

Australian Association of National Advertisers

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Australian Film and Literature Classification Scheme

Appendix 1

Outdoor Media Association's Code of Ethics

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

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

Principles for doing business with advertisers:

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

Principles of doing business with regulators:

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

Responsibilities towards the community:

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

Responsibilities towards the environment:

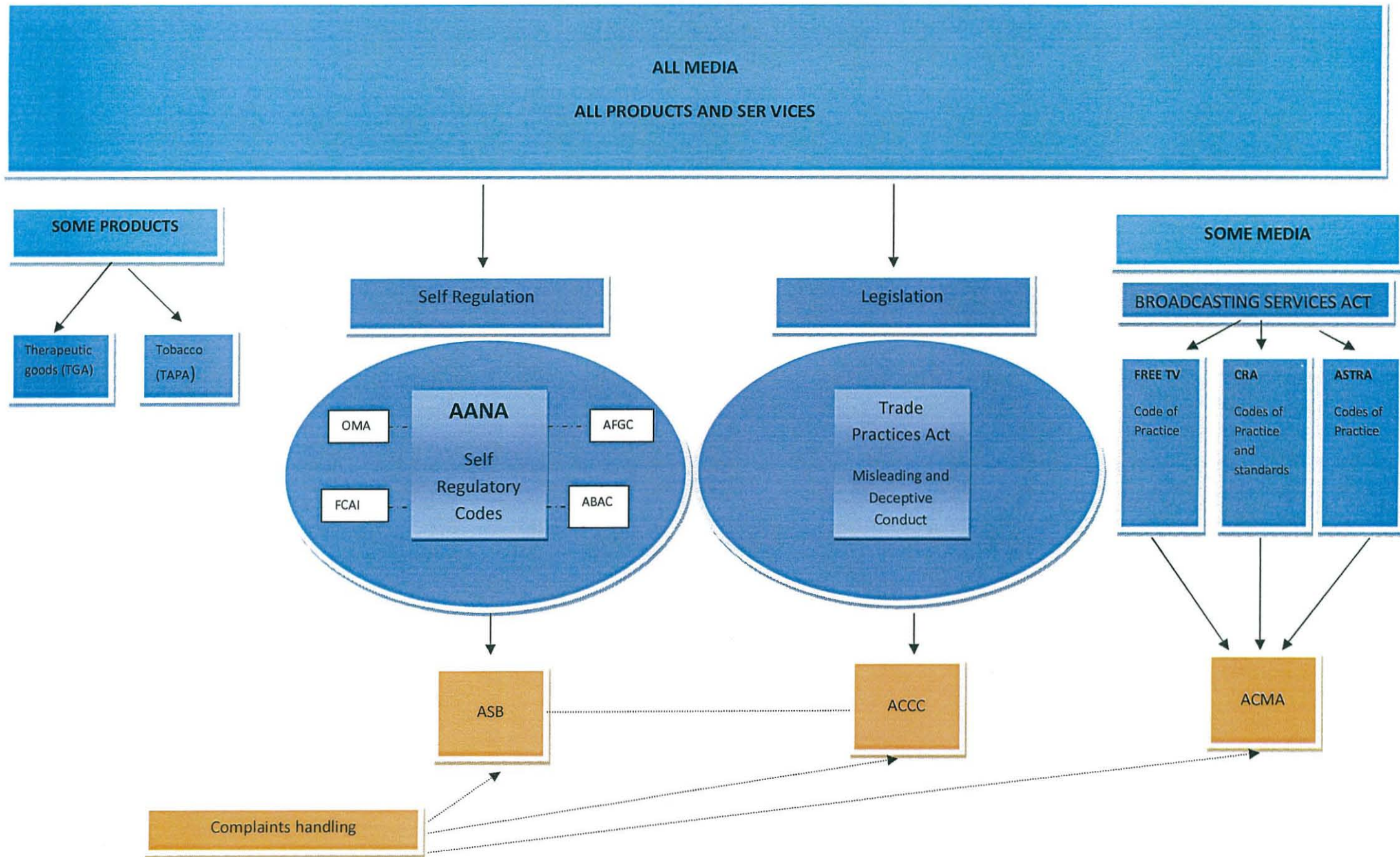
1. We are committed to protecting natural scenic beauty, parks, forests and places of historic value by locating our displays near populous areas as permitted by legislation.
2. We are committed to reducing the impact of our business on the built and natural environment through initiatives identified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

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Appendix 2

APPENDIX 2



Australian Association of National Advertisers

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Australian Film and Literature Classification Scheme

Appendix 3

This Code has been adopted by the AANA as part of advertising and marketing self-regulation. The object of this Code is to ensure that advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and fair sense of responsibility to competitors.

In this Code, unless the context otherwise requires:

Advertising or Marketing Communication means:

- (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or
- (b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

Advertising or Marketing Communications to Children

means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product.

Advertising Standards Board

means the board appointed by the Advertising Standards Bureau from time to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

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

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

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

Prevailing Community Standards means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to Advertising or Marketing Communications.

1. SECTION 1

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

2. SECTION 2

- 2.1 Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.

AANA Code of Ethics

- 2.2 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.
- 2.3 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.
- 2.4 Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising & Marketing Communications to Children applies.
- 2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.
- 2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.
- 2.7 Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertising or marketing communications to which the Federal Chamber of Automotive Industries Code of Practice applies.
- 2.8 Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code.

An outline of the process by which complaints can be made against this Code follows.

ADVERTISING STANDARDS BOARD COMPLAINTS PROCESS

Receipt of complaints

The Advertising Standards Board (**Board**) will normally only accept written complaints – by post or facsimile or via the online complaints form on the Advertising Standard Bureau (**ASB**) website (www.adstandards.com.au).

All complaints received are promptly assessed as to their appropriateness for submission to the Board for determination. The Secretariat replies to all complainants informing them of the status of their complaint.

If the information provided in the letter of complaint is insufficient (in particular, if it fails to adequately identify the advertiser or marketer, product or nature of complaint) then more information is sought from the complainant.

Complaints are not forwarded to the Board if:

- The commercial communication complained about has been previously considered – however all complaints are referred to the advertiser or marketer for its consideration.
- The commercial communication complained about does not constitute an Advertising or Marketing Communication for the purposes of one of the codes ASB administers being section 2 of the AANA Code of Ethics, the AANA Food & Beverages Advertising & Marketing Communications Code, the AANA Code for Advertising & Marketing Communications to Children or the Federal Chamber of Automotive Industries' Voluntary Code of Practice for Motor Vehicle Advertising (**Codes**).

- The complaint would involve determining questions of law or questions of truth and accuracy (other than as provided for under clause 2.2 of the AANA Code for Advertising & Marketing Communications to Children and under clauses 2.1, 2.4 and 3.1 of the AANA Food & Beverages Advertising & Marketing Communications Code).
- The complaint involves trivial issues.
- The complaint involves public advocacy issues.
- The commercial communication complained about is local advertising.
- The commercial communication complained about is the subject of litigation or an order by a court or government agency.
- The complaint is about unlawful business practices.
- The commercial communication complained about has been withdrawn or discontinued before challenge.
- The complaint is about highly technical issues.
- The complaint is about label directions or basic performance of products and services not related to advertising or marketing claims.
- The complaint involves issues covered by specific industry codes, such as:

- slimming/weight management products and services;
- therapeutic goods;
- alcoholic beverages; except in the case of motor vehicles.

An anonymous complaint is not sufficient to initiate a formal complaint. It can however be included as part of a complaint that has already been raised or is subsequently raised. To facilitate this, anonymous complaints are kept on file.

Initiating complaints

A single written complaint is sufficient to initiate a formal complaint.

Advising Advertiser/Marketer of complaints

Once a complaint has been accepted by the ASB, the advertiser/marketer is notified about the complaint, provided with a copy of the complaint and is requested to provide a written response and copies of the relevant advertising or marketing communication within sufficient time to allow the complaint to be dealt with at the next meeting of the Board.

If an advertiser/marketer fails to provide a response to the complaint within the specified period or any extension of it, the Board may consider the complaint and the advertising or marketing communication in question without the advertiser/marketer response.

Complaint resolution

The Board meets twice a month to consider complaints received. The Board also meets between meetings, usually by teleconference, if the Secretariat considers that a matter should be considered as a matter of urgency.

The position of Chair is rotated among Board members on a meeting by meeting basis. The Chair for each meeting during a year is generally determined at the beginning of each year but can be varied to accommodate changes in individual schedules.

Board members must disclose any personal interest in a matter that is the subject of a complaint. The member concerned must withdraw from contributing to the debate and decision or case report approval in relation to those complaints.

If a Board member's duties to another board or organisation require that they breach their duty of loyalty or confidentiality to the Board for a period of time, then the member must disclose this position to the Board.

A general conflict with the Board would require that the member withdraw from their duties to the Board during the period that the conflict continues.

The Board reaches its decision by way of simple majority. In the event of a tied vote, the Chair has a casting vote.

In relation to individual complaints, Board members will consider:

- the complaint(s) received;
- all relevant advertising/marketing communications submitted by the advertiser/marketer;
- the advertiser/marketer's response (if any);
- all relevant provisions of the Codes; and
- any other relevant supporting materials or other representations or submissions.

The Board considers complaints in light of all of the Codes and accordingly may apply any part of those Codes in reaching a determination. The Board is not limited, in its considerations, to issues raised by the complaint.

If the Board is unable to reach a decision until it is in possession of additional information, it can defer its determination until a future date.

Decisions the Board can make

Determination – complaint upheld

A complaint is upheld if the Board determines there is a breach of one of the Codes.

Determination – Complaint dismissed

A complaint is dismissed if the Board determines there is no breach of any of the Codes.

Notifying advertisers/marketers and complainants of the outcome of the Board's decision

Following the Board's determination, a draft case report is promptly prepared by the ASB and submitted to the Chair for approval. Following receipt of Chair approval, the ASB notifies the advertiser/marketer of the outcome and sends the advertiser/marketer a copy of the draft case report. This usually occurs between 8 and 10 business days of the Board decision. The advertiser/marketer is requested to advise the Board whether it agrees to modify or discontinue the advertising or marketing communication (**Advertiser Statement**) within 5 business days of the covering letter advising of the outcome and enclosing the draft case report. The advertiser/marketer is also advised of the opportunity to include an Advertiser's Statement in the case report.

If an advertising or marketing communication is found to breach a provision of the Codes and the advertiser/marketer does not respond to the opportunity to modify or discontinue the advertising or marketing communication within the allowed time frame, the Board will:

- If appropriate, refer the case report to the appropriate government agency;
- Include the advertiser/marketer's failure to respond in the case report;
- Forward the case report to media proprietors; and
- Post the case report on the ASB's website.

