

ADVERTISING STANDARDS AUTHORITY

ANNUAL REPORT 2011



ADVERTISING STANDARDS AUTHORITY

DID YOU KNOW?

- It is free for consumers to complain about advertisements.

- In 2011 an independent panel completed a review of the Code for Advertising Liquor and recommended a Code for Advertising and Promotion of Alcohol.

- Most complaints about advertisements are made online at www.asa.co.nz.

- 1197 complaints were received about 759 advertisements in 2011.

- The ASA system is similar to that in a number of countries in the world, most of which belong to the European Advertising Standards Alliance International Council, which includes countries from the European Union and Australia, Canada, Brazil, India, South Africa, Chile and Mexico.

- There are five public members on the Advertising Standards Complaints Board including the Chairman.

- The ASA has a freephone number for consumers and advertisers, 0800 AD HELP (234 357).

- Advertising revenue across all media reached 2.179 billion dollars in 2011.

- Most complaints to the ASA raise issues about misleading claims or matters of social responsibility including offensiveness.

- All Decisions of the Complaints Boards are released to the public and the media via the ASA website.

- The ASA also has a fast-track competitor complaints service called Adjudication with the Attendance of Parties (AWAP).

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FROM THE CHAIRMAN

My role as the Chairman of the Advertising Standards Authority (ASA) is to guide the governance and administration in support of self-regulation of advertising in New Zealand. Industry levies provide the funding and Codes of Practice the rules by which all advertisements in all media must comply. Members of the public may complain - free of charge - about any advertisement in any media which they believe breaches the Codes.

Complaints are heard by an independent Advertising Standards Complaints Board (ASCB) and there is a right of appeal to the independent Advertising Standards Complaints Appeal Board (ASCAB). In the event of a complaint being upheld, the advertiser, agency, and media are requested, by the ASA, to withdraw the advertisement. These requests are invariably complied with. All decisions are released to the public via the media and are widely reported.

In 2011, a total of 1197 formal complaints were received about 759 advertisements. The profile of the codes and complaints system is aided by regular news stories of Complaints Board decisions, a comprehensive website, and the annual distribution of thousands of information booklets.

The ASA is fortunate to have high calibre members on complaints boards that do an outstanding job and I would like to recognise the contribution of Jenny Robson, Chair of the Advertising Standards Complaints Board, Penny Mudford, Chair of the Liquor Promotions Complaints Board and Euan Abernethy, Chair of the Appeals Board. I would also like to acknowledge fellow ASA members, in particular Deputy Chair Lindsay Mouat, for their energy and wise counsel in support of industry self-regulation.

In 2011, two senior industry representatives retired from full-time employment and stepped down from their roles with the ASA. I would like to take this opportunity to publicly recognise the outstanding contributions of Jeremy Irwin, former Chief Executive of the Association of New Zealand Advertisers and David Innes, most recently Executive Director of the Radio Broadcasters' Association and prior to that, Executive Director of the Advertising Agencies Association (now CAANZ). Jeremy

In the event of a complaint being upheld, the advertiser, agency, and media are requested, by the ASA, to withdraw the advertisement.

and David are both former Chairmen of the ASA and were integrally involved in the organisation's development over the 1990's to encompass advertising in all media. More recently they undertook significant work in code development and continue to be passionate supporters of the value of advertising self-regulation. We wish them all the best in their future endeavours.

Finally, I would like to acknowledge the dedication and commitment of the Chief Executive, Hilary Souter, and the hard working team at the ASA. The success of the self-regulatory system is always reliant on a strong management team and staff.

John McClintock

Chairman

FROM THE CHIEF EXECUTIVE

The Advertising Standards Authority accepts complaints about all advertisements in all media. While we often deal with advertisers that have marketing departments, multi-media campaigns and significant internal compliance procedures, we now also have more contact with small and medium-sized advertisers.

One of the challenges for business compliance is an awareness of all the rules and regulations for advertising and sourcing that information can be difficult. The ASA deals with queries from advertisers, agencies, the media and individuals on a daily basis about what you can and cannot do in advertising, some of which relates to our codes and some to legal requirements. Education plays a significant role in any industry but particularly in self-regulation where it helps support code compliance – to minimise the risk of complaints.

In a different education challenge, the ASA, with the help of advertising agency Barnes Catmur and Friends, took on the job of reminding industry of the importance of preserving advertising self-regulation in 2011. As a

One of the challenges for business compliance is an awareness of all the rules and regulations for advertising and sourcing that information can be difficult.

regulator, we are often in touch with industry following complaints. This can lead to a negative perception of the role of the ASA. Barnes, Catmur and Friends came up with the idea of the Department of Advertising Standards and Regulations – a fictional statutory agency takeover of self-regulation. High profile TV ads were reviewed for ‘compliance’ by the DASR and found wanting. Letters were sent to all key industry players to alert them to these issues and the work of the ‘new agency’. The campaign raised the profile of the ASA with industry, confirmed that self-regulation should not be taken for granted and showed that we don’t take ourselves too seriously. As a bonus it has won a Bronze Effie, and Bronze and Gold RSVPs awards for the agency, a reward for their fantastic pro-bono work. Special thanks to Daniel Barnes, Paul Catmur and the team.

