



Australian Association of National Advertisers'

submission to the NZ ASA's review of:

CODE FOR ADVERTISING OF FOOD

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About AANA:

Formed in 1928, the Australian Association of National Advertisers has been the peak body of the Australian advertising industry for the past 80 years.

Over that period, AANA has promoted and protected the interests of the Australian advertiser community, and its membership has grown to include media, agencies and other service providers, making it a thoroughly representative industry association.

AANA is responsible for the establishment of the advertising industry self-regulation system now managed by the Advertising Standards Bureau in Canberra, and administered through the Advertising Standards Board and Advertising Claims Board.

AANA believes the advertising industry's self-regulation system can assist Government to promote and protect consumer confidence in the food sector.

As a member of the World Federation of Advertisers, AANA is keenly aware of the global nature of advertising industry regulation, particularly in the area of food advertising. Many AANA members have cross-Tasman corporate affiliations, therefore regulations developed for New Zealand have a significant compliance impacts for Australian food companies, making them important stakeholders in this Review process.

AANA welcomes and appreciates the opportunity to comment on the NZ ASA's review of the Code for Advertising of Food.

Overview:

All advertisements for food and beverages consumed by humans ("food") shall adhere to the Principles and Guidelines set out in this Code. The purpose of the Code is to ensure that advertising of food will be conducted in a manner that is socially responsible and does not mislead or deceive the consumer. Advertisements should not undermine the Healthy Eating, Healthy Action (HEHA) policy of Government, the Ministry of Health 'Food and Nutrition Guidelines' nor the health and wellbeing of individuals. The key applicable messages in the HEHA policy are the need for people to eat a variety of nutritious foods, less fatty, salty and sugary foods and more vegetables and fruits.

In interpreting the Code emphasis will be placed on the Principles and the spirit and intention of the Code. An advertisement that does or does not adhere to the letter of a particular law or Guideline nevertheless may or may not be in breach of the Code, depending on its compliance with the Principles and respect of the spirit and intention of the Code.

AANA comments

1. A clearer definition of "advertising" would reduce subjectivity in determining whether a piece of marketing communication is "advertising" (in the traditional sense) or another form of marketing communication (e.g. public relations, website, etc). This submission refers the ASA to Australian Association of National Advertisers (AANA) definitions found at: <http://www.aana.com.au/documents/CodeFoodBeverage.pdf>

2. While recognition is given in the Code for the use of the term "socially responsible", it is nonetheless highly subjective. An alternate reference point suggested by this submission is "in line with community expectations". (e.g. "The purpose of the Code is to ensure that advertising of food will be conducted in a manner that is in line with *community expectations*"). The benefit of such a reference point is that it can be benchmarked with a representative group of the population through a documented and rigorous process, such as qualitative and quantitative market research. With such evidence, the ASA has solid reference points to anchor decisions upon.

DEFINITIONS

For the purposes of this Code:

"Appropriate industry Code of Ethics" includes the New Zealand Infant Formula Marketers' Association "Code of Practice for the Marketing of Infant Formula" and any other industry Code endorsed by the ASA.

"Food and Nutrition Guidelines" are the Food and Nutrition Guidelines published by the Ministry of Health.

"Social Responsibility" is not defined in order not to confine its meaning and hamper the discretion of the Advertising Standards Complaints Board. A list of precedents of the Board is contained on the ASA website www.asa.co.nz.

"Treat food" is food high in fat, salt, or sugar and intended for occasional treats. (Refer to Ministry of Health's 'Food and Nutrition Guidelines for Healthy Children aged 2-12 years)

Principle 1:

Advertisements should comply with the laws of New Zealand and appropriate industry Code of Ethics .

Guidelines

AANA submission to the NZ ASA's review of Code for Advertising of Food

1(a) In addition to food related legislation advertisers should be familiar with the restrictions on advertising in the Food Act 1981, New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002 (Food Standards Code), and the requirements of the Fair Trading Act 1986.

1(b) The Food Standards Code has labelling requirements. Pictorial depictions, names, descriptions and other information in advertisements should not be inconsistent with labelling requirements.

