



ADVERTISING STANDARDS AUTHORITY

Advertising Codes of Practice – February 2009



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FROM THE CHAIRMAN

Advertising plays an important role in the New Zealand economy. Advertising informs citizens about the range of goods and services which are available in the market place. Without such information it would be difficult to decide what to buy and what is available. We receive this information through a variety of media. There are the traditional media such as newspapers, radio, television, cinema and magazines and now we can add to them the internet, outdoor advertising and many forms of direct advertising. We depend on these media for information and news and the media, in turn, depend on the advertising revenue they receive. It is impossible to imagine a world without advertising and the many forms of media which play a central role in our lives.

Like any industry, advertising needs to work to standards and codes which ensure that the rights of consumers are protected. The Advertising Standards Authority is dedicated to ensuring that advertising complies with the law, is truthful, not misleading or deceptive and is socially responsible.

We believe that self regulation is the best way to achieve industry commitment to these standards and the ASA is an excellent example of self regulation in practice. The ASA has formulated the Advertising Codes of Practice and all the media, advertisers and communications agencies are committed to upholding them.

The ASA has established an independent Advertising Standards Complaints Board whereby any member of the public who considers that there has been a breach of any of the Codes may complain to the Complaints Board which will seek comments from all interested parties and then adjudicate on the complaint.

If the complaint is upheld then the advertiser, advertising agency and media are committed to withdrawing the offending advertisement immediately. This positive action ensures that the public is protected against any undesirable and unethical practices without the need for an expensive and complex legal process.

Our Executive Director, Hilary Souter and her staff will willingly assist you with any enquiry that you may have. Please do not hesitate to call her on the ASA Free Phone number 0800 AD HELP (0800 234 357) or (04) 472 7852 or write to PO Box 10-675, Wellington, fax (04) 471 1785 or e-mail asa@asa.co.nz.

Rick Osborne
Chairman
Advertising Standards Authority

COMPLAINTS PROCEDURE

Any person can complain about any advertisement in any media which they consider to be in breach of the Codes.

The complaints procedure is simple.

1. Complaints should be addressed to the Secretary, Advertising Standards Complaints Board, PO Box 10-675, Wellington, or use the online complaints form at www.asa.co.nz. Where the complaint involves a print advertisement, a copy of the advertisement should be included. Where a television or radio advertisement is the subject of a complaint, the approximate time, date and station of broadcast should be specified.
2. The Chairperson will determine whether the complaint is suitable for the Board's consideration and within the Board's jurisdiction. If it is, the complaint (including your name and address) will be sent to all parties concerned seeking their opinion and comments and you will be advised. If it is not, you and other parties will be advised and shortly after a formal written decision, including your name, will be distributed to you, the other parties and to the media.
3. The Board will then determine whether the Codes of Practice have been breached and all parties will be informed of the outcome. A formal written decision, including your name, is distributed to you, the parties and to the media.
4. In lodging a complaint with the Complaints Board the complainant accepts that he/she will not pursue the complaint in any other forum and is required to sign a waiver to that effect.
5. If a complaint is upheld by the Board the advertiser, in accordance with self-regulatory principles, is requested to voluntarily immediately withdraw the advertisement. Additionally the media members of ASA are similarly requested not to publish or broadcast an advertisement which has been held by the Board to be in breach of the Codes of Practice. The requests are invariably followed.
6. Decisions of the Complaints Board may be appealed to the Advertising Standards Complaints Appeal Board on certain grounds. The main grounds are new evidence, the rules of natural justice were not followed, and the Decision was against the weight of evidence. All Rulings of the Chairperson of the Complaints Board are appealable to the Chairperson of the Appeal Board. Full details on appeals are available from the Secretary to the Complaints Board. The request for an appeal shall be made in writing to the Secretary within 14 days of receipt of the Complaints Board's written decision.

HOW TO WRITE AN EFFECTIVE COMPLAINT

The Advertising Standards Complaints Board considers complaints from members of the public about advertisements in all media. The Complaints Board requires a brief written complaint and in the case of print, outdoor and internet media, a copy of the advertisement complained of.

Copies of advertisements:

To ensure the Complaints Board has a copy of the advertisement it is essential that the following procedure is followed by all complainants when lodging a complaint.

Your letter must include:

For all electronic media: The date, approximate time and channel/station on which the advertisement was played. It is also preferable that the name of the advertiser is included.

For the internet: The URL or website address and a printout of the relevant part of the site.

For all print advertisements: A copy of the advertisement together with the name and date of the publication.

For billboard or outdoor advertisements: The complainant may be able to locate the same image in another medium, such as a magazine, otherwise it will be necessary to provide a photograph. Other useful information includes the name of the billboard company, which is usually visible on the billboard, and its exact geographic location.

Complaint letter:

A clear, concise, written complaint communicates your message most effectively. Please ensure that hand written complaints are legible.

As a complainant, you may wish to visit our website at www.asa.co.nz and look through the Advertising Codes, selecting what you feel is the most appropriate code and rule/s to cover your complaint.

When expressing your complaint, please be specific. Examples:

“I find the advertisement offensive because the part where it says, “” demeans all young mothers ” This is much more effective that a general statement such as “I did not like this advertisement.”

“I believe that the claim in the advertisement, “....” is misleading.”

Always sign the letter, making sure your name is legible. However, only your initial and surname will be used in writing the Decision.

We also need a postal address for return correspondence throughout the complaints process.

Extra Information

- Complaints can be posted to PO Box 10-675, Wellington, faxed to (04) 471 1785, or emailed to asa@asa.co.nz.
- You may wish to read some of the Complaints Board's previous Decisions. These are available on our website www.asa.co.nz.
- The Complaints Procedure is available on our website under the heading "How to Make a Complaint".
- If any assistance is required with any of the above do not hesitate to phone us on 0800 AD HELP (0800 234 357) or (04) 472 7852.
- Once a complaint is accepted, the Board will ask the advertiser, the advertising agency (if there is one) and the media to respond to the complaint. Responses are required within 14 days.

HOW TO RESPOND TO A COMPLAINT

The Complaints Board reviews the information provided by parties and makes a decision on whether or not the complaint is in breach of the advertising codes, and should be upheld or not upheld.

The following guidelines are intended to assist those responding to a complaint.

1. Please read the complaint carefully before responding and address the specific points raised by the complainant.
2. If the complainant has challenged a claim made by the advertiser, the advertiser must substantiate that claim. In your response please detail (and if possible provide) the information backing up any claim. For example, a survey result, a media story, independent research. When an advertiser is unable to properly substantiate a claim, the complaint is likely to be upheld.
3. Ensure you refer specifically to the codes that the Complaints Board has applied to the complaint. It may be useful for you to search the decisions database, which is available on the ASA website www.asa.co.nz. The decisions database has full copies of all the decisions made by the Complaints Board since 2000 and you can search the database by code.

Extra Information

- Responses can be posted to PO Box 10-675, faxed to (04) 471 1785, or emailed to asa@asa.co.nz.
- The Complaints Procedure is available on our website under the heading "How to Make a Complaint".
- If any assistance is required with any of the above do not hesitate to phone us on 0800 AD HELP (0800 234 357) or (04) 472 7852.



ADVERTISING STANDARDS AUTHORITY

CODES OF PRACTICE

INTRODUCTION AND INTERPRETATION

1. ADVERTISING STANDARDS AUTHORITY INC.

The ADVERTISING STANDARDS AUTHORITY INC, (ASA) (previously known as Committee of Advertising Practice) formed early in 1973, and incorporated in late 1990. Its membership, in accordance with self-regulatory principles, is requested to be bound by the decisions of the Advertising Standards Complaints Board. The ASA is made up of representatives from the:

- Association of New Zealand Advertisers (Inc)
- Communication Agencies Association of New Zealand (Inc)
- Interactive Advertising Bureau of New Zealand
- Letterbox Media
- Magazine Publishers' Association (Inc)
- Newspaper Publishers' Association (Inc)
- New Zealand Television Broadcasters Council
- New Zealand Community Newspapers
- New Zealand Cinema Advertising Council
- New Zealand Marketing Association (Inc)
- New Zealand Post Limited
- Outdoor Advertising Association of New Zealand
- Pay Television Group
- Radio Broadcasters Association (Inc)

The three main objectives are:

- (a) To seek to maintain at all times and in all media a proper and generally acceptable standard of advertising and to ensure that advertising is not misleading or deceptive, either by statement or by implication.
- (b) To establish and promote an effective system of voluntary self-regulation in respect to advertising standards.
- (c) To establish and fund an Advertising Standards Complaints Board.