The 2011 year ended with the release of the report on the review of the Code for Advertising Liquor and recommendations including a merger of the codes for alcohol advertising and alcohol promotion. Further details on the review can be found on page 8 of this report.

Two people who made a significant contribution to advertising self-regulation died in the past year. Tributes to Dame Vivienne Boyd DBE, an inaugural public member of the Advertising Standards Complaints Board and Laurie Enting, the inaugural Chairman of the Committee of Advertising Practice, are on page 7.

Finally, the ASA has great staff and I am very grateful to them for their support and hard work on a daily basis. I would also like to acknowledge John McClintock, ASA Chairman and Lindsay Mouat, ASA Deputy Chairman for their valuable contributions in supporting the governance and administration of the ASA.

Hilary Souter
Chief Executive

MEMBERS AND OFFICERS 2011

Members

- Association of New Zealand Advertisers (Inc)
- Communication Agencies Association of New Zealand (Inc)
- Interactive Advertising Bureau
- Letterbox Media
- Magazine Publishers' Association (Inc)
- Newspaper Publishers' Association (Inc)
- New Zealand Community Newspapers
- New Zealand Cinema Advertising
- New Zealand Marketing Association (Inc)
- New Zealand Post Limited
- Outdoor Media Association of New Zealand
- Pay Television Group
- Radio Broadcasters Association (Inc)
- ThinkTV

Officers

John McClintock, Executive Director of the Magazine Publishers Association was elected as Chairman for the 2011 year.

Lindsay Mouat, Chief Executive of the Association of New Zealand Advertisers (from June 2011) was elected as Deputy Chairman for the 2011 year.

Hilary Souter was the Chief Executive.

Advertising Standards Authority Board of Directors to May 2011

Daniel Barnes, Creative Managing Partner, Barnes Catmur and Friends

Rick Friesen, Chief Executive, ThinkTV

Paul Head, Chief Executive, Communications Agencies Association (from May)

David Innes, Executive Director, Radio Broadcasters' Association

Jeremy Irwin, Chief Executive, Association of New Zealand Advertisers

John McClintock, Executive Director, Magazine Publishers' Association

Lindsay Mouat, General Manager (Commercial) Association of New Zealand Advertisers

Keith Norris, Director of Public Affairs, New Zealand Marketing Association

Tony O'Brien, Director of Communications, Sky Network Television Ltd

Rick Osborne, Chief Executive, Communications Agencies Association (to February)

Tim Pankhurst, Chief Executive, Newspaper Publishers' Association

Following discussion on the governance requirements of the ASA, the membership agreed in May 2011 to disestablish the Board of Directors and replace it with a smaller Management Committee (page 7).

MEMBERS AND OFFICERS 2011 (Continued)

Advertising Standards Authority Management Committee from May 2011

Paul Head, Chief Executive, Communications Agencies Association

Rick Friesen, Chief Executive, ThinkTV

Lindsay Mouat, Chief Executive, Association of New Zealand Advertisers

John McClintock, Executive Director, Magazine Publishers' Association

Keith Norris, Director of Public Affairs, New Zealand Marketing Association

IN MEMORIAM

***DAME VIVIANNE BOYD DBE
1926-2011***

Dame Vivienne Boyd was appointed to the Advertising Standards Complaints Board (ASCB) in 1987, the year it was established, as a public member. She was a member of the ASCB, representing consumers for ten years to 1997 when she became a public member (alternate) on the Advertising Standards Complaints Appeal Board. She stepped down from that role in 1999. Dame Vivienne was an integral part of establishing the public credibility of the ASCB and we sincerely acknowledge her significant contribution to advertising self-regulation.

***LAURENZ MONTAGUE ENTING (LAURIE)
1914-2012***

Laurie Enting, as a representative of the Association of Accredited Advertising Agencies (4A's) was a founding member of the Committee of Advertising Practice (CAP) and its inaugural Chairman, elected at the first meeting on 3 May 1973. Laurie served as CAP Chairman for four years, resigning in December 1977 when he stepped down from the executive of the 4A's. In 1990, the industry restructured CAP and changed its name to the Advertising Standards Authority. The robust system of advertising self-regulation in New Zealand owes much to Laurie and the industry representatives who were proactive in establishing CAP. The ASA is very grateful for his foresight and dedication in supporting self-regulation in the early years.

