

**Appendix 1**

Current OMA Members

Adshel	Media Display
Adstream	Non-Media Display
APN Outdoor	Media Display
Bailey Outdoor Advertising	Media Display
Bishopp Outdoor	Media Display
Cactus Imaging	Non-Media Display
Country Outdoor Signs	Non-Media Display
Executive Channel Pty Ltd	Non-Media Display
GOA Billboards	Media Display
iOM	Media Display
IZON Global Media	Media Display
JCDecaux	Media Display
Magnify Media	Media Display
Metrospace	Media Display
MMT	Non-Media Display
Octopus Media	Media Display
Omnigraphics	Non-Media Display
On Media Services	Non-Media Display
oOh Media Pty Limited	Media Display
Outdoor Systems Pty Ltd	Media Display
Paradise Outdoor	Media Display
Prime Signs	Non-Media Display
Prismaflex	Non-Media Display
RailCorp	Asset Owner
Roads and Maritime Services (RMS)	Asset Owner
Rojo Pacific	Non-Media Display
ROVA Media Pty Ltd	Media Display
Savage Outdoor Advertising	Media Display
Tayco Outdoor Advertising Pty Ltd	Media Display
TorchMedia Pty Ltd	Media Display
Ultimate Sign Installations Pty Ltd	Non-Media Display
Warren Miles & Son	Media Display

TOTALS

Media Display members      18  
 Non-Media Display members 12  
 Asset owner members        2

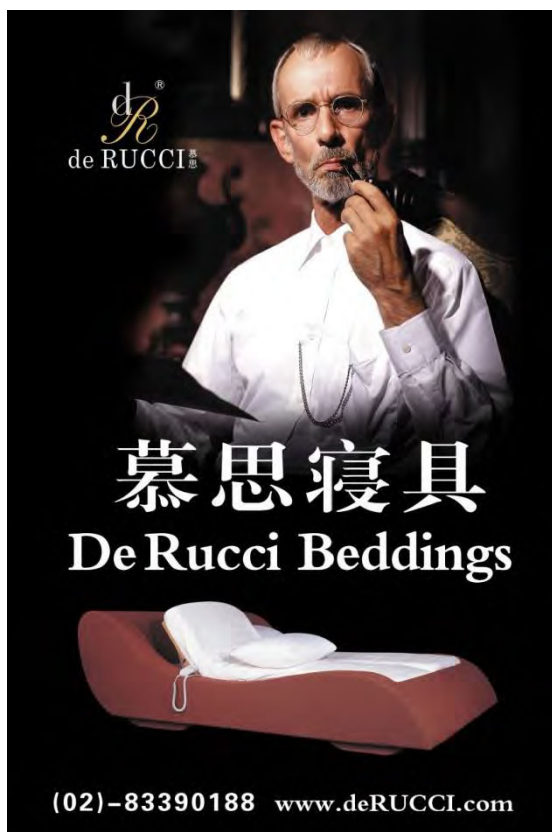
## Appendix 2

2012 Outdoor Advertising Industry Breaches of the AANA Code of Ethics

Breach 1 – Section 2.3, *advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.*



Breach 2 – Section 2.6, *advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.*



Breach 3 – Section 2.6, *advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.*





## Outdoor Media Association's Code of Ethics

Outdoor advertising is a medium that reaches almost every member of the community when they are travelling outside of their home. Outdoor advertising can be seen at any time of the day or night and cannot be turned off, fast-forwarded, put aside or be left unopened. This is why it is important for the industry to have its own Code of Ethics to ensure that it operates its business responsibly in the environment.

The Outdoor Media Association (OMA) has therefore developed a *Code of Ethics* which all members must adhere to. The *Code of Ethics* is a set of voluntary principles that defines the industry's standards for doing business with advertisers and regulators, and its responsibilities towards the community and the environment. They supplement the obligations that members already are required to comply with under existing law, including federal and state law, and are outlined below:

### Principles for doing business with advertisers:

1. We are committed to providing the best possible outdoor advertising sites for our advertisers that are also value-for-money.
2. We are committed to maintaining and improving the quality and appearance of site structures and locations to enhance their performance.
3. We observe an honest, ethical and professional approach to trading practices, media contracts and proof of performance.
4. We put genuine effort into providing research data, strategic planning, creative advice and production guidance to ensure that advertisers get the most out of their outdoor advertising campaigns.

### Principles of doing business with regulators:

1. We support fair and transparent tender processes for the awarding of contracts for outdoor advertising sites.
2. We advocate the right to develop and maintain outdoor advertising structures that are consistent with legal, regulatory and planning requirements.
3. We acquire and negotiate outdoor advertising sites in a business-like and competitive fashion.
4. We support outdoor advertising as a legitimate business to be practiced in appropriately zoned areas only.
5. We advocate regulatory changes that permit the use of new outdoor advertising technologies to enhance the service that we can offer to our advertisers.
6. We only endorse advertising that adheres to relevant codes of practice administered by the advertising industry (see box below).