To these ends the ASA introduces and amends Codes of Practice. These have been developed for specific categories of advertising where they are considered necessary. Where appropriate the Codes have been developed in consultation with industry, consumer groups and relevant government ministries.

2. ADVERTISING STANDARDS COMPLAINTS BOARD

In March 1988 the ASA established a separate self-regulatory body called the Advertising Standards Complaints Board (formerly known as the Advertising Standards Council) to administer the Codes of Practice in New Zealand. Its three main functions are:

- (a) To adjudicate on complaints received about advertisements which may be in breach of the Codes of Practice.
- (b) To advise the ASA on interpretation of the Codes and possible improvements to the Codes.

(c) To report to the ASA on any aspect of advertising which is causing concern.

The Complaints Board comprises five public representatives with no connection to media or advertising groups, one of whom is the chairperson with a right to exercise a casting vote, plus four persons nominated by the ASA, representative of media, advertising agencies, and advertisers.

The current members of the Complaints Board are:

Public Representatives

Ms Jenny Robson (Chair)
Mr Philip Broughton (Deputy Chair)
Mr Alex Handiside
Ms Margaret McKee
Dr Greg Simmons
Ms Susan Taylor (Alternate)

Industry Representatives

Ms Alison Sykora
Mr Paul Elenio
Mr Nigel Keats
Ms Sharon Daly
Ms Sandy Smith (Alternate)
Ms Janine Chamley (Alternate)
Mr Cameron Harland (Alternate)

The Advertising Standards Complaints Board considers complaints about advertisements in all media.

In 1994 the ASA established the Advertising Standards Complaints Appeal Board. Its function is to adjudicate on appeals from Decisions of the Complaints Board. The main grounds for appeal are new evidence, the rules of natural justice were not followed or the Decision was against the weight of evidence. Full details are available from the Secretary of the Complaints Board.

There are two public representatives on the Appeal Board and one industry representative. The current members of the Appeal Board are:

Public Representatives

Mr Euan Abernethy (Chairperson)
Ms Judi Jones
Mr Alan Haronga (Alternate)

Industry Representative

Mr Bob Moffat
Mr Martyn Turner (Alternate)

3. ADDRESSES

All correspondence to the Advertising Standards Authority Inc. should be addressed to:

The Executive Director, Advertising Standards Authority,
PO Box 10-675, Wellington.
Telephone (04) 472 7852
Free Phone 0800 AD HELP (0800 234 357)
Fax (04) 471 1785
Email asa@asa.co.nz
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4. THE CODES

The Codes are developed by the ASA to cover the entire range of advertising activity, and amended whenever there is an issue that requires review or updating. Where appropriate, mainstream consumer groups, government departments, government agencies, industry and other interested parties are also involved in the process.

The Codes include a Code of Ethics, which is the overall philosophy covering fairness, respect for people, and honest practice, plus a number of Codes covering either particular issues (eg. Advertising to Children) or product areas (eg. Financial Services).

All of the Codes are to be applied in the spirit, as well as the specific requirements.

The function of the Codes is to complement, not to replace, the laws of the land.

5. INTERPRETATION

The Codes apply to the entire content of an advertisement, including all words and numbers (spoken and written), visual presentations, music and sound effects.

The conformity of any advertisement with the Codes will be judged primarily in terms of its impact upon the type of person who is likely to be exposed to it.

Where there is any doubt, the interpretation shall be adopted that best serves the purpose and intent of any Code. The Code of Ethics will also provide guidance.

The Advertising Standards Complaints Board and the Advertising Standards Complaints Appeal Board are the final arbiters of the interpretation of the Codes.

For the purposes of the Codes:

- The word “advertisement” is to be taken in its broadest sense to embrace any form of advertising and includes advertising which promotes the interest of any person, product or service, imparts information, educates, or advocates an idea, belief, political viewpoint or opportunity. The definition includes advertising in all traditional media and new media such as online advertising, including websites. Emails and SMS messaging that are selling or promoting a product, service, idea or opportunity are also covered by the codes, as are neck labels or promotions attached to a product. Other examples include posters, pamphlets and billboards (whether stationary or mobile) and addressed or unaddressed mail.
- The word “product” includes goods, services and facilities whether paid or given free.
- The word “consumer” refers to any person to whom an advertisement is addressed or is likely to be reached by it whether as a final consumer or as a trade customer or user.

Where complaints have been received concerning advertisements placed in publications, programmes or interactive media, which

- (i) Originate outside New Zealand and
- (ii) Are intended primarily for audiences outside New Zealand but also reach New Zealand audiences, the ASCB and ASCAB will take into account the following guidelines.
 1. Compliance with the advertising rules in the country of origin.
 2. The size and composition of the New Zealand audience.
 3. Whether the advertising is targeted at New Zealand consumers.
 4. The accessibility of the product to New Zealand consumers.
 5. Whether best endeavours have been made to exclude advertisements which would clearly breach the Advertising Codes of Practice. This could be particularly relevant in the case of live presentations of overseas events to a substantial number of New Zealanders.

ADVERTISING CODE OF ETHICS

BASIC PRINCIPLES

1. All advertisements must comply with the laws of New Zealand.
2. No advertisement should impair public confidence in advertising.
3. No advertisement should be misleading or deceptive or likely to mislead or deceive the consumer.
4. All advertisements should be prepared with a due sense of social responsibility to consumers and to society.
5. All advertisements should respect the principles of free and fair competition generally accepted in business.

RULES

1. **Identification** - Advertisements should be clearly distinguishable as such, whatever their form and whatever the medium used; when an advertisement appears in a medium which contains news or editorial matter, it must be presented so that it is readily recognised as an advertisement.
2. **Truthful Presentation** - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).
3. **Research, Tests and Surveys** - Advertisements should not use tests and surveys, research results or quotations from technical and scientific literature, in a manner which is misleading or deceptive.
4. **Decency** - Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services).
5. **Offensiveness** - Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).
6. **Fear** - Advertisements should not exploit the superstitious, nor without justifiable reason, play on fear.
7. **Violence** - Advertisements should not contain anything which lends support to unacceptable violent behaviour.

8. **Denigration** - Advertisements should not denigrate identifiable products or competitors.
9. **Testimonials** - Advertisements should not contain or refer to any personal testimonial unless it is genuine, current, related to the experience of the person giving it and representative of typical and not exceptional cases. The claims in the testimonial should be verifiable.
10. **Privacy** - Unless prior permission has been obtained an advertisement should not portray or refer to any persons, whether in a private or public capacity, or refer to any person's property, in a way likely to convey the impression of a genuine endorsement.
11. **Advocacy Advertising** - Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.
12. **Safety** - Advertisements should not, unless justifiable on educational or social grounds, contain any visual presentation or any description of dangerous or illegal practices or situations which encourage a disregard for safety.

CODE FOR ADVERTISING TO CHILDREN

INTRODUCTION

The purpose of the Code is to serve as a guide to advertisers and agencies in preparing advertising messages which adequately recognise the special characteristics of the children's audience and in particular their vulnerability and to properly safeguard their interests.

Responsible advertising of products and services normally used by children, and the depiction of children in advertising in general, can serve not only to inform children of these products and services but also about many aspects of society and the world in which they live.

Special care should be taken in advertising to children.

Children are entitled to certain rights and protection pursuant to the United Nation's Convention on the Rights of the Child ("Convention"). Article 13 recognises the child's right to freedom of expression. "This right shall include the freedom to seek, receive and impart information and ideas of all kinds." Children therefore have the right to receive all kinds of information including advertisements. However, there are various fetters to that right; for instance Article 17(e) calls for "appropriate guidelines for the protection of the child from information and material injurious to his or her well-being." This Code provides the "appropriate guidelines" for advertisements directed at children. Furthermore, special notice is to be taken of Article 3 of the Convention, which states, "the best interests of the child shall be a primary consideration" and therefore the need to extend a duty of care to protect children.

All advertisements shall adhere to the Principles and Guidelines set out in this Code. The Code is designed to ensure that advertising to children will be conducted in a manner that is socially responsible and does not mislead or deceive children.

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

Note: Attention is drawn to the New Zealand Television Broadcasters code "Getting it Right for Children" which deals with such issues as the number of television advertisements in children's programmes. The code is available on www.nzdbc.co.nz.

DEFINITIONS

For the purposes of this Code:

The term "**children**" means all persons below the age of 14.

"**Advertisement**" includes all advertisements in all forms of media directed at children whether contained in children's media or otherwise. Reference should be made to the Interpretation section of the Codes of Practice.