IMPORTANT ISSUES

The Advertising Standards Authority takes all concerns about advertising seriously and has a comprehensive set of advertising codes of practice to reflect this as well as an efficient and effective complaints system for consumers. However, some types of advertising rightly generate more complaints and interest than others. The following section provides an update of progress across a range of categories that have a higher public profile due to the types of products advertised and/or the target audience

Alcohol Advertising

In 2011 the Complaints Board received 71 complaints under the Code for Advertising Liquor, a decrease on the 96 complaints received in 2010. Of the 71 complaints, 45 were accepted to be heard by the Complaints Board, where 21 were upheld or settled, 22 were not upheld and two were ruled no jurisdiction. The Chairman ruled that there were no grounds to proceed or the complaint was withdrawn for 26 of the complaints.

As discussed in the 2010 Annual Report, a review of the

The ASA sincerely acknowledges the contribution by submitters and the work of the Panel in reviewing the Code.

Code for Advertising Liquor was underway and the review was completed in late 2011. The Review Panel's report and the ASA response to it were released in December and are available on the ASA website, www.asa.co.nz.

The ASA sincerely acknowledges the contribution by submitters and the work of the Panel in reviewing the Code. In particular, the ASA thanks Hon. Sir Bruce Robertson for his chairmanship of the Panel.

Along with a revision of language in the Code, key recommendations included merging the revised Code for Advertising Alcohol and the Code for Naming, Labelling, Packaging and Promotion of Liquor and a shift of responsibility for all complaints about alcohol to the Advertising Standards Complaints Board (ASCB).

The ASA is very appreciative of the work undertaken by the Liquor Promotions Complaints Board on complaints under the Code for Naming, Labelling, Packaging and Promotion of Liquor, however, it agreed with the Panel that under a combined code, it would make more sense for one board to hear all the complaints. It was

considered the ASCB, as the larger board (9 members), dealing with complaints across all categories, would be the most appropriate board to take on this role.

Therapeutic Advertising

In 2011, 56 complaints were dealt with under the Therapeutic Products Advertising Code and the Therapeutic Services Advertising Code, a small decrease on the 61 complaints received in 2010. Twenty nine complaints were upheld or settled by the Complaints Board. Nine were not upheld, eight were deemed to have no grounds to proceed and 10 other complaints were either withdrawn, resolved or ruled to be outside the jurisdiction of the Complaints Board.

Therapeutic products and services continued to be a significant category of complaint in 2011. In particular, a number of complaints were received about advertiser websites. Education is an important tool in relation to the complaints process as often small business owners are unaware of the codes and sometimes legislation that restrict the claims they want to make about their products. Use of the Therapeutic Advertising Pre-Vetting Service (TAPS) can assist in minimising advertiser's risks of non-compliance and a review of recent decisions on the decisions database (www.asa.co.nz) can also help highlight common areas of concern from consumers.

The ASA is committed to ensuring that advertising of therapeutic products and services meet the required standards which will ensure the appropriate level of protection for consumers and responsible advertising from the industry.

Natural Health Products Bill

A Bill has been introduced to Parliament to help regulate the manufacture and labelling of natural health products. While advertising is not specifically referred to in the Bill, the ASA will be making a submission, about the current process for dealing with advertising complaints for natural

IMPORTANT ISSUES (Continued)

health products and the approach the ASA would take if the Bill is enacted.

Maintenance of Advertising Self-Regulation

On 31 May 2011, the Minister for State Services announced a review of further government agencies as part of its approach to seek better value for money and less duplication across the state sector. The media release referred to work across a number of sectors and under Arts, Culture and Heritage, said "Work with the *Broadcasting Standards Authority*, the *Advertising Standards Authority*, the *Press Council* and the *Office of Film and Literature Classification* to look at opportunities for greater collaboration."

Both the ASA and the Press Council are self-regulatory organisations, funded by industry. While happy to discuss the value of its self-regulatory model with government agencies that work in the media sector, the ASA did not consider there were significant opportunities for collaboration. The ASA runs a codes and complaints system for advertising standards. It covers all advertising in all media. The annual budget is about \$750,000 and it employs 5 staff. The ASA took part in a workshop process run by the Ministry for Culture and Heritage to discuss our processes with the named organisations. No announcement has been about the outcome of these discussions.

ASA Funding Challenges

Like many sectors, the advertising industry has seen a downturn in revenue in recent years and in the last two years, very flat returns. The ASA is funded via member subscriptions and levies paid by advertisers on media placement. In common with our international colleagues, the digital media environment presents a number of challenges. The ASA, using the flexibility of self-regulation, expanded its jurisdiction a number of years ago to include advertising in the digital environment and this has been a growth area for complaints. However, it is also a more challenging environment to source funding from, using the current ASA funding model.

The ASA advertiser levy was increased from 0.035% to 0.05% in 1999 and a further increase with effect from 1 April 2012 to 0.06% (\$600 per \$1 million media spend) has been put in place, in part to address the growth in advertiser websites. Since 1999, complaints have increased from 572 complaints relating to 340 advertisements; to 1197 complaints about 759 advertisements processed in 2011.