Publish case report

Within 10 business days of the Board's decision, all finalised case reports are made publicly available.

AANA Code of Ethics

Review

If a complaint is upheld, the advertiser/marketer can ask for a review of the Board's decision. If a complaint is dismissed, the original complainant can ask for a review of the Board's decision. There are 3 grounds on which a request for review may be made:

- Where new or additional relevant evidence which could have a significant bearing on the decision becomes available;
- Where there is a substantial flaw in the Board's decision; or
- Where there was a substantial flaw in the process by which the decision was made.

Any request for review should contain a full statement of the grounds, be addressed to the Independent Reviewer of ASB decisions c/o the ASB and be sent within 10 business days of the date of the ASB's letter of notification of a decision. The non-refundable cost of a review is \$500 for complainants, \$1000 for complainants who are Incorporated Associations and \$2000 for advertisers/marketers.

Requests for review will be considered by the Independent Reviewer. If the Independent Reviewer accepts the request for review, the Independent Reviewer will invite further comments on the review from the party who did not request the review.

Unless exceptional circumstances apply, within 10 business days of receipt of the request, the Independent Reviewer will make a recommendation (including reasons for the decision/recommendation and copies of any material relevant to the recommendation) to the Board, stating whether the decision should be reviewed, amended or confirmed. This recommendation will remain confidential until the Board's decision is published.

The Board must consider, but is not obliged to accept the Independent Reviewer's recommendation. Following reconsideration by the Board a new case report will be prepared. The Board's decision in the new case report is final and not capable of further review.

August 2009

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Appendix 4

Code for Advertising & Marketing Communications to Children

This Code has been adopted by the AANA as part of advertising and marketing self regulation. The object of this Code is to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing to children in Australia.

1. DEFINITIONS

In this Code, unless the context otherwise requires:

Advertising or Marketing Communication means:

- (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or
- (b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

Advertising or Marketing Communications to Children

means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product.

Advertising Standards Board

means the board appointed by the Advertising Standards Bureau from time

to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

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

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

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

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

Premium means anything offered free or at a reduced price and which is conditional upon the purchase of a regular Children's Food or Beverage Product.

Prevailing Community Standards means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to Advertising or Marketing Communications to Children.

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

2. CODE OF PRACTICE

2.1 Prevailing Community Standards

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

2.2 Factual Presentation

Advertising or Marketing Communications to Children:

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

2.3 Placement

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

2.4 Sexualisation

Advertising or Marketing Communications to Children:

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

2.5 Safety

Advertising or Marketing Communications to Children:

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

2.6 Social Values

Advertising or Marketing Communications to Children:

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

2.7 Parental Authority

Advertising or Marketing Communications to Children:

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

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

2.8 Price

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

2.9 Qualifying Statements

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

2.10 Competitions

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

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

2.11 Popular Personalities

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

2.12 Premiums

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

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

2.13 Alcohol

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

2.14 Privacy

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

2.15 Food and Beverages

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

2.16 AANA Code of Ethics

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

An outline of the process by which complaints can be made against this Code follows.

ADVERTISING STANDARDS BOARD COMPLAINTS PROCESS

Receipt of complaints

The Advertising Standards Board (**Board**) will normally only accept written complaints – by post or facsimile or via the online complaints form on the Advertising Standard Bureau (**ASB**) website (www.adstandards.com.au).

All complaints received are promptly assessed as to their appropriateness for submission to the Board for determination. The Secretariat replies to all complainants informing them of the status of their complaint.

If the information provided in the letter of complaint is insufficient (in particular, if it fails to adequately identify the advertiser or marketer, product or nature of complaint) then more information is sought from the complainant.

Complaints are not forwarded to the Board if:

- The commercial communication complained about has been previously considered – however all complaints are referred to the advertiser or marketer for its consideration.
- The commercial communication complained about does not constitute an Advertising or Marketing Communication for the purposes of one of the codes ASB administers being section 2 of the AANA Code of Ethics, the AANA Food & Beverages Advertising & Marketing Communications Code, the AANA Code for Advertising & Marketing Communications to Children or the Federal Chamber of Automotive Industries' Voluntary Code of Practice for Motor Vehicle Advertising (**Codes**).

- The complaint would involve determining questions of law or questions of truth and accuracy (other than as provided for under clause 2.2 of the AANA Code for Advertising & Marketing Communications to Children and under clauses 2.1, 2.4 and 3.1 of the AANA Food & Beverages Advertising & Marketing Communications Code).
- The complaint involves trivial issues.
- The complaint involves public advocacy issues.
- The commercial communication complained about is local advertising.
- The commercial communication complained about is the subject of litigation or an order by a court or government agency.
- The complaint is about unlawful business practices.
- The commercial communication complained about has been withdrawn or discontinued before challenge.
- The complaint is about highly technical issues.
- The complaint is about label directions or basic performance of products and services not related to advertising or marketing claims.
- The complaint involves issues covered by specific industry codes, such as:
 - slimming/weight management products and services;
 - therapeutic goods;
 - alcoholic beverages; except in the case of motor vehicles.

An anonymous complaint is not sufficient to initiate a formal complaint. It can however be included as part of a complaint that has already been raised or is subsequently raised. To facilitate this, anonymous complaints are kept on file.

Initiating complaints

A single written complaint is sufficient to initiate a formal complaint.

Advising Advertiser/Marketer of complaints

Once a complaint has been accepted by the ASB, the advertiser/marketer is notified about the complaint, provided with a copy of the complaint and is requested to provide a written response and copies of the relevant advertising or marketing communication within sufficient time to allow the complaint to be dealt with at the next meeting of the Board.

If an advertiser/marketer fails to provide a response to the complaint within the specified period or any extension of it, the Board may consider the complaint and the advertising or marketing communication in question without the advertiser/marketer response.

Complaint resolution

The Board meets twice a month to consider complaints received. The Board also meets between meetings, usually by teleconference, if the Secretariat considers that a matter should be considered as a matter of urgency.

The position of Chair is rotated among Board members on a meeting by meeting basis. The Chair for each meeting during a year is generally determined at the beginning of each year but can be varied to accommodate changes in individual schedules.

Board members must disclose any personal interest in a matter that is the subject of a complaint. The member concerned must withdraw from contributing to the debate and decision or case report approval in relation to those complaints.

If a Board member's duties to another board or organisation require that they breach their duty of loyalty or confidentiality to the Board for a period of time, then the member must disclose this position to the Board.

A general conflict with the Board would require that the member withdraw from their duties to the Board during the period that the conflict continues.

The Board reaches its decision by way of simple majority. In the event of a tied vote, the Chair has a casting vote.

In relation to individual complaints, Board members will consider:

- the complaint(s) received;
- all relevant advertising/marketing communications submitted by the advertiser/marketer;
- the advertiser/marketer's response (if any);
- all relevant provisions of the Codes; and
- any other relevant supporting materials or other representations or submissions.

The Board considers complaints in light of all of the Codes and accordingly may apply any part of those Codes in reaching a determination. The Board is not limited, in its considerations, to issues raised by the complaint.

If the Board is unable to reach a decision until it is in possession of additional information, it can defer its determination until a future date.

Decisions the Board can make

Determination – complaint upheld

A complaint is upheld if the Board determines there is a breach of one of the Codes.

Determination – Complaint dismissed

A complaint is dismissed if the Board determines there is no breach of any of the Codes.

Notifying advertisers/marketers and complainants of the Outcome of the Board's decision

Following the Board's determination, a draft case report is promptly prepared by the ASB and submitted to the Chair for approval. Following receipt of Chair approval, the ASB notifies the advertiser/marketer of the outcome and sends the advertiser/marketer a copy of the draft case report. This usually occurs between 8 and 10 business days of the Board decision. The advertiser/marketer is requested to advise the Board whether it agrees to modify or discontinue the advertising or marketing communication (**Advertiser Statement**) within 5 business days of the covering letter advising of the outcome and enclosing the draft case report. The advertiser/marketer is also advised of the opportunity to include an Advertiser's Statement in the case report.

If an advertising or marketing communication is found to breach a provision of the Codes and the advertiser/marketer does not respond to the opportunity to modify or discontinue the advertising or marketing communication within the allowed time frame, the Board will:

- If appropriate, refer the case report to the appropriate government agency;
- Include the advertiser/marketer's failure to respond in the case report;
- Forward the case report to media proprietors; and
- Post the case report on the ASB's website.

Publish case report

Within 10 business days of the Board's decision, all finalised case reports are made publicly available.

Review

If a complaint is upheld, the advertiser/marketer can ask for a review of the Board's decision. If a complaint is dismissed, the original complainant can ask for a review of

the Board's decision. There are 3 grounds on which a request for review may be made:

- Where new or additional relevant evidence which could have a significant bearing on the decision becomes available;
- Where there is a substantial flaw in the Board's decision; or
- Where there was a substantial flaw in the process by which the decision was made.

Any request for review should contain a full statement of the grounds, be addressed to the Independent Reviewer of ASB decisions c/o the ASB and be sent within 10 business days of the date of the ASB's letter of notification of a decision. The non-refundable cost of a review is \$500 for complainants, \$1000 for complainants who are Incorporated Associations and \$2000 for advertisers/marketers.

Requests for review will be considered by the Independent Reviewer. If the Independent Reviewer accepts the request for review, the Independent Reviewer will invite further comments on the review from the party who did not request the review.

Unless exceptional circumstances apply, within 10 business days of receipt of the request, the Independent Reviewer will make a recommendation (including reasons for the decision/recommendation and copies of any material relevant to the recommendation) to the Board, stating whether the decision should be reviewed, amended or confirmed. This recommendation will remain confidential until the Board's decision is published.

The Board must consider, but is not obliged to accept the Independent Reviewer's recommendation. Following reconsideration by the Board a new case report will be prepared. The Board's decision in the new case report is final and not capable of further review.

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Appendix 5

Practice Guide Managing Images of Children and Young People

INTRODUCTION

Concerns about the risks posed to children and young people, directly and indirectly, through the use of their images, particularly on the internet and other electronic media, have been voiced by governments and the community both internationally and in Australia.

AANA is committed to promoting best industry practice that facilitates a safe environment for children and young people. Fundamental to this commitment, is that advertisers/marketers take all reasonable steps to protect children and young people from unintended and inappropriate use of their images created for advertising or marketing communications.

AANA acknowledges and respects that children and young people:

- have a right to privacy and protection from exploitation or abuse;
- have a right to freedom of expression and involvement in the media, including advertising and marketing; and
- should not have their rights unduly restrained because of the improper actions of others.

