising or marketing communication contains an appeal or encouragement to children to urge parents or other adults to buy particular products for them, the Community Panel 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 Community Panel 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 Community Panel 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 Community Panel 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 Community Panel 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 Community Panel will use the definition of premiums contained in the AANA Code for Advertising & Marketing Communications to Children.

In both tests, the Community Panel 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 Community Panel'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.

PART 4

REFERENCE TO RCMI & QSRI

SECTION 4.1

General

This provision comes into effect on 1 June 2019.

The purpose of this provision is to ensure that Schedule 1 of the QSRI applies to advertising or marketing communication for a quick service restaurant and that Schedule 1 of the RCMI applies to other advertising of food or beverages products, regardless of whether the advertiser is a signatory to either the RCMI or the QSRI.

This provision does not otherwise alter the application of the RCMI or the QSRI or alter the defined terms used in those documents. Reference should be had to the RCMI and the QSRI to assess whether, and in what circumstances, they apply.

When do the RCMI or QSRI apply?

The RCMI or QSRI will only apply to *advertising or marketing communications to children* in an applicable *medium*. Each of these italicised terms are defined in the RCMI and QSRI and the Community Panel will apply either the definitions in the RCMI to material considered under section 4.1 of the AANA Food & Beverages Advertising Code, or the definitions in the QSRI to material considered under section 4.2.

Should advertisers comply with the RCMI or the QSRI?

If *advertising or marketing communications* is directed primarily to *children* in an applicable *medium*, advertisers should comply with either the RCMI or the QSRI. Advertisers should comply with the QSRI if they operate a quick service restaurant, i.e. a quick service food outlet whose business primarily offers for sale portable and/or ready-made Food or Beverage Products, excluding supermarkets and convenience stores. If the advertiser does not operate a quick service restaurant, they should comply with the RCMI.

What are the requirements of the RCMI and the QSRI?

Section 4.1 requires compliance with Schedule 1 of the RCMI where the advertising or marketing communication promotes a food and/or beverage product, and section 4.2 requires compliance with the QSRI where the advertising or marketing communication promotes a quick service restaurant. Reference should be had to those documents to determine the current requirements. They are available at afgc.org.au.

At the time of section 4.1 coming into effect, the key requirements for the RCMI are that *advertising or marketing communications to children* for food and/or beverages must:

- a. Represent healthier dietary choices, consistent with established scientific or Australian government standards, as detailed in a Company Action Plan; and
- b. Reference, or be in the context of, a healthy lifestyle, designed to appeal to *children* through messaging that encourages:
 - i. Good dietary habits, consistent with established scientific or government standards; and
 - ii. Physical activity.

SECTION 4.1 Continued

At the time of section 4.2 coming into effect, the key requirements for the QSRI are that *advertising or marketing communications to children* for food and/or beverages must:

- a. Represent healthier dietary choices, as determined by the Nutrition Criteria; and
- b. Reference, or be in the context of, a healthy lifestyle, designed to appeal to *children* through messaging that encourages:
 - i. Good dietary habits, consistent with established scientific or government standards; and
 - ii. Physical activity.

How is a 'healthier dietary choice' determined?

The QSRI determines 'healthier dietary choice' by reference to *nutrition criteria*, which are set out in Schedule 2 of the QSRI. If advertisers operate a quick service restaurant, they must comply with Schedule 1 of the QSRI and use the *nutrition criteria* contained within Schedule 2 to determine what constitutes a healthier dietary choice.

The RCMI determines 'healthier dietary choice' by reference to a company action plan – this is a document developed by a signatory to the RCMI (the advertiser) that details their commitments and the specific nutrition criteria that signatory applies in order to determine healthier dietary choices. For the purposes of the AANA Food & Beverages Advertising Code, if an advertiser is not a current signatory under the RCMI and doesn't have a company action plan, they should develop or adopt a nutrition criteria against which to determine healthier dietary choices, before commencing any advertising or marketing directed primarily to children.

In Australia, there is no one nutrition criteria that has been developed specifically to assess whether a product is a healthier dietary choice for the purposes of advertising or marketing communication to children. While the AANA does not endorse any particular nutrition criteria, advertisers may choose to look at the following for further information and guidance, which have been developed both locally and in other countries for the purpose of assessing the 'healthiness' of their products under the RCMI:

Developed in Australia:

- The Food Standard Australia New Zealand's Nutrient Profiling Scoring Calculator
- School Canteen Association Guidelines, e.g. NSW Healthy School
- Australian Dietary Guidelines
- Health Star Rating System

Developed Internationally (for the purposes of marketing to children):

- EU Pledge
- Singapore Common Nutrition Criteria

About the AANA

AANA is the Voice for Brands. Founded 90 years ago, AANA exists to inspire and promote responsible, innovative and respected marketing through a commitment to sustainable industry collaboration. As the peak industry body, our members represent some of Australia's biggest advertisers and the world's best known brands across all major sectors who contribute to an estimated advertising spend of more than \$15 billion a year including FMCG, automotive, banking, finance and insurance, travel, health and beauty, media and communications. On behalf of our members, the AANA's mandate is to maintain and evolve the advertising codes which underpin the system of self-regulation in Australia, safeguard the rights of its members to commercial free speech and protect consumers by ensuring marketing communication is conducted responsibly, while giving them the networks and pathways to career learning.