



Submission to the Advertising Standards Authority

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

by the Association of New Zealand Advertisers

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1. Introduction

- 1.1. The Association of New Zealand Advertisers (ANZA) welcomes the opportunity to provide this submission to the Advertising Standards Authority's review of the Code for Advertising to Children (CAC) and the Children's Code for Advertising Food (CCAF).
- 1.2. ANZA is the peak body for advertisers in New Zealand and has represented advertisers in this country for more than eighty years. ANZA represents the majority of New Zealand's major advertisers who promote a wide range of products and services to consumers. ANZA member represent, amongst others, advertisers in the food and non-alcoholic beverage sector, banking and finance, therapeutics, retail, energy, alcohol, media, telecommunications and the Government sectors.
- 1.3. ANZA is the New Zealand representative of the World Federation of Advertisers (WFA), the leading global marketers' organisation representing both advertisers and national advertiser associations, which champions responsible and effective marketing communications worldwide. The WFA is a major actor in advertising regulation and compliance.
- 1.4. Advertising plays an important part in the economy as a fundamental enabler for the competition and consumer choice that encourages both innovation and market value that in turn stimulates economic growth. More than \$2.4bn is invested annually in advertising in this country.
- 1.5. ANZA supports industry in taking a responsible approach to advertising, and the Association exerts its influence throughout the communication chain to ensure ethical and responsible. Advertising. We administer pre-vetting services for therapeutics (TAPS) and alcohol advertising and promotion (LAPPS) so that those advertisements meet pre-agreed standards or codes before they can appear in public media.
- 1.6. Before responding to the specific questions asked by the Panel, ANZA wishes to comment on some issues that we believe provide context to our responses and recommendations.
- 1.7. ANZA requests the opportunity to appear before the Panel to speak to this submission and to answer questions from the Panel members.

2. The Role of Self-Regulation

- 2.1. Self-regulation recognises that the advertising sector (advertisers, agencies and the media) create and distribute advertising that complies with clear ethical rules that require advertising to be:
- legal
 - decent
 - honest
 - truthful
 - prepared with a sense of social responsibility to the consumer and to wider society
 - created with respect for the principles and rules of fair competition
- 2.2. There has been public debate about the supposed relationship between advertising and social problems such as obesity, alcohol misuse, gender discrimination and stereotyping, and commercial pressure on children for a number of years. This has led, for example, to a 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, on the basis that the effect of advertising, relative to other influencing factors, is frequently overstated.
- 2.3. It is not the role of advertising self-regulation organisations (SRO), or any other interest group, to determine what products can or cannot be advertised. That is the role of Government. Nonetheless, the SRO (in New Zealand's case the ASA), has the remit to determine the appropriate manner by which products or services can be promoted via marketing communications. Their role is particularly important where advertising that is appropriate for an adult targeted audience, may be inappropriate for a children's audience.
- 2.4. The guiding principle of all our representations is that New Zealand's present self-regulatory advertising standards regime works in the best interests of the public and advertisers. ANZA believes industry led self-regulation has stood the test of time - for more than forty years - and remains the most effective method to prevent fraudulent, untruthful, misleading or otherwise inappropriate advertising.
- 2.5. ANZA believes that the ASA demonstrates internationally-benchmarked best practice. The ASA resolves issues promptly and at no cost to the taxpayer or individual consumers. Its codes and complaints system evolves with community expectations, needs and standards and with a fast-changing media environment. We do not believe that direct legislation can be as efficient or effective.

- 2.6. Furthermore, ANZA believes public policy must be evidence-based. Sometimes, even when evidence is lacking or inconclusive, public policy is initiated on a speculative basis in an effort to see if a particular approach will work or not. 'Evidence-based' means to us that if a speculative policy does not deliver the measureable outcomes claimed for it then it must be reversed. Speculative policy must face up to any unintended consequences, including the evidence-based failure to deliver the outcomes originally asserted for it.

3. Codes Review

- 3.1. ANZA welcomes the ASA's review of both the Code for Advertising to Children (CAC) and the Children's Code for Advertising Food (CCAF). We support the ASA's commitment to a regular schedule of reviews of all the Codes to continue to develop the principles of self-regulation and to ensure that the Codes reflect prevailing community standards and the needs of consumers.
- 3.2. It is within the remit of the Review Panel to recognise that undertaking a review is not by itself a reason to change a Code that is already functioning satisfactorily. Change should not occur just to be seen "to be doing something" but because there is compelling, evidence-based rationale for change that would strengthen the existing advertising rules. For example a Code may have proven difficult to understand or interpret, there may be inconsistencies with other Codes or changing category or media trends may need to be reflected.
- 3.3. A review is also an opportunity to take account of good practice developed outside New Zealand. In that respect ANZA draws the Review Panel's attention to the International Food & Beverage Alliance's (IFBA) global policy on marketing to children (see Appendix 1) which comes into force at the end of this year.
- 3.4. Similarly, we believe the current ASA Codes should be considered against Codes elsewhere in the world, for example (refer Appendices 2-4):
 - The UK Committee for Advertising Practice Codes
 - The Australian AANA Code for Marketing & Advertising Communications to Children
 - The Singapore ASAS Children's Code for Advertising Food and Beverage Products
- 3.5. There have been just nine complaints since the introduction of the Children's Code for Advertising Food in 2009. None were upheld, which indicates a high degree of compliance with the current Code. Further, the argument that 'the public don't complain about advertising or don't know how to complain' is false. During 2010-2015 the ASA received, 3935 complaints in total, with complaints regarding the Children's Code for Advertising Food amounting to 0.3% of those complaints. The public understands the system. The complaints statistics show they are rarely concerned about specific advertisements under this code.
- 3.6. ANZA strongly supports the value of 'guidance notes' which accompany some other ASA Codes. These clarify the intention and requirements of the Codes and aid their interpretation by advertisers, agencies media and the public.

4. Industry Pledge

- 4.1. The codes review, while originally proposed by the ASA, is one of a suite of initiatives included in the Government's Childhood Obesity Plan (Ministry of Health, 2015), which ANZA endorses.
- 4.2. A second initiative of this plan relates to the development of voluntary industry pledges. There are a number of initiatives already undertaken by industry in New Zealand, including the Food Industry Accord established in 2004 (King, 2004). Since then, various initiatives have been adopted aimed at reformulation, restricting the availability of sugar-sweetened beverages in schools and marketing of infant formula. Some of these initiatives occurred through the Food Industry Accord, which helped establish a better relationship between industry and the Ministry of Health.
- 4.3. Establishment of a New Zealand food industry pledge, recognised by Government, would, we believe be an important step, demonstrating that industry is willing to move and develop a new initiative that seeks to directly fulfil the World Health Organisation mandate (WHO, 2010) on the marketing of foods and non-alcoholic beverages to children that states (recommendation 1):

The policy aim should be to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.

ANZA, through this submission, supports this principle of a local industry pledge given it seeks to respond directly to the WHO challenge.

- 4.4. In this context, ANZA believes that a number of the issues raised by the review will be better dealt with via the development of an industry pledge rather than codified within the ASA. ANZA has begun work with the Ministry of Health and other stakeholders on development of such a pledge, reflecting similar pledges established in other countries. We would welcome endorsement by the Review Panel of specific initiatives, raised in the consultation document, for inclusion in such a pledge.