### **Responsibilities towards the community:**

1. We are committed to providing an effective form of communication for goods, services and public information of interest and / or benefit to the community.
2. We are committed to contributing to the sustainability of the communities in which we operate **through initiatives identified in the OMA's Environment and Sustainability Statement.**
3. We actively support community service and charity campaigns.
4. When we receive a complaint about any advertisement we display we refer the complainant to the Advertising Standards Bureau, an independent complaint adjudicator.
5. We support all decisions made by the Advertising Standards Board in regards to complaints about outdoor advertising.
6. We only endorse the display of advertising that adheres to the following advertising industry codes of practice:
  - Australian Association of National Advertisers (AANA) Code of Ethics.
  - AANA Environmental Claims in Advertising and Marketing Code.
  - AANA Code for Advertising and Marketing Communications for Children.
  - AANA Food and Beverages Advertising and Marketing Communications Code.
  - AANA Quick Service Restaurant Initiative
  - The Alcohol Beverages Advertising Code (ABAC).
  - **The Federal Chamber of Automotive Industries' Voluntary Code of Practice for Motor Vehicle Advertising.**
  - The Therapeutic Goods Advertising Code.
  - The Weight Management Industry Code of Practice.
7. We are committed to the responsible advertising of alcoholic beverages, including limiting their **display around schools, as outlined in the OMA's Alcohol Advertising Guidelines.**
8. We endorse and support the display of advertising for alcoholic beverages that has been approved by the Alcohol Advertising Pre-vetting System (AAPS).
9. We are committed to working with road authorities to address road safety requirements for outdoor advertising.

### **Responsibilities towards the environment:**

1. We are committed to protecting natural scenic beauty, parks, forests and places of historic value by locating our displays near populous areas as permitted by legislation.
2. We are committed to reducing the impact of our business on the built and natural environment through initiatives identified in the **OMA's Environment and Sustainability Statement.**
3. We are committed to recycling our waste materials where practicable.



## OMA Alcohol Advertising Guidelines

All members of the OMA are committed to responsible advertising, particularly **concerning the advertising of alcohol products**. As outlined in the OMA's *Code of Ethics*, our members only endorse alcohol advertising that complies with both the Australian Association of National Advertisers (AANA) *Code of Ethics* and the *Alcohol Beverages Advertising Code* (ABAC).

Our members acknowledge the recent public concern regarding the advertising of alcohol products and are committed to reducing the risk of alcohol advertisements inadvertently targeting young people who are not of a legal drinking age.

The OMA has therefore introduced a new policy which requires all members to **limit the advertising of “alcohol products” on fixed signs that are located within a 150 metre sight line of a primary or secondary school. This generally relates to any access gates to the school.**

There are some locations near schools where this policy does not apply, for example where the school is in the vicinity of a club, pub or bottle shop or any other venue that sells alcohol products. The policy also does not apply to transit advertising on buses and taxis.

This policy will be implemented by 31 March 2009 to allow time for OMA members to rearrange their inventory management systems and to honour seasonal contracts that have already been booked over the next six months.

In addition to the above policy, OMA members will also **only accept copy for alcohol advertising that has been approved for display through the *Alcohol Advertising Pre-vetting System (AAPS)***. The primary function of the AAPS is to reinforce the effectiveness of the ABAC, by utilising independent adjudicators to evaluate advertisements for alcohol beverages against the Code at either the concept or story-board stage. The AAPS has been very successful in reducing the number of complaints made about alcohol advertising.

In the case of an alcohol advertiser who does not wish to use the Alcohol Advertising Pre-vetting System, the OMA member may accept copy for advertising where the advertiser has provided written advice from a law firm stating that the advertisement complies with the ABAC.

The OMA and its members will continue to support all decisions made by the Advertising Standards Board or the ABAC Adjudication Panel in regards to complaints made about alcohol advertisements and outdoor advertising in general.

**In this Guideline, “alcohol products” includes alcohol beverages and retailers that sell alcohol beverages.**

**In this Guideline, “alcohol advertising” includes advertisements for alcohol beverages.** It does not include alcohol retailer advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except –

- i) the brand name or names of alcohol beverages offered for sale;
- ii) the type and/or style of the alcohol beverages offered for sale;

- iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged;
- iv) the location and/or times at which the alcohol beverages are offered for sale; and
- v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published.

**Outdoor Media Association**

Suite 504, 80 William Street, East Sydney NSW 2011  
T 02 9357 9900 F 02 8356 9500 E [info@oma.org.au](mailto:info@oma.org.au)  
ABN 59 004 233 489 [www.oma.org.au](http://www.oma.org.au)

## OMA's Environment and Sustainability Statement

As the peak representative body for the Australian outdoor advertising industry, the Outdoor Media Association (OMA) recognises our responsibility to minimise the **impact of our industry's operations on the built and natural environment, and to contribute to the sustainability of the communities in which we operate.**

We further recognise that to remain a financially responsible industry requires leadership through assisting members with regulatory and marketing support, **monitoring global industry trends, abiding by the industry's Code of Ethics and promoting best practice.**



The OMA will assist our members in meeting these goals by:

- Monitoring and reporting on evolving outdoor media technologies that reduce the impact of outdoor advertising on the built and natural environment.
- Working with member companies to establish achievable and measurable industry-wide environmental initiatives, including:
  - Benchmarks for reducing the generation of waste, including recycling programs for outdoor advertising skins.
  - Programs to conserve energy, water and natural resources through increased efficiency and the introduction of new technologies and production methods.
  - Targets to increase the number of fuel-efficient vehicles within operational transport fleets.
- Coordinating industry-wide initiatives which provide sponsorships or in-kind support toward community causes and not-for-profit organisations.
- Consulting on a regular basis with regulatory agencies and other key stakeholders on the planning and integration of outdoor media so as to add to the public benefit.
- Communicating openly and constructively with relevant authorities, government agencies and the community on sustainability and environment issues which relate to the outdoor advertising industry.
- **Supporting members' own environment and sustainability policies through targeted promotion and education among internal and external stakeholders.**

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## CONTENT REVIEW POLICY

Under the Outdoor Media Association (OMA) *Code of Ethics*, all members of the OMA comply with the Australian Association of National Advertisers (AANA) *Code of Ethics* and other AANA Codes. The OMA and its members recognise that outdoor advertising is visible to a broad audience and that this needs to be taken into account when considering compliance with the AANA *Code of Ethics*.