As the interests and welfare of children and young people are paramount AANA encourages advertisers and marketers to be aware of the potential risks and take appropriate steps to address them.

This guide should be interpreted with reference to relevant Commonwealth, State and Territory legislation and regulation. For example, the circumstances where children and young people may require parental consent in addition to their own consent vary between the States and Territories and in regard to activities undertaken i.e. the requirements for working with children and censorship laws.

The information provided in this guide is of a general nature. The guide should be applied by the user with consideration of the relevance to their particular circumstances and exercise of the users own skills and care in relation to any material contained therein.

THE PRACTICE APPROACH

Definition

Image – means a representation of the likeness of a person captured, created and/or modified in any medium, including on film, electronic or digital technology.

Key Principles

- Consent • Dignity • Security/Privacy

CONSENT

Parents/guardians, children and young people have a right to decide whether the child or young person's image is to be taken and how that image may be used.

1. Parents/guardians, children and young people each:
 - a. must understand the nature and intended outcome of the advertising or marketing communication.
 - b. must be made aware of the way in which the image is to be used and how long the image will be displayed and distributed including on the internet and mobile technology.
 - c. must provide consent for the child or young person's image to be taken and used*.

***Notes:** It is a matter of commercial judgement whether written or verbal consent is required. For persons 15 years of age and under parent/guardian written consent is required as to the nature of full or partial nudity. Consent is not required for images of children/young people captured incidentally and where they were not employed by or on behalf of, or did not take direction from, or on behalf of, the advertiser/marketer in the creation of the image.

DIGNITY

Advertisers/marketers must respect the integrity of children and young people by taking action appropriate to their age and maturity to protect them from ill-treatment and exploitation, including sexual exploitation.

2. Advertisers and marketers must take reasonable steps to:
 - a. ensure a child or young person is always portrayed in a dignified and respectful manner.
 - b. clearly outline what is considered appropriate behaviour and content to those taking, creating or modifying images (eg photographer).

c. ensure that images of children and young people are not sexually exploitative in nature, nor open to obvious misinterpretation and misuse.

d. ensure when working with a person 15 years of age and under, and where they are to be fully or partly naked, that the parent/guardian commits to direct supervision of that person.**

****Note:** Persons 16 years and over may not require parental consent for a range of matters including employment.

SECURITY/PRIVACY

Children and young people have the right to be protected from being hurt - physically or mentally.

3. Advertisers and marketers must take reasonable steps to:
 - a. ensure that images are taken/created by authorised persons or obtained from sources where this can be ascertained.
 - b. clearly outline in a written contract to persons contracted or paid to take images: who retains the rights to the images; who retains the images taken, including arrangements made for negatives, digital files and proofs; and outline any restrictions for use and sale.
 - c. ensure all images of children are securely stored.
 - d. ensure that no identifying or contact information of the child or young person is used in the publication of, or accompanies the circulation/distribution, of images.
 - e. apply technological measures, where appropriate, to reduce the ability for unauthorised access, modification and copying of electronic/digital images.***
 - f. provide details to parents/guardians, children or young people of who to contact and what to do if concerns or complaints of inappropriate behaviour or image use are raised.
4. Advertisers/marketers should consider using adult models, mannequins, illustrations or animation if appropriate for the circumstances.

*****Note:** Examples include, but are not limited to, disabling the 'right mouse click' function, encoding with digital watermark, blocking unauthorised access to source data, tagging information in metadata.

Australian Association of National Advertisers

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Australian Film and Literature Classification Scheme

Appendix 6

Food & Beverages Advertising & Marketing Communications Code

This Code has been adopted by the AANA as part of advertising and marketing self-regulation. The object of this Code is to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing food and beverage products in Australia.

1. DEFINITIONS

In this Code, unless the context otherwise requires:

Advertising or Marketing Communication means:

- (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or
- (b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

Advertising or Marketing Communications to Children

means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for a Children's Food or Beverage Product.

Advertising Standards Board

means the board appointed by the Advertising Standards Bureau from time to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

Average Consumer means a regular adult family shopper able to compare products by label-listed definition.

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

Children's Food or Beverage

Product means any food or beverage product other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code, which is targeted toward and has principal appeal to Children.

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

Food or Beverage Products means any food or beverage products other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code.

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

Premium means anything offered free or at a reduced price and which is conditional upon the purchase of a regular Product.

Prevailing Community Standards

means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of Food or Beverage Products taking into account, at a minimum, the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.

2. ADVERTISING OR MARKETING COMMUNICATIONS FOR FOOD OR BEVERAGE PRODUCTS

- 2.1 Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.

2.2 Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.

2.3 Advertising or Marketing Communications for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.

2.4 Advertising or Marketing Communications for Food or Beverage Products which include nutritional or health related comparisons shall be represented in a non misleading and non deceptive manner clearly understandable by an Average Consumer.

2.5 Advertising or Marketing Communications for Food or Beverage Products shall not make reference to consumer taste or preference tests in any way that might imply statistical validity if there is none, nor otherwise use scientific terms to falsely ascribe validity to advertising claims.

2.6 Advertising or Marketing Communications for Food or Beverage Products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits, shall be specific to the promoted product/s and accurate in all such representations.

2.7 Advertising or Marketing Communications for Food or Beverage Products appearing within segments of media devoted to general and sports news and/or current affairs, shall not use associated sporting, news or current affairs personalities, live or animated, as part of such Advertising and/or Marketing Communications without clearly distinguishing between commercial promotion and editorial or other program content.

2.8 Advertising or Marketing Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such.

2.9 Advertising or Marketing Communications for Food and/or Beverage Products must comply with the AANA Code of Ethics and the AANA Code for Advertising & Marketing Communications to Children.

3. ADVERTISING AND CHILDREN

3.1 Advertising or Marketing Communications to Children shall be particularly designed and delivered in a manner to be understood by those Children, and shall not be misleading or deceptive or seek to mislead or deceive in relation to any nutritional or health claims, nor employ ambiguity or a misleading or deceptive sense of urgency, nor feature practices such as price minimisation inappropriate to the age of the intended audience.

3.2 Advertising or Marketing Communications to Children shall not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered, acting reasonably, as excessive quantities of the Children's Food or Beverage Product/s.

3.3 Advertising or Marketing Communications to Children shall not state nor imply that possession or use of a particular Children's Food or Beverage Product will afford physical, social or psychological advantage over other Children, or that non possession of the Children's Food or Beverage Product would have the opposite effect.

3.4 Advertising or Marketing Communications to Children shall not aim to undermine the role of parents or carers in guiding diet and lifestyle choices.

3.5 Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular Children's Food or Beverage Products for them.

3.6 Advertising or Marketing Communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Product/s being offered.

An outline of the process by which complaints can be made against this Code follows.

ADVERTISING STANDARDS BOARD COMPLAINTS PROCESS

Receipt of complaints

The Advertising Standards Board (**Board**) will normally only accept written complaints – by post or facsimile or via the online complaints form on the Advertising Standard Bureau (**ASB**) website (www.adstandards.com.au).

All complaints received are promptly assessed as to their appropriateness for submission to the Board for determination. The Secretariat replies to all complainants informing them of the status of their complaint.

If the information provided in the letter of complaint is insufficient (in particular, if it fails to adequately identify the advertiser or marketer, product or nature of complaint) then more information is sought from the complainant.

Complaints are not forwarded to the Board if:

- The commercial communication complained about has been previously considered – however all complaints are referred to the advertiser or marketer for its consideration.
- The commercial communication complained about does not constitute an Advertising or Marketing Communication for the purposes of one of the codes ASB administers being section 2 of the AANA Code of Ethics, the AANA Food & Beverages Advertising & Marketing Communications Code, the AANA Code for Advertising & Marketing Communications to Children or the Federal Chamber of Automotive Industries' Voluntary Code of Practice for Motor Vehicle Advertising (**Codes**).

- The complaint would involve determining questions of law or questions of truth and accuracy (other than as provided for under clause 2.2 of the AANA Code for Advertising & Marketing Communications to Children and under clauses 2.1, 2.4 and 3.1 of the AANA Food & Beverages Advertising & Marketing Communications Code).
- The complaint involves trivial issues.
- The complaint involves public advocacy issues.
- The commercial communication complained about is local advertising.
- The commercial communication complained about is the subject of litigation or an order by a court or government agency.
- The complaint is about unlawful business practices.
- The commercial communication complained about has been withdrawn or discontinued before challenge.
- The complaint is about highly technical issues.
- The complaint is about label directions or basic performance of products and services not related to advertising or marketing claims.
- The complaint involves issues covered by specific industry codes, such as:
 - slimming/weight management products and services;
 - therapeutic goods;
 - alcoholic beverages; except in the case of motor vehicles.

An anonymous complaint is not sufficient to initiate a formal complaint. It can however be included as part of a complaint that has already been raised or is subsequently raised. To facilitate this, anonymous complaints are kept on file.

Initiating complaints

A single written complaint is sufficient to initiate a formal complaint.

Advising Advertiser/Marketer of complaints

Once a complaint has been accepted by the ASB, the advertiser/marketer is notified about the complaint, provided with a copy of the complaint and is requested to provide a written response and copies of the relevant advertising or marketing communication within sufficient time to allow the complaint to be dealt with at the next meeting of the Board.

If an advertiser/marketer fails to provide a response to the complaint within the specified period or any extension of it, the Board may consider the complaint and the advertising or marketing communication in question without the advertiser/marketer response.

Complaint resolution

The Board meets twice a month to consider complaints received. The Board also meets between meetings, usually by teleconference, if the Secretariat considers that a matter should be considered as a matter of urgency.

The position of Chair is rotated among Board members on a meeting by meeting basis. The Chair for each meeting during a year is generally determined at the beginning of each year but can be varied to accommodate changes in individual schedules.

Board members must disclose any personal interest in a matter that is the subject of a complaint. The member concerned must withdraw from contributing to the debate and decision or case report approval in relation to those complaints.

If a Board member's duties to another board or organisation require that they breach their duty of loyalty or confidentiality to the Board for a period of time, then the member must disclose this position to the Board.

A general conflict with the Board would require that the member withdraw from their duties to the Board during the period that the conflict continues.

The Board reaches its decision by way of simple majority. In the event of a tied vote, the Chair has a casting vote.

In relation to individual complaints, Board members will consider:

- the complaint(s) received;
- all relevant advertising/marketing communications submitted by the advertiser/marketer;
- the advertiser/marketer's response (if any);
- all relevant provisions of the Codes; and
- any other relevant supporting materials or other representations or submissions.

The Board considers complaints in light of all of the Codes and accordingly may apply any part of those Codes in reaching a determination. The Board is not limited, in its considerations, to issues raised by the complaint.