5. Advertising to Children

- 5.1. The advertising industry is well aware of the need for particular care when advertising is likely to reach children. This is expressed via specific rules in the advertising codes.
- 5.2. Marketing communications do impact children's preferences and their requests of parents and caregivers. Given the effort brand owners commit to product innovation, reformulation and communication it would be counterintuitive to argue otherwise. But this needs to be considered in balance.
- 5.3. Today's children are growing up in an environment shaped by media, entertainment and popular culture. Advertising is an intrinsic part of this. We live in a commercial world, where advertising sustains the content provided by almost all media platforms. Society benefits from this funding of content and our unprecedented access to technology, knowledge and communication tools.
- 5.4. Children need to learn to decipher and critically interpret the communications, including marketing communications, around them. The accountability that parents and our education system have to lead this process does not diminish the responsibility of industry and the ASA to ensure that marketing communications meet reasonable guidelines for the protection of children from information - and anything else – that is injurious to their well-being.
- 5.5. An important issue here is the impact that advertising has on children and how it effects their preferences (this is discussed further in section 11). We draw the attention of the Panel to four seminal Government-led reviews of existing research on this subject:
 - *Hastings et al, 'Review of research on the effects of food promotion to children' (2003),*
 - *Ofcom, 'Childhood Obesity – Food Advertising in Context' (2004),*
 - *The Institute of Medicine, 'Food Marketing to Children and Youth: Threat or Opportunity' (2005) and*
 - *Livingstone and Helsper, 'Advertising Foods to Children: Understanding promotion in the context of children's daily lives', conducted for Ofcom (2006).*
- 5.6. These papers were all reviews of all existing research and therefore provide comprehensive independent opinion.

- 5.7. All the studies agree that most children do not understand the commercial intent of advertising before six to eight years old. At this age, children start to develop the cognitive faculties which discern persuasive intent. There is consensus that by age twelve children are fully aware of the commercial intent in advertising and are able to take a critical approach to it.
- 5.8. In the case of food & beverages, the critical question is the extent to which food advertising impacts children's food choices, food preferences and food behaviours, and if this correlates to the stages when children can identify commercial intent, and their 'immunity' to the commercial persuasion kicks in?
- 5.9. There is consensus in these reports that food marketing has, at best, a modest direct effect on children's food preferences, choices and behaviours and, unsurprisingly, this effect is greatest on younger children. It appears that the influence of advertising is relatively small compared to the child's own taste preferences and familiarity.
- 5.10. The U.S. Institute of Medicine (2005) found moderate evidence that television advertising influences usual dietary intake of younger children aged 2–5 years, weak evidence that it influences usual dietary intake of children aged 6–11 years and weak evidence that it does not influence usual dietary intake of teens aged 12–18 years. The Institute found insufficient evidence about "the influence [of advertising] on the purchase requests of teens ages 12–18 years...its influence on the beliefs of teens aged 12–18 years [and] its influence on the short-term consumption of teens aged 12–18 years. The Institute concludes
- "... all the government-led reviews of the existing academic research conducted in the context of the debate on food marketing communications identified an age cut-off for policy restrictions at 12 years".*
- 5.11. It should also be noted that the vast majority of purchases are made by parents, not children, recognising that under the age of 14, most children have limited direct spending power.
- 5.12. Industry recognises the importance of socially responsible rules that account for children's behavioural responses to advertising. The foundation document for advertising codes around the world is the International Chamber of Commerce (ICC) Consolidated Code of Advertising and Marketing Communication Practice (2006). It includes rules regarding advertising to children which have been adopted by the European Standards Alliance (EASA), the leader in global practice of advertising self-regulation.

5.13. The ICC Code rules provide that: *"Special care should be taken in marketing communication directed to or featuring children or young people. Such communications should not undermine positive social behaviours, lifestyles and attitudes. Products unsuitable for children or young people should not be advertised in media targeted to them, and advertisements directed to children or young people should not be inserted in media where the editorial matter is unsuitable for them. Material unsuitable for children should be clearly identified as such."*

5.14. Most SRO codes in individual jurisdictions conform to the ICC statement of fundamental requirements. ANZA believes they must be reflected in any ASA Code dealing with children. Such advertising must not:

- i. Mislead or deceive children
- ii. Employ ambiguity or deceptive sense of urgency to buy the product;
- iii. Feature practices such as price minimisation (using "only" or "just") which are inappropriate to the age of the intended audience;
- iv. State or imply that a product makes children who own or enjoy it superior to their peers;
- v. Undermine the authority, responsibility or judgment of parents or carers;
- vi. Contain an appeal to children to urge their parents, carers or another person to buy a product for them; or
- vii. Use popular personalities or celebrities to endorse, recommend or promote products in a manner that obscures the distinction between commercial promotions and program content.

5.15. A regular message from those seeking to restrict advertising of food products to children is that the media are "awash" with food advertising and thus creates an 'obesogenic environment'. This argument is greatly exaggerated given Nielsen's top advertiser list for the year to June 2014, shows only two food advertiser in the top 20 advertisers in the country, across all media, for the year - McDonald's Restaurants at rank #16 and Nestle at #18 (this does not include Unilever, which is predominantly a personal care and household products company in New Zealand). Two further companies are in the top 30 advertisers. In total, four advertisers in the top-30 is hardly a measure of food and beverage companies dominating the media.

- 5.16. A similar claim is that children's television advertising time is dominated by food and beverage advertising. Again that is incorrect. Analysis of all advertising in children's time zones in 2012 by Nielsen showed that just 7% of all advertisements were for food and beverage, which included the likes of better-for-you options such as 5+A Day and Weet-bix Tryathalon advertising.
- 5.17 ANZA commissioned research (Hofer, 2012) to evaluate, over three months, all television advertisements for food (including quick service restaurants) and for non-alcoholic beverages that screened on television within designated children's time zones, or at other times with an audience with 35% or more aged under 14. Six separate commercials screened in that time zone, or with this audience profile and each was reviewed for compliance with the ASA's Children's Code for Advertising Food. Five advertisements were for quick-service restaurant (QSR) meals and one advertised a fruit-based snack. Each advertisement was found to be compliant with the codes.
- 5.18 Despite the results of this research, Burger King have subsequently announced they would stop advertising in children's time zones (2014) and no longer provides free toys with children's meals (April 2015). McDonald's too has stopped advertising in daytime television. These decisions suggest that competitive commercial behaviour and responsible self-regulation are not mutually exclusive.
- 5.19 Complaints to the ASA regarding advertising, complaints regarding advertising to children, both food and non-food, have been minimal (see 3.5). Given the steps taken by advertisers to comply with the codes, this is not surprising but also because parents agree that it is they who have the greatest influence on the diets of their own children. An Ipsos (2012) survey of 500 parents in Australia concluded that the principal influences on in-home food purchasing decisions by parents were nutritional value (32%), price (26%) and taste (16%), rather than advertising.
- 5.20 The same survey suggests that there is widespread community acceptance that parents are the biggest influencer of children's diets and those factors that tend to reduce physical exercise - such as concerns about children's safety when playing outdoors and the rise of sedentary behaviour and pastimes, such as the use of electronic games, and that these are by far the most profound significant causes of increased obesity among children. It is clear from the survey that it is parents who want responsibility for making health, nutrition and exercise decisions for their children. Only one in four believed this should be shared with the Government.

