



Submission to the Advertising Standards Authority

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

13 April 2016

Table of Contents

Contact	3
About Frucor Beverages	3
General Statement on Industry Self-Regulation	4
Question 1	6
Question 2	7
Question 3	8
Question 4	8
Question 5	9
Question 6	9
Question 7	9
Question 8	10
Question 9	10
Question 10	11
Question 11	11
Question 12	12
Question 13	12
References.....	13

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About Frucor Beverages

Since its beginning in the early 1960s, Frucor Beverages [**Frucor**] has evolved from a small New Zealand juice business to become a leading Australasian drinks company. Frucor produces more than 20 million cases of drinks each year, employs 800 people in New Zealand, a further 200 in Australia, and has annual revenue of more than NZ\$500 million. Since 2009, Frucor has been wholly owned by Suntory Group, a leading Japanese beverage and food company.

Frucor manufactures a wide variety of beverages including energy drinks, fruit juices, mineral water, sports drinks and milk-based beverages. Our brands are enjoyed in homes throughout New Zealand and Australia and we are proud to be the market leader for energy drinks in both countries and fruit juices in New Zealand.

Our brands include New Zealand favourites like V, Just Juice, Sparkling OH!, Fresh-up, McCoy, OVI Hydration, Citrus Tree, Simply Squeezed, h2go, NZ Natural, Mizone and we also manufacture and distribute Pepsi products, including Gatorade, in New Zealand.

Frucor is an active member of the New Zealand Beverage Council (NZBC), the Australian Beverage Council (ABC), New Zealand Food and Grocery Council (NZFGC), New Zealand Nutrition Foundation and the NZ Fruit & Vegetable Alliance (NZ FAVA). Frucor New Zealand [**Frucor NZ**] contributes membership dues and staff provide executive and technical expertise on several working groups within these organisations.

Frucor has taken a lead role in the beverage sector in making drinks with the best taste and least sugar to support the increasing consumer demand for low- and no-sugar beverages. Frucor's commitment to ongoing change and better products is focussed on reformulation of existing beverages, developing new, great tasting drinks and labelling initiatives.

Frucor NZ has been accredited as an Aon Hewitt 'Best Employer in Australasia' in four of the last five years and has invested significantly in the creation of a vibrant corporate culture with values that are shared among all of our employees.

Frucor supports the submissions by the NZBC and ANZA (Association of New Zealand Advertisers) to this Review.

General Statement on Industry Self-Regulation

Advertising reflects the social norms and beliefs of a society at any given time and self-regulation is the best and most effective model for regulating advertising practices. Self-regulation benefits consumers, government and industry in a variety of ways.

Government regulation can only address current technologies, practices or market conditions and lacks the flexibility and agility to adapt to rapidly changing environments. Unnecessary and inefficient regulations become inevitable without frequent legislative change which ties up government time and resources.

Increased compliance and production costs from outdated regulations are usually passed onto consumers without any corresponding social benefit. Self-regulation is flexible and adaptable, allowing businesses to operate more efficiently and minimising compliance costs which are factored into the end cost of goods for consumers.

Businesses also derive significant benefits from self-regulation instead of state regulation. Self-regulation enables industry guidelines to be developed by having industry experts review current trends and identify best practices. These guidelines are then able to evolve in response to feedback from consumers, watchdogs and industry leaders, keeping them relevant and cost-effective.

Self-regulation is the optimum model to encourage innovation. Businesses can invest in new and experimental ways of production when they are confident that regulations can evolve easily and efficiently if new and improved methods are identified.

Finally, self-regulation avoids adversarial situations in which businesses try to find exceptions to state regulation. Because self-regulation is defined by social norms and the behaviour of other companies operating in the same sector, businesses have a vested interest in internalising and complying with the rules.

Frucor NZ endorses the ASA's view that:

Self-regulation encourages the industry to take responsibility to ensure legal, decent and honest advertising communications to consumers. There are a number of incentives. Most advertisers do not want to deliberately mislead or offend current or potential customers. They understand the importance of responsible advertising of restricted products and engage with pre-vetting processes and code-compliance prior to the release / publication of advertising. If consumers trust advertising, it is more effective. Advertising self-regulation also works best alongside a legislative framework and in New Zealand there are about 50 different pieces of legislation that restrict advertising in some way.¹

Self-regulation does have limitations. The first and most obvious is that participation from all key players in an industry is essential. Businesses that do not opt-in to self-regulated standards receive the benefits without paying any of the costs, and unethical conduct can occur if businesses choose not to commit to working within the guidelines.²

¹ (Advertising Standards Authority, 2016)

² (Castro, 2011)

Self-regulation is the best approach to regulate advertising to children by the New Zealand food industry. The current Children's Codes embody the principles of flexibility and durability outlined in The Best Practice Regulation Model: Principles and Assessments from the NZ Treasury which states:

Flexibility: regulated entities should have scope to adopt least cost and innovative approaches to meeting legal obligations. A regulatory regime is flexible if the underlying regulatory approach is principles or performance-based, and policies and procedures are in place to ensure that it is administered flexibly, and non-regulatory measures, including self-regulation, are used wherever possible.