If the Board is unable to reach a decision until it is in possession of additional information, it can defer its determination until a future date.

Decisions the Board can make

Determination – complaint upheld

A complaint is upheld if the Board determines there is a breach of one of the Codes.

Determination – Complaint dismissed

A complaint is dismissed if the Board determines there is no breach of any of the Codes.

Notifying advertisers/marketers and complainants of the Outcome of the Board's decision

Following the Board's determination, a draft case report is promptly prepared by the ASB and submitted to the Chair for approval. Following receipt of Chair approval, the ASB notifies the advertiser/marketer of the outcome and sends the advertiser/marketer a copy of the draft case report. This usually occurs between 8 and 10 business days of the Board decision. The advertiser/marketer is requested to advise the Board whether it agrees to modify or discontinue the advertising or marketing communication (**Advertiser Statement**) within 5 business days of the covering letter advising of the outcome and enclosing the draft case report. The advertiser/marketer is also advised of the opportunity to include an Advertiser's Statement in the case report.

If an advertising or marketing communication is found to breach a provision of the Codes and the advertiser/marketer does not respond to the opportunity to modify or discontinue the advertising or marketing communication within the allowed time frame, the Board will:

- If appropriate, refer the case report to the appropriate government agency;
- Include the advertiser/marketer's failure to respond in the case report;
- Forward the case report to media proprietors; and
- Post the case report on the ASB's website.

Publish case report

Within 10 business days of the Board's decision, all finalised case reports are made publicly available.

Review

If a complaint is upheld, the advertiser/marketer can ask for a review of the Board's decision. If a complaint is dismissed, the original complainant can ask for a review of

the Board's decision. There are 3 grounds on which a request for review may be made:

- Where new or additional relevant evidence which could have a significant bearing on the decision becomes available;
- Where there is a substantial flaw in the Board's decision; or
- Where there was a substantial flaw in the process by which the decision was made.

Any request for review should contain a full statement of the grounds, be addressed to the Independent Reviewer of ASB decisions c/o the ASB and be sent within 10 business days of the date of the ASB's letter of notification of a decision. The non-refundable cost of a review is \$500 for complainants, \$1000 for complainants who are Incorporated Associations and \$2000 for advertisers/marketers.

Requests for review will be considered by the Independent Reviewer. If the Independent Reviewer accepts the request for review, the Independent Reviewer will invite further comments on the review from the party who did not request the review.

Unless exceptional circumstances apply, within 10 business days of receipt of the request, the Independent Reviewer will make a recommendation (including reasons for the decision/recommendation and copies of any material relevant to the recommendation) to the Board, stating whether the decision should be reviewed, amended or confirmed. This recommendation will remain confidential until the Board's decision is published.

The Board must consider, but is not obliged to accept the Independent Reviewer's recommendation. Following reconsideration by the Board a new case report will be prepared. The Board's decision in the new case report is final and not capable of further review.

August 2009

Australian Association of National Advertisers

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Australian Film and Literature Classification Scheme

Appendix 7

Food & Beverages Advertising & Marketing Communications Code

Practice Note

This Practice Note is an attachment to the *AANA Food & Beverages Advertising & Marketing Communications Code* as a guide to interpretation only. The interpretations offered are based on the original intent of the Code, and may be expanded by the AANA Board as considered necessary including on the advice of the Advertising Standards Bureau as informed by the experience of public complaint adjudication by the Advertising Standards Board.

DEFINITIONS & INTERPRETATIONS

Advertising or Marketing Communications - Shall not include material that is exhibited without financial consideration, such as television station promotions of future programs.

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

Children - shall be regarded as persons of 14 years and under, in accord with the established practice for television, although the Board shall be cognisant that some sectors of the food & beverages industry have adopted the age of secondary school entry as their cut-off point for advertising or marketing communications.

PART 2 – ADVERTISING OR MARKETING COMMUNICATIONS FOR FOOD OR BEVERAGE PRODUCTS

Section 2.1

The Board will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

In testing the requirement that an advertising or marketing communication should be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.

In testing the requirement that a advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Board will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an

advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.

Thus, a advertising or marketing communication may make reference to one or more of the nutritional values or health benefits of a product but such references must be accurate and appropriate to the level of understanding of the target audience, and must not misleadingly represent the overall nutritional or health benefits of the product

Some complaints made under this Code that the Board is better able to determine under the broader aspects of the *AANA Code of Ethics* will be considered under that Code eg complaints about matters such as language, sex and violence.

Section 2.2

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

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

- In testing whether an advertising or marketing communication undermines the importance of a healthy lifestyle, the Board will consider whether the communication is disparaging of healthy foods or food choices or disparaging of physical exercise.

Such disparagement need not be explicit, and the Board will consider the message that is likely to be taken by the average consumer within the target market of the communication.

- In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.

The Board will also consider the age of the person shown in association with the product, recognising for example, that a teenage male may often consume more than a female or younger child and this may not be a representation that encourages excess consumption in the situation portrayed.

Section 2.3

This provision is intended to be triggered by the Board when considering that an average consumer, acting reasonably, might consider statements made within an advertising or marketing communication as health or nutrition claims.

In testing whether this provision is properly triggered, the Board will apply its view of what an average consumer within the target market, might reasonably take from a communication.

Having considered that statements made within an advertisement might reasonably be taken by an average consumer as health or nutrition claims, the Board will rely on substantiation provided by the advertiser and/or appropriate expert or professional advice as to whether such claims can be properly supported by scientific evidence meeting the requirements of the Food Standards Code.

Complaints upheld on this basis, and where the Board considers the product involves a risk to public safety, may be referred to the appropriate food regulatory enforcement body.

Section 2.4

Rather than a legal test, in testing whether a advertising or marketing communication that it finds likely to be regarded by an average consumer as making a nutritional or health related comparison, either explicitly or by implication, the Board will consider whether, in its view, such comparison is presented in a non-misleading and non-deceptive manner that is clearly understandable by an average consumer.

Section 2.5

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

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

- In testing whether an advertising or marketing communication includes reference to consumer taste or preference tests in a way implying statistical validity when no statistically valid testing had taken place, the Board will consider whether target audiences of the communication would most likely believe that the communication claimed some statistical validity.
- In testing whether an advertising or marketing communication uses scientific terms to falsely ascribe validity to a claim the Board will consider the probable view of the target audience.
- In testing the validity of any associated claim of endorsement by a scientific, health or other organisation, the Board will rely on substantiation by the advertiser. Use of scientific terms in the name of supporting organisations will not automatically constitute a breach of this section.

Section 2.6

In testing whether any claim is included within a advertising or marketing communication, the Board will consider whether an average consumer, acting reasonably, would consider a statement as constituting a claim (i.e. an assertion or contention about the component, as against a 'claim' as defined under other legislation).

Once a claim relating to a material characteristic of a promoted product is established, the Board will need to determine whether such a claim can be substantiated by the product alone, rather than its consumption in combination with other products.

The Board will also need to consider whether the claim is accurate in its representations about the product, and will usually do so on the basis on information provided on the packaging or otherwise provided by the advertiser.

Visual or textual representation of a 'suggested serving' will not, on its own, represent grounds for finding a advertisement or marketing communication in breach of the Code.

Any taste or nutrition claims relating to the product as consumed with an external ingredient (eg cereal consumed with milk) must be clearly distinguished as being a claim for the product as consumed with such external ingredient/s.

Section 2.7

In testing whether the use of a personality contravenes the Code, the Board will consider whether the target audience would see a clear distinction between advertising and editorial or program content.

In testing the matter of target audience, the Board will not rely solely on the advice of the advertiser, but also consider the placement of the material or, in the case of broadcast media, the program within which it appears.

For any advertising or marketing communication directed towards children the Board will:

- consider whether children within the target audience would be likely to see a clear distinction between advertising and editorial or program content.
- exercise particular sensitivity in relation to younger children, taking special notice of target audience and time zones, recognising that while an advertisement might be placed between sections of editorial or program content, or between separate editorial material or programs, this might not represent a clear distinction for very young children.

This section does not apply to 'product placement' within films or programs.

Section 2.8

In its determination of whether any advertising or marketing communication portrays a product as suitable as a substitute for a meal when it is not intended or suitable for such use, the Board will consider whether an average consumer, acting reasonably, would consider that the communication presents the product as suitable as a meal replacement. In determining whether such meal is intended or suitable for use as a meal replacement the Board will apply its view of what a reasonable consumer might think.

Section 2.9

In its determination of all complaints, the Board will automatically consider them under the provisions of the *AANA Code of Ethics* and the *AANA Code for Advertising & Marketing Communications to Children* as well as the *AANA Food & Beverages Advertising & Marketing Communications Code*.

PART 3 – ADVERTISING & CHILDREN

Section 3.1

In its determination of whether any advertising or marketing communication is directed towards children, the Board will apply the same criteria as used in considering complaints under the *AANA Code for Advertising & Marketing Communications to Children*.

The Board will consider the advertiser's stated intent but will also make an evaluation based on its own review of the advertising or marketing communication material and the product being promoted.

This section contains a number of separate obligations. Failure to comply with any one will be considered a breach of the Code. Again, the Board will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether a advertising or marketing communication is properly designed and delivered in a manner to be understood by children comprising the target audience, the Board will apply its own view of what it considers a reasonable child of the target audience would understand from the advertisement.

- In testing whether an advertising or marketing communication is misleading or deceptive or seeks to mislead or deceive in relation to any nutritional or health claims, the Board will form its own view on the information likely to be taken from a communication by a reasonable child of the target audience.
- In testing whether an advertising or marketing communication employs ambiguity, the Board will form its own view of what it considers a reasonable child of the target audience would understand from the communication.
- In testing whether an advertising or marketing communication incorporates a misleading or deceptive sense of urgency, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.
- In testing whether a advertising or marketing communication features practices such as price minimisation inappropriate to the age of the intended audience, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.

Section 3.2

In testing whether an advertising or marketing communication improperly exploits children's imagination in ways which might reasonably be regarded as based upon an intent to encourage excessive consumption, the Board need not rely exclusively on evidence of actual intent, but form its own view of what a reasonable child of the target audience would understand from the communication.

Section 3.3

In testing whether a advertising or marketing communication contains an explicit or implied message that ownership or consumption of a particular product would provide particular positive or negative outcomes, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.

Section 3.4

In testing whether an advertising or marketing communication contains information or depictions that would undermine the role of a parent or other responsible adult in guiding a child's diet and lifestyle, the Board will form its own view of what a reasonable child of the target audience would understand from the communication.