The ASA is currently reviewing its funding model with a view to obtaining support from a broader range of advertisers for levy payment, along with looking at the collection model and the member subscriptions. This review will include work being undertaken to address similar challenges by self-regulatory organisations around the world.

The wider advertising industry is committed to credible, robust advertising self-regulation and an update on funding will be included in the 2012 annual report.

COMPLAINTS BOARDS

The success of our self-regulatory system is largely due to the excellent work of the three Boards and we are deeply appreciative of their contribution.

Advertising Standards Complaints Board

The Advertising Standards Complaints Board (ASCB) is an independent Board. It was established by the ASA in March 1988 to adjudicate on complaints about advertisements which complainants believe breach the Advertising Codes of Practice.

Its three main functions are:

- To adjudicate on complaints received about advertisements, which may be in breach of the Codes of Practice.
- To advise the ASA on the interpretation of the Codes and possible improvements to the Codes.
- To report to the ASA on any aspect of advertising which may be causing concern.

The ASCB meets monthly and in the event of urgent complaints is able to meet at short notice.

Members of the Advertising Standards Complaints Board (ASCB) IN 2011 were:

Public Members

Ms Jenny Robson (Chairman) (Consultant, Wellington)

Mr Philip Broughton (Deputy Chair) (Chartered Accountant, Dunedin)

Dr Greg Simmons (Public Health Physician, Taranaki)

Ms Margaret McKee (Chief Executive, Queen Elizabeth II National Trust, Wellington)

Mr Alex Handiside (Youth Senior Policy Analyst, Mental Health Foundation, Wellington)

Ms Susan Taylor, Chief Executive Officer, Financial Services Complaints Limited, was the Public Member alternate.

Industry Members

Ms Rachel Prince (Advertising Manager, New Zealand Transport Agency, Wellington)

Mr Paul Elenio (General Manager, Fairfax Central Region, Wellington) (to June 2011)

Ms Lynley Belton (General Manager, Fairfax Magazines, Auckland (from July 2011)

Ms Livia Esterhazy (General Manager, Saatchi and Saatchi, Wellington)

Ms Dianne Martin (Media Standards Manager, TVNZ, Auckland)

A number of industry members alternates are available to take the place of the appointed industry members if required.

A breakdown of complaints statistics dealt with by the ASCB begins on Page 20.

Liquor Promotions Complaints Board

The Liquor Promotions Complaints Board (LPCB) was established in 2010 to receive complaints under the Code for Naming, Labelling, Packaging and Promotion of Liquor (Liquor Promotions Code).

The main functions of the Board are:

- To determine complaints received about promotions which may be in breach of the Liquor Promotions Code;
- To advise the ASA on interpretation of the Liquor Promotions Code and possible improvements to the Code;
- To maintain an effective system of self-regulation in respect to Liquor promotions, naming, labelling and packaging;
- To report to the ASA on any aspect of liquor marketing which is causing concern.

Members of the Liquor Promotions Complaints Board (LPCB) in 2011 were:

Public Members

Penny Mudford (Chairman) (Arbitrator and Mediator, Wellington)

Dr Ruth Richards (Public Health Physician, Regional Public Health, Wellington)

COMPLAINTS BOARDS (Continued)

Paul Stanley (Public health and senior management background, Tauranga)

Industry Members

John Macdonald (Founder and Director Mac2 Management Ltd)

Erica Crawford (Exporter and Marketer)

Ms Deborah Rundle, Independent Chairman of the Discipline and Complaints Committee of the Insurance Brokers Association of New Zealand, was the Public Member alternate. **Ian McAteer** (Agency Importing Company) was available to take the place of the appointed industry members if required.

There were three complaints lodged during 2011, all of which were accepted to proceed to the Liquor Promotions Complaints Board for deliberation. Following detailed consideration of these complaints, for a variety of reasons, they were not upheld. Decisions are available on the ASA website, www.asa.co.nz.

Following the review of the Code for Liquor Advertising, the ASA agreed to recommendations to merge the two alcohol codes and move the complaints adjudication for alcohol promotions to the Advertising Standards Complaints Board as the larger board, and to help ensure consistency in decisions across advertising and promotions.

The ASA would like to sincerely thank the Chair of the Liquor Promotions Complaints Board (LPCB), Penny Mudford and the public and industry members for their willingness to be involved in the process and their dedication to the review of complaints and application of the code. The LPCB will be dis-established on 30 June 2012.

Advertising Standards Complaints Appeal Board

The Advertising Standards Complaints Appeal Board (ASCAB) was established in 1994 to adjudicate on appeals about decisions of the ASCB (and from 2010, the LPCB). Any party to a complaint may appeal.

The main grounds for appeal include the availability of new evidence, it is in the interests of natural justice that the appeal be accepted, the Decision was against the weight

of evidence, evidence before the Complaints Board was misinterpreted, and proper procedures were not followed.