“Appropriate media and industry Codes” includes the Television Broadcasters’ Council Children’s Broadcasting Code, and any other industry Codes endorsed by the ASA.

Principle 1 - Advertisements should comply with the laws of New Zealand and appropriate media and industry Codes.

Principle 2 - Advertisements should observe a high standard of social responsibility.

Guidelines

- 2(a) Advertisements should not portray violence, undue aggression, or menacing or horrific elements likely to disturb children.
- 2(b) Advertisements should not encourage anti-social behaviour or depict children behaving in an anti-social manner, eg. vindictiveness and bullying, unless the purpose of the advertisement is to discourage such behaviour.
- 2(c) Children in advertisements should not behave in a socially unacceptable manner, bearing in mind their age, unless the purpose of the advertisement is to discourage such behaviour.
- 2(d) Children should not be urged in advertisements to ask their parents, guardians or caregivers to buy particular products for them.
- 2(e) Advertisements should not suggest to children any feeling of inferiority or lack of social acceptance for not having the advertised product.
- 2(f) Advertisements, except safety messages, should not contain any statement or visual presentation that could have the effect of portraying children in unsafe acts, showing them in unsafe situations, encouraging them to consort with strangers, or behaving in an unsafe way.
- 2(g) Advertisements, except safety messages, should not show products being used in an unsafe or dangerous manner, or which would be unsafe if used by children without proper supervision.
- 2(h) Advertisements should not depict toy weapons which are realistic (in size, shape and colour) and can be confused with real weapons.
- 2(i) Advertisements should not portray sexually suggestive images, or images that are degrading to any individual or group.
- 2(j) Children should not be encouraged in advertisements to participate in gambling or gaming. (Refer to the Code for Advertising Gaming and Gambling)
- 2(k) Advertisements should not undermine the role of parents in educating children to be healthy and socially responsible individuals.
- 2(l) Persons, characters or groups who have achieved particular celebrity status with children shall not be used in advertisements to promote food or drink in such a way so as to undermine a healthy diet taking into account the Ministry of Health’s ‘Food and Nutrition Guidelines’ for children.

Principle 3 - Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children, abuse the trust of or exploit the lack of knowledge of children, exploit the superstitious or without justifiable reason play on fear.

Guidelines

- 3(a) Advertisements must be clearly recognisable as such by children and separated from editorial, programmes or other non-advertising material. If there is any likelihood of advertisements being confused with editorial or programme content, they should be clearly labelled “advertisement” or identified in a clear manner.
- 3(b) Advertisements should take into account the level of knowledge, sophistication and maturity of the intended audience. In particular advertisements should not be directed at younger children who may have a lack of ability to comprehend the purpose of advertising and differentiate between it and non-advertising messages.
- 3(c) Care should be taken to ensure that advertisements are able to be understood by children to whom the advertisements are directed, are not ambiguous, do not mislead as to the true size, value, nature, durability and performance of the advertised product and contain warning information if the product is unsafe when used by younger children.
- 3(d) If extra items are needed to use the product (eg. batteries) to produce the result shown or described (eg. paint, dolls clothes) this should be made clear. A product that is part of a series should be clearly indicated as such as well as the method of acquiring the series.
- 3(e) In the case of a product that must be assembled, this should be made clear, and where appropriate, the source of power and performance should be indicated.
- 3(f) If price is mentioned, the complete price of the product should be made clear, and advertisements should clearly indicate the cost of those items that constitute the original purchase and additional items that must be purchased separately.
- 3(g) Where reference is made to a competition the rules should be made clear and the value of prizes and the chances of winning should not be exaggerated.
- 3(h) Any reference to a premium (eg. an additional product or service offered free, at a reduced price or as a prize) should be clearly displayed and conditions relating to it should be clearly represented.
- 3(i) Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and/or salt, especially those marketed to and/or favoured by children, should not be portrayed in any way that suggests they are beneficial to health.

Principle 4 - Advertisements should not encourage inappropriate purchase or use including excessive consumption.

Guidelines

- 4(a) Children are not a homogeneous group but have varying levels of maturity and understanding. Care needs to be taken that the product advertised and style of advertisement are appropriate for the audience to whom it is primarily directed.
- 4(b) Advertisements soliciting responses incurring a fee to telephone or text should state, "Children ask your parents first" or similar words.
- 4(c) Extreme care should be taken in requesting or recording the names, addresses and other personal details of children to ensure that children's privacy rights are fully protected and the information is not used in an inappropriate manner.

Note: Notice should also be taken of Principle 3 of the Privacy Act 1993.

- 4(d) Care should be taken with advertisements promoting a premium or loyalty/continuity programme to ensure that inappropriate purchase or excessive consumption was not a likely outcome.
- 4(e) For advertisements for food or beverages attention is drawn to the Code for Advertising Food and in particular Principle 3

CODE FOR COMPARATIVE ADVERTISING

Comparative advertising, or advertising that identifies a competing product or service, is characterised by three distinct features:

- It should be factual and informative.
- It should explicitly or by implication make clear what comparison is being made.
- It should not mislead the consumer about other products or services with which comparisons might be made.

Advertisements should not unfairly attack or discredit other products, advertisers or advertisements directly or by implication.

Guidelines

- (a) Comparative advertising should be factual and informative and should offer a product or service on its positive merits. The intent and connotation of the advertisement should be to inform and not to discredit, disparage or attack competitors, competing products or services directly or by implication.
- (b) Comparative claims should be unambiguous and clearly understandable so that there is no likelihood of the consumer being misled as a result of the comparison.
- (c) Where an advertisement makes a comparison, whether explicitly or implicitly, it should be clear with what the comparison is being made, i.e. price to price, dimension to dimension, feature to feature.
- (d) The competition should be fairly and properly identified but never in a manner or tone of voice that degrades the competitive product or service.
- (e) The identification should be for honest comparison purposes and not simply to upgrade by association.
- (f) The subject matter of a comparison should not be chosen in such a way as to confer an artificial advantage upon the advertiser or so as to suggest that a better bargain is offered than is actually the case.
- (g) Where appropriate, comparative advertising claims must be supported by documentary evidence which is easily understood. Where technical data is submitted it should be accompanied by a summary of the relative comparative points, written in layman's language.
- (h) If the advertisement refers to a competitive test, such tests should have been conducted by an independent and objective body so that there will be no doubt as to the veracity of the test. In all cases the test must be supportive of all claims made in the advertising that are based on the test.
- (i) The advertising should never use partial results or stress insignificant differences to cause the consumer to draw an improper conclusion.

- (j) The product or service being compared should be significant in terms of value or usefulness to the consumer.
- (k) Advertisements should not make unjustifiable use of the name or initials of any firm, company or institution nor take unfair advantage of the goodwill attached to the trade name or symbol of another firm or its product or the goodwill acquired by its advertising campaign.
- (l) Advertisements should not be so similar to other advertisements in general layout, copy, slogans, visual presentation, music or sound effects as to be likely to mislead or confuse.

CODE FOR ENVIRONMENTAL CLAIMS

Note: The spurious use of environmental claims and claims which mislead by omission or by implication may not only bring the advertiser into conflict with this Code and the Fair Trading Act but may also cause confusion amongst consumers and potentially lessen their confidence in advertising generally.

This Code covers all advertising containing claims for environmental benefit and includes packaging shown in advertisements.

BASIC PRINCIPLES

1. Generalised claims for environmental benefit must be assessed on the complete life-cycle of the product and its packaging taking into account any effects on the environment of its manufacture, distribution, use, disposal, etc. Thus absolute claims for environmental benefit, either stated or implied, are not appropriate.
 - eg “Environmentally friendly”
 - “Environmentally safe” “Environmentally kind”
 - “Product X has no effect on the environment” “100% ecologically sound”
 are absolute claims and therefore not acceptable.
2. Qualified claims such as “environmentally friendlier/safer/kinder” may be acceptable where the advertised product, service or company can demonstrate a significant environmental advantage over its competitors or a significant improvement on its previous formulation, components, packaging, method of manufacture or operation.
3. All claims must:
 - a. be able to be substantiated, and
 - b. meet relevant local or international standards as appropriate if a particular benefit is claimed (eg “biodegradable”, “organic” etc), and
 - c. explain clearly the nature of the benefit,
 - eg “our product X is kinder to Mother Nature” is unclear and thus unacceptable but “our CFC-free product X is kinder to the ozone layer” would be acceptable.
4. Advertisements, packaging and promotional material must not falsely suggest or imply official approval for a product, whether by words, symbols or any other means.

