

**SUBMISSION TO THE  
ADVERTISING STANDARDS AUTHORITY**

**CODE FOR ADVERTISING TO CHILDREN AND  
CHILDREN'S CODE FOR ADVERTISING FOOD**

**13 APRIL 2016**



**To:** Codes Review Panel  
ASA Secretariat  
P O Box 10675  
Wellington

**By email:** asa@asa.co.nz

This submission is made on behalf of Television New Zealand Limited, in response to the Advertising Standards Authority's Consultation Document entitled *Consultation on the Review of the Code for Advertising to Children and the Children's Code for Advertising Food*.

TVNZ is happy for this submission to be made public in its entirety.

© Television New Zealand Limited 2016

**Contact Details:**

**Brent McAnulty**  
General Counsel and Corporate Affairs Director  
Television New Zealand Limited

Ph: 09 916 7935  
M: 027 226 4913  
E: brent.mcanulty@tvnz.co.nz

---

## INTRODUCTION

1. Television New Zealand Limited (**TVNZ**) thanks the Advertising Standards Authority (**ASA**) for the opportunity to make a submission in respect of the Review of the Code for Advertising to Children and the Children's Code for Advertising Food (the **Children's Codes**). TVNZ welcomes the further opportunity to discuss these submissions with the ASA, if that would be useful.
2. TVNZ is the country's leading free to air broadcaster. It reaches approximately 2.2 million New Zealanders every day, predominantly through its broadcast channels, TV ONE, TV2 and Duke, as well as its TVNZ OnDemand and ONE News Now online services. TVNZ is owned by the Crown and operates as a self-sufficient, commercial entity by virtue of the Television New Zealand Act 2003, and is supported by advertising revenue.

## EXECUTIVE SUMMARY

3. TVNZ supports the ASA's proposal to combine the two current Children's Codes into a single code for advertising to children, but does not consider it necessary to introduce new restrictions or prohibitions around the content of such code.
4. In the event that the ASA is minded to amend the principles and guidelines of the Children's Codes with a view to supplementing the protections afforded to children, particularly in light of the Ministry of Health's childhood obesity plan, then TVNZ proposes that the ASA should look to the Children's Television Policies adopted by ThinkTV's members for guidance as to an appropriate framework for any such changes.

### ***Q1: What are the strengths and weaknesses of the two current Children's Codes?***

5. TVNZ believes that there is a significant degree of overlap between the two Codes (and amongst the other Advertising Codes generally), and that they could accordingly benefit from streamlining of the principles in a manner similar to that employed by the Codes of the Broadcasting Standards Authority.

### ***Q2: What are the strengths and weaknesses of the current complaints process?***

6. The core concern that TVNZ has with the current complaints process is the degree of uncertainty that exists in relation to the application of the principles and guidelines set out in the Advertising Codes. The majority of broadcasters and advertisers take their responsibilities under the Advertising Codes seriously and organisations such as the Commercial Approvals Bureau (CAB) and the Association of New Zealand Advertisers (ANZA) have established processes to pre-approve advertisements before broadcast/publication. CAB seeks to protect the reputation of broadcasters and minimise compliance risks for advertisers by vetting all television advertisements before they are broadcast. LAPPS and TAPS are services set up by ANZA to pre-vet liquor and therapeutic advertising respectively. However, CAB, LAPPS and/or TAPS approvals are no guarantee that an ASA complaint will not be upheld – and this in turn can lead to disproportionately severe consequences for broadcasters and advertisers as set out in response to Question 11 below.

7. A further concern that TVNZ has with the complaints process relates to the ASA's funding model. Although the ASA is currently funded from member subscriptions and advertiser levies, it is TVNZ's understanding that not all members/advertisers are paying their requisite subscription fees/levies. The inequitable result is that responsible broadcasters and advertisers are left bearing the financial burden of maintaining the complaints system despite the fact that they are the least likely to give rise to complaints.