There were 75 appeal applications lodged during the 2011 year. Of the total appeal applications received, 47 did not meet the grounds for appeal. Of the applications that were declined, the majority of these restated the original concerns of the Complainant. Rulings on these applications noted that disagreement with a decision of the Complaints Board was not, in itself, a ground upon which an application for appeal could be accepted.

17 appeals were accepted to proceed to, or be reheard by, the Complaints Board, and 10 were referred to the Appeals Board. One appeal was adjourned. The most common grounds upon which applications were accepted were that evidence before the Complaints Board may have been misinterpreted, and it was in the interests of natural justice that the appeal be allowed. Of the appeals heard by the Appeals Board, six of these were dismissed, three were allowed and one was allowed in part and dismissed in part.

The ASCAB comprises three members, two of whom are public representatives with no connection or background with the media or advertising industry, the third being an industry member.

Members of the Advertising Standards Complaints Appeal Board (ASCAB) in 2011 were:

Public Members

Mr Euan Abernethy (Chairperson) (Lawyer, former Chairman, Securities Commission, Wellington)

Ms Judi Jones (Lawyer, Electricity and Gas Complaints Commissioner, Wellington)

Industry Member

Mr Bob Moffat (former advertising agency executive, Wellington)

Mr Alan Haronga (Company Director, Wellington) is the public member alternate and **Mr Martyn Turner** (former Chief Executive, Ogilvy Mather, currently Chisel Communications, Wellington), and **Mr Paul Elenio**, (former General Manager, Fairfax Central Region) are the industry member alternates.

Adjudication with the Attendance of Parties (AWAP)

When accepting a complaint into the complaints process, the Chairman of the Complaints Board will sometimes rule that the complaint be heard at adjudication with the attendance of parties (AWAP). The AWAP system is designed to process complaints made by one competitor against another, and to respond to the requirements of complaints in a competitive environment. Its focus is on providing parties with a speedy and efficient extrajudicial process and decision, based on the Advertising Codes of Practice.

Following a receipt of a written complaint, all parties to the complaint are invited to submit a written response. Two people representing each party are then invited to attend a hearing, where they may speak to their written submissions, answer questions put to them by a Panel, and respond to issues raised by other parties. The submissions are heard by a Panel comprised of two public members and one industry member, this year drawn from the Advertising Standards Complaints Board (ASCB) and the Advertising Standards Complaints Appeal Board (ASCAB). When the decision of the Panel is distributed to all parties shortly after the hearing, if a complaint is upheld, the advertiser is requested to immediately remove the offending advertisement.

In 2011 complainants paid a fee for the adjudication of up to \$10,000 plus GST. After a decision has been made, advertisers against whom a complaint has been upheld are requested to refund the complainant this fee. It is a requirement within the AWAP process, as with all complaints accepted into the ASCB process, that complainants waive their right to pursuing the same complaint in a different jurisdiction. Parties are not able to appeal AWAP rulings.

AWAPS in 2011

In 2011, there were nine AWAPS, down from 14 in 2010. Five of these proceeded to a hearing, where two were upheld, two were not upheld, and one was upheld in part.

Schick v Gillette

The first AWAP of 2011 was also one of the year's most complex, focusing on the cutting edge technology in men's razors. The complaint from Procter & Gamble Distributing New Zealand challenging claims Energizer Schick HYDRO made about its Schick HYDRO razor products, involved a number of different claims across different advertisements and was being contested in various jurisdictions including America, Australia and Germany. The two most prominent claims among those looked at by the Panel related to the phrase "Best shave for your skin" and claim which conferred post-shave hydration. The Panel said, much, like the Complainant's own catchphrase "Gillette: the best a man can get", "Best shave for your skin" was likely to be perceived as

puffery by the reasonable consumer and therefore unlikely to deceive or mislead. In addition it said the Advertiser had not used tests, surveys or research in a manner which was likely to mislead and therefore the claim did not require substantiation.

On a more technical note the Panel was required to consider whether the various statements, including "It's a blast of hydration to your face" and "Hydrates your skin as you shave" implied that there was a hydrating effect beyond the shaving process (i.e. moisturising). The Panel concluded that the present tense wording, imagery and documented evidence provided, combined to ensure the consumer take out was one which would not mislead. However, a further claim that "...[a] shaving experience during and after, no longer will you have to worry about feeling dry and uncomfortable after a shave using Schick Hydro razor" was upheld on the basis that the hydration effect was not lasting.