5. Claims based on the absence of a harmful chemical or damaging effect are not acceptable when other products in the category do not include the chemical or cause the effect.
6. Scientific terminology is acceptable provided it is relevant and used in a way that can be readily understood by consumers without specialist knowledge.

CODE FOR FINANCIAL ADVERTISING

The Code should be read in conjunction with legislation and in particular the Securities Act 1978, the Securities Regulations 1983, the Credit Contracts and Consumer Finance Act 2003 and the Fair Trading Act 1986.

An advertisement which adheres to the letter of a particular law nevertheless may be in breach of the Code if it does not comply with and respect the spirit and intention of the Code.

DEFINITIONS

“Appropriate industry standards” are industry standards, guidelines, or codes set by a recognised industry group and endorsed by the ASA.

“Financial advertisements” are advertisements for the borrowing, lending, saving or investment of money, for guarantees, financial instruments and the purchase or sale of securities.

BASIC PRINCIPLES

1. Financial advertisements should comply with the laws of New Zealand and appropriate industry standards.
2. Financial advertisements should observe a high standard of social responsibility particularly as consumers often rely on such services for their financial security.
3. Financial advertisements should strictly observe the basic tenets of truth and clarity and should not by implication, omission, ambiguity, small print, exaggerated claim or hyperbole mislead, deceive or confuse, or be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or, without justifiable reason, play on fear.

Note:

- Attention is drawn to the strict provisions of sections 33, 38 and 38A of the Securities Act 1978 and to regulations 8 to 23 of the Securities Regulations 1983 which are available on request. Regulation 17(6) has particular relevance to the position of agencies who publish financial advertisements.
- Attention is also drawn to section 30 of the Reserve Bank of New Zealand Act 1989 which requires the prior consent of the Reserve Bank for the reproduction of banknotes in an advertisement where they are likely to be confused or mistaken for the real thing.

CODE FOR ADVERTISING OF FOOD

INTRODUCTION

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

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

DEFINITION

For the purposes of this Code:

“**Appropriate industry Code of Ethics**” includes the New Zealand Infant Formula Marketers’ Association “Code of Practice for the Marketing of Infant Formula” and any other industry Code endorsed by the ASA.

“**Food and Nutrition Guidelines**” are the Food and Nutrition Guidelines published by the Ministry of Health.

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

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

Principle 1 - Advertisements should comply with the laws of New Zealand and appropriate industry Code of Ethics.

Guidelines

- 1(a) In addition to food related legislation advertisers should be familiar with the restrictions on advertising in the Food Act 1981, New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002 (Food Standards Code), and the requirements of the Fair Trading Act 1986.
- 1(b) The Food Standards Code has labelling requirements. Pictorial depictions, names, descriptions and other information in advertisements should not be inconsistent with labelling requirements.

Principle 2 - All food advertisements should be prepared with a due sense of social responsibility to consumers and to society. However advertisements containing nutrient, nutrition or health claims*, should observe a high standard of social responsibility.

Guidelines

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

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

Principle 3 - Advertisements directed at children should observe a high standard of social responsibility.

Guidelines

- 3(a) Advertisements for treat foods directed at children should not actively encourage children to eat or drink them inappropriately or in excess.
- 3(b) Advertisements for treat food, snacks or fast food should not encourage children to consume them in substitution for a main meal on a regular basis.
- 3(c) Advertisements for nutritious foods important for a healthy diet as stipulated in the Food and Nutrition Guidelines for children are encouraged to advocate the benefits of such foods, particularly when directed at children. A large and liberal but commonsense interpretation is allowed. However, benefits should not be exaggerated and should not imply that a single food should replace a healthy diet.
- 3(d) Advertisements should not encourage excessive consumption or inappropriately large portions of any particular food nor should they undermine the Food and Nutrition Guidelines for children.
- 3(e) Advertisements for slimming products or foods sold as an aid to slimming should not be directed at children.
- 3(f) Persons, characters or groups who have achieved particular celebrity status with children shall not be used in advertisements to promote food in such a way so as to undermine a healthy diet taking into account Food and Nutrition Guidelines for children.
- 3(g) Attention is drawn to the Code for Advertising to Children.

Principle 4 - Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

Guidelines

- 4(a) All nutrient, nutritional and health claims* should be factual, not misleading, and able to be substantiated. Claims should be compliant with the requirements of the Food Standards Code.
- 4(b) The nature of the audience should be taken into account particularly when advertisements contain nutrient, nutritional and health claims*.
- 4(c) Food advertisements containing obvious hyperbole, identifiable as such are not considered misleading.
- 4(d) Claims in an advertisement should not be inconsistent with information on the label or packaging of the food.
- 4(e) Advertisements should not claim or imply endorsement by any government agency, professional body or independent agency unless there is prior consent, the claim and the endorsement verifiable, current and the agency or body named.
- 4(f) Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and/or salt, especially those marketed to and/or favoured by children, should not be portrayed in any way that suggests they are beneficial to health.

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

CODE FOR ADVERTISING GAMING AND GAMBLING

All advertisements for gambling and gaming (herein called gaming) shall adhere to the Principles and Guidelines set out in this Code. The Code is designed to ensure that advertising of gaming will be conducted in a manner that is socially responsible and does not mislead or deceive the consumer.

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

DEFINITIONS

“**Minors**” means people under the age at which they are legally entitled to participate in the particular gaming activity advertised.

Principle 1 - Advertisements should comply with the laws of New Zealand.

Guidelines

- 1(a) Advertisements should comply with the restriction on the sale of various gaming products and particularly age restrictions. The laws of New Zealand have various age restrictions for different gambling activities. Attention is drawn to the Racing Act 2003 and the Gambling Act 2003.

Principle 2 - Advertisements should observe a high standard of social responsibility.

Guidelines

- 2(a) Advertisements should not be directed at minors, have strong or evident appeal to minors, nor portray minors participating in activities in which they are under the legal age. Minors may appear in situations in which they would be naturally found (e.g. a family meal), provided there is no direct or implied suggestion that they will participate in the gaming.
- 2(b) Advertisements should not promote reliance on gaming as a means of relieving a person's financial or personal difficulties.
- 2(c) Advertisements should not encourage consumers to participate excessively or beyond their means.
- 2(d) Advertisements should not state or imply a promise of winning nor portray unrealistic outcomes.
- 2(e) Advertisements should not exaggerate the connection between the gaming activity and the use to which the profits may be put.

Principle 3 - Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

Guidelines

- 3(a) Winning claims should be factual and able to be proven. The chances of winning or the size of the prize should not be exaggerated.
- 3(b) Advertisements should not state or imply that a player's skill can influence the outcome of a game unless the skill can affect the outcome of the game.

CODE FOR ADVERTISING LIQUOR

All advertising shall adhere to the Principles and Guidelines set out in this Code.

The Code is designed to ensure that liquor advertising 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 minors.

In interpreting the Code emphasis will be placed on compliance both with the Principles and the spirit and intention of the Code. The Guidelines are examples, by no means exhaustive, of how the Principles are to be interpreted and applied. Thus many are mandatory requirements. Notwithstanding the foregoing, the paramount consideration is the spirit and intention of the Code. Accordingly, upon complaint, the Advertising Standards Complaints Board is vested with a discretion to ensure a commonsense outcome.

Approval by the Liquor Advertising Pre-vetting System (LAPS) is strongly recommended.

Radio and television broadcasters annually provide free airtime to government organisations for the broadcast of liquor moderation messages and/or the no alcohol option as a result of commitments made by broadcasters when alcohol brand advertising was introduced in 1992. Such messages can be broadcast at any time.

DEFINITIONS

“Heroes and/or heroines of the young” means individuals or groups of people who have achieved particular celebrity status with minors and includes cartoon and other imaginative characters.

“Light (or lite) alcohol” means liquor containing a maximum of 2.5% alcohol by volume.

“Liquor advertisement” means an advertisement, by whatever means it is disseminated, that promotes liquor by product, brand or outlet, but does not include a sponsorship credit or a sponsorship advertisement or an advertisement in which reference to or the depiction of liquor or liquor packaging or a liquor outlet is incidental to its purpose.

“Liquor advertiser” means an advertiser which markets or sells liquor and uses its name or any identifying feature to promote the sale of liquor in any way.

“Liquor packaging” means a recognisable representation of a liquor bottle, can, cask, pack or other container.

“Minors” are people who are under the age at which they are legally entitled to purchase liquor.

“Sponsorship credit” means an acknowledgment of a liquor advertiser’s sponsorship.

“Sponsorship advertisement” means an advertisement which clearly indicates that the advertiser is sponsoring a person, competition, activity or event.