6. Childhood Obesity

- 6.1. The policy debate around food marketing to children is sensitive. It appropriately stirs the emotions - what kind of society would we live in if activities that are perceived to impact children's health are not seriously questioned? Inevitably sensationalism, dogma and professional self-interest can be obstacles to practical solutions that affect 'real-world' realities, recognising where ultimate accountability lies on family issues, and a desire for perfect solutions.
- 6.2. Childhood obesity is a serious health concern that needs attention given the social and economic costs involved. ANZA therefore welcomed Minister Coleman's announcement of the Government's Childhood Obesity Plan last year (Ministry of Health, 2015).
- 6.3. We are clear that food marketing does impact children's food preferences and food choices. This impact occurs at both a brand and category level. To suggest otherwise would be counterintuitive when companies invest in marketing their products as well as reformulating and innovating new product lines.
- 6.4. What is rarely acknowledged, however, is 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* (Clarke & Svanes, 2014), notes that the evidence from research on the relationship between food marketing and childhood obesity is not conclusive and, despite claims of the existence of a direct relationship, reviewers of the research disagree in their overall conclusions.
- 6.5. The review highlighted that some evidence is correlational evidence it falls short of establishing a causal relationships between exposure to advertising and obesity. Research has tended to describe children's reported exposure to media rather than their exposure to advertising *specifically*. This is problematic, since there are many ways in which media use might be associated with obesity - watching television and surfing the internet are sedentary activities, which do not burn many calories. Further, long periods of screen time are an indicator of other sedentary activities.
- 6.6. Similarly, the US Institute of Medicine (2005) concluded that at best food marketing has a "...modest direct effect..." on the food choices, preferences and behaviours of children (see 5.10).

- 6.7. A UK study commissioned from Foresight by the then Labour Government (Butland et al, 2007), produced what ANZA suggests is the most comprehensive analysis of the factors leading to obesity in society. It found that exposure to food marketing was one of no less than 106 variables. This leads us to suggest that if holistic solutions to a societal problem are advocated as essential to its solution then how is it possible to guarantee that any one solution – advertising regulation or anything else – is likely to lead to an outcome that can be tested for validity of outcome as ‘evidence-based’ against any other single cause of action.
- 6.8. This is in no way meant to absolve food marketers of their responsibilities. If food marketing impacts children’s food choices at any level then responsible food companies need to respond appropriately. Of course many food and beverage manufacturers are already going a long way to doing this and we are in an era of rapid and significant product transformation, with greater choice of better-for-you options than ever for consumers.

7. Non-Food Advertising Issues

7.1. There is a risk that this Code review focuses on food and beverage at the expense of other issues affecting children in advertising. That is one of the reasons why we support a single code that applies to all advertising directed at children (Section 10). We draw the Review Panel's attention to three specific issues – sexualisation, body image and the use of popular personalities in advertising and marketing directed at children.

7.2. Sexualisation:

The UK Bailey review of the commercialisation and sexualisation of childhood (Bailey, 2011), described an increasingly "sexualised" wallpaper surrounding children and called on businesses and the media to take measures to prevent this from continuing. ANZA believes that the current ASA codes could be strengthened by adoption of the Australian Code for Advertising or Marketing Communications to Children's guideline (see Appendix III) which begins with the statement that (these advertisements) *must not employ sexual appeal*. ANZA proposes that the ASA codes should be amended to give effect to the principle that advertising directed at children must:

(a) 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

ANZA further suggests that the final guideline on sexualisation should rank more highly within the guidelines supporting current Principle 1 of CAC.

7.3. Body Image

There is a consensus that exposure to media that 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, ANZA believes it would be appropriate for the Code to have an added guideline (or incorporated) within an existing guideline that:

"Care should be taken that advertisements directed at children should not provide an unrealistic sense of body image".

7.4. 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 that:

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 program 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. ANZA's recommendation is in line with this approach.

8. Trade

- 8.1. Commerce is increasingly international, with long-standing trade barriers being removed or scaled back.
- 8.2. The 1993 free trade agreement between the Governments of New Zealand and Australia (CER) has led to continuing alignment of business rules, economic integration and a common competition policy.
- 8.3. Many businesses, including advertisers, manage their businesses across Australia and New Zealand as single or closely aligned businesses, often with common brands. It is not uncommon for responsibility for advertising and marketing decisions to be made in head offices in Sydney or Melbourne for the two countries.
- 8.4. ANZA believes it would be unproductive for the advertising codes of the two countries to significantly diverge, to lessen competition or become an artificial barrier to trade. It would be unreasonable for Codes to be developed in either market in a way that demanded significantly different standards and practices or creative approaches. We cannot see how this would benefit consumers. ANZA therefore proposes that the Panel's review should include consideration of the AANA's *Code for Marketing & Advertising Communications to Children* (see Appendix III).
- 8.5. Notwithstanding the independence of the complaints boards in each country to interpret community standards, as a principle an advertiser should expect that an advertisement created to be shown in either New Zealand or Australia should reasonably be expected to be shown in the other country, allowing for variations in widely-accepted cultural norms. Other than in exceptional circumstances, Codes should not be configured in a way that results in significant barriers to the transfer of advertising content across the two markets.

9. Advertising Pre-vetting

- 9.1. As previously noted, ANZA administers two pre-vetting services for therapeutics (TAPS) and alcohol advertising and promotion (LAPPS). We do so to ensure advertisements in these categories, which demand a high standard of social responsibility, meet their respective Code of Practice requirements, before they are shown to the public. In both cases they have contributed significantly to compliance.
- 9.2. ANZA proposes trialling a similar pre-vetting service for non-alcoholic food and beverage advertising (FAPS), where that advertising may be considered to have appeal to children.
- 9.3. In doing so, we recognise that the breadth of these categories, creates a number of challenges, for example, we wouldn't propose pre-vetting all food and beverage advertising. That would be an unnecessary burden on industry. Instead it is proposed to implement a voluntary pre-vetting trial of:
- HFSS product advertising appearing in video (including broadcast TV) or outdoor media
 - That are new campaigns
 - Excluding retail advertising
- 9.4. It would be our intention to trial this first with ANZA Members for 6 months and review uptake and compliance with the ASA following that trial, We would then make recommendations, in consultation with the ASA on future pre-vetting, which may be included in an industry pledge (see section 4)

10. One Code or Two

(Q13) Do you support or oppose combining the two current Codes?