***Q3: What changes, if any, are necessary to protect the rights of children and their health/wellbeing?***

8. TVNZ acknowledges that the review of the Children's Codes is taking place in the context of work being undertaken across a number of sectors as part of the childhood obesity plan, and submits that (i) the Children's Codes already contain a number of guidelines which address issues such as pester power, anti-social behaviour, portion sizes, nutrition/ health claims, and the promotion of unhealthy lifestyles; (ii) no changes or further provisions are required to protect the rights of children and their health/wellbeing; and (iii) the Children's Codes are not the appropriate vehicle to prevent marketing to children.
9. There is no doubt that the rising prevalence of childhood obesity is an urgent public health concern. However, it is widely accepted that no single solution will have sufficient impact to reverse obesity, and obesity prevention and treatment instead requires a whole of government approach. For support of this proposition, refer to the interim report of the World Health Organisation's Commission on Ending Childhood Obesity (<http://www.who.int/end-childhood-obesity/commission-ending-childhood-obesity-draft-final-report-en.pdf?ua=1>) and the report from McKinsey Global Institute on "Overcoming obesity: an initial economic analysis" (<http://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/how-the-world-could-better-fight-obesity>).
10. Organisations such as the Campaign for a Commercial Free Childhood voice concern about the allegedly harmful effects of screen time on young children and argue that any screen media should accordingly be free of advertising and brand placement. It is TVNZ's submission that it is neither feasible nor appropriate to expect the Children's Code to impose such absolute ideals when it comes to the regulation of marketing to children. Such ideals are unrealistic, would be impractical to enforce and represent an unwarranted restriction on the freedom of expression.
11. As a responsible broadcaster, TVNZ has voluntarily adopted policies which do not permit advertising during pre-school television programming, however it would not be commercially viable for advertising to be restricted across all children's content. The reality for free-to-air broadcasters such as TVNZ is that advertisement-free content is not commercially viable and for the most part only exists where it has been mandated by the Broadcasting Act 1989 (i.e. on Christmas Day, Good Friday and Easter Sunday, and between 6am and 12pm on Sundays and Anzac Day). The area of children's content is particularly difficult to make viable - even on pay television channels, as is evidenced by the recent demise of Kidzone which will no longer be available on SKY or Igloo after 30 April 2016. If there is a requirement for children's content to be advertisement-free, it is questionable whether such content will continue to be available to New Zealand viewers on a free-to-air basis – and as 50% of households do not subscribe to pay television, that content would be lost to a large proportion of NZ households.

12. Instead the role of the Children's Codes is to ensure that a minimum standard of conduct is adhered to. In light of the fact that (i) no vocal critic of advertising food to children has made a complaint; and (ii) only 9 of the 3,935 complaints received by the ASA during the period 2010-2015 related to the Children's Code for Advertising Food - none of which were upheld (<http://www.mad-daily.com/wp-content/uploads/2016/04/Information-Childrens-Food-Code.pdf>); TVNZ submits this objective is already being achieved within the current framework .
13. If the ASA is minded to investigate potential changes to the Children's Code with a view to affording greater protection to children's health and wellbeing, TVNZ submits that the policies adopted by ThinkTV's members as set forth in the "Getting it Right for Children" booklet would offer appropriate guidance (<http://www.thinktv.co.nz/thinktv/standards-and-regulations/children-an-tv/>). The CF (Children's Food) advertising classification, which is implemented by these policies, is targeted so that it only applies during school-age children's programming times. TVNZ supports the proposition that any regulation of food advertising to children should be restricted to children's programming times on the basis that the rationale behind such a focussed application is supported by the evidence of children's viewing times as set forth in 2014 Children's Media Use Study, which was commissioned by NZ On Air and the Broadcasting Standards Authority (<http://www.nzonair.govt.nz/document-library/childrens-media-use-study-2015/>). This study confirms that (i) children's television viewing falls steadily after 4.30pm, that many 6-8 year olds stop watching at 7pm and that only one in ten 6-14 year old viewers are still watching at 8.30pm; (ii) TV classifications are a successful means of alerting children to content that is not suitable for them with one in two parent using classifications frequently to guide children's TV viewing; and (iii) the most common rules applied to TV viewing are the length of time and the times when children are allowed to watch (e.g. after homework/chores), rules relating to content (e.g. not allowed to watch AO content, only allow children's shows) and adult supervision.

***Q4: Please comment on any concerns you have with different media formats in relation to advertising to children (for example: magazines, television, social media, websites).***

14. TVNZ submits that the ASA should continue its efforts to ensure a level playing field when it comes to the application of the Advertising Codes and to ensure that the principles are applied equally and consistently across all media channels.

***Q5: If the content of advertisements is a concern, can you please give examples and/or supporting evidence? A product name and ad description would be helpful so we can source the advertisements.***

15. No comment.

***Q6: If the placement of advertisements is a concern, can you please give examples and/or supporting evidence? For broadcast media it would be helpful to have the time/date/channel or programme, for other media, a link/publication title/outdoor location would be appreciated.***

16. No comment.

***Q7: The Children's Codes currently define a child as under the age of 14. Do you support or oppose this definition. Why?***

17. TVNZ supports the current definition of a child remaining as a person under the age of 14. Maintaining the definition is logical as it maintains consistency with the definition of a child under the Children, Young Persons and Their Families Act 1989 and also with the definition applied by the Broadcasting Standards Authority.
18. Further, the 2014 Children's Media Use Study referred to above recognised that age is the most important differentiator in terms of media behaviour and usage. The study identified the age of 11 as a key 'tipping point' at which online use of sites such as YouTube and Facebook increases significantly. The Study also notes that parents are the key online content decision-makers for most children until the age of eight, at which point a majority (59%) are finding content for themselves. In this context, retaining the current definition of a child as under the age of 14 would appear consistent with (if not more protective than) parental views and practices as to when a child is able to engage sufficient critical faculties to make their own decisions when accessing content.