Section 3.5

In considering whether a advertising or marketing communication contains an appeal or encouragement to children to urge parents or other adults to buy particular products for them, the Board will form its own view of what a reasonable child of the target audience would understand from the communication and, in addition, will form a view inclusive of the following pointers:

- Although children may be expected to exercise some preference over the foods and beverages they consume, an advertising or marketing communication must be prepared with a due sense of responsibility and should not directly encourage children to urge the purchase of particular products for them.
- An advertising or marketing communication must not give children cause to pester or otherwise make a nuisance of themselves in relation to the promoted products. [As an example, in a

supermarket setting, a child should not be portrayed asking for a particular product or putting it into a shopping trolley without asking, while voice or text messages must not include such urging as “Ask Mummy to buy you one.”]

Section 3.6

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

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

- In testing whether an advertising or marketing communication features ingredients or premiums that are not an integral part of the product or service, the Board will consider whether the ingredient or premium is given undue prominence by way of being made the dominant feature or otherwise occupies more than half of the advertisement.
- In testing whether an advertising or marketing communication features ingredients that are not an integral element of the product being offered, the Board will consider whether attributes claimed for the product are wholly dependent on its consumption in association with ingredients that are not integral to the promoted product. In determining whether something is an ‘integral’ element of a product, the Board will consider whether the element is necessary to the completeness of the product or service being offered.
- In testing whether an advertising or marketing communication features a premium that is not an integral element of the product being offered, the Board will use the definition of premiums contained in the *AANA Code for Advertising & Marketing Communications to Children*.

In both tests, the Board will consider whether the advertising or marketing communication features inclusions in a manner that accords them undue prominence in relation to the product being promoted, taking account of the fact that it is not the intention of this clause to prohibit legitimate promotion of special offers, but rather to impose a reasonable limit, based on the Board’s representation of prevailing community standards, on the extent to which an average child within the target audience might regard the advertising or marketing communication being for a featured ingredient or premium rather than the product itself.

Australian Association of National Advertisers

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Australian Film and Literature Classification Scheme

Appendix 8

Environmental Claims in Advertising and Marketing Code

This Code has been adopted by the AANA as part of advertising and marketing self-regulation. The object of this code is to ensure that advertisers and marketers develop and maintain rigorous standards when making Environmental Claims in Advertising and Marketing Communications and to increase consumer confidence to the benefit of the environment, consumers and industry.

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

PRINCIPLES

AANA supports the following principles for environmental claims.

Claims should be:

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

DEFINITIONS

In this Code, unless the context otherwise requires:

Advertising or Marketing Communication means:

- (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct; or

- (b) any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.

Advertising Standards Board means the board appointed by the Advertising Standards Bureau from time to time, the members of which are representative of the community, to administer a public complaints system in relation to Advertising or Marketing Communications.

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

Environment includes:

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

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

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

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

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

Environmental Claims in Advertising and Marketing Code

CODE OF PRACTICE

1 TRUTHFUL AND FACTUAL PRESENTATION

Environmental Claims in Advertising or Marketing Communications:

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

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

2 A GENUINE BENEFIT TO THE ENVIRONMENT

Environmental Claims must:

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

3 SUBSTANTIATION

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

September 2009

Australian Association of National Advertisers

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Australian Film and Literature Classification Scheme

Appendix 9

Environmental Claims in Advertising and Marketing Code

Practice Note

This Practice Note is an attachment to the AANA *Environmental Claims in Advertising and Marketing Code* (the Code) as a guide to interpretation only. Not all sections have attributed notes as they are considered self-evident. The interpretations offered are based on the original intent of the Code, and may be expanded by the AANA Board as considered necessary including on the advice of the Advertising Standards Bureau as informed by the experience of public complaint adjudication by the Advertising Standards Board (ASB) and subsequent review and amendments of this Practice Note.

This Practice Note alone should not be relied on to address every aspect of the Code. Please refer to the Code, Edition 1, September 2009, for all provisions.

Given the range of industry sectors and environmental issues to which the Code applies and the dynamic political, regulatory, technical and social environment in which it will operate, rules that relate to specific concerns tend to become quickly out-of-date. The Code provides general principles, and not overly prescriptive rules. AANA considers that a Practice Note is an appropriate format for providing up-to-date advice on specific issues.

A number of international and national examples of guidance documents are available and are useful references to assist in the interpretation of the Code. **Attachment 1**, which is not exhaustive, includes relevant examples.

DEFINITIONS & INTERPRETATIONS

Advertising or marketing communications

The definition of 'advertising or marketing communication' in the Code does not include 'labels and packaging' (also refer to definition of 'excluded communications'). Notwithstanding, images of labels or packaging contained within an 'advertising or marketing communication' will be considered to be an element of that 'advertising or marketing communication'.

Environmental Claim

AANA acknowledges there are currently many interpretations, and no universal consensus, of what an 'environmental claim' is. AANA considers it useful to include a definition in order to clarify the scope of the Code.

An environmental claim in relation to goods or services, their consumption/ use/ interaction or their disposal may include representations that state or imply:

- benefit to the environment; or
- no effect on the environment; or
- no or only limited effect on the environment in itself or if used or delivered in a particular way.

Environmental claims may be made in relation to single or multiple attributes or all product or service attributes such as those based on full life-cycle assessment.

1 – TRUTHFUL AND FACTUAL PRESENTATION

Section i - *shall not be misleading or deceptive or be likely to mislead or deceive.*

An advertisement may be misleading or deceptive directly or by implication or through emphasis, comparisons, contrasts or omissions. It is not the intent for the ASB to apply legal tests in its determination of whether advertisements are, or likely to, mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to the Code.

Advertising ‘puffery’ or ‘hyperbole’ etc may be acceptable where the ‘advertising or marketing communication’ would not reasonably be understood to be literally true. Such statements do not require substantiation.

In testing the requirement that advertisements and/or marketing communications should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the ASB will consider the advertiser’s stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes the Code in regard to the stated or implied environmental claim.

Section ii - *must not be vague, ambiguous or unbalanced.*

Advertisers should accurately consider the overall impression they convey to the general public.

Section iii - *must display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language.*

A disclaimer can clarify, expand or reasonably qualify a representation but should not contradict, diminish or retract it. One matter that may be considered to contribute to a potential contradiction, diminution or retraction of a representation is the failure to mention a relevant matter in an advertisement.

As a general guideline, the main body of the advertisement, apart from the disclaimer, should be capable of standing alone without being misleading.

Section iv - *must be supported by evidence that is current and reflects legislative, scientific and technological developments.*

AANA acknowledges the dynamic nature of legislative, scientific and technological developments. AANA also recognises there may be various options that advertisers and marketers may take in meeting environmental aims, thus promoting innovation.

The intent of this section is not to require a consensus view in relation to scientific or technological matters; it is that advertisers and marketers support the claim with sufficient substantiation. What advertisers and marketers consider to be sufficient will vary from organisation to organisation, and in the circumstances, and is, ultimately, a commercial decision for the advertiser or marketer.

Section v - *that make any claim relating to future matters or commitments must be based on reasonable grounds.*

Claims relating to future matters carry the risk that the substance of those claims may not eventuate. However, even if the future matter does not come to pass, the Code will only be breached if, when the statement as to that future matter was made, there was no reasonable ground for believing that the state would come to pass. The fact that a person may believe in a particular state of affairs does not necessarily mean that there are reasonable grounds for the belief. Care needs to be taken with any claim that relates to a future matter to satisfy the requirement that there is a reasonable basis for the belief prior to making a claim.

Section vi - *must not lead the consumer to conclude a business has voluntarily adopted an environmental practice if that practice has been legally mandated.*

Self-evident.

Section vii - *must not imply a product or service is endorsed or certified by another organisation when it is not.*

Self-evident.

Section viii - *The environmental claim must not be extended, or implied to be extended, to a whole product or service when it relates only to one aspect of the product eg packaging or energy use, or service.*

An environmental claim must represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer. For example, if the claim relates to the:

- packaging only, but not the use of that product, the claim should not imply that it relates to the product as well as the packaging;
- energy use in the manufacture of a product only the claim should not imply that it relates to the energy use in the manufacture of the packaging as well.

Section ix - *must reflect the level of scientific or authoritative acceptance of matters relating to any claim; claims should not imply wide acceptance if this is not the case. Where evidence is inconclusive this should be reflected in the Advertising or Marketing Communication.*

An environmental claim may be able to be substantiated (as required by the Code, see section iv above), but there is a dispute among relevant authorities as to the veracity, accuracy or completeness of the matter, or the claim is not widely accepted by the relevant scientific or technical community. In these circumstances, in addition to being satisfied that the claim is substantiated, the advertising or marketing communication needs to make it clear that the claim is not widely accepted. Section x is also relevant, as it is necessary to clearly identify the particular source that is relied on when there is scientific or authoritative disagreements.

Section x - *That use of scientific terminology, technical language or statistics must do so in a way that is appropriate, clearly communicated and able to be readily understood by the audience to whom it is directed. Publication of research results must identify the researcher and source reference unless there is an obligation of confidence or compelling commercial reason not to do so.*

This section is intended to be read as two mutually exclusive parts.

Scientific or technical terminology or presentation of statistics should be relevant and used in a way that can be readily understood by the intended audience without specialist knowledge. Irrelevant data and scientific terminology should not be used to make claims appear to have a scientific basis they do not possess. Technical terminology and jargon should not be used to 'blind with science' and to make simple claims sound impressive.

Publication of (published or unpublished) research results includes, but is not limited to, any direct or indirect reference to the research, a direct or indirect quote from the research, or paraphrasing the research results.

PART 2 – A GENUINE BENEFIT TO THE ENVIRONMENT

Section i - *be relevant, specific and clearly explain the significance of the claim.*

Self-evident.

Section ii - *not overstate the claim expressly or by implication.*

Advertisers and marketers should avoid making or implying significant environmental benefit if the benefit is not significant. Consideration should be given to whether there is sufficient disclosure of any negative impacts. For example, whether negative impacts have been withheld which, if known, would diminish the positive attribute.

Section iii - *in comparative advertisements, be relevant and balanced either about the product/service advertised or class of products or services, with which it is compared.*

Any comparative claim should be specific and make clear the basis for the comparison. Points of comparison, where appropriate, should reflect a body of evidence including recognised benchmarks or standards where appropriate.

Comparisons should be made with like products, and if there are a number of different models or options, there must be a clear statement as to which product is in fact being compared. Consideration should be given to quantifying the claims for example by use of percentages or absolute values, making comparisons against comparable products/services serving similar functions or making a claim against the advertisers own prior products/services or processes or another organisation's products/services or processes.

