



Communication Agencies Association

Submission to  
The Advertising Standards Authority

Review of the Code for Advertising to Children  
and Children's Code for Advertising Food

From the  
Communication Agencies Association of  
New Zealand (CAANZ)

**April 2016**

## Section A – Introduction

### 1.0 Submission

This submission is from the Communication Agencies Association of New Zealand (CAANZ), 60 Parnell Road, Auckland (www.caanz.co.nz). The contact person is Paul Head, Chief Executive. Email: paul@caanz.co.nz or phone: 021 574 062.

### 2.0 About the Communication Agencies Association of New Zealand

CAANZ is an incorporated body representing the interests of members on issues affecting the advertising industry and agencies. There are 90 member agencies, which collectively represent 90 percent of agency billings in New Zealand, with a combined turnover well in excess of \$1 billion.

CAANZ is an expert in the field of advertising and it is an advocate for the important role advertising plays in any modern consumer society. We acknowledge the influence of advertising as a change agent in society and the need for ethical behaviour to govern the execution of that influence.

Approximately 1,600 people are employed in New Zealand advertising agencies. Advertising activity contributes to the employment of approximately 10,000 people in the publishing, radio and television industries.

CAANZ is an active member of the ASA and strongly supports the ASA's Codes, including those that relate to advertising to children. We are part of a broader industry-wide ecosystem that includes agencies, advertisers and media companies; all committed to ensuring a self-regulatory system that delivers advertising which complies with a set of ethical rules and is;

- legal
- decent
- honest
- truthful
- prepared with a due sense of social responsibility to the consumer and society as a whole
- created with due respect to the rules of fair competition

As the industry body for agencies, CAANZ promulgates (and enforces) an industry *Code of Ethics, Practices and Obligations* which all members adhere to. The code includes the following section.

#### SUPPORT OF SOCIETY, CONSUMERS AND SELF REGULATION

- *CAANZ members recognise an obligation to create communications that are consistent with the laws of New Zealand, and/or any international treaties and agreements undertaken by the Government of New Zealand, relating to the social, economic and environmental principles of sustainable development.*

- *CAANZ members recognise that consumers are entitled to rely on our member agencies to operate not only within the law and within the letter and spirit of global, national and sectoral codes of practice, but also within accepted ethical norms.*
- *CAANZ supports the principle of self-regulation and a portion of members' fees are allocated each year to the Advertising Standards Authority on behalf of all members. Members agree to support both the spirit and the letter of various codes and guidelines that are developed and administered by the ASA.*
- *CAANZ members are also expected to take their turn, when asked, to provide volunteer personnel to serve on the self-regulatory committees of the ASA.*

Breach of the *Code of Ethics, Practices and Obligations* can lead to a member's suspension or expulsion from the Association.

It is worth pointing out at this juncture that on rare occasions when a complaint to the ASA is upheld, the agency involved isn't always happy. That is understandable, but CAANZ's position is always to support the ASA decision to ensure that self-regulation remains effective and consumers are protected.

### **3.0 The Role of Self-Regulation**

As outlined above, self-regulation is about ensuring that advertising meets a set of agreed ethical standards. The ASA has historically been very successful in defining and enforcing these standards.

Public debate continues about the supposed relationship between advertising and social problems such as obesity, alcohol misuse, gender discrimination and stereotyping, and commercial pressure on children. This has led to, for example, the call for advertising of certain foods and beverages to be banned or restricted by legislation. Similar calls have been made in other jurisdictions – and typically rejected.

CAANZ firmly believes it is not the role of advertising self-regulation organisations (SRO) to determine what products can or cannot be advertised; that is the role of Government. Nonetheless, the ASA has an important role to determine the appropriate manner by which products or services can be promoted via marketing communications. This is particularly important where a product or service may be advertised appropriately, targeting an adult audience, but that same advertising might be considered inappropriate for an audience of children.

The current self-regulatory advertising standards regime works in the best interests of the public and advertisers. CAANZ believes industry led self-regulation is the most effective method for preventing fraudulent, untruthful, misleading or otherwise inappropriate advertising.