Dilmah v Bell Tea

The advertised claims made by Dilmah Tea were contested in one of 2011's more interesting AWAPS. The complaint made by Bell Tea and Coffee Company Limited focused on four claims relating to the origins of English Breakfast Tea. The Panel found that the claims made by Dilmah Tea such as "Dilmah English Breakfast ... it's from Dimbula region of Sri Lanka where English Breakfast originally came from", and "The Dilmah family bring our real English Breakfast fresh from our tea gardens" were likely to be misleading to consumers as both parties agreed the origins of English Breakfast Tea were unclear and the Advertiser could not substantiate the claim that English Breakfast tea originated in the Dimbula region. The Panel further found that as only a small percentage of Dilmah's total tea purchases came from plantations which they had an interest in, the claim "from our tea gardens" was likely to mislead consumers. The Panel also said the use of the word "real" in the claim "the Dilmah family bring you real English Breakfast Tea", was a subjective reference rather than a statement and therefore did not reach the threshold to breach the Codes of Advertising. However, as the Panel found that the Complaint had breached the Code of Ethics, it was upheld.

ASA CODES OF PRACTICE

The Codes are developed by the ASA to cover the entire range of advertising activity, and amended whenever there is an issue that requires review or updating. Where appropriate, mainstream consumer groups, government departments, government agencies, industry and other interested parties are also involved in the process.

The Codes include a Code of Ethics, which is the overall philosophy covering fairness, respect for people, and honest practice, plus a number of Codes covering either particular issues (e.g. Advertising to Children) or product areas (e.g. Financial Services).

All of the Codes are to be applied in the spirit, as well as the specific requirements.

The function of the Codes is to complement, not to replace, New Zealand legislation.

- Advertising Code of **Ethics**
- **Children's** Code for **Advertising Food**
- Code for Advertising to **Children**
- Code for **Comparative** Advertising
- Code for **Environmental** Claims
- Code for **Financial** Advertising
- Code for Advertising of **Food**
- Code for Advertising **Gaming** and **Gambling**
- Code for Advertising **Liquor**
- Code for **People** in Advertising
- **Therapeutic Products** Advertising Code
- **Therapeutic Services** Advertising Code
- Code for Advertising **Vehicles**
- Code for Advertising of **Weight Management**
- Code for **Naming, Labelling, Packaging** and **Promotion of Liquor**

THE MOST COMPLAINED ABOUT ADVERTISEMENTS IN 2011

1

11/222

178 Complaints – Not Upheld**Bun Brouhaha. Black humour saves Hell Pizza advertisement**

The billboard advertisement for Hell Pizza featured a hot cross bun on the right hand side of the board that was decorated with an inverted pentacle symbol. On the left of the bun were the words “For a limited time. A bit like Jesus.”

Complainants felt that the billboard’s appearance in the weeks leading up to Easter was “deliberately inflammatory and akin to blasphemy,” “mocks Easter and its importance to the Christian faith,” inappropriate for tourists and children to see; factually incorrect, inflammatory and promoted anarchy.

The majority of the Complaints Board was of the view that

the imagery itself on the advertisement was relatively innocuous, and that any possible offence would be caused by people’s understanding of the symbol and the text in the advertisement. The majority also agreed that nothing in the advertisement had specifically attacked the tenets of Christianity, or the existence of Jesus, but instead had played on the well-known promotional line: “for a limited time”. The majority was of the view that, while provocative, the degree of black humour would be recognised by most people, including many Christians, and said that this humour – albeit provocative – saved the advertisement from being likely to cause serious or widespread offence in the light of generally prevailing community standards.

2

11/060

30 Complaints – No Grounds to Proceed**KY OK. Advertising adult products in AO time unlikely to cause serious or widespread offence**

The television advertisement for Yours & Mine KY gel showed a couple sitting in bed. Between them they explained the effects of the gel which they used during “relations”. After they discussed how the gel benefits each of them individually they then stated: “But the real surprise is when they combine ...” A shot of a ballerina being lifted into the air by a male ballerina was then shown. The next shot showed the couple in bed with the sheets crumpled, laughing.

Complainants said that adult products should not be shown until after 9.00pm as children would be watching before then.

The Chairman referred to a previous Ruling about the same product which stated, in part: “...in her view, the advertisement promoted a delicate product and concept in a tasteful and relatively discreet manner, and although it was offensive to some, she said it would not be likely to cause serious or widespread offense in the light of generally prevailing standards.” The Chairman considered that the advertisement had been broadcast in accordance with its rating of AO (Adults only) and there were no grounds for the complaint to proceed.

THE MOST COMPLAINED ABOUT ADVERTISEMENTS IN 2011 (Continued)

3

11/001

25 Complaints – Not Upheld**Thumbs up for Down Boy. ASCB rules that advertisement for toilet seat gadget not sexist.**

The television advertisement for Down Boy, the self-lowering toilet seat, showed a man on his knees and acting like a dog, panting with his tongue out, as he ran up to a woman who is seated at the kitchen table.

The woman looked down to the man and asked “Down Boy?” The man acting like a dog nodded his head while he continued to pant. The woman then said “good boy” and threw the man a biscuit which he caught in his mouth.

Complainants were of the view that it undermined

parental efforts to teach children about respecting both males and females; that if the genders were reversed, the advertisement would be the subject of numerous complaints and would likely result in the advertisement not being played.