The OMA has developed this **Content Review Policy** to support its members' compliance with the AANA *Code of Ethics*.

1. OMA members will endeavour to seek copy advice from the OMA before posting the following types of advertisements:

1.1 Advertising that may discriminate against or vilify a person or section of the community on any grounds, including on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.

1.2 Advertising that may present or portray violence that is not justified in the context of the product or service being advertised, or that may not be appropriate for viewing by a broad audience.

1.3 Advertising that may fail to treat sex, sexuality or nudity with sensitivity to the broad audience that will view the advertisement. This includes, but is not limited to:

1.3.1 Advertising in which male or female models are portrayed in a sexualised manner

1.3.2 Advertising that uses scantily clad models, where such models are not relevant in the context of what is being advertised.

**1.3.3 Advertising where significant amounts of a model's torso, breasts, cleavage or buttocks are exposed.**

1.3.4 Advertising for adult-only products and services (excluding alcohol – refer to the OMA *Alcohol Guidelines*).

1.4 Advertising that uses language which is strong or obscene, or which is inappropriate for viewing by a broad audience.

1.5 Other advertising that may be inconsistent with prevailing community standards for viewing by a broad audience.

2. The OMA will consult with the AANA, the Advertising Standards Bureau and/or the Communications Council when providing copy advice.

3. The OMA and its members acknowledge that copy advice is provided to maintain compliance with the AANA Code of Ethics. An OMA member will not post an advertisement if the copy advice states that the advertisement is likely to breach the AANA Code of Ethics.

4. The OMA and its members acknowledge that even if copy advice states that an advertisement is not likely to breach the AANA Code of Ethics, this does not guarantee that a complaint will

not be made about the advertisement or that such a complaint will not be upheld by the Advertising Standards Board (ASB). This is due to the subjective nature of making judgements about content.

5. In the event that a complaint is upheld by the ASB, the OMA member will take immediate steps to facilitate removal of the advertisement that is the subject of the complaint.

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## Objectives

This Code has been adopted by the Australian Association of National Advertisers as part of advertising and marketing self-regulation. Its object is to ensure that advertisements and other forms of marketing communications are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors.

This Code comes into effect on 1 January 2012. It replaces the previous AANA Code of Ethics and applies to all advertising and marketing communications on and from 1 January 2012.

This Code is accompanied by Practice Notes which have been developed by AANA. The Practice Notes provide guidance to advertisers, complainants and the Advertising Standards Board (Board) in relation to this Code.

## Definitions and Interpretation

In this Code, unless the context otherwise requires:

**Advertising or Marketing Communications** 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 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 Product. "Product" is defined in the Code for Advertising & Marketing Communications to Children as follows: **Product** means goods, services and/or facilities which are targeted toward and have principal appeal to Children.

**The 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.

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

**Excluded Advertising or Marketing Communications** means labels or packaging for products, public relations communications (corporate or consumer) and related activities and, in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.

**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies.

**Prevailing Community Standards** means the community standards determined by the Board as those prevailing at the relevant time in relation to Advertising or Marketing Communications. Prevailing Community Standards apply to clauses 2.1 – 2.6 below. The determination by the Board shall have regard to Practice Notes published by AANA and any research conducted by the Advertising Standards Bureau.

## **1. Section 1 Competitor Complaints<sup>1</sup>**

- 1.1 Advertising or Marketing Communications shall comply with Commonwealth law and the law of the relevant State or Territory.
- 1.2 Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive.
- 1.3 Advertising or Marketing Communications shall not contain a misrepresentation, which is likely to cause damage to the business or goodwill of a competitor.
- 1.4 Advertising or Marketing Communications shall not exploit community concerns in relation to protecting the environment by presenting or portraying distinctions in products or services advertised in a misleading way or in a way which implies a benefit to the environment which the product or services do not have.
- 1.5 Advertising or Marketing Communications shall not make claims about the Australian origin or content of products advertised in a manner which is misleading.

## **2. Section 2 Consumer Complaints<sup>2</sup>**

- 2.1 Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.
- 2.2 Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.
- 2.3 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.
- 2.4 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.
- 2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

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<sup>1</sup> Complaints under Section 1 are made to the Advertising Claims Board,  
<http://www.adstandards.com.au/process/claimsboardprocess>

<sup>2</sup> Complaints under Section 2 are made to the Advertising Standards Board  
<http://www.adstandards.com.au/process/theprocesssteps>

2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

**3 Section 3: Other Codes**

3.1 Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising & Marketing Communications to Children applies.

3.2 Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles.

3.3 Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code.

**This section does not form part of the Code of Ethics and is provided here for information only**

### **Complaints under the AANA Self Regulatory System**

Complaints about the content of an advertisement or marketing communication can be made under this Code and the other AANA Codes to the Advertising Standards Bureau.

You can make a complaint by:

- Lodging a complaint on line at:

<http://www.adstandards.com.au/process/theprocesssteps/makingacomplaint>

If your complaint is about a program (not an advertisement) on television or radio, please contact the relevant industry association.