Flexibility and durability can be two sides of the same coin; a regime that is flexible is more likely to be durable, so long as the conditions are in place for the regime to 'learn'. Indicators of durability are that feedback systems are in place to assess how the law is working in practice; decisions are reassessed at regular intervals and when new information comes to hand; and the regulatory regime is up-to-date with technological change. These two principles have been grouped for carrying out assessments.

Durability: closely associated with flexibility; the regulatory system has the capacity to evolve to respond to new information and changing circumstances.³

As a responsible manufacturer, Frucor NZ has robust, internal processes to ensure that all marketing materials produced by the business comply with internal standards and are legally compliant.

Marketing collateral, including point of sale advertising, is reviewed regularly by senior managers from the early conceptual stages through to final execution. Managers have the ability to delay, stop or seek legal advice at various points if they have any questions or concerns about an activity. Processes to adapt and explore alternatives are in place and are rapid and appropriately managed across marketing, R&D and in senior leadership teams.

Self-regulation is also effective in ensuring regulatory compliance in other areas of the food industry like beverage labelling. The NZ Beverage Council Industry Compliance Committee (NZBC ICC) is comprised of experts, FSANZ staff and independent consultants who are responsible for managing labelling compliance and best practices for food standards codes. For more information on the ICC, please see www.nzjba.org.nz/consumers/self-regulation.asp.

³ (The Treasury, 2012)

Question 1

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

This Review of the Children's Code is timely as the last amendments were made in 2010.

Strengths

The Principles and Guidelines of the Children's Codes are focussed on protecting children and the rights of their parents/caregivers. These are in line with current social norms and expectations.

The Principles and Guidelines provide an appropriate balance between the need to protect children from harmful material and information while also enabling businesses to operate both responsibly and effectively.

More generally, the Children's Codes have many benefits that are inherent in self-regulatory regimes (please see the General Statement on Industry Self-Regulation, [p.4](#) for a discussion on benefits) as well as the advantages of the ASA's complaints process (please see Question 2, [p.7](#) for more detail).

Weaknesses

Advertising, like many areas of society, began to move away from traditional print and broadcast channels to digital channels well before 2010. However, over the last six years the way in which New Zealanders access digital/online channels has continued to change and the Codes do not presently take into account the increasing use of mobile internet and devices.

People now go online using mobile devices with increasing frequency and there has been a shift away from accessing the internet via a computer at home. At the end of 2014, a HorizonPoll stated that by September 2015, 79% of New Zealand's consumers aged 18+ will have a smartphone.⁴ Advertising practices have also evolved to take the shift to mobile into account and are now much more complex than the placement of an ad on a website.

Accessing media channels simultaneously is now standard. The Connected Consumer Survey 2015 found that 52% of adult New Zealanders are online while simultaneously watching TV with an average of 2.6 screens open at one time providing multiple opportunities for advertising.⁵ Industry self-regulation will require a Code that takes into account the increasingly mobile nature of the internet.

The general trend is reflected in children's access to the internet too. NZ On Air and the Broadcasting Standards Authority (BSA) jointly commissioned the 2014 Children's Media Use Survey which found that 'tablets and smartphones have also become a part of many children's daily lives, and are now significant devices for using the internet and listening to music.' The study found that 59% of NZ children aged 6-14 years use a tablet to connect to the internet at home.⁶

Contemporary advertising practices have evolved to realise the benefits of mobile internet and an effective Code will address the potential - both positive and negative - presented by these developments in technology.

⁴ (HorizonPoll, 2014)

⁵ (Research New Zealand, 2015)

⁶ (Colmar Brunton, 2015)

Question 2

What are the strengths and weaknesses of the current complaints process?

Under the ASA, the current system for complaints about advertising is highly advantageous to consumers and government as well as industry.

The strengths of the current complaint process include:

1. Accessibility: Any person can make a complaint using free and readily available information via a simple and user-friendly system that is available online as well as in print.
2. Speed: In 2015, complaints were addressed in an average time of 13 days, an impressive turn-around time for any public-facing system.⁷
3. Independence: The ASA's Complaints Board and Appeal Board both have a public member majority and Chair. A cross-section of community members, professions and industry experts is represented on the Boards.
4. Transparent: The Principles, processes and decisions of the ASA are accessible and easy to understand.
5. Adaptability: The Codes are able to be reviewed and adapted regularly in response to public demand. These changes can be made with significantly more ease than government legislation or regulations. This Review is an example of the adaptable and responsive nature of the Codes.
6. Cost effective: Making a complaint is free to members of the public. The ASA has five full time employees and a budget of approximately \$750,000 p.a. which is funded through member subscriptions and advertiser levies providing excellent value at little to no cost to the taxpayer.⁸

As outlined in the General Statement on Self-Regulation, [p.4](#) the weaknesses of the current complaints system are inherent in any self-regulatory framework, namely that the system relies on industry-wide co-operation to function effectively.