Principle 1 - Liquor advertisements shall neither conflict with nor detract from the need for responsibility and moderation in liquor consumption.

Guidelines

- 1(a) Liquor advertisements shall not emphasise a product’s alcoholic strength, except where the product is a light (or lite) alcohol product.
- 1(b) Liquor advertisements shall not glamorise liquor or association with it, or show or encourage the immoderate consumption of liquor.

Principle 2 - Liquor advertisements shall observe a high standard of social responsibility.

Guidelines

- 2(a) No product shall be advertised that does not comply with the following requirements taken from the National Guidelines on the Naming, Packaging and Merchandising of Alcoholic Beverages, published by the Alcohol Advisory Council of New Zealand (June 2000).

Labels, graphics, artwork, brand names, packaging, containers and other marketing materials and techniques shall observe the law, and shall not:

- (i) have the appearance of special appeal to minors by way of designs, motifs, cartoon characters or other devices that predominantly appeal to minors.
 - (ii) lead to confusion with confectionery or soft drinks.
 - (iii) lead to confusion as to the alcoholic nature and/or alcoholic strength of the product.
 - (iv) draw any association with drug culture, narcotics or illegal drugs.
 - (v) mimic containers or shapes (eg. hypodermic needles and syringes, explosive devices, etc) that are predominantly associated with anti-social or dangerous behaviour.
- 2(b) Advertisements shall not depict or imply offensive, aggressive or irresponsible behaviour or unduly masculine themes or portray unrealistic outcomes.
 - 2(c) While advertisements may depict the consumption of liquor as incidental to a friendly and happy social environment, they shall not suggest that liquor will create a significant or desirable change in mood or social environment, or that liquor contributes to or is a reward for success or achievement of any kind.
 - 2(d) Advertisements shall not be sexually provocative or suggestive or suggest any link between liquor and sexual attraction or performance.

Principle 3

1. **Liquor advertisements shall not depict or imply the consumption of liquor in potentially hazardous situations or include any unsafe practices.**
2. **Liquor advertisements shall not offer motor vehicles or boats as prizes in any competition.**

Notes

- Principle 3(1) applies to advertisements depicting or implying the consumption of liquor by people in motor vehicles or boats, or while participating in swimming or other water sports, or other activities where the consumption of liquor by those participating is potentially hazardous.
- It is permissible to depict the consumption of liquor after the activity has ended, provided that no unsafe practice is involved.

Principle 4

1. **Liquor advertisements shall be directed to adult audiences. Liquor advertisements shall not be directed at minors nor have strong or evident appeal to minors in particular.**

Note: Particular care is needed in advertising products such as RTDs which may appeal to the younger section of the adult market.

2. **Liquor advertisements shall not be shown on television between 6.00 am and 8.30 pm**
3. **Liquor advertisements shall not use or refer to identifiable heroes or heroines of the young.**
4. **Broadcasters must take care to avoid the impression that liquor promotion is dominating the viewing or listening period when broadcasting liquor advertisements, including liquor sponsorship advertisements and/or liquor sponsorship credits taking into account the context of the programme.**

Guidelines

- 4(a) Anyone visually prominent in a liquor advertisement depicting liquor being consumed shall be and shall appear to be at least 25 years of age with their behaviour and appearance clearly appropriate for people of that age or older.
- 4(b) Minors may appear in advertisements only in situations where they would naturally be found, for example in a family barbecue, provided that there is no direct or implied suggestion that they will serve or consume liquor.
- 4(c) Television liquor advertising shall not exceed six minutes per hour, and there shall be no more than two advertisements for liquor in a single commercial break. (Effective from 1st December 2004.)

Principle 5 - Sponsorship advertisements and sponsorship credits shall clearly and primarily promote the sponsored activity, team or individual. The sponsor, the sponsorship and items incidental to them, may be featured only in a subordinate manner.

Guidelines

Sponsorship advertisements and sponsorship credits:

- 5(a) Shall not contain a sales message.
- 5(b) Shall not show a product or product packaging.
- 5(c) Shall not imitate or use any parts of product advertisements from any media.
- 5(d) Shall not portray consumption of liquor.
- 5(e) Shall only briefly and in a subordinate way mention or portray the sponsors name and/or brand name and/or logo orally and/or visually.
- 5(f) Sponsorship advertisements and sponsorship credits may be broadcast at any time except during programmes intended particularly for minors.

Principle 6 - Liquor advertisements shall not by any means, directly or by innuendo, contain any misleading description, claim or comparison about the product advertised, or about any other product, or suggest some special quality which cannot be sustained.

CODE FOR PEOPLE IN ADVERTISING

BASIC PRINCIPLES

1. Advertisements should comply with the laws of New Zealand. Attention is drawn to the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990.
2. Advertisements should not portray people in a manner which is reasonably likely to cause serious or widespread hostility, contempt, abuse or ridicule.
3. Advertisements should not portray people in a manner which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence on the grounds of their gender; race; colour; ethnic or national origin; age; cultural, religious, political or ethical belief; sexual orientation; marital status; family status; education; disability; occupational or employment status.
4. Stereotypes may be used to simplify the process of communication in relation to both the product offered and the intended consumer. However, advertisements should not use stereotypes in the portrayal of the role, character and behaviour of groups of people in society which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence, hostility, contempt, abuse or ridicule.
5. Advertisements should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people in society to promote the sale of products or services. In particular people should not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product. Children must not be portrayed in a manner which treats them as objects of sexual appeal.
6. Humour and satire are natural and accepted features of the relationship between individuals and groups within the community. Humorous and satirical treatment of people and groups of people is acceptable, provided that, taking into account generally prevailing community standards, the portrayal is not likely to cause serious or widespread offence, hostility, contempt, abuse or ridicule.

Note: Attention is drawn the Code for Advertising to Children.

THERAPEUTIC PRODUCTS ADVERTISING CODE

PREFACE

This Code came into force on 1 February 2005. The Principles and Requirements are modelled on the proposed Australia New Zealand Therapeutic Products Advertising Code (proposed code) which has not yet come into force.

The guidelines and other information in the proposed code will apply to this code where permitted by law. Until the proposed code is introduced the Medicines Act 1981 and Medicines Regulations 1984 will apply. In particular the current restrictions on complementary medicines making therapeutic claims will apply.

The following information has been drawn from the code formulated by the Trans Tasman Harmonisation of Therapeutic Products and services interim council. As a result the numbering is not necessarily consecutive.

Principle 1 - Advertisements must comply with the laws of New Zealand

Principle 2 - Advertisements must be truthful, balanced and not misleading. Claims must be valid and have been substantiated.

Principle 3 - Advertisements must observe a high standard of social responsibility.

A6. DEFINITIONS

Therapeutic product

(a) means:

- (i) a product that is represented in any way to be, or that is, whether because of the way in which the product is presented or for any other reason, likely to be taken to be for therapeutic use;
- (ii) an ingredient or component in the manufacture of a product referred to in subparagraph (i) above;
- (iii) a container or part of a container for a product, ingredient or component referred to in subparagraphs (i) or (ii) above; or
- (iv) a product falling within a class of products the sole or principal use of which is, or ordinarily is, a therapeutic use; and

(b) includes:

- (i) a product which the law provides shall be treated as a therapeutic product for the purposes of the code; and
- (ii) a product which is declared to be a therapeutic product by statutory authorities

(c) does not include:

- (i) a product which the law provides shall not be treated as a therapeutic product for the purposes of this code; or
- (ii) a product which is declared not to be a therapeutic product statutory authorities.

Therapeutic use

(a) means use in or in connection with:

- (i) preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury in humans;
- (ii) influencing, inhibiting or modifying a physiological process in humans;
- (iii) testing the susceptibility of humans to a disease or ailment (iv) influencing, controlling or preventing conception in humans; (v) testing for pregnancy in humans; or
- (vi) the replacement or modification of parts of the anatomy in humans; and

(b) includes any other use which the law provides shall be treated as a therapeutic use for the purposes of the code; but

(c) does not include any use which the laws provides shall not be treated as a therapeutic use for the purposes of this code.

PART B1

ADVERTISING MEDICINES TO CONSUMERS

The advertising of all medicines, other than controlled drugs as defined in the Misuse of Drugs Act 1975, directly to consumers is legal in New Zealand. The Researched Medicines Industry Association of New Zealand (RMI) Code of Practice contains additional requirements, which must be taken into account for such advertising.

Requirement 1

Advertisements must not encourage, or be likely to encourage, inappropriate or excessive use.