AANA Comment

AANA fully supports the principle of aligning industry Codes to existing legislation/other Codes.

Principle 2:

All food advertisements should be prepared with a due sense of social responsibility to consumers and to society. However advertisements containing nutrient, nutrition or health claims*, should observe a high standard of social responsibility.

Guidelines

2(a) Nutrient, nutrition and health claims should not be inconsistent with national health and nutrition policy and should comply with the requirements of the Food Standards Code.

Note: The Food Standards Code is in a state of change. Please refer to the ASA website for information. The Food Standards Code is available on www.foodstandards.govt.nz

AANA comments

Notwithstanding the earlier comments in relation to the subjectivity of the term “socially responsible”, AANA fully supports the principle of aligning industry behaviour to prevailing community standards, and furthermore, where nutrition claims are made, these are in accordance with the proposed FSANZ standard on Nutrition, Health and Related Claims currently under development.

(<http://www.foodstandards.gov.au/standardsdevelopment/proposals/proposalp293nutritionhealthandrelatedclaims/index.cfm>)

AANA recommends an additional guideline referring to the need for food advertising to ensure food and or beverage products are not portrayed as complete meals unless they are formulated as such.

Principle 3:

Advertisements directed at children should observe a high standard of social responsibility.

Guidelines

3(a) Advertisements for treat foods directed at children should not actively encourage children to eat or drink them inappropriately or in excess.

3(b) Advertisements for treat food, snacks or fast food should not encourage children to consume them in substitution for a main meal on a regular basis.

3(c) Advertisements for nutritious foods important for a healthy diet as stipulated in the Food and Nutrition Guidelines for children are encouraged to advocate the benefits of such foods, particularly when directed at children. A large and liberal but commonsense interpretation is allowed. However, benefits should not be exaggerated and should not imply that a single food should replace a healthy diet.

3(d) Advertisements should not encourage excessive consumption or inappropriately large portions of any particular food nor should they undermine the Food and Nutrition Guidelines for children.

3(e) Advertisements for slimming products or foods sold as an aid to slimming should not be directed at children.

3(f) Persons, characters or groups who have achieved particular celebrity status with children shall not be used in advertisements to promote food in such a way so as to undermine a healthy diet taking into account Food and Nutrition Guidelines for children.

3(g) Attention is drawn to the Code for Advertising to Children.

AANA comments

“High degree of social responsibility” is highly subjective. Comments made earlier in this submission relating to ‘community standards’ apply here. AANA supports the 7 sections of Principle 3. Further comments on Advertising to Children are provided in the AANA submission into the review of Code for Advertising to Children.

Principle 4:

Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

Guidelines

AANA submission to the NZ ASA's review of Code for Advertising of Food

4(a) All nutrient, nutritional and health claims* should be factual, not misleading, and able to be substantiated. Claims should be compliant with the requirements of the Food Standards Code.

4(b) The nature of the audience should be taken into account particularly when advertisements contain nutrient, nutritional and health claims*.

4(c) Food advertisements containing obvious hyperbole, identifiable as such are not considered misleading.

4(d) Claims in an advertisement should not be inconsistent with information on the label or packaging of the food.

4(e) Advertisements should not claim or imply endorsement by any government agency, professional body or independent agency unless there is prior consent, the claim and the endorsement verifiable, current and the agency or body named.

4(f) Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and/or salt, especially those marketed to and/or favoured by children, should not be portrayed in any way that suggests they are beneficial to health.

*Note: The law currently prohibits health claims, but is under review.

AANA comments

In relation to 4(f), the MOH document, "Eating for Healthy Children (2-12) makes no determination as to "high" in relation to levels of sugar, fat or salt. Clear, unambiguous and scientifically based reference levels should be used if 4(f) is to be an effective guideline. Furthermore, with the assistance of MOH, guidelines should be established to ensure specific nutrients are not penalising the overall nutritional benefit of a food. For example, cheese, with levels of fat and salt that some may regard as 'high', may still be regarded by others as appropriate for children because of the overall nutritive benefit- e.g. calcium, proteins, etc.

End of Submission