- Writing a letter (and sending via post or fax) to:

The Advertising Standards Bureau  
Level 2  
97 Northbourne Avenue  
TURNER ACT 2612

Fax: (02) 6262 9833

Once the Advertising Standards Bureau has received your complaint, it then assesses the complaint to determine whether it can go to the Board. If accepted the advertiser/marketer is notified and a response is requested. The complaint is then considered by the Board and the advertiser and complainant are advised of the determination. A case report is then published.

The original complainant or advertiser/marketer can also ask for a review of the determination.

**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 rigorous standards when making Environmental Claims in Advertising and Marketing Communications and to increase consumer confidence to the benefit of the environment, consumers and industry.**

Providing clear, straightforward, environmental information, as outlined in this code, has benefits for consumers and business alike. By providing information about the environmental impacts and qualities of products and services, environmental claims (sometimes called 'green' claims) help consumers make informed buying choices. They also help raise awareness of the issues, enhance consumer understanding and improve product standards overall. At the same time businesses can enhance their credentials and demonstrate to the community at large their willingness to be accountable for upholding these standards.

## PRINCIPLES

AANA supports the following principles for environmental claims.

Claims should be:

- Truthful and factual
- Relevant to the product or service and its actual environmental impacts, and
- Substantiated and verifiable.

## 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 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.

**Authoritative (organisation, initiative, program)** means a source of expert information, advice, assistance and includes, but is not limited to, government, industry bodies, scientific/technical organisations, independent certification schemes, international or national standards setting organisations.

### Environment includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas.

**Environmental Aspect** means the element of a product, a component or packaging or service that interacts with or influences (or has the capacity to interact with or influence) the Environment.

**Environmental Claim** means any representation that indicates or suggests an Environmental Aspect of a product or service, a component or packaging of, or a quality relating to, a product or service.

**Excluded Advertising or Marketing Communications** means a label or packaging for Products,

**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies.

# Environmental Claims in Advertising and Marketing Code

## CODE OF PRACTICE

### 1 TRUTHFUL AND FACTUAL PRESENTATION

Environmental Claims in Advertising or Marketing Communications:

- i. shall not be misleading or deceptive or be likely to mislead or deceive.
- ii. must not be vague, ambiguous or unbalanced.
- iii. must display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language.
- iv. must be supported by evidence that is current and reflects legislative, scientific and technological developments.
- v. that make any claim relating to future matters or commitments must be based on reasonable grounds.
- vi. must not lead the consumer to conclude a business has voluntarily adopted an environmental practice if that practice has been legally mandated.
- vii. must not imply a product or service is endorsed or certified by another organisation when it is not.
- viii. must represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer. Relevant information should be presented together.

- ix. must reflect the level of scientific or authoritative acceptance of matters relating to any claim; claims should not imply wide acceptance if this is not the case. Where evidence is inconclusive this should be reflected in the Advertising or Marketing Communication.
- x. that use scientific terminology, technical language or statistics must do so in a way that is appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed. Publication of research results must identify the researcher and source reference unless there is an obligation of confidence or compelling commercial reason not to do so.

### 2 A GENUINE BENEFIT TO THE ENVIRONMENT

Environmental Claims must:

- i. be relevant, specific and clearly explain the significance of the claim.
- ii. not overstate the claim expressly or by implication.
- iii. in comparative advertisements, be relevant and balanced either about the product/service advertised or class of products or services, with which it is compared.
- iv. not imply that a product or service is more socially acceptable on the whole. The use of Environmental Claims must not reduce the importance of non-environment attributes / detriments of a product or service.
- v. not imply direct relationship to social initiatives of a business where there is no correlation to environmental benefits or attributes or improvements to a product or service.

### 3 SUBSTANTIATION

- i. Environmental Claims must be able to be substantiated and verifiable. Supporting information must include sufficient detail to allow evaluation of a claim.
- ii. Environmental Claims must meet any applicable standards that apply to the benefit or advantage claimed.
- iii. The use of unqualified general claims of environmental benefit should be avoided unless supported by a high level of substantiation or associated with a legitimate connection to an authoritative source.
- iv. Environmental Claims and comparisons that are qualified or limited may be acceptable if advertisers can substantiate that the product/service provides an overall improvement in environmental terms either against a competitor's or their own previous products.
- v. Claims relating to sponsorships, approvals, endorsement or certification schemes must be current.
- vi. The use of any symbol or logo must be explained unless the symbol is required by law, or is underpinned by regulations or standards, or is part of an authoritative certification scheme.
- vii. Substantiation information should be readily accessible, or made available in a timely manner in response to a reasonable written request.
- viii. Testimonials must reflect genuine, informed and current opinion of the person giving the testimonial.

September 2009



**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 to children 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 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.

**Alcohol Products** means products which have some association with alcohol including alcoholic beverages, food products that contain alcohol or other Products that are associated in some way with alcohol including in the sense of being branded in that way.

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

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

**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 Advertising or Marketing Communications to Children.

**Product** means goods, services and/or facilities which are targeted toward and have principal appeal to Children.

## 2. CODE OF PRACTICE

### 2.1 Prevailing Community Standards

Advertising or Marketing Communications to Children must not contravene Prevailing Community Standards.