Frucor NZ is aware of concerns relating to the lack of financial sanctions that the ASA can impose which may be fostering a perception that the ASA is ineffective or powerless.⁹ Frucor NZ is of the view that there may be value in considering whether the ASA should have a greater ability to enforce decisions or recommend penalties and this is outlined in more detail in Question 11, [p.11](#).

⁷ (Advertising Standards Authority, 2014)

⁸ (Advertising Standards Authority, 2016)

⁹ (University of Otago, 2010)

Question 3

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

As outlined in our response to Question 1, [p.6](#) Frucor's view is that the Code should be revised to take into account technological changes, particularly the increasingly mobile nature of the internet.

Any changes to the Codes should be relative to the scale of the problem – the Codes are working well at present and require updating rather than substantive changes to the Principles and Guidelines.

Advertising enables businesses to communicate to consumers – including children – about the benefits of a particular product over that of a competitor. As new technology becomes available and consumers' preferences change, it is essential that companies like Frucor NZ are able to inform consumers that healthier, better drinks are available through advertising. Businesses in the food sector need to have the ability to advertise new or improved products if New Zealand is to experience the benefits of reducing sugar consumption at a population level.

It is also important to recognise that advertising (and branding) is essential to an economy because it enables businesses to compete. This is particularly true in environments where restrictions are already in place like DHB premises, and increasingly educational and local body facilities, where only sugar free beverages are available. It is reasonable to allow drinks manufacturers to continue to differentiate one type of bottled water from that of their competitors so that they can remain commercially viable.

Question 4

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

In general, the move to digital channels, and in particular the shift to mobile internet, has increased both the total number, and the diversity, of places where children can find advertising alongside information, entertainment and social interaction.

Parental control in the form of checks and balances is required at a far greater level for digital channels than other, more traditional channels. For example, a parent or caregiver can choose a different TV or radio station for their children but it is more difficult to control access to Youtube channels and videos.

Updating the Codes to take changing media formats into account is necessary because industry agreement on a broad set of principles and guidelines can provide parents with some confidence that advertising is aligned with the prevailing standards and norms of their society.

Question 5

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.

We are not aware of any specific examples.

Question 6

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.

We are not aware of any specific examples.

Question 7

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

Frucor NZ supports the current definition of a child as a person under the age of 14 years old. We recognise that there are different ages for different activities in New Zealand. For example, the minimum driver licensing age is 16 and the age at which a New Zealander can vote in a general election is 18.

The definition of 14 years and under recognises that between the ages of 14 and 18 (the age of majority in New Zealand) young people are able to act independently of their parents in relation to some media consumption and purchasing behaviours.

The definition of a child as being under 14 is aligned with the Children, Young Persons, and Their Families Act (1989). We note that at 14 years old children can also be left at home without supervision, babysit and be prosecuted for any criminal offence.

Question 8

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?

Frucor NZ does not support the inclusion of nutrient profiling systems in the Children's Codes as the Health Star Rating system is increasingly shown on-pack.

However, if a nutrient profile scoring system were to be included, the most pragmatic approach would be to utilise the existing Nutrient Profiling Scoring Criteria (NPSC) that are set out under the Health Star Rating (HSR) system or similarly under Australia New Zealand Food Standards Code – Standard 1.2.7 – Nutrition, Health and Related Claims

Frucor NZ, and the wider New Zealand beverage industry, is currently working to implement the HSR and claims labelling systems on packaging. However, it is important to note that the HSR system currently has several anomalies which need to be addressed for beverages. For example, some products with a low sugar content like Just Juice 50% less sugar currently score poorly compared to standard Just Juice which has more sugar (but receives a better rating because it contains more fruit juice).

Question 9

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

We do not support the inclusion of specific guidelines in relation to sponsorship and have serious concerns about the direction any guidelines could take.

While we acknowledge that the some public health advocates have expressed concerns in relation to irresponsible sponsorship practices, we believe these concerns must be balanced against the potential for sponsorship to provide important social benefits such as support for community events.

For example, in 2014 and 2015 Frucor NZ worked closely with the organisers of Polyfest to provide exclusively sugar free drinks at the event. The NZ Population Health Congress recognised the sugar free drink Polyfest as a significant achievement and a model for future community activities.¹⁰

Restricting or banning sponsorship would have deeply negative impact on both the financial viability of community events like Polyfest, and on the ability for businesses to show their support for the communities in which they operate.