***Q8: 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?***

19. While TVNZ submits that the current Children's Code provisions around food advertising are sufficient, if a nutrient profiling system were to be adopted, then it submits that the Children's Food (CF) classification adopted by CAB would be the appropriate model to adopt. The CF rating classifies foods and beverages in accordance with the Ministry of Health's Food and Beverage Classification System, compares advertisements for "occasional" foods/beverages against the Food Standards Australia Nutrient Profiling Model, and in all instances ensures that the proposed advertisement is consistent with the Government's Healthy Eating-Healthy Action campaign. Further information on the model can be found within the "Getting it Right for Children" booklet referred to above.
20. TVNZ submits that the CF model is the most appropriate model for the ASA to consider adopting because it is based on and consistent with Government policies, it is a tried and tested system that has been successfully operating since 2008, and as such advertisers and advertising agencies are already familiar with its requirements which will go some way towards ensuring compliance when implemented.

***Q9: Do you support or oppose a specific guideline on sponsorship? Why?***

21. TVNZ opposes a specific guideline on sponsorship because it does not believe such a guideline is necessary. Beyond the specific sponsorship guidelines contained in the ASA's Code for Advertising and Promotion of Alcohol, TVNZ submits that the general principles and guidelines of the Children's Codes which require the observation of high standards of social responsibility are sufficient to address concerns that may be raised by sponsorship of children's programming.

***Q10: Do you support or oppose the introduction of independent monitoring and evaluation of the codes? How would this work?***

22. TVNZ opposes the introduction of independent monitoring and evaluation of the codes on the basis that adding another administrative tier to the implementation of the Advertising Codes is unnecessary. The current ASA processes provide a robust system for determining advertising

complaints, and to artificially insert an additional layer of oversight would be inconsistent with the position adopted by the Broadcasting Standards Authority and the Online Media Standards Authority. Additionally, as noted above, the ASA is currently funded from member subscriptions and advertiser levies, and the prospect of adding an additional layer of monitoring also raises the question of how such monitoring will be funded.

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

23. The sanctions imposed by the ASA when a complaint is upheld can have serious – and wide ranging – implications for broadcaster and advertiser alike.
24. If a complaint is upheld while an on-air campaign is still underway, the advertiser can incur significant costs in attempting to change the offending advertisement so that it is compliant. In the meantime (or if the advertisement is not capable of being remedied), an ASA uphold can severely disrupt the effectiveness of an entire campaign by removing a key component of the campaign's marketing strategy. For example, if an offending television advertisement is a teaser for online, outdoors and print, the other elements of the campaign won't work without the television commercial.
25. For the broadcaster, an ASA uphold means that the broadcaster will need to ensure that future planned screenings of such advertisement are removed from the programme schedule. As well as the administrative burden of implementing such a decision, it can also have implications for programme timings, particularly if the broadcaster is not able to reduce the ad-break or fill the (now-empty) timeslot in the timeframe available. The broadcaster will also need to reach an arrangement with the affected advertiser in relation to the loss of advertising time and revenue, and in many instances contra-ads (i.e. other time slots for other products) may need to be provided and will not necessarily be paid for by the advertiser in question.
26. Also, and as discussed earlier in response to Question 2, the ASA may uphold a complaint despite the fact an advertisement in question has obtained CAB approval. TVNZ submits that this compounds the impact of sanctions because the effect is that broadcasters and advertisers can suffer severe financial, reputational and business repercussions despite their best endeavours to comply with the Advertising Codes.

***Q12: Are there environments where you consider it to be inappropriate to advertise to children?***

27. Within the context of television media, there is a great deal of scope to manage and control the amount and appropriateness of advertising to children. For instance, ThinkTV's Children's Television Policies do not permit advertising or sponsorship during pre-school television programming and also restrict the amount of advertising which may be placed in school-age children's television programming times (information regarding specific time frames can be found online [http://www.thinktv.co.nz/wp-content/uploads/Times\\_Info\\_Sheet\\_May\\_2015.pdf](http://www.thinktv.co.nz/wp-content/uploads/Times_Info_Sheet_May_2015.pdf)). Parents also have the ability to further control children's exposure to television and television advertising by monitoring the length of time and the times when children are allowed to watch and imposing rules relating to permissible content, and the 2014 Children's Media Use Study shows that parents rely on their discretion to do exactly that.

28. Parents have less ability to control or eliminate access to other forms of advertising and so TVNZ submits that there may be scope for greater regulation of advertising in other media. A level of regulation may also be necessary to ensure that inappropriate advertising does not move to the least onerous environment.

***Q13: Do you support or oppose combining the two current codes? Why?***

29. The ASA has framed the review as part of a project to reduce the number of codes. The review of the Children's Codes in particular has been brought forward to coincide with the work being undertaken across a number of government sectors as part of the Ministry of Health's Childhood Obesity Plan. TVNZ sees no necessary contradiction between the two objectives, and further supports the combining of the current codes to avoid repetition and to streamline the requirements imposed on advertisers.