## Section B - Responses to ASA Guidance Questions

### 1.0 Introduction

**For ease of review by the panel, we have structured our response to fit the template provided by the ASA, but we also wish to make several opening remarks as follows.**

- Childhood obesity is a serious health concern that needs addressing, given the social and economic costs involved. For that reason, CAANZ welcomed Minister Coleman's announcement of the Government's Childhood Obesity Plan in October 2015.
- Whilst food marketing does impact children's food preferences and food choices, it isn't often acknowledged that food marketing is just one contributing factor and a small one at that. The recent UK *Literature Review of Research on Online Food and Beverage Marketing to Children*, notes that the evidence from research on the relationship between food marketing and childhood obesity is not conclusive and despite claims that there is an emerging consensus on a relationship existing, reviewers of the research disagree in their overall conclusions.
- The review notes that some evidence is correlational but generally fails to establish causal relationships between exposure to advertising and phenomena like obesity, explaining that much of the research measures children's reported exposure to media rather than their exposure to advertising specifically. This is problematic as there are many possible ways in which media use might be associated with obesity, for example, watching television and surfing the internet are sedentary activities, which do not burn many calories. In addition, people who spend a lot of time in front of a screen tend to exercise less and are more likely to prefer other sedentary activities.
- In the UK, the Foresight Study, a think-tank commissioned by the then Labour government, produced probably the most comprehensive analysis of the factors leading to obesity in society. They found that exposure to food marketing was one of no less than 106 different variables.

### 2.0 ASA Questions

#### 1. What are the strengths and weaknesses of the two current Children's Codes?

In our view, the content of the current codes is clear and easily understandable for consumers, advertisers and agencies. The major weakness we see is in the fact that there are two codes. This creates duplication and crossover. We believe that simplifying the two codes to a single code would be easier for all stakeholders and may lead to fewer breaches or complaints due to greater clarity.

#### 2. What are the strengths and weaknesses of the current complaints process?

The comments below are generic to the ASA process rather than specific to complaints relating to advertising to children.

CAANZ considers the current complaints process sound and easy to understand for all stakeholders, including consumers. The process to deal with formal complaints is rigorous and

fair on all parties. Complaints resolution is prompt, and judgements are consistent and at no cost to the public or taxpayer. This provides excellent value to society. It is worth noting that the ASA has made significant changes to the complaints process over the last two years which have reduced the time it takes to hear a complaint. This speed of response is crucial in a digital world where campaigns are often of a relatively short duration.

The monetary cost of non-compliance for agencies and advertisers is significant. Being found in breach of the Code results in the immediate withdrawal of the offending advertisement. This brings penalties by way of the cost of creative which can no longer be used, for example a television advertisement which may have cost anywhere between \$250,000 and upwards of \$1million. See Q13 below for more detail on this point.

Decisions by the ASCB are released to the media and frequently receive significant media coverage. For the great majority of advertisers and agencies, particularly publically-listed companies, such coverage can materially harm their corporate reputation, resulting in lost consumer trust and brand sales, and is avoided at all cost. See Q13 below.

So there are real costs to agencies and advertisers for non-compliance which act as an active incentive to ensure advertising meets the letter and intent of the relevant code and CAANZ believes the current complaint process is robust, transparent, timely and effective.

**3. What changes to the Codes, if any, are necessary to protect the rights of children and their health / wellbeing?**

The fact that the ASA is undertaking a review is not in itself a reason for a Code to be changed. The Code, in its existing form may be functioning satisfactorily, and it is within the brief to the Review Panel to recognise that. Change should occur only if there is compelling rationale for change which would strengthen the existing advertising rules.

It is worth noting that that since the introduction of the Children's Code for Advertising Food there have been just nine complaints under the Code, none of which were upheld. This indicates a high degree of compliance with the Code. The argument that the public don't complain about advertising is negated by the fact that during the period 2010-2015, the ASA received 3935 complaints in total. During this time, complaints regarding the Children's Code for Advertising Food made up 0.3% of all complaints. Recent research undertaken by the ASA as part of a strategic review indicates that 87% of people are aware that they can make a formal complaint about an advertisement and a total 73% of people are aware of the ASA specifically.

**In our view, the Codes as they stand provide clear guidance for advertisers.**

It does however, seem that there is significant duplication between the two codes and it would be beneficial to combine them into a single code for advertising to children. Doing so would perhaps create a better understanding of the importance of appropriate advertising to children, make compliance easier and further reduce the very small number of complaints under these codes.