### 2.2 Factual Presentation

Advertising or Marketing Communications to Children:

- (a) must not mislead or deceive Children;
- (b) must not be ambiguous; and
- (c) must fairly represent, in a manner that is clearly understood by Children:
  - (i) the advertised Product;
  - (ii) any features which are described or depicted or demonstrated in the Advertising or Marketing Communication;
  - (iii) the need for any accessory parts; and
  - (iv) that the Advertising or Marketing Communication is in fact a commercial communication rather than program content, editorial comment or other non commercial communication.

### 2.3 Placement

Advertising or Marketing Communications to Children must not be placed in Media where editorial comment or program content, in close proximity to that communication, or directly accessible by Children as a result of the communication, is unsuitable for Children according to Prevailing Community Standards.

## 2.4 Sexualisation

Advertising or Marketing Communications to Children:

- (a) must not include sexual imagery in contravention of Prevailing Community Standards;
- (b) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.

## 2.5 Safety

Advertising or Marketing Communications to Children:

- (a) must not portray images or events which depict unsafe uses of a Product or unsafe situations which may encourage Children to engage in dangerous activities or create an unrealistic impression in the minds of Children or their parents or carers about safety; and
- (b) must not advertise Products which have been officially declared unsafe or dangerous by an authorised Australian government authority.

## 2.6 Social Values

Advertising or Marketing Communications to Children:

- (a) must not portray images or events in a way that is unduly frightening or distressing to Children; and
- (b) must not demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability.

## 2.7 Parental Authority

Advertising or Marketing Communications to Children:

- (a) must not undermine the authority, responsibility or judgment of parents or carers;
- (b) must not contain an appeal to Children to urge their parents or carers to buy a Product for them;
- (c) must not state or imply that a Product makes Children who own or enjoy it superior to their peers; and

- (d) must not state or imply that persons who buy the Product the subject of the Advertising or Marketing Communication are more generous than those who do not.

## 2.8 Price

- (a) Prices, if mentioned in Advertising or Marketing Communications to Children, must be accurately presented in a way which can be clearly understood by Children and must not be minimised by words such as “only” or “just”.
- (b) Advertising or Marketing Communications to Children must not imply that the Product being promoted is immediately within the reach of every family budget.

## 2.9 Qualifying Statements

Any disclaimers, qualifiers or asterisked or footnoted information used in Advertising or Marketing Communications to Children must be conspicuously displayed and clearly explained to Children.

## 2.10 Competitions

An Advertising or Marketing Communication to Children which includes a competition must:

- (a) contain a summary of the basic rules for the competition;
- (b) clearly include the closing date for entries; and
- (c) make any statements about the chance of winning clear, fair and accurate.

## 2.11 Popular Personalities

Advertising or Marketing Communications to Children must not use popular personalities or celebrities (live or animated) to advertise or market Products or Premiums in a manner that obscures the distinction between commercial promotions and program or editorial content.

## 2.12 Premiums

Advertising or Marketing Communications to Children, which include or refer to or involve an offer of a Premium:

- (a) should not create a false or misleading impression in the minds of Children about the nature or content of the Product;
- (b) should not create a false or misleading impression in the minds of Children that the product being advertised or marketed is the Premium rather than the Product;
- (c) must make the terms of the offer clear as well as any conditions or limitations; and
- (d) must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.

## 2.13 Alcohol

Advertising or Marketing Communications to Children must not be for, or relate in any way to, Alcohol Products or draw any association with companies that supply Alcohol Products.

## 2.14 Privacy

If an Advertising or Marketing Communication indicates that personal information in relation to a Child will be collected, or if as a result of an Advertising and Marketing Communication, personal information of a Child will or is likely to be collected, then the Advertising or Marketing Communication must include a statement that the Child must obtain parental consent prior to engaging in any activity that will result in the disclosure of such personal information.

## 2.15 Food and Beverages

- (a) Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits.
- (b) Advertising or Marketing Communications to Children must comply with the AANA Food & Beverages Advertising & Marketing Communications Code.

## 2.16 AANA Code of Ethics

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

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 ([www.adstandards.com.au](http://www.adstandards.com.au)).

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 ASB, 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 twice a month 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 ASB and submitted to the Chair for approval. Following receipt of Chair approval, the ASB notifies the advertiser/marketer of the outcome and sends the advertiser/marketer a copy of the draft case report. This usually occurs between 8 and 10 business days of the Board 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. The nonrefundable cost of a review is \$100 for complainants, \$500 for complainants who are Incorporated Associations, \$1000 for advertisers who remit the AASC advertising levy and \$2000 for advertisers who do not remit the AASC advertising levy.

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.

August 2009

**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 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 and 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 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 ([www.adstandards.com.au](http://www.adstandards.com.au)).

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 ASB, 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 twice a month 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 ASB and submitted to the Chair for approval. Following receipt of Chair approval, the ASB notifies the advertiser/marketer of the outcome and sends the advertiser/marketer a copy of the draft case report. This usually occurs between 8 and 10 business days of the Board 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. The nonrefundable cost of a review is \$100 for complainants, \$500 for complainants who are Incorporated Associations, \$1000 for advertisers who remit the AASC advertising levy and \$2000 for advertisers who do not remit the AASC advertising levy.

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.

August 2009





## The ABAC Scheme: ALCOHOL BEVERAGES ADVERTISING (AND PACKAGING) CODE

### Preamble

Brewers Association of Australia and New Zealand Inc, the Distilled Spirits Industry Council of Australia Inc and the Winemakers Federation of Australia are committed to the goal that all advertisements for alcohol beverages produced for publication or broadcast in Australia, other than point of sale material produced by alcohol beverage retailers, and all naming and packaging of alcohol beverages comply with the spirit and intent of this Code.