- 10.1. ANZA believes that limiting the number of Codes enables the public and advertisers to better understand the rules concerning advertising and, in the case of advertisers, their obligations. We are on record as supporting an expanded Code of Ethics, incorporating a number of points from the existing Codes. This is not to suggest that the core principles or guidelines should be weakened, simply that a single Code, which includes specific guidelines regarding food and beverage, as in both the UK and Australian Codes, is more readily understood and interpreted, with consistent language and without unnecessary duplication.
- 10.2. There is already significant overlap between the two Codes e.g.: in terms of peer power and the role of parents and caregivers or the need for advertisements to be clearly recognisable as such, which could usefully be simplified.
- 10.3. There are also inconsistencies, such as Principle 2(b) of CCAF and 2(b) of CAC, which address in different ways the level of knowledge, sophistication of audience and potential to be misleading. These would benefit from simplification,
- 10.4. A disadvantage of retaining two Codes is the risk of an advertiser inadvertently overlooking an important element of the Code for Advertising to Children when ensuring compliance with the Children's Code for Advertising Food. For example principle 1(f) requires that that advertisements 'should not have the effect of portraying children in unsafe acts'. This needs to be clear to all advertisers regardless of the nature of their product.
- 10.5. ANZA suggests that public interpretation of, and response to, the Code would also benefit from an amalgamated single Code for Advertising to Children, provided that it included specific guidelines regarding food and beverage advertising.
- 10.6. ANZA proposes that a simple integration of the current Codes, removing duplication and ambiguity, should be the starting point for the review, creating an initial framework for the new Code, from which any amendments can then be considered by the Panel.

11. The Age of Children

(Q7) The Children's Code currently defines a child as under the age of 14. Do you support or oppose this definition?

- 11.1. Both the current ASA Codes define a child as under-14. We understand that past reviews have chosen to align the age with the Broadcasting Standards Authority definition and that of the Children, Young Persons and their Families Act. While both provide sound rationale, ANZA contends there are grounds to in fact reduce the age to under-12.
- 11.2. Despite frequent calls for regulation of advertising to children and a proliferation of regulatory proposals in this field, particularly with regard to food and beverage advertising, there is no consensus on the definition of a child in this context. The typical international standard for advertising is under-12 (in the US, Canada and Europe). In one of the more recent co-regulatory Code agreements, Singapore, under-12 was again agreed (see Appendix IV).
- 11.3. In Australia three standards apply. The AANA self-regulatory code defines children as 14 years old or younger (under-15), while the AFGC pledge programme for packaged food is under-12 and the QSR pledge is under-14.
- 11.4. At the same time emerging digital media, particularly social media – Facebook, Instagram, and Snapchat etc. require users to be 13 or older to register.
- 11.5. Given the lack of consensus concerning age, in this section we seek to inform the debate by drawing on the academic and empirical evidence as well as looking at other legal precedents. Of particular importance is the evidence on children's understanding of the persuasive intent of advertising; the analysis of other legal precedents is useful to give some perspective on the proportionality of proposed measures for advertising in relation to other spheres of life.

- 11.6. There is significant research on children's understanding of advertising and advertising's impact on children's food choices, food preferences and food behaviours. Most academic reviews recognise that by the age of 12 children develop their behaviour as consumers, effectively recognise advertising and are able to adopt critical attitudes towards it Institute of Medicine (2005):

"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."

- 11.7. There is a strong degree of 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 articulate a critical understanding of advertising, even becoming sceptical or distrustful of it."

- 11.8. An important issue in discussions about the influence of food and beverage advertising and marketing reaching children and youth relates to the stages of discernment. Before a certain age, children lack the defences, or skills, to discriminate commercial from non-commercial content, or to attribute persuasive intent to advertising. Children generally develop these skills at about age 8 years, but children as old as 11 years may not activate their defences unless explicitly cued to do so.

There is strong evidence that television advertising influences the food and beverage purchase requests of children ages 2–11 years. There is insufficient evidence about its influence on the purchase requests of teens ages 12–18 years...

There is moderate evidence that television advertising influences the food and beverage beliefs of children ages 2–11 years. There is insufficient evidence about its influence on the beliefs of teens ages 12– 18 years....

There is strong evidence that television advertising influences the short-term consumption of children ages 2–11 years. There is insufficient evidence about its influence on the short-term consumption of teens ages 12–18 years...

There is moderate evidence that television advertising influences the usual dietary intake of younger children ages 2–5 years and weak evidence that it influences the usual dietary intake of older children ages 6–11 years. There is also weak evidence that it does not influence the usual dietary intake of teens ages 12–18 years."

11.9. Analysis for Ofcom in the UK (Livingstone and Helsper 2006) concluded that none of the 49 key studies cited found that older children, e.g.: those above 12 years old, should be targeted for restrictions to food advertising. Essentially:

- Before the age of four or five, children regard advertising as simply entertainment.
- Between four and seven, they begin to be able to distinguish advertising from programmes.
- By the age of eight, the majority has generally grasped the intention to persuade.
- After eleven or twelve they can articulate a critical understanding of advertising.

11.10. In the light of the evidence relating to children's understanding of advertising and of the existing definitions of a child in other domains, it can be concluded that advertising rules should reflect the needs of children.

- Children under 6 deserve particular attention, as they may not yet be able to identify an advertisement as such.
- Children between the ages of 6 and 12 generally understand the persuasive intent of advertising, but care should be taken because they may not have developed a critical understanding.
- Above the age of 12 the evidence is that children today are equipped with an advanced critical understanding of advertising and may even be more sophisticated "media consumers" than adults.

11.11. Consideration should also be given to the number of legal definitions of a child for other purposes, such as different ages of driver licencing, 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 evidence base.

11.12. 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.

11.13. 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, leave school, get married or drive a car. Classifying teenagers as children then makes little sense.

11.14. ANZA contends that the evidence points to the need for advertising to take particular care when addressed to children below the age of 12. This should be reflected in codes of conduct and corporate marketing policies, which should contain particular provisions for children pre-school and primary school age. ANZA recommends consideration be given to aligning the New Zealand Code(s) with the most common international standard of under-12.

12. The Current Codes

(Q1) What are the strengths and weaknesses of the two current Children's Codes?

(Q3) What changes, if any, are necessary to protect the rights of children and their health and well-being?

- 12.1. As noted (section 3.2) it is not a given that a review of the existing Codes requires that the principles or guidelines necessarily change. Considerable thought and preparation was given to preparing the Codes at the time and ANZA believes that they continue to serve the public well.
- 12.2. The ASA's own statistics (section 3.3) confirm that complaints under the Codes specific to children are low when compared with the other Codes. This suggests the current Codes' principles are sound, clearly expressed, reflect the community's views and provide clear guidance to advertisers and to members of the Advertising Standards Complaints Board charged with the resolution of formal complaints.
- 12.3. ANZA proposes that the Codes strike an effective and realistic balance in protecting children and their health and well-being and the freedom of brand owners to responsibly market their products and services.

13. Media

(Q4) Please comment on any concerns you have with different media formats?

(Q12) Are there environments where you consider it to be inappropriate to advertise to children?