**4. Please comment on any concerns you have with different media formats in relation to advertising to children (for example: magazines, television, social media, websites).**

Perhaps the single biggest challenge facing the broader marketing and communications industry, including SRO's like the ASA, is the rapidly changing media world, both in terms of media platforms and delivery devices along with the increasingly borderless nature of media. Young consumers, often early adopters of new technology, are at the forefront of many of these changes.

Gone are the days when children consumed media via free-to-air television channels or recorded content (DVD) that could be relatively easily monitored by parents or caregivers. Time-shifted viewing, social media, online video, tablets and cell phones all mean that advertising can be accessed from international sources and in many ways that even a decade ago would have seemed impossible.

**In this environment, CAANZ believes it is critical the ASA maintains its long-standing principle that it is mediaagnostic and that advertising codes should be applied equally and consistently across all media channels.**

We also believe it is important at this point to raise the issue of Media Audience and its make-up.

It is sometimes argued, somewhat simplistically in our view, that certain products should not be targeted to children. However, those same products or brands can reasonably be targeted at adult audiences, either as parents / caregivers or consumers in their own right. Two relevant precedents exist, the International Food & Beverage Alliance's (IFBA) global policy on marketing to children and the ASA's own code on alcohol.

IFBA is made up of companies representing the global leaders of the food and non-alcoholic beverage industry. The IFBA global policy on marketing to children sets out the criteria for food and beverage product marketing communications that are paid for or controlled by IFBA companies in every country where they market their products worldwide. For the purpose of the policy, "advertising to children" means advertising in child-directed media where 35% or more of the audience is under 12 years of age. For television advertising, independent data is available to show the composition of the audience. IFBA members will not advertise products that do not meet the better-for-you criteria when the proportion of children under 12 exceeds 35% of the audience. For third party internet advertising, independent data is available to identify the audience composition.

The New Zealand precedent has been set by the ASA in its Code for Advertising and Promotion of Alcohol, whereby Guideline 3(g) states, "Alcohol branded merchandise, point-of-sale materials and other promotions for alcohol must not be available in unrestricted areas at events or activities where more than 25% of the expected audience is minors (under 18). In other words, although a restricted product (purchase age 18 and over), alcohol promotion can occur so long as it is to a predominantly adult audience.

**5. The Children's Codes currently define a child as under the age of 14. Do you support or oppose this definition? Why?**

CAANZ is broadly supportive of the existing definition and would not support seeing it raised. However, there may be a case to lower the age to 12 years.

The challenge here is that there is no consensus on the definition of a child in this context, either locally or globally.

Both current ASA Codes define a child as under 14. In the US, Canada and Europe, the standard is under 12. In Australia three standards apply, the AANA self-regulatory code is 14 (under 15), the pledge programme for packaged food is under 12 and the QSR pledge is under 14.

There is significant academic research on children's understanding of advertising and advertising's impact on children's food choices, food preferences and food behaviours. There are also a number of legal definitions for other purposes, such as different ages of licence, for consent, voting rights and so on. Since the intent of food and beverage advertising regulation is to protect children from the perceived "potentially harmful effects" of advertising, it should be grounded in this base of evidence.

Most academic reviews recognise that by the age of 12, children develop their behaviour as consumers; they can effectively recognise advertising, and are able to adopt critical attitudes towards it.

*"A descriptive model of the development of children's consumer behaviour from infancy to 12 years of age [says that] by age 12, children have become acquainted with all aspects of their consumer behaviour [...] They are able to feel wants and preferences, search to fulfil them, make a choice and a purchase, and evaluate a product and its alternatives. [By the age of 12] children's eye for detail and quality develops, and thereby, their ability to critically evaluate and compare products and information [...] In this period, children develop a sincere interest in real-world phenomena, and they can be highly critical of entertainment and commercials that lack realism."*<sup>1</sup>

There is a strong degree of academic consensus that by the age of 12, children are fully capable of understanding the persuasive intent of advertising and have the necessary cognitive tools to critically assess it:

*"By about 7 or 8 years of age, children have learned to identify the persuasive intent of advertising, distinguishing it from information. From 12 years of age, children can surely articulate a critical understanding of advertising, even becoming sceptical or distrustful of it."*<sup>2</sup>

Advertising rules should reflect the rights and responsibilities that young individuals are given in other spheres of life, for example:

- If it is permitted for a person aged 15 to watch films containing frequent strong language, sexual activity, violence and drug taking, it would seem quite disproportionate to ban that person from being exposed to food and beverage advertising.
- Likewise, it would seem illogical to prevent a 16 year old from being exposed to food and beverage advertising, when they are allowed to engage in sexual relations and get married.