Frucor NZ believes that if the Panel were to include guidelines in relation to event sponsorship in the revised Codes, guidelines that ensure businesses can offer options for foods that are lower in sugar, salt and fat would be preferable to other restrictions.

¹⁰ (NZ Population Health Congress, 2014)

Question 10

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

Frucor NZ believes the current system is adequate, proportional and sufficient and does not support additional monitoring and evaluation of the Codes.

Question 11

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

Frucor NZ believes that the ASA functions as an effective 'first line' for complaints. Regulatory enforcement provisions are available through many pieces of legislation including the Fair Trading Act, Medicines Act, Sale and Supply of Alcohol Act which provide a 'legal backstop' for the ASA.

An effective self-regulatory framework must have consequences that do not discourage businesses from participation out of fear of expensive or onerous consequences should they inadvertently be found to be in breach. But the consequences of non-compliance also have to be strong enough that the community can be confident that complaints will be adequately addressed.

We recognise that the ASA deals with complaints that range from trifling to very serious. There may be some complaints that are serious but for which it is not cost-effective for the relevant authority to take further action.

Therefore, Frucor NZ is of the view that there may be value in considering whether the ASA should have a greater ability to enforce decisions or recommend penalties for some instances of deliberate or repeated non-compliance.

However, this Review of the Children's Codes is not the appropriate forum for this discussion and we would support a separate dialogue on this point.

Question 12

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

Frucor NZ supports facilities and places that cater to children retaining the right to decide what is appropriate in their organisation.

As outlined in Question 3, [p8](#) in places like DHB premises where only milk and water is allowed, it is reasonable that drinks manufacturers can differentiate one type of bottled water from that of a competitor in order to remain commercially viable. As technology develops, Frucor expects that drinks that are healthier and/or have greater functionality will become more popular with consumers. It is essential that the ability to advertise these products is retained if New Zealanders – including children - are to benefit from the corresponding positive health outcomes.

Frucor NZ believes that if the Panel were to include guidelines in relation to placement of advertising in the revised Codes, guidelines that protect the ability of businesses to advertise options that are lower in sugar, salt and fat would be preferable bans or other disproportionate restrictions.

Question 13

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

Frucor NZ supports combining the two Children's Codes as many of the guidelines are already aligned. Combining the Codes would also make the guidelines simpler to understand and remember.

Regardless of whether the Codes are combined or remain separate, it is important that they remain aligned and consistent with the current Australian Association of National Advertisers (AANA) Code for Advertising & Marketing Communications to Children and the AANA Food & Beverages Code, and all associated guidelines.

References

- Advertising Standards Authority. (2014). *2014 ASA Annual Report*. Retrieved from [www.asa.co.nz: http://www.asa.co.nz/wp-content/uploads/2015/06/ASA-Annual-Report-2014.pdf](http://www.asa.co.nz/wp-content/uploads/2015/06/ASA-Annual-Report-2014.pdf)
- Advertising Standards Authority. (2016, 04 08). *ASA About Us*. Retrieved from [ASA.co.nz: http://www.asa.co.nz/about-us/](http://www.asa.co.nz/about-us/)
- Castro, D. (2011, December). *Benefits and Limitations of Industry Self-Regulation for Online Behavioral Advertising*. Retrieved from Information Technology Innovation Foundation: <http://www.itif.org/files/2011-self-regulation-online-behavioral-advertising.pdf>
- Colmar Brunton. (2015, March 30). <http://www.nzonair.govt.nz/>. Retrieved from NZ On Air: <http://www.nzonair.govt.nz/document-library/childrens-media-use-study-2015/>
- HorizonPoll. (2014, November 14). *Adult smartphone ownership will hit 79% within year*. Retrieved from www.horizonpoll.co.nz: <https://www.horizonpoll.co.nz/page/388/adult-smartphone-ownership-will-hit-79-within->
- NZ Population Health Congress. (2014, October 8). *Health*. Retrieved from www.scoop.co.nz: <http://www.scoop.co.nz/stories/GE1410/S00061/community-agencies-and-sponsors-create-sugar-free-polyfest.htm>
- Research New Zealand. (2015). *ResearchNZ*. Retrieved from www.researchnz.com: <http://www.researchnz.com/pdf/Special%20Reports/Research%20New%20Zealand%20Special%20Report%20-%20Use%20of%20Smartphones.pdf>
- The Treasury. (2012, July). *The Best Practice Regulation Model*. Retrieved from <http://www.treasury.govt.nz/>: <http://www.treasury.govt.nz/regulation/bpr/bpregmodel-jul12.pdf>
- University of Otago. (2010, April 28). *News at Otago*. Retrieved from University of Otago, Wellington: <http://www.otago.ac.nz/news/news/otago008187.html>