The Complaints Board said the advertisement was satirising and lampooning the old conundrum that exists between men and women over whether the toilet seat should be up or down and did not uphold the complaints.

4

11/438

17 Complaints – Upheld**‘Shock’ Potential. Vodafone advertisement breaches codes**

The television advertisement for Vodafone featured an actor in the kitchen trying to retrieve toast stuck in the toaster. The actor picked up a knife with the apparent intent of retrieving the toast.

The scene ended before the actor put the knife in the toaster. The accompanying voice-over said: “Bonus weekend minutes when you top up on Supa Prepay: another way to get more than you bargained for.”

Complainants said the advertisement showed a very dangerous act that if copied by anyone, could result in electrocution or at least a serious shock. Complainants were also concerned at the time the advertisement was shown which was when teenagers would be viewing. Vodafone said that it was well known that to put a knife in a toaster may result in electric shock and also pointed

out the advertisement was aimed at adults, who would understand this along with the reference to getting more than you bargained for.

However, the Complaints Board considered that the advertisement contained a visual presentation of a potentially dangerous situation and encouraged a disregard for safety. The Complaints Board agreed the implication from the advertisement was that the actor was about to put the bread knife down the toaster to retrieve the toast which could result in an electric shock. While the Complaints Board acknowledged the intention of the accompanying tagline and the rating of the advertisement, in its view this did not save the advertisement from depicting a potentially dangerous ‘everyday’ situation and it upheld the complaints.

THE MOST COMPLAINED ABOUT ADVERTISEMENTS IN 2011 (Continued)

5

11/425

15 Complaints – Not Upheld (in part) Settled (in part)**Powershop withdraws 3 out of 4 bus shelter advertisements**

A suite of bus shelter and website advertisements by Powershop featured pictures of people such as Saddam Hussein, Kim Jong-il, Richard Nixon and Che Guevara. The heading on all of the advertisements said: “SAME POWER DIFFERENT ATTITUDE”.

The Complaints Board noted the amount of complaints received, particularly about the image of Saddam Hussein. These Complainants said that the image was offensive to Iraqi refugees who fled his brutal regime.

Powershop replied: “In response to feedback received during the advertising campaign ..., Powershop had decided prior to receiving your letter to remove the bus

shelter and website advertisements featuring images of Saddam Hussein and Kim Jong-il. Powershop has actioned this and all of these advertisements have been withdrawn.” Accordingly, the Complaints Board noting the self-regulatory action taken by the Advertiser said that this matter could be considered settled.

The Complaints Board considered the advertisements of Che Guevara and Richard Nixon. It noted the sincere concerns of the Complainants with regard to these advertisements, however it was of the view that they did not reach the threshold to cause serious or widespread offence in light of generally prevailing community standards and did not uphold the complaints.

6

11/069

14 Complaints – Upheld**Top Chef: Just Desserts. Use of expletive on billboard not ok**

The billboard advertising the television programme Top Chef: Just Desserts on channel Four was in Auckland and Wellington. The image was of an intricately iced cake top that included the words “Backstabbing Slut”.

Underneath these words, the advertisement said, Top Chef: Just Desserts. They make desserts, not friends. 8.30 Mondays.” Complainants felt that the use of the word “slut” highly offensive. Many complainants also said that it was inappropriate for children to be exposed to such a term via a billboard.

The majority of the Complaints Board was of the view that - despite the anecdotal evidence provided

by the Advertiser and Agency that the word “slut” was now frequently used by teenage girls as a “humorous throwaway line” - it remained a strong and pejorative expletive rather than a humorous term. The majority also said that the billboard advertisement was highly visible to a wide cross-section of the general public – including children.

The majority of the Complaints Board was of the view that the position and, therefore, the public nature of the advertisement, together with the offensive nature of the wording, meant that the advertisement had offended against generally prevailing community standards, and upheld the complaints.

THE MOST COMPLAINED ABOUT ADVERTISEMENTS IN 2011 (Continued)

7

11/403

12 Complaints – No Grounds to Proceed**ACT Party's advocacy advertisement avoids censure**

A newspaper advertisement from the ACT contained the headline: "Fed up with pandering to Maori radicals?" Statements in the advertisement included: "Give us enough party votes and ACT will stop National trading away your country's resources for Maori Party votes."

"Under a string of weak governments, New Zealand has been slowly morphing into a state where those who are Maori have more rights than those who are not."

"Even though they don't have to appease the Maori Party, these are just some of the ways National have done so: ..."

The advertisement then listed a number of matters relating to Government decisions or policy. The advertisement ended with the following wording: "Now is the time to draw a line in the sand. Only one thing can stop the Maori radicalisation of New Zealand. And that's a strong ACT."

Complainants raised a number of concerns about the advertisement. Among those concerns were that the advertisement was misleading, offensive, racist, in breach

of the requirement for a due sense of social responsibility; likely to play on fear and "a gross misrepresentation of Maori political issues and was framed in a way that was likely to insight tension between Maori and non-Maori."