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<sup>1</sup> The Development of a Child into a Consumer, Vlakenburg and Cantor, University of Amsterdam, University of Wisconsin - Madison, NL and US, 2001

<sup>2</sup> Brian Young, The Role of Advertising in the Life of the Child: A Review of some empirical findings, 1999

Overall, the evidence points to the need for advertising to take particular care when addressed to children below the age of 12.

On this basis, CAANZ would also support lowering the definition to under the age of 12 years if the panel felt it appropriate.

**6. Is there a role for a nutrient profiling system such as the health star rating system in the Children's Codes? If yes, in what way and which system would you suggest?**

This is a problematic area. While the health star rating (HSR) system is recognised by Government and is a valuable tool for consumers, it was developed as an information system for packaged foods. It shouldn't be used for comparison across different food groups, it does result in anomalies, and the HSR certainly isn't suitable for meals.

For this reason, CAANZ rejects the use of HSR as part of the Codes.

We also don't believe it is the role of this review process to develop an appropriately broad nutrient profiling system. The development of any such system needs to be led by industry in partnership with Government and other stakeholders.

So, whilst CAANZ supports in principle the idea of nutrition profiling within the Code, it is not supportive of it as part of this review.

**7. Do you support or oppose a specific guideline on sponsorship? Why?**

CAANZ supports a reduction in the number of codes to make the process easier for consumers and to simplify compliance for advertisers and agencies. Our expectation is that any consolidation of the Codes is able to capture marketing to children in all its forms, including sponsorship.

**8. If further restrictions for advertising to children are necessary, what do you think should be done?**

CAANZ does not believe further restrictions are necessary.

**9. Do you support or oppose the introduction of independent monitoring and evaluation of the codes? How would this work?**

In principle CAANZ is not opposed to the idea of monitoring and would welcome being part of any discussion, but we believe that any form of monitoring is outside the scope of this review. A discussion of monitoring is a broader issue for industry and would need to look at all of the options available, what exactly would be monitored, by whom and how it might be funded. This is a significant piece of work that would require engagement with a wide range of stakeholders. Inclusion of such a process in this review would only serve to slow it down significantly.

**10. What is your view of the sanctions imposed by the ASA when a complaint is upheld?**

CAANZ's view is that the sanctions imposed provide a very strong incentive to comply with the Codes and are fair and reasonable. See Q13 below.



**12. Do you support or oppose combining the two current Codes? Why?**

CAANZ supports the principle that having fewer codes enables the general public and advertisers to better understand the rules concerning advertising and, in the case of advertisers, their obligations. CAANZ strongly supports an expanded Code of Ethics, incorporating a number of existing Codes as the primary Code, and that additional Codes should only apply when a high standard of social responsibility is required.

There is already significant overlap between the two Codes, e.g. pester power and the role of parents and caregivers, or the need for advertisements to be clearly recognisable as such; which could usefully be simplified.

At the same time there are inconsistencies, such as Principle 2(b) of CCAF and 2(b) of CAC that would benefit from simplification and which address, in different ways the level of knowledge, sophistication of audience and potential to mislead.

**CAANZ is supportive of combining the two existing Codes into a single Code as it simplifies understanding and application of the Codes for all parties. For those making a complaint, it gives them a single point of reference and makes the complaints process easier. For advertisers and agencies, it provides a unified guideline to measure advertising ideas against. This will ultimately improve compliance with the Codes.**

**13. Have you had to alter or remove advertising following a complaint to the ASA? If yes, can you give an estimate of the cost of that decision to the advertiser / agency / media?**

As the industry body representing advertising and media agencies, our members are actively involved when a complaint is made to the ASA.

Any complaint requires a response from the agency involved in making the commercial. All CAANZ member agencies are familiar with the ASA codes and work hard to comply. A complaint to the ASA, under any code can have a significant cost impact for the agency involved. These costs fall into several areas.