Section iv - *not imply that a product or service is more socially acceptable on the whole. The use of Environmental Claims must not reduce the importance of non-environment attributes / detriments of a product or service.*

Consideration should be given to the relationship of the environmental claims to other aspects of a product/service. For example, advertisers should use care not to imply a product or service is more socially acceptable overall by implying another non-environmental attribute/detriment is of lesser importance such as a product that is perceived by consumers to be better for them when there are community health concerns about the use of that product.

Also refer to AANA *Code of Ethics* clause 2.6 Advertisements shall not depict material contrary to prevailing community standards on health and safety.

Section v - *not imply direct relationship to social initiatives of a business where there is no correlation to environmental benefits or attributes or improvements to a product or service.*

Environmental claims should not be made in a manner that implies, directly or indirectly, a correlation between the environmental aspects of the product/service and any social initiative of the advertiser when none exists. For example, the advertising of a "partnership" with or "sponsorship" of an environmental group should not imply that the partnership has improved environmental aspects of the company's product/services where this is not the case.

PART 3 – SUBSTANTIATION

Section i - *Environmental Claims must be able to be substantiated and verifiable. Supporting information must include sufficient detail to allow evaluation of a claim.*

Advertisers and marketers should have a reasonable basis for making a claim and therefore should hold appropriate, balanced, comprehensive and credible evidence to substantiate all express and implied claims.

Information to support a claim may include, but is not limited to, documentary evidence or data evidencing conformity with an identified standard, research, studies, or an expert independent audit. There is no requirement to use third party verification or certification before an environmental claim is made. An advertiser's own internal procedures may be able to provide the necessary substantiation.

In testing the validity of any claim the ASB will only rely on information/material provided by the advertiser and the complainant. The ASB may seek expert advice to assist in the consideration of material provided in relation to the complaint. It is not the intent for the ASB to act as an arbiter of scientific fact, or of philosophical approaches to understanding or addressing environmental concerns.

Section ii - *Environmental Claims must meet any applicable standards that apply to the benefit or advantage claimed.*

This section does not apply where standards exist that are not legally mandated i.e. the standard is a voluntary standard, however, the section will apply in circumstances where the advertiser represents voluntarily compliance with a specified voluntary standard.

Section iii - *The use of unqualified general claims of environmental benefit should be avoided unless supported by a high level of substantiation or associated with a legitimate connection to an authoritative source.*

An unqualified general environmental claim may convey that the product or service has far-reaching environmental benefits or conveys to consumers a broad range of environmental attributes it does not have. Unqualified claims (stated or implied), such as 'green' or 'eco friendly' should therefore be evidenced with a high level of substantiation, for example, such as that based on a full life-cycle assessment.

Unqualified claims, if they relate to an authoritative source, are not considered to necessarily require similar evidentiary material as those claims where they do not relate to an authoritative source. For example, where a claim is made relating to participation in a government program that happens to be titled with what could be considered an unqualified term, for instance, the Commonwealth Governments Green Car Innovation Fund.

Use (by themselves) of scientific terms, business names, trademarks that may be considered to be an unqualified general claim will not automatically constitute a breach of this section. However, use of such terminology in an advertisement may contribute to an 'advertising or marketing communication' to imply an environmental claim.

Section iv - *Environmental Claims and comparisons that are qualified or limited may be acceptable if advertisers can substantiate that the product/service provides an overall improvement in environmental terms either against a competitor's or their own previous products.*

An environmental claim should be relevant to the particular product or service and relate only to the environmental aspects that exist or are likely to be realised during that product or service's life.

Section v - *Claims relating to sponsorships, approvals, endorsement or certification schemes must be current.*

Self-evident.

Section vi - *The use of any symbol or logo must be explained unless the symbol is required by law, or is underpinned by regulations or standards, or is part of an authoritative certification scheme.*

Symbols or logos should only be used in an advertisement when the source of the symbol or logo is clearly indicated, and there is no confusion over the meaning.

In the case of symbols and logos associated with non-accredited certification schemes, special consideration should be given to any explanation of the scheme as it may have no independent audit or monitoring and therefore be open to question regarding achieving stated outcomes.

Section vii - *Substantiation information should be readily accessible, or made available in a timely manner in response to a reasonable written request.*

Consumers must be provided with all information reasonably necessary for them to make an informed purchase decision.

Advertisers have a variety of avenues available for making such information available to consumers, for example, websites, brochures, labels, shelf-talkers; such information does not need to be included in the advertising or marketing communications itself.

Section viii - *Testimonials must reflect genuine, informed and current opinion of the person giving the testimonial.*

Self-evident.

SELECTED REFERENCES

(This is not an exhaustive list. The references are included to provide additional information to assist advertisers and marketers to comply with the Code)

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Australian Association of National Advertisers

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Australian Film and Literature Classification Scheme

Appendix 10



FEDERAL CHAMBER OF AUTOMOTIVE INDUSTRIES

VOLUNTARY CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING

EXPLANATORY NOTES

CONTEXT

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

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

DATE OF COMMENCEMENT

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

SCOPE AND COVERAGE OF THE CODE

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

GUIDANCE TO ADVERTISERS

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

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

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

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

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

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

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

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

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

COMPLIANCE AND ADMINISTRATION

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

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

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

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

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

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

CONSULTATION

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

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

REVIEW OF THE CODE

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

CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING

1. DEFINITIONS

In this Code, the following definitions apply:

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

2. GENERAL PROVISIONS

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

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

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

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

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

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

3. USE OF MOTOR SPORT IN ADVERTISING

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

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

4. DEPICTION OF OFF-ROAD VEHICLES

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

Australian Association of National Advertisers

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Appendix 11



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MEDIA RELEASE

AANA INITIATES CODE OF ETHICS REVIEW

27 May 2010

AANA has initiated a comprehensive review of the Code of Ethics, to be conducted over the coming months.

The objective of the review is to update and where necessary develop the Code with a view to meeting all stakeholders' requirements and expectations. The revised code will articulate world's best practice standards against which it can be measured and published.

The review will include an open public consultation which is anticipated to commence in July 2010 with the publication of a discussion paper which will be available for comment by all interested stakeholders.

Scott McClellan, Chief Executive Officer of AANA said this was an important review. "The Code of Ethics is referenced extensively by advertisers, their agencies and the media, as well as being acknowledged by the community as setting the standard for ethical behaviour in marketing communication. The review will identify the need for Guidance or Practice Notes to assist advertisers, their agencies and other suppliers, and the Advertising Standards Board in applying and interpreting the codes," he said.

"This review is intended to be as broad and comprehensive as necessary to ensure that all views are canvassed. It will not be limited to the current content of the Code and new elements will be considered where necessary."

AANA will engage an independent expert to conduct the review. It is anticipated that the final report and a revised Code of Ethics will be submitted to the AANA Board before the end of the year.

For further information: Scott McClellan, Chief Executive, AANA 0407 704 748

Background Information

The Australian Association of National Advertisers (AANA) is the peak advertising industry body representing the rights and responsibilities of Australia's major advertisers and their industry partners. AANA's objective is to promote and safeguard the marketing communications interests of its members and ensure ethical standards are upheld through the management of the industry's self-regulation system. The central features of this system are the [Advertiser Code of Ethics](#), the [Food & Beverages Advertising & Marketing Communications Code](#), the [Advertising and Marketing to Children Code](#), and the [Environmental Claims in Advertising Code](#). Complaints under the Codes are independently handled by the Advertising Standards Bureau (ASB) and adjudicated through the Advertising Standards Board and the Advertising Claims Board. Further information about the ASB is available from <http://www.adstandards.com.au/pages/index.asp>

Australian Association of National Advertisers

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Australian Film and Literature Classification Scheme

Appendix 12

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5 August 2010

AANA leads discussion on advertising and marketing ethics

AANA has released the discussion paper for its Code of Ethics review to promote dialogue with all stakeholders and to stimulate informed input to the review.

"The AANA Code of Ethics is widely regarded as the standard for ethical behaviour by advertisers and marketers and this review will ensure the Code remains world's best practice for marketing self regulation," said Scott McClellan, Chief Executive Officer of AANA.

"The discussion paper encourages dialogue on the objectives and structure of the Code as well as issues such as privacy, body image, the portrayal of people, taste and decency and the substantiation of claims in advertising."

The paper also welcomes comments on the clarity of the current 'tests' included in the Code of Ethics that form the basis of how complaints to the Australian Standards Bureau (ASB) are considered and determined.

"These issues have been identified through discussions with relevant parties, including the ASB, but interested parties are invited to raise other matters that they consider to be important to our industry's ethical framework," Mr McClellan added.

The review will be undertaken by Dr Terence Beed, Honorary Associate Professor in the Faculty of Economics and Business, University of Sydney.

"Sustained open dialogue with interested non-industry participants is a key requirement for a good self-regulatory system because the model should evolve to meet community expectations and to take into account the new methods employed by marketers to get their messages across. My hope is that all interested parties will grasp this opportunity to help shape the self-regulatory system," said Dr Beed.

The closing date for submissions is Friday 10 September 2010 and it is anticipated that the final report and a revised Code of Ethics will be submitted to the AANA Board before the end of the year.

For further information: Scott McClellan, Chief Executive, AANA (02) 9221 8088

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Appendix 13

Australian Association of National Advertisers

Review of *Code of Ethics*

Discussion Paper — for public comment

August 2010

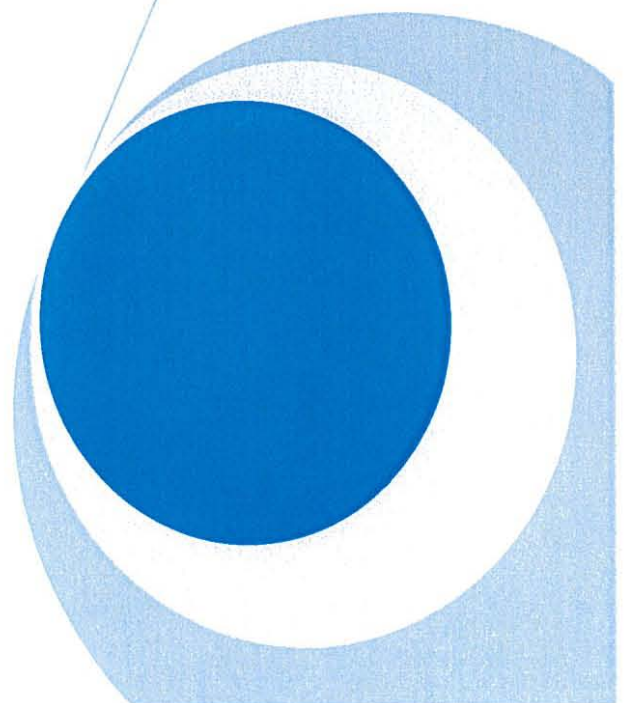


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INTRODUCTION

Marketing communication plays an important role in the national and international economy and worldwide society. It takes many forms, including advertising in the main media, online communication, personal selling, direct marketing, public relations and word-of-mouth. It drives consumer choice in the commercial and non-commercial sectors and promotes competition. As a result, it helps consumers and wider society to be better informed, to achieve insights and understandings and to secure value for money. As a key driver of demand, it enables innovation to be brought to market and stimulates economic growth and employment. More specifically, it underwrites the economic viability of the media and enhances the variety of media content.