The Code is designed to ensure that alcohol advertising, naming and packaging will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons.

The conformity of an advertisement, name or packaging with this Code is to be assessed in terms of its probable impact upon a reasonable person within the class of persons to whom the advertisement or product material is directed and other persons to whom the advertisement or product material may be communicated, and taking its content as a whole.

### Definitions

For the purpose of this Code –

**adult** means a person who is at least 18 years of age;

**alcohol beverage** includes any particular brand of alcohol beverage;

**adolescent** means a person aged 14-17 years inclusive;

**Australian Alcohol Guidelines** means the electronic document 'Australian Guidelines to Reduce Health Risks from Drinking Alcohol (1-2)' published by the National Health & Medical Research Council ("NHMRC") as at 1<sup>st</sup> January 2010.

**child** means a person under 14 years of age; and

**low alcohol beverage** means an alcohol beverage which contains less than 3.8% alcohol/volume.

### Standards to be applied

Part 1 – Standards to be applied to advertisements for alcohol beverages

**Advertisements for alcohol beverages must –**

- a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
  - i) must not encourage excessive consumption or abuse of alcohol;
  - ii) must not encourage under-age drinking;
  - iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
  - iv) must only depict the responsible and moderate consumption of alcohol beverages;
- b) not have a strong or evident appeal to children or adolescents and, accordingly –
  - i) adults appearing in advertisements must be over 25 years of age and be clearly depicted as adults;
  - ii) children and adolescents may only appear in advertisements in natural situations (eg family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
  - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene;
- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
  - i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
  - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
  - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
  - i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
  - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content; and
- f) comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.

- g) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- h) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

### **Internet Advertisements**

The required standard for advertisements outlined in (1)(a) to (h) above applies to internet sites primarily intended for advertising developed by or for producers or importers of alcohol products available in Australia or that are reasonably expected to be made available in Australia, and to banner advertising of such products on third party sites.

### **Retail Advertisements**

Advertisements which contain the name of a retailer or retailers offering alcohol beverages for sale, contain information about the price or prices at which those beverages are offered for sale, and which contain no other material relating to or concerning the attributes or virtues of alcohol beverages except –

- i) the brand name or names of alcohol beverages offered for sale;
- ii) the type and/or style of the alcohol beverages offered for sale;
- iii) a photographic or other reproduction of any container or containers (or part thereof, including any label) in which the alcohol beverages offered for sale are packaged;
- iv) the location and/or times at which the alcohol beverages are offered for sale; and
- v) such other matter as is reasonably necessary to enable potential purchasers to identify the retailer or retailers on whose behalf the advertisement is published,

must comply with the spirit and intent of the Code but are not subject to any process of prior clearance.

### **Promotion of alcohol at events**

Alcohol beverage companies play a valuable role in supporting many community events and activities. It is acknowledged that they have the right to promote their products at events together with the right to promote their association with events and event participation. However, combined with these rights comes a range of responsibilities. Alcohol beverage companies do not seek to promote their products at events which are designed to clearly target people under the legal drinking age.

This protocol commits participating alcohol beverage companies to endeavour to ensure that:

- All promotional advertising in support of events does not clearly target underage persons and as such is consistent with the ABAC standard; and

- Alcohol beverages served at such events are served in keeping with guidelines, and where applicable legal requirements, for responsible serving of alcohol (which preclude the serving of alcohol to underage persons); and
- Promotional staff at events do not promote consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- Promotional staff do not misstate the nature or alcohol content of a product; and
- Promotional staff at events are of legal drinking age; and
- Promotional materials distributed at events do not clearly target underage persons; and
- Promotional materials given away at or in association with events do not connect the consumption of alcohol with the achievement of sexual success; and
- Promotional materials given away at or in association with events do not link the consumption of alcohol with sporting, financial, professional or personal success; and
- Promotional materials given away at events do not encourage consumption patterns that are inconsistent with responsible consumption, as defined in the NHMRC Guidelines; and
- A condition of entry into giveaways promoted by alcohol companies at or in association with events is that participants must be over the legal drinking age; and Prizes given away in promotions associated with alcohol beverage companies will only be awarded to winners who are over the legal drinking age.

### *Third Parties*

At many events alcohol companies limit their promotional commitments to specified activities. This protocol only applies to such conduct, activities or materials associated with events that are also associated with alcohol beverage companies.

Alcohol beverage companies will use every reasonable endeavour to ensure that where other parties control and/or undertake events, including activities surrounding those events, they comply with this protocol. However non-compliance by third parties will not place alcohol beverage companies in breach of this protocol.

### *Public Education*

This protocol does not apply to or seek to restrict alcohol beverage companies from being associated with conduct, activity or materials that educate the public, including underage persons, about the consequences of alcohol consumption and the possible consequences of excessive or underage consumption.