Requirement 2

Advertisements must contain the mandatory information to encourage responsible use.

Any advertisement for therapeutic products must include all of the required statements in paragraphs (a) to (e), other than where:

- the advertisement does not contain a therapeutic claim and displays only the:
- brand/name/picture of the therapeutic products or
- the name of the sponsor and/or the price and/or point of sale; or
- the advertisement is an unbranded, or a reminder, or a sponsorship advertisement.

All required statements in paragraphs (a) to (e) must be prominently displayed or communicated, i.e. standing out so as to be easily read from a normal viewing distance, and/or be heard and understood.

For all required statements, other than 'Always read the label', words conveying the same meaning may be used.

(a)

(i) Advertisements to consumers for medicines must contain:

- the trade name; and indications consistent with those included in the database of therapeutic products maintained by the Agency; and
- where the advertising of prescription medicines is permitted in New Zealand, a list of the active ingredients; and
- for all medicines, (except for prescription medicines where they may be advertised in New Zealand) the following mandatory statement:

ALWAYS READ THE LABEL

- and the following statement or words with the same meaning:

USE ONLY AS DIRECTED

- and the following statement, or words with the same meaning, where relevant to the product i.e. if the indication is for symptomatic relief, or a similar indication.

IF SYMPTOMS PERSIST SEE YOUR HEALTHCARE PROFESSIONAL

(ii) If the product, when used according to the directions:

- has known serious adverse effects (in terms of severity and clinical importance);
- or is contraindicated for a known group of people because it could cause serious adverse effects which are reflected in the regulatory requirements on the label or in the Consumer Medicine Information (CMI), an appropriate warning of those effects must be given

(Where a warning reflects the regulatory requirements for the label of the Consumer Medicine Information (CMI), an approval for use of a restricted representation is not required).

Most prescription medicines would be likely to meet the above criteria. Categories of non-prescription medicines which would be likely to meet the above criteria include sedating anti-histamines, pseudoephedrine and non-steroidal anti-inflammatory drugs.

(iii) Additional mandatory statements based on the scheduling classification of the therapeutic product, as follows:

- If it is a restricted/pharmacist only medicine (New Zealand) or Schedule 3 and listed in Appendix H, SUSDP (Australia), the words:

**YOUR PHARMACIST'S ADVICE IS REQUIRED; or
AVAILABLE ONLY FROM YOUR PHARMACIST**

- If it is a Schedule 4 (prescription medicine) able to be advertised in New Zealand:

PRESCRIPTION MEDICINE, CONSULT YOUR DOCTOR [OR OTHER REGISTERED HEALTHCARE PRACTITIONER] TO SEE IF THIS MEDICINE IS RIGHT FOR YOU

- For New Zealand, if there is a charge for a prescription medicine in excess of the standard prescription fee, this should be indicated, e.g.

A CHARGE APPLIES, CONSULT YOUR DOCTOR OR PHARMACIST

(iv) Where an advertisement is for the sale or supply of therapeutic products by mail order, direct mail, or the internet, the advertisement must contain, in addition to the above:

- any mandatory advisory statements required to be included on the product label, prominently displayed on each page that features the relevant therapeutic product/s;
- if the product, when used according to the directions:
 - has known serious adverse effects (in terms of severity and clinical importance);

or

- is contraindicated for a known group of people because it could cause serious adverse effects which are reflected in the regulatory requirements on the label or in the Consumer Medicine Information (CMI);

an appropriate warning of those effects must be given

(Where a warning reflects the regulatory requirements for the label of the Consumer Medicine Information (CMI), an approval for use of a restricted

representation is not required);

- a full list of the active ingredients.

(Where the product name is also the single active ingredient, the pack shot displaying the product name will be sufficient to meet this requirement).

(b)

Where the advertising of prescription medicines is permitted (New Zealand), consumers must be notified that additional product information can be obtained, and the methods for doing so. Such information shall include the name and quantities of the active ingredients, authorised uses, appropriate precautions, contra-indications, and adverse reactions. Various acceptable methods include, but are not limited to, instructions for consumers to contact their doctor, pharmacist or health practitioner; referring consumers to the labelling of the product or the Consumer Medicine Information; provision of a toll-free telephone number; the advertiser's internet website address; the advertiser's postal address; reference to the Consumer Medicines Information, where applicable, and referring consumers to advertisements with full information appearing concurrently in other media.

(c)

In addition to the requirements specified above, analgesics require the following statement:

INCORRECT USE COULD BE HARMFUL

An advertisement for analgesics must not represent that:

- (a) analgesic consumption is safe; and/or
- (b) analgesics will relax, relieve tension, sedate or stimulate.

(d)

An advertisement for vitamins must not represent that vitamin supplements:

- are a substitute for good nutrition or a balanced diet; and/or
- are superior to, or more beneficial than, dietary nutrients or that normal health may be affected by not taking vitamin supplements.

(e)

Advertisements for therapeutic products containing claims for weight management, meaning weight loss, measurement reduction, clothing size loss and weight control/maintenance, must have an appropriate balance between those claims and references to healthy energy-controlled diet and physical activity.

Requirement 3

To assist consumers to make informed decisions, advertisements must contain truthful and balanced representations and claims that are valid and have been substantiated and:

- a) for medicines - must be consistent with the indications included on the database of therapeutic products maintained by the Trans Tasman Therapeutic Products Agency; and
- b) for exempt therapeutic products - must be compliant with the Code.

Requirement 4

Advertisements must not directly nor by implication, omission, ambiguity, exaggerated claim or comparison:

- (a) mislead or deceive, or be likely to mislead or deceive; or
- (b) abuse trust, or exploit lack of knowledge; or
- (c) exploit the superstitious or, without justifiable reason, play on fear or cause distress.

R4.1 An advertisement must not:

- i) contain any claim, statement or implication that the products are safe or that their use cannot cause harm or that they have no side effects or risks associated with use;
- ii) contain any claim, statement or implication that the product is effective in all cases of a condition;
- iii) contain any claim, statement or implication that it is infallible, unailing, magical, miraculous, or that it is a certain, guaranteed or sure cure;
- iv) contain any matter which is likely to lead persons to believe that;
 - they are suffering from a serious ailment, or
 - harmful consequences may result from the therapeutic product not being used.

R4.2 Comparative advertising

Comparative advertising must be balanced and must not be misleading, or likely to be misleading, either about the product advertised or any therapeutic products, or classes of therapeutic products, with which comparison is made.

Comparative advertisements must not be disparaging but must be factual, fair and already substantiated, referenced to the source and reflective of the body of available evidence.

In comparing products, advertisements must not discourage consumers from taking therapeutic products prescribed by a healthcare practitioner.

R4.3 Scientific information

Scientific information within an advertisement must be presented in an accurate manner. Scientific terminology must be appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed.

Publication of research results in an advertisement must identify the researcher and the financial sponsor of the research.

Requirement 5

Advertisements must not unduly glamorise products or services, or prey on the vulnerability of particular audiences.

Requirement 6

Advertisements may include reference to sponsorship of any government agency, hospital or other facility providing healthcare services, provided that sponsorship is explicitly acknowledged and cannot be misconstrued as an endorsement of a product.

Advertisements may contain or imply an endorsement by individual, or individual groups of, healthcare practitioners in their professional capacity, bodies or associations representing the interests of the health of consumers, conducting or funding medical research or representing health practitioners, provided that the endorsement does not in any way imply endorsement by any government agency, hospital or other facility providing healthcare services. However, such endorsements must have prior consent from the endorser, be authenticated and the advertisement must contain, prominently displayed, the name of the endorser and acknowledgment of any valuable consideration.

Requirement 7

Testimonials in advertisements, where not prohibited by law, must comply with the Code, be authenticated, genuine, current, typical and acknowledge any valuable consideration.

Requirement 8

Advertisements directed to consumers must not refer directly or by implication to serious diseases, conditions, ailments or defects without approval from the Trans Tasman Therapeutic Products Agency.

PROHIBITIONS

In New Zealand, advertisements for Class A, Class B and Class C controlled drugs other than Exempted Controlled Drugs, as defined in the Misuse of Drugs Act 1975, may only be directed to healthcare practitioners and in appropriate media.

PART B2

ADVERTISING MEDICAL DEVICES TO CONSUMERS

Requirement 1

Advertisements must not encourage, or be likely to encourage, inappropriate or excessive use.

Requirement 2

Advertisements must contain the mandatory information to encourage responsible use.