**Cost of response** – Agencies take any complaint to the ASA seriously. Responding to a complaint is a time consuming business and needs to be led by someone senior. Based on charge out rates, the cost of preparing a response can easily add up to thousands of dollars.

**Other financial impacts** – If a complaint is upheld, the worst case scenario is that a TVC is pulled from air. From an agency's perspective this can have downstream revenue impacts. TV is often the hero and lead element for an integrated campaign with other elements including digital, magazine, outdoor and experiential. Without the TVC, other elements of the campaign may not get made, which impacts agency revenues. Additionally, if a TVC is pulled off air, any revenue the agency was earning for media planning and placement is also at risk.

Whilst these points may appear overly focused on the agency rather than the client, they do provide a real incentive for agencies to ensure that work complies with the Codes. The costs of not doing so can potentially be very substantial, running into the many tens of thousands of dollars.

In addition, there are potentially significant costs for advertisers and media owners if a complaint is made against them. These could include;

#### For Advertisers

- The costs of having to pull a campaign completely off air (there is also a real issue for the marketing team who have a campaign pulled. It damages their reputation within the organisation and may have career impacts for individuals).
- The costs to revise ads to make them compliant (an example would be the Kiwibank TVC that was required to edit out kids jumping into the river).
- Media cancellation penalties if the campaign is cancelled at short notice.
- The potential loss of business performance/revenues (particularly if it is a retail sale, DRTV or limited time offer).

#### For Media owners

- The most obvious impact is loss of revenue if cancelled inventory is unable to be resold in time (cancellation fees generally don't cover lost revenue).

In summary, the parties of the self-regulatory model all support it because it is the right thing to do as responsible members of the community. However, there are also real financial disincentives for non-compliance.

**Reputational damage** – Notwithstanding the points above, there is also the risk of reputational damage for an agency that has work pulled from air.

### 16. Do you have any other comments that may assist the Panel?

A significant amount of time and effort is applied by a wide range of stakeholders in making submissions for a review such as this. The review panel also puts a huge amount of effort into doing their job. It would be a shame if this review focused too tightly on food and beverage as a response to concerns about obesity at the expense of other issues affecting children in advertising.

Of particular note are three specific issues – sexualisation, body image and popular personalities for all advertising and marketing directed at children. Again, we believe that addressing these issues as part of a single code will ensure greater compliance.

#### Sexualisation:

In 2011, the UK Bailey review of the commercialisation and sexualisation of childhood described an increasingly "sexualised" wallpaper surrounding children and called on businesses and the media to play their part in taking positive measures to prevent this from continuing. CAANZ believes that the current ASA codes could be strengthened by adoption of the AANA's Code for Advertising or Marketing Communications to Children, which begins with the statement that (these advertisements) must not employ sexual appeal. This Code is unequivocal, appropriate and could usefully update CAC guideline 1(f):

*"(a) must not employ sexual appeal; (b) must not include sexual imagery in contravention of Prevailing Community Standards; and (c) must not state or imply that children are sexual beings and that ownership or enjoyment of a product will enhance their sexuality."*

CAANZ further suggests that the final guideline on sexualisation should rank more highly within the guidelines supporting Principle 1.

### Body Image

There is a general consensus that exposure to media which showcases idealized body types can affect how children (and teens) view their own bodies. Research indicates that when a young person does not feel like his or her body meets society's image of perfection, he or she can have a difficult time developing a strong self-esteem.

For that reason, CAANZ believes it would be appropriate for the Code to have an added (or incorporated) guideline within an existing guideline which states, *"Care should be taken that advertisements directed at children should not provide an unrealistic sense of body image"*.

### Popular Personalities

The use of popular personalities and celebrities (live or animated) in marketing communications can be contentious. Personalities can be influential in brand choice. To that end, we recommend adoption of the AANA's Code for Advertising or Marketing Communications guideline:

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

We recommend, however, a clear exclusion regarding brand equity characters. As the IFBA global policy on marketing to children notes, these characters are part of a brand's intellectual property and so, taking them away from the brand would basically mean that the brand ceases to be the same entity. When the UK government decided to regulate food marketing in 2006, it decided to differentiate between characters which are an integral part of the brand and those that are licensed on an ad-hoc basis. Other regulators including for example, in Ireland, Norway, Singapore and Spain, take the same view and our policy is in line with this approach.