## Part 2 – Standards to be applied to the naming and packaging of alcohol beverages

1. The naming or packaging of alcohol beverages (which is also referred to within these standards as “product material”) must:
  - a) present a mature, balanced and responsible approach to the consumption of alcohol beverages and, accordingly –
    - i) must not encourage excessive consumption or abuse of alcohol;
    - ii) must not encourage under-age drinking;

- iii) must not promote offensive behaviour, or the excessive consumption, misuse or abuse of alcohol beverages;
  - iv) must only depict the responsible and moderate consumption of alcohol beverages;
- b) not have a strong or evident appeal to children or adolescents and, accordingly –
- i) adults appearing in product material must be over 25 years of age and be clearly depicted as adults;
  - ii) children and adolescents may only appear in product material in natural situations (e.g. family barbecue, licensed family restaurant) and where there is no implication that the depicted children and adolescents will consume or serve alcohol beverages; and
  - iii) adults under the age of 25 years may only appear as part of a natural crowd or background scene;
- c) not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment and, accordingly –
- i) must not depict the consumption or presence of alcohol beverages as a cause of or contributing to the achievement of personal, business, social, sporting, sexual or other success;
  - ii) if alcohol beverages are depicted as part of a celebration, must not imply or suggest that the beverage was a cause of or contributed to success or achievement; and
  - iii) must not suggest that the consumption of alcohol beverages offers any therapeutic benefit or is a necessary aid to relaxation;
- d) not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity and, accordingly –
- i) any depiction of the consumption of alcohol beverages in connection with the above activities must not be represented as having taken place before or during engagement of the activity in question and must in all cases portray safe practices; and
  - ii) any claim concerning safe consumption of low alcohol beverages must be demonstrably accurate;
- e) not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content; and
- f) not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC.
- g) not refer to The ABAC Scheme, in whole or in part, in a manner which may bring the scheme into disrepute.

2. These standards, (Part 2 (1) (a)-(g)), apply to the naming and packaging of all alcohol beverages supplied in Australia, with the exception of the name of any product or a trademark which the supplier can demonstrate, to the satisfaction of the Adjudication Panel, had been supplied for bona fide retail sale in the ordinary course of business in a State or Territory of Australia prior to 31 October 2009.



**FEDERAL CHAMBER OF AUTOMOTIVE INDUSTRIES**

# **VOLUNTARY CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING**

## **EXPLANATORY NOTES**

### **CONTEXT**

The Voluntary Code of Practice for Motor Vehicle Advertising (the Code) has been instituted by the Federal Chamber of Automotive Industries (FCAI) as a means of industry self-regulation of motor vehicle advertising in Australia. The primary purpose of the Code is to provide guidance to advertisers in relation to appropriate standards for the portrayal of images, themes and messages relating to road safety.

Vehicle occupant protection and road safety are primary concerns for the automotive industry in the design and operation of all motor vehicles supplied to the Australian market. FCAI endorses the National Road Safety Strategy and acknowledges the importance of increased road safety awareness in the Australian community and fully supports the efforts of all relevant Commonwealth, State and Territory authorities to secure this outcome.

### **DATE OF COMMENCEMENT**

This revised version of the Code is to be applied to all advertisements for motor vehicles published or broadcast in Australia from 1 July 2004.

### **SCOPE AND COVERAGE OF THE CODE**

The Code is to be applied to all forms and mediums for advertising of motor vehicles in Australia. This includes television, radio, print media, cinema, billboards and Australian domain internet websites.

### **GUIDANCE TO ADVERTISERS**

The FCAI supports a responsible approach to advertising for motor vehicles. FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict road safety messages or undermine efforts to achieve improved road safety outcomes in Australia.

Advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. Moreover, advertisers need to be

mindful that excessive speed is a major cause of death and injury in road crashes and accordingly should avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle.

FCAI acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code.

In particular, it is noted that use of disclaimers indicating that a particular scene or advertisement was produced under controlled conditions; using expert drivers; that viewers should not attempt to emulate the driving depicted; or expressed in other similar terms, should be avoided. Such disclaimers cannot in any way be used to justify the inclusion of material which otherwise does not comply with the provisions of the Code.

Advertisers should avoid references to the speed or acceleration capabilities of a motor vehicle (for example, "0-100 km/h in 6.5 seconds"). Other factual references to the capabilities of the motor vehicle (for example, cylinder capacity, kilowatt power of the engine, or maximum torque generated) are acceptable, provided that they are presented in a manner that is consistent with the provisions of the Code.

The Code contains a specific clause (clause 3) relating to the use of motor sport, simulated motor sport and similar vehicle testing or proving activities in advertising. It is acknowledged that motor sport plays a crucial role in brand promotion and the development and testing of crucial technologies, many of which result in safer vehicles. Accordingly the Code seeks to ensure that advertisers can continue to legitimately make use of motor sport in advertising, provided that care is taken to ensure that depictions of speed, racing and other forms of competitive driving are clearly identified as taking place in this context. FCAI urges also advertisers to avoid any suggestion that depictions of such vehicles participating in motor sport, or undertaking other forms of competitive driving are in any way associated with normal on-road use of motor vehicles.

In addition, it is noted that the Code contains a clause (clause 4) relating to the depiction of off-road vehicles which have been designed with special features for off road operation. This clause provides some limited flexibility allowing advertisers to legitimately demonstrate the capabilities and performance of such vehicles in an off-road context. In so doing however, care should be taken to ensure that all other provisions and the underlying objectives of the Code are still adhered to. In particular, advertisers should be mindful to ensure that advertisements for such vehicles do not involve the depiction of 'excessive' or 'unsafe' speed. Equally, advertisers should avoid portrayal of images of off-road driving which could otherwise be construed as being unsafe.

In interpreting and applying the Code, FCAI asks that advertisers take into account both the explicit and implicit messages that are conveyed by an advertisement. Advertisers should make every effort to ensure that advertisements not only comply with the formal provisions of the Code but are also consistent with the objectives and guidelines expressed in these Explanatory Notes which accompany the Code.