Any advertisement for therapeutic products must include all of the required statements in paragraphs (a) to (e), other than where:

- the advertisement does not contain a therapeutic claim or intended purpose for use and displays only the brand/name/picture of the therapeutic products and/or the price and/or point of sale; or
- the advertisement is an unbranded, or a reminder, or a sponsorship advertisement.
- All required statements in paragraph (a) must be prominently displayed or communicated, i.e. standing out so as to be easily read from a normal viewing distance, and/or heard and understood.

(a)

Advertisements to consumers for medical devices must contain the following statements:

- the trade name;
- the intended purpose consistent with that included in the database of therapeutic products maintained by the Agency. [Until 2007, where there is no intended purpose on the database, the purpose must be consistent with the manufacturer's intended purpose for use]; and
- the following mandatory statement (except where the advertisement is for a health service or treatment program that includes a reference to the use or administration of a particular device as part of that service or treatment):

ALWAYS READ THE LABEL

and/or, where appropriate,

FOLLOW THE INSTRUCTIONS (or words to that effect)

If the medical device has contraindications or specific warnings that may affect the safe use of the device, which are reflected in the regulatory requirements for the product label or in the patient information, an appropriate warning must be given.

Requirement 3

To assist consumers to make informed decisions, advertisements must contain truthful and balanced representations and claims that are valid and have been substantiated and:

- a) for medical devices - must be consistent with the manufacturer's intended purposes included on the database for therapeutic products maintained by the Trans Tasman Therapeutic Products Agency; and**
- b) for exempt therapeutic products - must be compliant with the Code.**

Requirement 4

Advertisements must not directly nor by implication, omission, ambiguity, exaggerated claim or comparison:

- (a) mislead or deceive, or be likely to mislead or deceive; or**
- (b) abuse trust, or exploit lack of knowledge; or**
- (c) exploit the superstitious or, without justifiable reason, play on fear or cause distress.**

R4.1 An advertisement must not:

- i) contain any claim, statement or implication that the products are safe or that their use cannot cause harm or that they have no side effects or risks associated with use;
- ii) contain any claim, statement or implication that the product is effective in all cases of a condition;
- iii) contain any claim, statement or implication that it is infallible, unailing, magical, miraculous, or that it is a certain, guaranteed or sure cure;
- iv) contain any matter which is likely to lead persons to believe that;
 - they are suffering from a serious ailment, or
 - harmful consequences may result from the therapeutic product not being used.

R4.2 Comparative advertising

Comparative advertising must be balanced and must not be misleading, or likely to be misleading, either about the product advertised or any therapeutic products, or classes of therapeutic products, with which comparison is made.

Comparative advertisements must not be disparaging but must be factual, fair and already substantiated, referenced to the source and reflective of the body of available evidence.

In comparing products, advertisements for medical devices must only make comparisons between products with a similar intended purpose of use.

R4.3 Scientific information

Scientific information within an advertisement must be presented in an accurate manner. Scientific terminology must be appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed.

Publication of research results in an advertisement must identify the researcher and the financial sponsor of the research.

Requirement 5

Advertisements must not unduly glamorise products or services, or prey on the vulnerability of particular audiences.

Requirement 6

Advertisements may include reference to sponsorship of any government agency, hospital or other facility providing healthcare services, provided that sponsorship is explicitly acknowledged and cannot be misconstrued as an endorsement of a product.

Advertisements may contain or imply an endorsement by individual, or individual groups of, healthcare practitioners in their professional capacity, bodies or associations representing the interests of the health of consumers, conducting or funding medical research or representing health practitioners, provided that the endorsement does not in any way imply endorsement by any government agency, hospital or other facility providing healthcare services. However, such endorsements must have prior consent from the endorser, be authenticated and the advertisement must contain, prominently displayed, the name of the endorser and acknowledgment of any valuable consideration.

Requirement 7

Testimonials in advertisements, where not prohibited by law, must comply with the Code, be authenticated, genuine, current, typical and acknowledge any valuable consideration.

Requirement 8

Advertisements directed to consumers must not refer directly or by implication to medical devices, or procedures involving medical devices, that are intended to be used and/or administered solely by healthcare practitioners, without approval from the Trans Tasman Therapeutic Products Agency.

PART B3

ADVERTISING DIRECTED TO HEALTHCARE PRACTITIONERS

Preface

The Advertising Principles and relevant Advertising Requirements included in this part of the Code apply specifically to advertisements for therapeutic products that are directed to healthcare practitioners.

PART A of the Code applies to the advertising of therapeutic products directed both to consumers and to healthcare practitioners.

All advertising directed to healthcare practitioners must encourage the responsible and quality use of therapeutic products. Because healthcare practitioners have expert and professional knowledge in their relevant fields, and are able to discriminate between information of value and advertising hyperbole, not all of the Advertising Requirements in Sections B1 and B2 (i.e. advertising directed to consumers) apply.

The following requirements for advertising to healthcare practitioners have been developed jointly by the relevant industry associations in Australia and New Zealand with reference to their existing codes of practice. These requirements will continue to be reflected in the industry association codes. Where applicable, the requirements are the same as those for advertising to consumers.

While the Australia New Zealand Therapeutic Products Advertising Code sets the minimum standard for advertising requirements, additional requirements may be applied to particular industry sectors through the industry association codes. These additional requirements can be found in the individual industry association codes, which also provide additional guidance on the application of these requirements.

Requirement 1

Advertisements must not encourage, or be likely to encourage, inappropriate or excessive use.

Requirement 2

Advertisements must contain the mandatory information to ensure responsible use.

Requirement 3

Advertisements must contain truthful and balanced representations and claims that are valid and have been substantiated, and:

(a) for medicines:

must be consistent with the approved Product Information, or other substantiation of efficacy provided by the sponsor to the Trans Tasman Therapeutic Products Agency;

(b) for medical devices:

must be consistent with the manufacturer's intended purposes, included on the database for therapeutic products maintained by the Trans Tasman Therapeutic Products Agency; and

(c) for exempt therapeutic products:

must be compliant with the Australia New Zealand Therapeutic Products Advertising Code.

Requirement 4

Advertisements must not directly nor by implication, omission, ambiguity or comparison mislead or deceive, or be likely to mislead or deceive.

Claims and representations made in advertisements must be truthful and have been substantiated.

R4.1 An advertisement must not:

- i) contain any claim, statement or implication that the products are safe or that their use cannot cause harm or that they have no side effects or risks associated with use;

- ii) contain any claim, statement or implication that it is effective in all cases of a condition;
- iii) contain any claim, statement or implication that it is infallible, unailing, magical, miraculous, or that it is a certain, guaranteed or sure cure;

R4.2 Comparative advertising

Comparative advertising must be balanced and must not be misleading, or likely to be misleading, either about the product advertised or any therapeutic products, or classes of therapeutic products, with which comparison is made.

Comparative advertisements must not be disparaging but must be factual, fair and already substantiated, referenced to the source and reflective of the body of available evidence.

R4.3 Substantiating Data

Any information used to support a claim must include sufficient detail, and be of adequate quality, to allow evaluation of the validity of results and hence of the claim.

Requirement 5

Advertisements must not unduly glamorize products or services.

Requirement 6

Advertisements may include reference to sponsorship of any government agency, hospital or other facility providing healthcare services, provided that sponsorship is explicitly acknowledged and cannot be misconstrued as an endorsement of a product.

Advertisements may contain or imply an endorsement by individual, or individual groups of, healthcare practitioners in their professional capacity, bodies or associations representing the interests of the health of consumers, conducting or funding medical research or representing health practitioners, provided that the endorsement does not in any way imply endorsement by any government agency, hospital or other facility providing healthcare services. However, such endorsements must have prior consent from the endorser, be authenticated and the advertisement must contain, prominently displayed, the name of the endorser and acknowledgment of any valuable consideration. Industry codes of practice address appropriate transparency requirements in relation to the funding of research by sponsors.

Requirement 7

Testimonials in advertisements, where not prohibited by law, must comply with the Code, be authenticated, genuine, current, typical and acknowledge any valuable consideration. The use of testimonials in advertisements to promote therapeutic products is acceptable, provided the testimonial:

- is genuine;
- complies with the Code;
- is current;
- has been authenticated; and
- presents the typical case, not the exceptional.

“Current” means that the content of a testimonial must be up to date and hold true at the time of the publication of the advertisement.

“Typical” means that which reflects the characteristics of a group. i.e. a result obtained from the use of a product which would be likely to be attained by most people using the product within the audience to which the advertisement is directed.

The following Advertising Requirement is applicable only to advertising directed to healthcare practitioners

Requirement 9 (medicines)

All communications made by company representatives must comply with the Code. Where the product being advertised is a finished product, therapeutic claims for unlicensed products and unapproved indications must not be made, unless the product is exempt from product licensing.