- 13.1. The media environment has changed markedly since the existing Codes were written in 2009. A world of linear broadcast and print deadline has quickly evolved into one of all content on all devices at any time. Time shifting, smartphones, tablets and other personal devices, supported by 4G and rapidly-developing UFB access has placed consumers, including young consumers, into an advertising environment that is both global, and highly personalised,
- 13.2. Content is increasingly consumed where, when and how the viewer and/or caregiver determines. When children once accessed their audio-visual experiences through linear television channels (and DVD), that media world has changed substantively.
- 13.3. Online and ‘over the top’ (OTT) services deliver new media content that is not necessarily ‘curated’ with a degree of editorial responsibility. In short the ‘new media’ will increasingly deliver content across multiple channels to targeted viewers.
- 13.4. The advent of social media provides new challenges for SROs. Facebook, for example, is barely 10 years old. Today’s 20-25 years olds grew up as children with now redundant MySpace and Bebo while Instagram, Snapchat and other channels are increasingly popular with today’s teens. We do not know what channels and supporting technologies will emerge in the likely lifespan of any new Code.
- 13.5. Social media is typically age-gated, with new registrants for Facebook and Instagram, for example, needing to declare that they are 13 years or older to join. Inevitably some young people may register on sites using false ages, in the same manner they may consume other media underage. The question then arises whose responsibility is that – the child, their parents, media owners, or advertisers? Advertisers are not in a position to deal directly with such deception, but can (and do) minimise the risk by taking a conservative approach by targeting a slightly older age group.
- 13.6. ANZA proposes that the ASA maintains the long-standing ‘media agnostic’ principle with all advertising. Codes should be applied equally and consistently across all media channels on a technology-neutral basis.

- 13.7. Media Audience – Although Q4 and Q12 of the consultation document relate to media, ANZA directs the attention of the Panel to the make-up of media audiences. This is important because while it may be argued that some products should not be targeted to children, 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 for Advertising and Promotion of Alcohol.
- 13.8. IFBA comprises 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.
- 13.9. For the purpose of the IFBA 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.
- 13.10. In New Zealand, the ASA Code for Advertising and Promotion of Alcohol includes Guideline 3(g) which 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.
- 13.11. ANZA proposes that any revisions to the Code(s) reflect the IFBA standard for media audiences for food and non-alcoholic beverages products, noting the allowance for better-for-you products that meet agreed nutritional standards.

- 13.12. International Media Platforms: A further issue in attempting to limit access to online media other than by age restriction is the difficulty of controlling online media when users can source both paid and unpaid content uploaded anywhere in the world. For example, a ban on advertising and sponsorship in New Zealand will not prevent the New Zealand public being exposed to HFSS branding at global events, such as the FIFA World Cup, ICC Cricket World Cup or the IRB Rugby World Cup, or in regional events as diverse as drifting, adventure sport, beach sports and motor racing.
- 13.13. The public is also exposed to advertisements placed on global media platforms. This is particularly so as younger people increasingly consume media content, be it television, movies or music online and increasingly through international channels, outside the jurisdiction of New Zealand law or Codes. A good example is Norway, where alcohol advertising has been banned since the early 1970s, yet global alcohol brands are commonplace in online pan-European media
- 13.14. Restrictions on marketing communications locally, that are inconsistent with international standards, thus provide global brand owners, who can align with international events, with an unfair advantage over local producers. ANZA contends that it is not the role of the ASA to facilitate a distorted market.
- 13.15. Further the premise, that HFSS brands, for example, should not sponsor local programme content would encourage investment on offshore content – for example the KFC Big Bash Cricket League, with embedded branded content, still broadcast into New Zealand whereas the Georgie Pie T20 may not exist. There are many content properties in Australia that could be utilised to circumvent such restrictions.
- 13.16. Regulatory measures designed to control this aspect of new media would almost certainly constrain public internet freedom. The increasing divergence of media platforms to capture mobile devices also adds complexity to the issue.

- 13.17. Schools: In addition IFBA members have committed not to engage in food or beverage product marketing communications to children in primary schools. Members respect that schools are very special environments where healthy lifestyles must be encouraged. IFBA members have also made further voluntary commitments. For example Coca-Cola, together with Frucor agreed the Voluntary Schools Beverage Agreement (Foodworks, 2014) which has seen both companies completely withdraw the direct supply of full sugar carbonated soft drinks and full sugar energy drinks from all New Zealand schools.
- 13.18. ANZA contends that branded communication in school environments is best addressed by means of an agreed industry pledge (see section 4).

14. Advertising or Marketing?

(Q9) Do you support or oppose a specific guideline on sponsorship?

- 14.1. Before responding to this question, we suggest that the Panel note the definition of advertising in the ASA Code:

The word “advertisement” is to be taken in its broadest sense to embrace any form of advertising and includes advertising which promotes the interest of any person, product or service, imparts information, educates, or advocates an idea, belief, political viewpoint or opportunity. The definition includes advertising in all media, print, broadcast, and digital and includes social media and advertiser-controlled websites. Emails and SMS messaging that are selling or promoting a product, service, idea or opportunity are also covered by the codes, as are neck labels or promotions attached to a product. Other examples include posters, pamphlets and billboards (whether stationary or mobile) and addressed or unaddressed mail.

- 14.2. The definition used in the AANA Code in Australia refers to marketing rather than advertising, and seeks to identify what is excluded from the definition rather than what is included:

In this Code, unless the context otherwise requires, Advertising or Marketing Communications means:

any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,

- *over which the advertiser or marketer has a reasonable degree of control, and*
- *that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,*

but does not include

- *labels or packaging for products*
- *corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like*
- *in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.*

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.

- 14.3. By referring to ‘Advertising or Marketing Communications’, and being specific as to what is excluded, rather than attempting to identify what is included in the definition of advertising, the AANA Code provides greater clarity as to the breadth of the code and enables the complaints board to better interpret complaints. In ANZA’s view this definition does include, by not specifically excluding, sponsorship and proposes sponsorship should be included in the guidelines, but with due care.

- 14.4. Sport, music and community events in New Zealand make a significant contribution to the country's vibrant and diverse culture as well as having important economic and social impact. Sponsorship of such events is an important contributor to the diversity of activity throughout the country, and industry is a contributor to that. Funding also delivers essential support allowing investment in grassroots programmes nationwide.
- 14.5. Sponsorship is for many organisations, sporting, school and cultural, vital for their ongoing viability and enabling growth of those organisations that may not otherwise be realised.
- 14.6. Sponsorship is generally crucial for events. Without the sponsorship the event would not occur or would be in a much smaller form, for example the Weetbix Tryathlon series is of a scale, with 18 events nationally, which could not be sustained without significant corporate funding.
- 14.7. Sponsorship in the food sector includes considerable public good – for example Fonterra and Sanitarium both contribute significantly to the Ministry of Social Development's KickStart Breakfast programme whereby thousands of students experience the power of a nutritious breakfast to provide both strength and energy for maximum learning at school.
- 14.8. At grassroots level, clubs provide an important focus in the community and perform valuable social services in the form of community pride and community activity. They are a large contributor to the creation of social capital. It is recognised that Clubs receive significant benefit from sponsorship, which is used to encourage participation in the sport and cultural activities throughout the country.
- 14.9. The general consensus is that the sponsorship market is tough, small and competitive. Brand owners are approached for sponsorship almost daily and there is a significant gap between what the private sector is asked for support through corporate sponsorship and what it is able to provide. If sponsorship by food and beverage brands was removed there would be extreme difficulty and in most cases impossibility of replacing that funding with the same value sponsorship from elsewhere. This would lead directly to a reduction in community events and assets. The social, economic and cultural capital of New Zealand communities would be eroded.

15. Nutrient Profiling

(Q8) Is there a role for a nutrient profiling system such as the health star rating system in the Children's Codes?