## **COMPLIANCE AND ADMINISTRATION**

Assessment of compliance with the Code is to be administered by the Advertising Standards Board (ASB). The ASB will review all public complaints made against advertisements for motor vehicles under the terms of the Code.

In administering the Code, the ASB is to give relevant advertisers the opportunity to present such evidence as they deem appropriate in defence of an advertisement under review, prior to making any determination in relation to its consistency, or otherwise, with the provisions of the Code.

The ASB will ensure that all complaints are considered in a timely fashion. As a general rule the panel should finalise its determination within one calendar month of a complaint having been received. Where necessary the ASB may be required to meet more frequently to ensure the timely consideration of complaints.

The ASB will arrange prompt publication of the reasons for all decisions on its website. An annual report on the outcomes of the complaint process will be compiled and published.

Companies may also seek an opinion, from the ASB, on whether the content of a planned advertisement meets the Code, prior to finalisation and release of the advertisement.

FCAI and ASB will work to increase public awareness of the Code and the complaints process.

## **CONSULTATION**

In developing the Code, FCAI has undertaken an extensive process of consultation with a wide range of stakeholders, including representatives of the following:

- (a) The Federal Government and its agencies (including the Australian Transport Safety Bureau);
- (b) Relevant State and Territory Government authorities;
- (c) The National Road Safety Strategy Panel (which comprises representatives of police services, road safety authorities, motoring organisations and industry groups);
- (d) The Australian Automobile Association;
- (e) The Australian Association of National Advertisers; and
- (f) The Advertising Standards Bureau Limited.

## **REVIEW OF THE CODE**

FCAI will undertake a review of the current version of the Code, (in consultation with all parties listed above) commencing in December 2005. The process of this review should be completed by end-March 2006.



## CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING

### 1. DEFINITIONS

In this Code, the following definitions apply:

- (a) *Advertisement*: means matter which is published or broadcast 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 that product, service, person, organisation or line of conduct.
- (b) *Off-road vehicle*: means a passenger vehicle having up to 9 seating positions including that of the driver having been designed with special features for off-road operation, consistent with the requirements of the definition for such a vehicle as provided in the Australian Design Rules (MC category). An off-road vehicle will normally have 4 wheel drive.
- (c) *Motor sport*: means racing, rallying, or other competitive activities involving motor vehicles of a type for which a permit would normally be available under the National Competition Rules of the Confederation of Australian Motor Sport, or other recognised organising body.
- (d) *Motor vehicle*: means passenger vehicle; motorcycle; light commercial vehicle and off-road vehicle.
- (e) *Road*: means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.
- (f) *Road-related area*: means an area that divides a road; a footpath or nature strip adjacent to a road; an area that is not a road and is open to the public and designated for use by cyclists or animals; an area that is not a road and that is open to or used by the public for driving, riding or parking motor vehicles.

### 2. GENERAL PROVISIONS

Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

- (a) Unsafe driving, including reckless and menacing driving that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.

[*Examples*: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]

- (b) People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.
- (c) Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation.

[*Examples:* Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion.]

- (d) People driving while being apparently fatigued, or under the influence of drugs or alcohol to the extent that such driving practices breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing directly with road safety or traffic regulation.
- (e) Deliberate and significant environmental damage, particularly in advertising for off-road vehicles.

### **3. USE OF MOTOR SPORT IN ADVERTISING**

Without limiting the general application of clause 2, advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising, subject to the following:

- (a) Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity, of a type for which a permit would normally be available in Australia.
- (b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.

### **4. DEPICTION OF OFF-ROAD VEHICLES**

An advertisement may legitimately depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming part of a road or road related area. Such advertisements should not portray unsafe driving and vehicles must not travel at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area.

## **APPENDIX 14**

### **Scenarios of advertising industry deadlines**

#### **1. Creative work on hold until product completed**

A computer technology company planned to release a new computer in 6 months time. In preparation, the company booked outdoor advertising spaces on billboards and street furniture, for a campaign to be run in 6 months time. However the design of the advertisement could not be completed until the new computer was produced and available to be photographed. There were delays in the computer production so the design could not be completed until shortly before it was due to be installed.

#### **2. Urgent competitor reaction**

A supermarket launched an unexpected price slash campaign, and its direct competitor wanted to launch a campaign to compete against it. The direct competitor wanted the campaign to be designed, printed and installed as quickly as possible.

#### **3. Charity/fundraising initiatives**

Following the Queensland floods, the Government and supermarket brands launched fund raising campaigns immediately, which required design, printing and installation of advertisements in a short timeframe.

#### **4. Running a campaign at short notice**

A soft-drink company became aware that the following week was going to be a heatwave in Sydney. The company decided to run an outdoor advertising campaign for their drink during the week of the heatwave. This required booking the outdoor advertising sites, developing the advertisement creative work and installing the advertisements by the start of the following week.

## Appendix 15

Examples of the Concept Review Service provided by the OMA

Hansel and Gretel, Witch Hunters

The first image was not approved by the OMA, however utilising the Concept Advisory Service, the creative agency was able to work with the OMA to achieve an outcome that did not risk breaching the AANA *Code of Ethics* (section 2.4, *advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.*).



## Lady Gaga – Fame perfume

The first image was deemed by the OMA to be at risk of breaching the Code in section 2.4, ***advertising or marketing communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience***. After working with the creative agency and member, the final image was used which retained the aspects of the original campaign, but which did not risk breaching the Code.

