



# Food & Beverages Advertising Code

PRACTICE NOTE | NOVEMBER 2021

**AANA**

The voice for brands

## 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 will 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



### TARGET CHILDREN

All three criteria will be considered by the **Community Panel** in determining whether or not advertising targets **Children**. The weighting given by the **Community Panel** to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the **Community Panel**, the advertiser should be in a position to provide details in terms of the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears.

In relation to the third criteria, measures to determine if **Children** are likely to be a 'significant proportion' of the expected average audience may include one or a combination of the following:

- Where data exists, 25% or more of the predicted audience will be **Children**. In relation to outdoor advertising, if across a campaign the data shows a predicted audience with less than 25% Children, and there is a **Children's** event or concert that is incidental to the ad placement, the audience of that incidental **Children's** concert or event will not be captured.
- C&P programmes.
- Programs, artists, playlists, video, movies, magazines or other content with significant appeal to **Children** (e.g. featuring personalities or characters popular with **Children**).
- Compliance with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy which regulate the placement of advertising at primary and secondary schools which are locations where **Children** regularly and predictably gather.

Where accurate program audience data is not available, the **Community Panel** may have regard to other factors listed above such as the program content, the time or the location where the advertisement is being shown (in line with the above provision).

## ADVERTISING FOR FOOD OR BEVERAGES PRODUCTS

### SECTION 2.1



In determining whether advertising for food or beverage products is misleading or deceptive or likely to mislead or deceive, the **Community Panel** will consider the likely audience for the advertising, including whether the advertisement is directed at the public at large or a more targeted audience. The **Community Panel** will consider whether or not an **Average Consumer** within the target audience would have been misled or deceived or likely to be misled or deceived by the advertisement.

### 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:

- ▶ Undermining the importance of healthy or active lifestyles or healthy balanced diets need not be explicit, and the Community Panel will consider the overall message that is likely to be understood by the Average Consumer.
- ▶ 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 the **Australian Dietary Guidelines**, the **Community Panel** will consider whether members of the community in the target audience would most likely take a message encouraging 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 an older male or younger child and this may not be a representation that encourages excess consumption in the situation portrayed.

## ADVERTISING FOR FOOD OR BEVERAGES PRODUCTS

### SECTION 2.3



This provision is intended to be applied by the **Community Panel** when considering whether an **Average Consumer** might consider statements made in an advertising or marketing communication as a **Health Claim** or **Nutrition Content Claim**.

In testing whether this provision is properly applies, the **Community Panel** will apply its view of what an **Average Consumer** within the target market, might reasonably understand from a communication.

Having considered that statements made within an advertisement might reasonably be understood by an Average Consumer as a **Health Claim** or **Nutrition Content Claim**, the **Community Panel** will rely on substantiation provided by the advertiser and/ or appropriate expert or professional advice as to whether the claims can be properly supported by scientific evidence meeting the requirements of the **Australian Food Standards Code**.

### SECTION 2.4



In testing whether any claim is included within advertising, the **Community Panel** will consider whether an **Average Consumer**, acting reasonably, would consider a statement to constitute a claim (i.e. an assertion or contention about the component).

Once a claim relating to a material characteristic of a promoted product is found, the **Community Panel** will need to determine whether such a claim can be met by the product alone, or only in combination with other products.

The **Community Panel** will also 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 representations of a 'suggested serving' will not, on its own, represent grounds for finding an advertisement or marketing communication in breach of section 2.4 of the **Code**. Any taste or nutrition claims relating to the product as consumed with an additional ingredient (e.g. cereal consumed with milk) must be clearly distinguished as being a claim for the product as consumed with such additional ingredient/s.

Advertisers are able to present a product in its best possible light, so long as that representation would be in line with what an **Average Consumer** would expect from such advertising, and would be unlikely to be considered to be making an explicit claim about the product/s.

## ADVERTISING FOR FOOD OR BEVERAGES PRODUCTS

### SECTION 2.5



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 **Community Panel** will apply its view of what an **Average Consumer** might think.

## ADVERTISING & CHILDREN

### SECTION 3.1



Advertisers must be able to demonstrate that they have evaluated or that care has been taken to evaluate the expected average audience composition before the placement of **Occasional Food or Beverage advertisements** to ensure they are not targeted at children.

Where a meal deal is being advertised, each item in that meal deal must meet the **Food Standards Australia Nutrient Profile Scoring Criterion**, otherwise the advertisement will be considered to be for **Occasional Food and Beverage Products**.

### SECTION 3.2



These restrictions do not apply to sponsorship advertisements for **food and beverage products** that are not **Occasional Food or Beverage Products**.

Companies or brands that sell **Occasional Food or Beverage Products** can sponsor teams / events / individuals and activities however:

- ▶ A clear sponsorship association should be made in sponsorship advertising (e.g. proud sponsor of x).
- ▶ In circumstances where a sponsorship or billboard shows anything more than the logo, company or brand name, the focus of the sponsorship advertisement should be on the activity, the team or the sponsored individual.
- ▶ Where the **Occasional Food or Beverage Product** is featured in sponsorship advertisement, the ad must not target children.

### SECTION 3.3



Advertising for collection-based promotions must not create a sense of urgency or seem to urge Children or their parents to buy excessive quantities of food.

For the avoidance of doubt, promotional offers for **Occasional Food or Beverage Products** must not target children.

### SECTION 3.4



A voucher for a specific dollar amount which can be used for **Occasional Food and Beverage Products** will be captured by this provision.

## 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.

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