- 15.1. While we stress that the current review should focus on marketing communications of any and all products which may be directed at children, it would be wrong to ignore the fact that food and beverage products are of particular interest to a number of stakeholders.
- 15.2. Creating rules specific to food and beverage are problematic. Whereas advertising for other products and services can be relatively easily defined e.g.: alcohol or car advertising, by its very nature, the food and beverage sector is diverse covering whole foods and processed foods; individual products, meals and diets; both snacks and meal occasions; in-home and out-of-home consumption and a diverse range of retail and restaurant channels and more. At the same time, while purchase and consumption of many products or services might be considered discretionary, food is an essential for life. So approaching this review by attempting to apply rules from other sectors is inadvisable.
- 15.3. By way of example a quick service restaurants serves meals rather than individual food. Meal options within, for example McDonald's, include an array of food types including fruit and low fat yoghurt options, salads, chicken wraps, water, fruit juice and hamburgers. In the current code, all these food items (many of which are not high in fat, salt and sugar) are bundled together under the pejorative "fast food" label. That is both inaccurate and unreasonable.
- 15.4. For this reason, while we argue that a single Code should apply to advertising to children, reference to foods within that Code needs to be carefully considered and defined. In principle there is a role for a nutrient profiling system, however the suggestion of using the Health Star Rating system (HSR) is problematic.
- 15.5. While the HSR is recognised by Government and applicable across Australia and New Zealand, it was developed as an information system for packaged foods, as an interpretation tool for consumers. It shouldn't be used for comparison across different food groups and does result in anomalies and the HSR isn't suitable for meals. For this reason ANZA supports in principle the idea of nutrition profiling within the code, it rejects the use of HSR for that role.

- 15.6. At the same time, there is a need for more for more objective descriptions of particular food types. The current CFC refers to (Guideline 1(c)) treat food, snacks or fast food. The only definition is the one for “treat foods” which is defined as “food high in fat, salt or sugar intended for occasional consumption. Food high in fat, salt or sugar is also known as energy dense and nutrient poor food.”
- 15.7. The UK Advertising Standards Authority’s code governing food and soft drink product advertising to children, the code refers only to “HFSS products” and defines them as follows: *“...those food or drink products that are assessed as High in Fat, Salt or Sugar in accordance with the nutrient profiling scheme published by the Food Standards Agency (FSA)...For avoidance of doubt, HFSS product advertisements may make nutritional or health claims in accordance with rule 13.4.*
- 15.8. Having said that, the case for using a nutrient profiling system should not be used to prevent a certain product (or meal option) to be advertised, rather how it may be advertised. It is not the role of the ASA’s Code to determine whether a product can or cannot be advertised. Again the premise should be on the media audience (see section 13.7).

16. Monitoring

(Q10) Do you support or oppose the introduction of independent monitoring and evaluation of the Codes? How would this work?

- 16.1. The question that was asked is, we believe, unclear. Monitoring can take many forms, for example of any of the content, placement and/or frequency of advertising messages.
- 16.2. Nonetheless ANZA recognises a number of different monitoring systems are in place around the world and we are open for discussion with stakeholders on how a monitoring programme could be structured in a market the size of New Zealand. Existing monitoring systems (in different forms) are in place in Europe, the USA, Canada, Australia, Philippines and Singapore.
- 16.3. ANZA has been working recently with the World Federation of Advertisers (WFA) who have been a significant actor in a majority of monitoring systems. Central to monitoring is the question of what is monitored. For example compliance data can be measured for all channels but trend / impact data is only available for television – a medium becoming less relevant for younger people. Each of the existing schemes has their own strengths and weaknesses, summarised below and it will be important to evaluate the best option for New Zealand - one that is cost-effective, uses existing structures and provides relevant narrative.

Monitoring scheme	Strengths	Weaknesses
Preclearance / Copy advice (Before going to air)	Simple to operate Can use existing structure at ASA	No outcome data to measure success of policy intervention
Industry post-facto monitoring (After ad goes to air)	Snapshot of compliance with code, provides extra layer of rigour	No outcome data to measure success of policy intervention
Third party compliance monitoring (like IFBA does at global level post broadcast)	Third parties (i.e. Accenture measuring company compliance with code)	Can be very complicated. You are compliant with what? No outcome data. Expensive and time consuming
Third party impact monitoring (like EU Pledge does post broadcast)	Outcome/trend data can show outcomes : very powerful politically	What happens if the trends are unhelpful? Expensive, time-consuming

- 16.4. There is a further fundamental issue of how any monitoring programme would be funded. It is ANZA's proposition that it is outside the resources of the ASA. Rather it would be industry funded and as such the mechanism and provider would be determined by industry in consultation with stakeholders.
- 16.5. For these reasons ANZA believes that a full evaluation of monitoring options is outside the brief of an ASA Code Review Panel but would welcome endorsement of the principle that industry should fully investigate the establishment and funding of a market appropriate monitoring system to evaluate market impact of food and beverage advertising to children for inclusion in an Industry Pledge.

17. The Complaints Process and Sanctions

(Q2) What are the strengths and weaknesses of the current complaints process?

(Q11) What is your view of the sanctions imposed by the ASA when a complaint is upheld?

- 17.1. ANZA considers the current complaints process is sound and clearly expressed for the understanding of all stakeholders including the community. The process to deal with formal complaints is rigorous, fair on all parties, complaints resolution is prompt and judgements are consistent and at no cost to the public or taxpayer, provides excellent value to society.
- 17.2. It is argued that the self-regulatory regime excludes the risk of cost penalty to advertisers that could be applied through legislation. This ignores a number of significant penalties to an advertiser who is found in breach of a Code. Being found in breach 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 \$1m+
- 17.3. Decisions by the ASCB are released to the media and frequently receive significant media coverage. For the great majority of advertisers, 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 costs.
- 17.4. For multinational companies, such as Coca-Cola, Nestle and McDonalds, compliance with local advertising Codes is regularly measured and reported as part of global corporate social responsibility and it is very important for local operations to ensure compliance.
- 17.5. In addition to ASA sanctions, the nature of social media channels is such that public negativity around brand communications can quickly create a 'firestorm' of negativity, even before a complaint has been heard by the ASCB, for example, Old Mout Cider in February 2016.
- 17.6. For these reasons ANZA believes the current codes complaint process is robust, transparent and effective.

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Appendix I

International Food & Beverage Alliance

Global Policy on Marketing Communications to Children (Sept. 2014)

Global Policy on Marketing Communications to Children IFBA members commit either to:

- Only advertise products to children under the age of 12 years that meet common nutrition criteria¹ which are based on accepted science-based dietary guidance², or
- Not to advertise their products at all to children under the age of 12 years.

The above policy covers food and beverage product marketing communications³ that are primarily directed to children under 12⁴ in all covered media⁵.

In addition, IFBA members agree not to engage in food or beverage product marketing communications to children in primary schools⁶.

IFBA will publish yearly reports to demonstrate compliance with this policy.

This policy will become applicable to all IFBA member companies globally by 31 December 2016.

Individual member companies may maintain or adopt specific policies that go beyond the IFBA policy.