The Australian Association of National Advertisers (AANA) has been the peak national body for over 80 years. It is engaged in a wide range of activities on behalf of its members, including the development of formal self-regulatory mechanisms that are designed to represent the common interests and obligations of companies across all business sectors involved in marketing communications. These self-regulatory mechanisms also serve to protect the interests and rights of consumers in ensuring advertising and marketing communication is conducted responsibly.

AANA's advertising self-regulatory scheme came into operation in 1997 following extensive consultation by AANA with consumers and consumer groups, advertisers and business and government representatives.

The AANA *Code of Ethics* provides the overarching set of principles to which all advertising and marketing communications, across all channels should comply. Building on this Code, the AANA has developed a further three more specialised codes to address the specific circumstances of advertising to children, the advertising of food and beverages and environmental claims in advertising. In addition, AANA actively supports self-regulatory initiatives of other industry sectors that address matters applicable to those sectors, including through sector-specific codes such as those applying to the marketing of motor vehicles.

The aim of the current review of the *Code of Ethics* is to update and, where necessary, develop the Code to ensure that it continues to meet community requirements and expectations. A revised *Code of Ethics* will articulate world's best practice standards against which it can be measured and administered.

The purpose of this discussion paper is to promote a dialogue with all stakeholders and to stimulate informed input to the review.

Submissions received in response to this paper will assist the Independent Code Reviewer in preparing a report on the review, including recommendations for revisions to the *Code of Ethics*, for consideration by the AANA Board.

CONSULTATION PROCESS

Consultation on the review of the *Code of Ethics* will be undertaken through:

- submissions from any interested party; and
- discussions between interested stakeholders and the independent Code Reviewer.

The information gathered through these processes will assist the Independent Code Reviewer to clarify the issues and formulate the review recommendations.

The Independent Code Reviewer invites submissions from all interested parties. Written submissions on this discussion paper may be made as follows:

By email: codereview@aana.com.au
By mail Independent Code Reviewer
AANA Code Review
Suite 2, Level 5
90 Elizabeth Street Sydney

The closing date for submissions is the close of business **Thursday, 30 September 2010**.

AANA requests that all submitters clearly identify:

- the name of the party making the submission;
- the organisation or interest group represented by the submission (where relevant); and
- contact details – including telephone number, postal address and email address (if available).

If you wish to otherwise communicate with the Independent Code Reviewer you should register your request via email to codereview@aana.com.au or phone (02) 9221 8088.

Please direct general enquiries about the review to AANA on admin@aana.com.au or phone (02) 92218088.

THE AANA CODES

Overview

In addition to the *Code of Ethics* the AANA currently administers three other more recently developed codes:

- *Food & Beverages Advertising and Marketing Communications Code* (2006)
- *Advertising & Marketing Communications to Children Code* (2008)
- *Environmental Claims in Advertising and Marketing Code* (2009)

The *Code of Ethics* was adopted by AANA as the overarching means of advertising and marketing self-regulation in Australia. It applies widely to advertising and marketing communications. It is the fundamental building block for the other AANA codes and is an important component of other (sector-specific) industry self-regulatory codes and initiatives.

All of the AANA codes are self-regulatory instruments that articulate standards of conduct by Australian advertisers. The aim of the codes is to enhance standards throughout the advertising and marketing sector to promote ethical and responsible advertising, and thereby ensure consumer confidence and public trust is maintained.

Objective of the AANA Code of Ethics

The object of the *Code of Ethics* is to ensure that advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and a sense of fairness and responsibility to competitors. The *Code of Ethics* is widely regarded as the standard for ethical behaviour by advertisers and marketers as well as advertising and marketing agencies. The vast majority of complaints dealt with by the ASB relate to elements of the Code.

Recognition of the AANA Code of Ethics

AANA codes are also acknowledged and supported by government as an important (self) regulatory mechanism to assist in achieving public policy outcomes.

The AANA *Code of Ethics*:

- also gains recognition in legislation, through its incorporation (by reference), in other industry sector codes which are subject to legislation i.e. the *Broadcasting Services Act 1992* and the self-regulatory Commercial Television Code;
- is referenced in other industry specific self-regulatory codes eg alcohol, gambling;
- is promoted by commercial enterprises including through their legal and advertising policies; and
- is a topic covered in advertising and marketing education and is widely referenced in education materials such as marketing textbooks.

Compliance with the AANA Codes

Compliance with the codes is enforced by the Advertising Standards Bureau, an operationally-independent complaints handling and dispute resolution service. Complaints to the Bureau are adjudicated by the Advertising Standards Board, made up of individuals who are representative of the wider community. This complaints-based system offers the public participation in facilitating advertiser's compliance with the codes. It provides a free, open and transparent mechanism to address concerns about the content of advertisements and other marketing communications. Further information on the complaints procedures and complaint outcomes is available at www.adstandards.com.au.

PURPOSE OF THE REVIEW OF THE OBJECTIVES AND CONTENT OF THE AANA CODE OF ETHICS

The purpose of the review of the objectives and content of the AANA *Code of Ethics* is to ensure that it continues to meet community expectations. A revised code will articulate world's best practice standards against which it can be measured and administered.

The *Code of Ethics* references the following three codes, two AANA codes and one industry sector specific code:

- AANA *Food and Beverages Advertising and Marketing Communications Code*;
- AANA *Advertising & Marketing Communications to Children Code*; and
- Federated Chamber of Automotive Industries (FCAI) *Voluntary Code of Practice for Motor Vehicle Advertising*.

SCOPE OF THE REVIEW OF THE CODE OF ETHICS

The expected outcomes of the review are an up-to-date, relevant, easily understood and world's best practice *Code of Ethics*.

AANA is committed to an ongoing program of monitoring and review of its codes and welcomes comment and feedback on the above matters at any time.

ABOUT THE INDEPENDENT CODE REVIEWER

The AANA Board has appointed Dr Terence Beed as the Independent Code Reviewer.

As an Associate Professor in the Faculty of Economics and Business, University of Sydney he was Chair of the Marketing Discipline from 1998-2002. He maintains a strong teaching presence in the Faculty's postgraduate coursework programs and has most recently introduced a course on marketing regulation and ethics in the new Masters of Marketing program.

In 2006-2007 Dr Beed was appointed Independent Code Reviewer by the Association of Market and Social Research Organisations to review the Australian Market and Social Research Privacy Code.

Dr Beed's research interests are primarily in the field of survey quality assurance, especially audience surveys, and in socio-legal research.

THE AANA CODE OF ETHICS

This section of the Discussion Paper describes and poses questions relating to the current *Code of Ethics*. The issues and related questions raised are presented to facilitate discussions and submissions and are not intended to be exhaustive. Stakeholders and interested parties are invited to comment on these, as well as any other matters, they wish to raise.

Note: Text highlighted in orange refers to the current text of the Code of Ethics.

Objective of the Code of Ethics

This Code has been adopted by the AANA as part of advertising and marketing self-regulation. The object of this Code is to ensure that advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and fair sense of responsibility to competitors.

All advertisers and marketers have a common interest in promoting consumer confidence in, and respect for, the truthfulness of advertising claims and for the general standard of advertising.

Since the adoption of the *Code of Ethics* there have been numerous developments in:

- international policy environment, technology and markets;
- Australian government policy, legislation and regulation;
- specific industry sector codes of practice/conduct; and
- new media, for example digital and social media.

Question 1

1.1 Does the *Code of Ethics* continue to meet its stated objectives?

1.2 Do the current objectives need to be amended? If so, what are the objectives that the *Code of Ethics* should address?

Structure of the AANA Code of Ethics

The *Code of Ethics* currently comprises two parts – Section 1 and Section 2.

Section 1 of the Code deals with questions of truth, accuracy and questions of law and is primarily, but not exclusively, provided to enable alternative resolution of disputes between competitor advertisers. The Advertising Claims Board, on a fee basis, deals with complaints under Section 1.

Section 2 of the Code deals with maintaining standards of taste and decency in advertising and marketing and is provided to enable any person to lodge, for no fee, a complaint to the industry funded complaints mechanism administered by the Advertising Standards Bureau. The Advertising Standards Board adjudicates such complaints under Section 2.

Further information on the Advertising Claims Board and Advertising Standards Board is available at www.adstandards.com.au.

Question 2

- 2.1 Does the current structure of the *Code of Ethics* adequately distinguish between the two sections of the *Code of Ethics*?
- 2.2 What are the benefits, or otherwise, of revising the current structure of the *Code of Ethics*?

Content of Section 2

Code Clause: 2.1 Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.

There is a range of other issues regarding the portrayal of people in relation to matters not specifically noted in Section 2.1. For example, people with particular physical and vocal features, gender¹, social values, and economic circumstances.

There may be circumstances that require particular consideration of persons in contexts other than discrimination or vilification.

Question 3

What circumstances relating to the portrayal of people should the *Code of Ethics* address?

Code Clause: 2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.

There is a range of other issues in addition to 'language', for example, images that carry the potential to cause offense, alarm, distress or discomfort. Such matters may be considered to relate, for example, to 'taste and decency' in a controversial advertising campaign.

¹ 'Gender' and 'sex' are not inter-changeable terms. 'Sex' refers to the biological and physiological characteristics that define men and women. 'Gender' refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women. <http://www.who.int/gender/whatisgender/en/index.html>

Question 4

What issues, if any, relating to 'taste and decency' should be addressed in the *Code of Ethics*?

Code Clause: 2.7 Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertising or marketing communications to which the Federal Chamber of Automotive Industries Code of Practice applies.

The intention of Clause 2.7 is to avoid duplication between the *Code of Ethics* and the FCAI Code. This interpretation may unintentionally result in health and safety issues featured in motor vehicle advertisements, but not covered by the FCAI Code, being excluded from the scope of the Advertising Standards Board. For example, a young child riding a bicycle without a helmet in a scene in a motor vehicle advertisement does not relate to the depiction of a motor vehicle or driving of a vehicle (matters addressed by the FCAI Code).