Whenever a therapeutic claim is made for a product for which the sponsor is required to hold a product licence, a company representative must offer the approved PI, or other data used by the sponsor as the basis for obtaining the product licence for the product.

Whenever a therapeutic claim is made for:

- an active ingredient that may be used in the manufacture of therapeutic products; or
- a product which is exempt from product licensing;

the data used by the supplier to verify the claim must be offered by the company representative. Advertisements directed to healthcare practitioners for extemporaneously compounded therapeutic products (as finished goods which are exempt from product licensing) are required to comply with the Code.

Requirement 9 (medical devices)

The representation of medical devices/diagnostics included on the database for therapeutic products maintained by the Trans Tasman Therapeutic Products Agency must be consistent with the manufacturer’s intended purposes and be consistent with the essential principles for the product.

When requested, the representative must be able to supply a copy of the sponsor's product information consistent with the manufacturer's intended purpose and essential principles.

Claims outside the manufacturer's intended purpose and essential principles must not be made.

For non-therapeutic claims the sponsor must hold substantiating data to support the claims.

THERAPEUTIC SERVICES ADVERTISING CODE

All advertisements for therapeutic services (herein called “therapeutic services”) shall adhere to the Principles and Guidelines set out in this Code. The Code is designed to ensure that advertising for such services will be conducted in a manner which is socially responsible and does not mislead or deceive the consumer. Other ASA Codes may also be relevant. In interpreting the Code emphasis will be placed on the Principles and spirit and intention of the Code. An advertisement which does or does not adhere to the letter of a particular ethic or Guideline nevertheless may or may not be in breach of the Code, depending on its compliance with the Principles and respect of the spirit and intention of the Code. In interpreting standards of advertising of various services there will be reference to the appropriate industry Code of Ethics as it relates to advertising.

DEFINITIONS

“**Appropriate industry Code of Ethics**”; includes any industry or professional code endorsed by the ASA.

“**Therapeutic services**”; are therapeutic, medical or health services or services which claim a therapeutic purpose.

Principle 1 - Advertisements should comply with the laws of New Zealand and the appropriate industry Code of Ethics.

Principle 2 - Advertisements should observe a high standard of social responsibility particularly as consumers rely on therapeutic services for their health and well-being.

Principle 3 - Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

Guidelines

3(a) Therapeutic claims should be factual and able to be proved.

3(b) Advertisements should not have depictions which unduly glamorise the service or portray unrealistic outcomes.

Principle 4 – Any scientific information in an advertisement should be presented in an accurate manner. Scientific terminology should be appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed.

Principle 5 – Advertisements should not claim or imply endorsement by any government agency, professional body or independent agency unless there is prior consent, the endorsement is verifiable and the agency or the body is named.

Guideline

- 5(a) Testimonials, where not prohibited by law, should be valid, true, current, documented and exceptional cases should be represented as such, not as typical. The claims in testimonials should be verifiable.

CODE FOR ADVERTISING VEHICLES

INTRODUCTION

All advertisements for vehicles shall adhere to the Principles and Guidelines set out in this Code. The purpose of the Code is to ensure that advertising of vehicles will be conducted in a manner which is socially and environmentally responsible and does not encourage unsafe practices.

In interpreting the Code emphasis will be placed on the compliance with both the Principles and the spirit and intention of the Code. The Guidelines are examples, by no means exhaustive of how the Principles are to be interpreted and applied. Upon complaint the Advertising Standards Complaints Board is vested with discretion to ensure a commonsense outcome and take into account obvious hyperbole and humour.

DEFINITION

“**Vehicle**” includes, but is not restricted to motorised and non-motorised conveyances such as passenger vehicles; trucks; light commercial vehicles; off-road vehicles; motorcycles; all-terrain vehicles (ATV); tractors; bicycles; scooters; skateboards and rollerskates.

Principle 1 - Advertisements should comply with the laws of New Zealand.

Guideline

- 1(a) Advertisements should not demonstrate any action by any road user or vehicle on a public road which would constitute a traffic offence, unless the advertising has the aim of discouraging unlawful practices.

Principle 2 - Advertisements should not encourage unsafe practices.

Guidelines

- 2(a) Advertisements should not glorify excessive speed and /or unsafe driving practices.
- 2(b) Advertisements for all off-road activities should not portray unsafe practices such as cyclists, motorcyclists and ATV drivers not wearing approved safety helmets, nor persons not wearing seatbelts where they are normally worn.
- 2(c) Advertisements should not associate driving with alcohol consumption unless the consumption is clearly after the completion of driving or the advertising has the aim of discouraging unlawful practices.
- 2(d) Advertisements should not depict unsafe road practices which may not breach the law but are not desirable from a safety point of view, for example skateboarders or rollerskaters on the roadway.

Principle 3 - Advertisements portraying off-road driving should observe a due sense of responsibility to the environment.

Guideline

- 3(a) Advertisements should not encourage environmental damage to areas of significant conservation value. These may include beaches, dunes, riverbeds, wetlands, tussocklands, lake margins and estuaries.

Note: Advertisers are able to seek advice from the New Zealand Transport Agency on matters relating to safety and roadside advertising.

CODE FOR ADVERTISING OF WEIGHT MANAGEMENT

Introduction

All advertisements for weight management shall adhere to the Principles and Guidelines set out in this Code. The purpose of the Code is to ensure that advertising of weight management goods or services will be conducted in a manner which is socially responsible and does not mislead or deceive the consumer.

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

This Code applies to weight management products (including services) which include nutrition and exercise as features.

The Code does not apply to advertisements with therapeutic claims that advertise medicines, dietary supplements or medical devices; in those cases the Code for Therapeutic Advertising applies.

DEFINITION

For the purposes of this Code:

“Appropriate industry standards” are industry standards, guidelines or codes set by a recognised industry group and endorsed by the ASA.

Principle 1 - Advertisements should comply with the laws of New Zealand and appropriate industry standards.

Guidelines

- 1(a) There are a number of laws which can affect slimming or weight loss advertising. Attention is drawn to the Medicines Act 1981, Medicines Regulations 1984, Food Act 1981, Food Regulations 1984 and the Dietary Supplement Regulations 1985.
- 1(b) Particular attention is drawn to Section 4(e) of the Medicines Act 1981 which includes in the definition of ‘therapeutic purpose’ “Altering the shape, structure, size or weight of the human body”. The effect of this is that a food, tablet or substance which reduces weight is classified as a “medicine” and an apparatus as a “medical device”, thus bringing them within the ambit of the Medicines Act 1981. In such cases the Code for Therapeutic Advertising applies. Weight reduction programmes may not be subject to the Medicines Act 1981, but are subject to this Code. Advice from the Therapeutic Advertising Pre-vetting Services (TAPS) is strongly recommended.

Principle 2 - Advertisements should observe a high standard of social responsibility.

Guidelines

- 2(a) Advertisements should not suggest or imply that consumers should have a diet which is not nutritionally well-balanced nor advertise a diet plan with less than 3500 kilojoules (800 calories) per day.
- 2(b) Advertisements should not promise unrealistic or unsafe rapid weight reduction.
- 2(c) Advertisements should neither be directed at, nor have strong or evident appeal to people under the age of 18 in particular.
- 2(d) Advertisements should not suggest that it is desirable to be underweight or use underweight models. Models of generally accepted height/weight ratios should be used.
- 2(e) Advertisements for intensive exercise programmes should encourage users to check with a doctor or professional advisor before commencing.
- 2(f) Advertisements should not imply that the advertised product is a substitute for a balanced diet.

Principle 3 - Advertisements should not by implication, omission, ambiguity or exaggerated claim, mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

Guidelines

- 3(a) Claims for specific weight loss or reduction in body measurement should be typical, realistic, factual and able to be proved.
- 3(b) Advertisements should not have depictions which unduly glamorise the product or portray unrealistic outcomes.
- 3(c) Claims such as “Eat as much as you like”, “Eat, eat, eat” or “Eat and get slim” are unacceptable.

Principle 4 - Advertisements should not claim or imply endorsement by any government agency, professional body, independent agency or person unless there is prior consent and the endorsement verifiable.

Guideline

- 4(a) Testimonials, where not prohibited by law should be valid, current, documented and exceptional cases should be represented as such, not as typical. The claims in testimonials should be verifiable.

Note: Current law effectively prohibits testimonials (Section 58(1)(c) Medicines Act) in a large number of cases, so extreme care must be taken.



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