¹ *Applicable nutrition criteria will be harmonised on a regional or national basis, taking into account local dietary and cultural specificities. IFBA will not develop global criteria but common nutrition criteria already underpin industry commitments in the EU and the US and IFBA is currently working to support the adoption of these or similar common nutrition criteria in other markets worldwide. In countries or regions where common nutrition criteria do not yet exist for industry self-regulatory commitments or the member has not yet adopted the common nutrition criteria, members will only market products that meet company-specific nutrition criteria based on accepted scientific evidence and/or applicable national and international dietary guidelines.*

² *Dietary guidance includes, for example, Codex Alimentarius guidance, the Dietary Guidelines for Americans, the Institute of Medicine (IOM) guidelines and EURODIET, a project funded by the European Commission.*

³ *“Marketing communications” means paid advertising or commercial sales messages for food and beverage products, including marketing communications that use licensed characters, celebrities and movie tie-ins. Company-owned, brand equity characters are not covered by the policy.*

⁴ *Primarily directed to children under 12 means advertising in measured media where 35% or more of the audience is under 12 years of age. Where adequate data are unavailable, companies will consider other factors as appropriate, which may include the overall impression of the advertising, actions taken to restrict child access and the target demographic based on the company’s media plan.*

⁵ Covered media means the following vehicles: TV, radio, print, cinema, online (including company-owned websites), DVD/CD-ROM, direct marketing, product placement, interactive games, outdoor marketing (to be defined by interpretative guidelines), mobile and SMS marketing. Packaging, in-store and point of sale as well as forms of marketing communications which are not under the direct control of the brand owner, such as user-generated content, are not covered by this policy.

⁶ Menus or displays for food and beverage products offered for sale, charitable donations or fundraising activities, public service messages, and items provided to school administrators for education purposes or for their personal use are not covered. IFBA members commit to developing and publishing specific guidelines on permissible activities in schools.

Appendix II

UK CAP Code of Broadcast Advertising

NB: The UK's Committee of Advertising Practice has two advertising codes – one for broadcast media the other for non-broadcast media, sales promotion and direct marketing. In both cases the codes are written as comprehensive codes with sections specific to children. The following is the children's section from the Code of Broadcast Advertising. The full codes can be sourced at <https://www.cap.org.uk/Advertising-Codes.aspx>

05 Children

Principle

Children must be protected from advertisements that could cause physical, mental or moral harm.

Background

The context in which an advertisement is likely to be broadcast and the likely age of the audience must be taken into account to avoid unsuitable scheduling. Advertisements that are suitable for older children and young persons but could distress younger children must be sensitively scheduled or placed. This section should therefore be read in conjunction with Section 32: Scheduling. Care must be taken when scheduling advertisements that could frighten or distress children or could otherwise be unsuitable for them: those advertisements should not be scheduled or placed in or around children's programmes or in or around programmes likely to be seen by significant numbers of children. Care must also be taken when featuring children in advertisements.

Definitions

A child is someone under 16.

"Children's products and services" are products or services of more or less exclusive interest to children.

"Products and services of interest to children" are products or services that are likely to appeal to children but are not of exclusive interest to them.

Rules

5.1 Advertisements that are suitable for older children but could distress younger children must be sensitively scheduled (see Section 32: Scheduling).

5.2 Advertisements must not condone, encourage or unreasonably feature behaviour that could be dangerous for children to emulate. Advertisements must not implicitly or explicitly discredit established safety guidelines. Advertisements must not condone, encourage or feature children going off alone or with strangers.

This rule is not intended to prevent advertisements that inform children about dangers or risks associated with potentially harmful behaviour.

5.3 Advertisements must not condone or encourage practices that are detrimental to children's health.

- 5.4 Advertisements must not condone or encourage bullying.
- 5.5 Advertisements must not portray or represent children in a sexual way.
- 5.6 Advertisements must not imply that children are likely to be ridiculed, inferior to others, less popular, disloyal or have let someone down if they or their family do not use a product or service.
- 5.7 Advertisements must not take advantage of children's inexperience, credulity or sense of loyalty. Advertisements for products or services of interest to children must not be likely to mislead; for example, by exaggerating the features of a product or service in a way that could lead to children having unrealistic expectations of that product or service.
- 5.8 Child actors may feature in advertisements but care must be taken to ensure that those advertisements neither mislead nor exploit children's inexperience, credulity or sense of loyalty.
- 5.9 Advertisements must neither directly exhort children to buy a product or service nor encourage them to ask their parents, guardians or other persons to buy or enquire about a product or service for them.
- 5.10 Advertisements that promote a product or service and invite consumers to buy that product or service via a direct response mechanism must not be targeted directly at children. Direct-response mechanisms are those that allow consumers to place orders without face-to-face contact with the supplier.
- 5.11 If it includes a price, an advertisement for a children's product or service must not use qualifiers such as "only" or "just" to make the price seem less expensive.
- 5.12 Television only – Advertisements for a toy, game or comparable children's product must include a statement of its price or, if it is not possible to include a precise price, an approximate price, if that product costs £30 or more.
- 5.13 Advertisements for promotions targeted directly at children:
- 5.13.1 must include all significant qualifying conditions
- 5.13.2 Must make clear if adult permission is required for children to enter. Advertisements for competitions targeted directly at children are acceptable only if the skill required is relevant to the age of likely participants and if the values of the prizes and the chances of winning are not exaggerated.
- 5.14 Promotions that require a purchase to participate and include a direct exhortation to make a purchase must not be targeted directly at children. Advertisements for promotions directly targeted at children should comply with Section 28: Competitions.

Appendix III

AANA Code for Advertising and Marketing Communication to Children

This Code has been adopted by the Australian Association of National Advertisers (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.

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

1. DEFINITIONS

In this Code, unless the context otherwise requires:

Advertising or Marketing Communications means:

a. any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,

b. but does not include

- labels or packaging for products
- corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like
- in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.

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. The Board shall have regard to the Practice Note to this Code in determining whether Advertising or Marketing Communications are to children under this definition.

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.

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.

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 either free, at a reduced price, or with an additional cost and which is conditional upon the purchase of an advertised product.

Prevailing Community Standards means the community standards determined by the Board as those prevailing at the relevant time in relation to Advertising or Marketing Communications to Children. Prevailing Community Standards apply to Section 2 below. The determination by the Board shall have regard to Practice Notes published by AANA and any research conducted by the Advertising Standards Bureau.

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 accurately represent, in a manner that is clearly understood by Children:

(i) the advertised Product;

(ii) any features (including the size and performance of the product) which are described or depicted or demonstrated in the Advertising or Marketing Communication;

(iii) the need for and the price of 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.

(d) Price

(i) 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”;

(ii) Advertising or Marketing Communications to Children must not imply that the Product being promoted is immediately within the reach of every family budget.

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 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.

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, carers or another person 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 are more generous than those who do not.

2.8 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.

2.9 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.

2.10 POPULAR PERSONALITIES 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 program or editorial content.

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

- (a) must not create a false or misleading impression in the minds of Children about the content of the Product;
- (b) must be presented conspicuously;
- (c) must 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;
- (d) must not refer to the premium in more than an incidental manner to the advertised product;
- (e) must make the terms of the offer clear as well as any conditions or limitations; and
- (f) must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.