Question 5

Is the current provision relating to the FCAI Code appropriate?

Clauses 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6

The Advertising Standards Board, which adjudicates on complaints, is composed of 16 members from a broad range of age groups and backgrounds to be representative of the diversity of Australian society. The Board members are individually and collectively independent of the advertising industry and discharge their responsibilities with fairness, impartiality and a keen sense of prevailing community attitudes.

The *Code of Ethics* currently contains different 'tests' that may result in lack of clarity for advertisers and the community regarding the basis on which complaints are considered and determined. For example:

Section 2.3 (relating to sex, sexuality and nudity) of the code includes reference to the '*relevant audience and, where appropriate, the relevant programme time zone.*' Such considerations are not specified in any other provision of the *Code of Ethics*;

- the "Prevailing Community Standards" test is only applicable to clause 2.6 of the *Code of Ethics* in relation to health and safety.

Question 6

What 'test' or 'tests' should the *Code of Ethics* include?

OTHER TOPICS

This section of the Discussion Paper poses questions on topics relevant to advertising and marketing. The issues and related questions raised are presented to facilitate discussions and are not intended to be exhaustive. Stakeholders and interested parties are invited to comment on these, as well as any other matters, they wish to raise.

Recognising ‘advertising or marketing communications’

Advertising or marketing communications² that are not clearly identifiable as such have the potential to cause confusion or to mislead. The matter of distinguishing advertising and marketing material is, to some extent, addressed in legislation; examples include, the *Broadcasting Services Act 1992*,

Broadcasting Services (Commercial Radio Advertising) Standards 2000 and *Children’s Television Standards 2009*.

A number of industry sector specific codes, including other AANA codes, include relevant provisions that such communications should be recognisable as such. For example:

- AANA Code for Advertising & Marketing Communications to Children requires -
2.2(iv) ‘that the Advertising or Marketing Communication is in fact a commercial communication rather than program content, editorial comment or other non-commercial communication.’
- AANA Food & Beverages Advertising & Marketing Communications Code requires -
2.7 ‘Advertising or Marketing Communications for Food or Beverage Products appearing within segments of media devoted to general and sports news and/or current affairs, shall not use associated sporting, news or current affairs personalities, live or animated, as part of such Advertising and/or Marketing Communications without clearly distinguishing between commercial promotion and editorial or other program content.’

Question 7

Should provisions similar to those noted above, or others on distinguishing ‘advertising or marketing communications’, be included in the *Code of Ethics*?

Reality in Advertising Images

AANA contributed to the development of the 2008 Victorian Government *Voluntary Media Code of Conduct on Body Image* for the advertising, media and fashion industries and 2004 *Gender Portrayal Guidelines, Keep it real. Keep it in context*. These initiatives are designed to encourage these industry sectors to place greater emphasis on diversity, positive body images and a focus on health rather than body shape. Both these documents are actively promoted throughout industry.

² ‘Advertising or marketing communication’ is defined in the *Code of Ethics*.

On 27 June 2010 the Minister for Youth, Kate Ellis, announced new Australian Government initiatives to promote positive body image among young Australians, including a new Voluntary Industry Code of Conduct³. These initiatives aim to further build young people's resilience to negative body image pressures and promote leadership on this issue in the fashion, media and advertising industries.

Question 8

What are the benefits, or otherwise, in addressing body image issues in the *Code of Ethics*?

Privacy

The *Code of Ethics* makes no specific reference to privacy matters. A number of privacy related legislative provisions apply to advertisers and marketers including the *Privacy Act 1988*, *Spam Act 2003* and *Do Not Call Register Act 2006*.

Privacy is the subject of ongoing and current reform by the Australian government including proposed amendments to privacy legislation.

Question 9

Given the separate government privacy reform process should privacy issues be addressed in the *Code of Ethics*?

Substantiation of claims

The *Code of Ethics* makes no specific reference to claims substantiation. A number of industry self-regulatory codes, including other AANA codes⁴, provide a mechanism for the public to obtain substantiating information from an advertiser or marketer for claims made in an 'advertising or marketing communication'.

Question 10

Is there value in addressing substantiation of claims in 'advertising or marketing communications' in the *Code of Ethics*?

Codes and new media

Where the Advertising Standards Board upholds a complaint, the advertiser is given a reasonable period in which to advise whether the advertisement has been modified or discontinued. If the advertiser chooses not to modify or discontinue an advertisement in line with a determination, the Board may forward its Case Report to appropriate Government agencies and media proprietors. It is the policy of media proprietors not to carry advertisements which are in breach of the codes.

³ <http://www.youth.gov.au/bodyimage.html>. This code has no associated enforcement mechanisms.

⁴ *Environmental Claims in Advertising and Marketing Code*, section 3 Substantiation, includes various clauses in relation to claims being able to be substantiated and that such substantiation be accessible or made available on request.

For example, Free TV, which represents the interests of all Australia's free to air commercial television stations, oversees the 2010 Commercial Television Industry Code of Practice (Television Code) which has been registered by the Australian Communications and Media Authority (ACMA).

Under **Requirements for Television Commercials 1.11** of the Television Code states "Television advertisers are expected to ensure that their commercials comply with the Advertiser Code of Ethics and the Code for Advertising Marketing Communications to Children, as amended from time to time..."

As advertising and marketing communication migrates to non-traditional media, the role of these publishers in ensuring the effective operation of the AANA Codes also increases.

Question 11

Should online publishers play the same role as traditional publishers in helping to ensure that advertisements are in line with the AANA Code of Ethics and in ensuring that advertisements adjudged to be in breach of the Code by the ASB cease to be broadcast? If not, how might their role differ, what role should they play?

Question 12

Does the AANA *Code Ethics* need to be amended or changed in any other way? If so, how?

LIST OF QUESTIONS

Question 1

- 1.1 Does the *Code of Ethics* continue to meet its stated objectives?
- 1.2 Do the current objectives need to be amended? If so, what are the objectives that the *Code of Ethics* should address?

Question 2

- 2.1 Does the current structure of the *Code of Ethics* adequately distinguish between the two sections of the *Code of Ethics*?
- 2.2 What are the benefits, or otherwise, of revising the current structure of the *Code of Ethics*?

Question 3

What circumstances relating to the portrayal of people should the *Code of Ethics* address?

Question 4

What issues, if any, relating to 'taste and decency' should be addressed in the *Code of Ethics*?

Question 5

Is the current provision relating to the FCAI Code appropriate?

Question 6

What 'test' or 'tests' should the *Code of Ethics* include?

Question 7

Should provisions similar to those noted above, or others on distinguishing 'advertising or marketing communications', be included in the *Code of Ethics*?

Question 8

What are the benefits, or otherwise, in addressing body image issues in the *Code of Ethics*?

Question 9

Given the separate government privacy reform process should privacy issues be addressed in the *Code of Ethics*?

Question 10

Is there value in addressing substantiation of claims in 'advertising or marketing communications' in the *Code of Ethics*?

Question 11

Should online publishers play the same role as traditional publishers in helping to ensure that advertisements are in line with the AANA Code of Ethics and in ensuring that advertisements adjudged to be in breach of the Code by the ASB cease to be broadcast? If not, how might their role differ, what role should they play?

Question 12

Does the AANA *Code Ethics* need to be amended or changed in any other way? If so, how?

AANA CODE OF ETHICS

Attachment 1

Objectives

This Code has been adopted by the AANA as part of advertising and marketing self-regulation. The object of this Code is to ensure that advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and fair sense of responsibility to competitors.

Content

Section 1

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

Section 2

- 2.1 *Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.*
- 2.2 *Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.*
- 2.3 *Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.*
- 2.4 *Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising & Marketing Communications to Children applies.*
- 2.5 *Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.*
- 2.6 *Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.*
- 2.7 *Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertising or marketing communications to which the Federal Chamber of Automotive Industries Code of Practice applies.*
- 2.8 *Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code.*

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Appendix 14: Dr Terry Beed – Independent Reviewer – Biography

Dr Terry Beed is an Honorary Associate Professor in the Faculty of Economics and Business, University of Sydney where he led the Marketing Discipline from 1998-2002. He maintains a strong presence in the Faculty's postgraduate coursework programs and most recently has pioneered a course on marketing regulation and ethics in the new Masters of Marketing program. He has also been actively engaged in business education in Asia. He taught in the University's program at the Singapore Institute of Management for eight years and in local programs for business delegations and government officials from across Asia during their visits to Australia.

His research interests are primarily in the field of survey quality assurance, especially audience surveys, and in socio-legal research. He was commissioned to design and administer the Interviewer Quality Control Australia scheme (IQCA) on behalf of the Market Research Society of Australia and the Association of Market Research Organizations in the early 1990s. In 2002-2005 he served as a member of a Technical Committee at Standards Australia which framed the standards of best practice in Australian marketing research now widely adopted by the industry. He is currently Senior Research

Fellow and Consultant at the Law and Justice Foundation of New South Wales where he provides strategic advice on socio-legal research designs, methodology and other organisational matters. Earlier, he was a member of the Board of Governors of the Foundation, a statutory appointment.

Terry Beed has spent almost as much of his career in business as he has in academia. His industry appointments have included inaugural Research Director of News Limited and founder and CEO of Australian Nationwide Opinion Polls (ANOP). On the academic side, he was Foundation Director of the University of Sydney Sample Survey Centre. After this, he conducted a consulting practice in marketing and social research -- privately as the Centre for Survey Quality Assurance and corporately within KPMG.

Terry returned to the University of Sydney's Faculty of Economics in 1995 teaching undergraduate and postgraduate courses in marketing research, marketing communications and services marketing and was appointed Head of the Marketing Department. He retired from the full time academic staff in 2003.

As a consultant, Terry has conducted many strategic assignments in quality assurance of media audience surveys, acting on behalf of television, radio and the print media in Australia and overseas. In New Zealand, he was the first independent audience survey auditor appointed by the television industry and was also the first auditor appointed by the New Zealand newspaper and magazine publishing industry. He served both the Australian and New Zealand media industry as auditor until 1995, shortly before his return to academic appointments at the University of Sydney. As an academic, he has retained an active interest in media research and has completed several quality assurance assignments on behalf of media organisations (News Ltd, Fairfax, and Federal).

In 2006-7, he was appointed independent Code Reviewer by the Association of Market and Social Research Organisations to review the Australian Market and Social Research Privacy Code. The Code has now been updated and approved by the commonwealth Privacy Commissioner.

Australian Association of National Advertisers

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Australian Film and Literature Classification Scheme

Terry has published in the Journal of Advertising Research and Admap, and he has co-authored several books on survey methods and opinion polls in Australia.