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

2.13 PRIVACY If an Advertising or Marketing Communications 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 a parent or guardian's express consent prior to engaging in any activity that will result in the collection or disclosure of such personal information. Personal information is information that identifies the child or could identify the child.

2.14 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.

2.15 AANA CODE OF ETHICS Advertising or Marketing Communications to Children must comply with the AANA Code of Ethics.

Further details of the AANA codes, practice notes and practice guidelines can be found at <http://aana.com.au/self-regulation/codes/>

Appendix IV

Advertising Standards Authority of Singapore **Children's Code for Advertising Food and Beverage Products**

This Advisory must be read in conjunction with the Singapore Code of Advertising Practice (SCAP) and applicable legislation.

1. Principles

1.1 Special care should be taken in marketing communications of food and beverage products addressed to children or young people. The way in which children perceive and react to advertisements depends on their age, experience and the context in which the message is delivered. Marketing communications that are acceptable for young teenagers will not necessarily be acceptable for young children. The ASAS will take these factors into account when assessing the suitability of advertisements.

1.2 Marketing communications to children should be designed and delivered in a manner to be understood by those children. Marketing communications shall not be misleading or deceptive in relation to any nutritional or health claims, shall not be ambiguous or provide a misleading sense of urgency, nor feature practices such as price minimisation inappropriate to the age of the intended audience.

1.3 Explicit guidelines and interpretation shall be provided by ASAS on a case-by case basis. In interpreting the Advisory, emphasis will be placed on compliance with both the principles and the spirit of the Advisory. The guidelines provide examples, which are by no means exhaustive, of how the principles are to be interpreted and applied.

1.4 In adjudicating on complaints, the ASAS will consider: (a) The extent to which the medium employed has a primary appeal for children, i.e. the extent to which children are the express target group for the medium employed; and (b) The extent to which the advertising tools and techniques used are designed to appeal primarily to children.

1.5 In adjudicating on complaints, the ASAS is vested with discretion to ensure a common sense outcome. It should be emphasised that a product with a special appeal for children can never in itself be regarded as marketing.

2. Definitions

2.1 For the purpose of this Code:

(a) a "child" is a person 12 years old or younger.

(b) "food and beverage products" means any food and beverage products advertised in Singapore, including advertising of meals or 3 individual menu items by restaurant owners and other food service providers.

(c) "Common Nutrition Criteria" is the common nutrition profile for food and beverage products that is endorsed by the HPB and will be adopted by all companies for food and beverage marketing communications targeted primarily at children – with effect from January 2015. (Until 31 Dec 2014, Company Specific Criteria will be adopted by individual companies as a guide.)

(d) "marketing communications" include advertising as well as other means, such as promotions, sponsorships and direct marketing, and should be interpreted broadly to mean any communications produced directly by or on behalf of marketers intended primarily to promote products or to influence consumer behaviour. However, the following are not included in the scope of this Advisory:

(i) The product itself, including its packaging,

(ii) Ordinary display in store/ at point of sale, and

(iii) Sponsorship, where this only entails the use of the sponsor's name and/ or trademark.

(e) “food and beverage marketing communications primarily addressed to children” are marketing communications, which as set out in Section 1.4 of this Code, having regard to their placement, as well to the theme, visuals and language used, are targeted primarily at children.

(f) a “premium” is anything offered, other than the product itself, without additional cost or at a reduced price, and is conditional upon the purchase of the advertiser's regular product or service.

(g) “child-dedicated television” includes programmes on channels on both free-to-air and subscription television that specifically target children.

(h) “child-dedicated publications” includes all print media that specifically target children.

3. Guidelines

3.1 All food and beverage products promoted in marketing communications that are primarily addressed to children in any media must meet the common 4 nutrition criteria endorsed by the HPB. Details of the above can be found on the website of the ASAS at www.asas.org.sg.

3.2 Diet and Lifestyle Marketing communications for food and beverage products primarily addressed to children shall be responsible in the manner in which the food and beverage products are portrayed:

(a) They should not encourage or promote unhealthy eating or drinking habits.

(b) They should not actively encourage children to eat excessively throughout the day or to replace main meals with confectionery or snack foods.

(c) They should not undermine the role of parents or caregivers in guiding dietary and lifestyle choices.

(d) They should feature quantities of food or portion sizes that are responsible and relevant to the scene depicted. They should not suggest that a portion intended for more than one child is to be consumed by a single individual, or that an adult's portion may be consumed by a small child.

3.3 Pressure to Purchase Marketing communications for food and beverage products primarily addressed to children must be prepared with a due sense of responsibility:

(a) They should not imply that children are likely to be ridiculed, inferior to others, less popular, disloyal or have let someone down if they or their family do not use the advertised product.

(b) They should not urge children to buy the food or beverage product, or persuade others to buy the products for them, via “high pressure” and “hard sell” techniques. Words or the tone adopted in the advertisement should not cajole, pressure or bully children or their parents into buying the food or beverage product.

(c) They should not encourage children to make a nuisance of themselves to parents, caregivers or others.

(d) They should not feature prices with words such as “only” or “just”, which implies a level of affordability that may not be true.

3.4 Promotional Offers Marketing communications of food and beverage products addressed primarily to children and that feature promotional offers must be prepared with a due sense of responsibility:

(a) They should not create an undue sense of urgency in children or encourage the purchase of excessive quantities for irresponsible consumption.

(b) They should ensure that the product is significantly featured and should not encourage children to eat or drink a product only to take advantage of a promotional offer. The product should be offered on its merits, and the offer should serve only as an added incentive.

(c) Premiums

- (i) Marketing communications for collection-based promotions or premiums must not urge children or their parents to buy excessive quantities of the product. They should not directly encourage children only to collect the premiums, or unduly emphasise the number of items to be collected. The closing dates for premiums should enable the whole set to be collected without having to buy excessive or irresponsible quantities of the product within a short timeframe. Children should not be urged to buy the product in a hurry.
- (ii) Marketing communications for premiums should not give children a false impression about the nature or content of the product.
- (iii) Marketing communications for premiums should not give children a false impression that the premium, and not the product, is the item being advertised.
- (iv) Marketing communications for premiums must clearly state the terms and conditions, as well as limitations.
- (v) Marketing communications for premiums should not encourage children to consume the product in excess in a bid to obtain the premium.

3.5 Popular Personalities

- (a) “Brand equity characters” are characters that have been created by the advertiser and have no separate identity outside their associated product or brand. For the purpose of this Advisory, such brand equity characters are not included in the definition of Popular Personalities.
- (b) Marketing communications for food or beverage products primarily addressed to children must be prepared with a due sense of responsibility:
 - (i) They must not use popular personalities or celebrities (live or animated) primarily popular among children in advertisements and marketing communications to promote or endorse the product, or premium, in such a manner as to extol the virtue of the advertised product or undermine a healthy diet.
 - (ii) They must not suggest that consumption of the product would enable children to resemble an admired figure or role-model. They must also not suggest that the non-consumption of the product would imply that the children are not being loyal to the figure or role-model they admire.
 - (iii) Popular personalities or celebrities (live or animated) well known to children may present factual and relevant statements about nutrition and health.
 - (iv) Popular personalities or celebrities (live or animated) that are primarily popular among children should not be used to endorse food and beverage products that do not meet the common nutrition criteria endorsed by HPB.