The Chairman noted that the advertisement contained provocative language and strong positioning statements from the ACT Party on a number of matters that had been widely debated during the term of the current Government. The Chairman also said that issues raised in the advertisement continued to be debated publicly by the political parties and other groups and individuals with differing views and that this was an important part of the democratic process.

The Chairman noted the General Election allowed the voting public the opportunity to support such positions, or not, and referred to the Advocacy Principles stated ... "People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules." The Chairman ruled there were no grounds for the complaints to proceed.

8

11/116

11 Complaints – Not Upheld**Lynx Dry's Wet Patches Get By**

The television advertisement for Lynx showed four different men looking distressed as wet patches suddenly appeared under their armpits when they were in close proximity to women.

Complainants found the advertisement in very bad taste inappropriate to show an advertisement that contains such sexually explicit innuendo during family viewing times when children are watching television and that companies had gone too far in using sex to sell products.

The Complaints Board found that the advertisement

relied solely on innuendo, rather than anything explicit occurring. In the Complaints Board's view, the scenarios in the advertisement, although highly suggestive, were acceptable for the product being advertised.

The Complaints Board also noted that the advertisement did not contain anything that could be considered exploitative or degrading toward men or women. It also noted that Basic Principle 6 provided for the use of humour in the portrayal of people in advertising and it was unanimously of the view that the advertisement before it was not likely to cause serious or widespread offence.

THE MOST COMPLAINED ABOUT ADVERTISEMENTS IN 2011 (Continued)

9

11/668

9 Complaints – No Grounds To Proceed**Trailers for horror movie broadcast in appropriate timeslot**

Two versions of the television advertisement promoting the movie “Paranormal Activity 3” screened during the early part of the evening. The first advertisement showed scenes from the movie of children playing who ‘then suddenly scream and a black image standing alone appears.

The second advertisement showed scenes from the movie of adults talking about there being something in the house. The advertisement then shows scenes of darkness with fleeting electrical pulses. The camera is unsteady and screams are heard. Complainants said that it was inappropriate for children to see movie trailers that contained horror images.

The Chairman acknowledged that while the images contained in the advertisements from the film “Paranormal Activity 3” could be distressing to some viewers, the movie trailer advertisements had a rating of PGR. The advertisements were either aired during the News, which falls within an unclassified time slot, or after 7pm which is a PGR rated time slot (where there is an expectation that programs would attract parental guidance). The Chairman also noted the two versions of the advertisement had been aired at times which were appropriate to its rating and, therefore, there had been no breach of the Advertising Codes.

10

11/086

8 Complaints – Not Upheld**America’s Next Top Model photo-shoot on NZ farm ute not pornographic**

The billboard advertisement for America’s Next Top Model featured an image of a naked woman in the middle of a typical New Zealand farming scene.

The model was sitting on the back of the vehicle, and positioned so her arm and hand covered her breasts, with a side profile of her naked body. Complainants were of the view that the billboard advertisement was offensive, particularly as it could be seen by children. Some Complainants also said thought that the advertisement was degrading to women and was pornographic.

The Complaints Board noted that the advertisement was for the television programme America’s Next Top Model and the woman featured in the advertisement was a contestant, and the image of her was from a professional

photo shoot. The Complaints Board considered that the image was neither salacious nor titillating. Therefore, the Complaints Board said it was a long bow to draw to say that the image was “pornographic”. It further noted the response from the Advertiser where they stated: “In this season of America’s Next Top Model, the American contestants visited New Zealand, and this advertisement was based on the juxtaposition of the beautiful, high-class, international fashion model, being brought into typical NZ scenes such in this instance, a farm.”

Having observed all of the above, the Complaints Board was of the view that the advertisement was not likely to clearly offend or cause serious or widespread offence in light of generally prevailing community standards.

THE MOST COMPLAINED ABOUT ADVERTISEMENTS IN 2011 (Continued)

11

11/380

8 Complaints – Not Upheld**Complainants irked by placement of adult entertainment advertisements.**

Three newspaper advertisements for Calendar Girls Strip Club, each of which differed slightly, appeared in the New Zealand Herald, including on the front page.

One of the advertisements featured a woman, dressed in underwear, reclining on a couch. Complainants said that the advertisements were degrading and exploitative to women in general and openly promoted pornography, which was offensive in the context of a newspaper. Complainants were also concerned that the advertisement exposed sexual images to children.

The Complaints Board said that the images of the women in the three advertisements, while provocative

and suggestive, did not meet the threshold to be considered salacious and were of a similar view with regard to the wording, taking into account the venue being promoted. As such, the Complaints Board agreed that the advertisements had not employed sexual appeal in a manner that was exploitative or degrading to any individual or group.

The Complaints Board also noted that the newspaper was a publication that was produced for, and read predominantly by, adults. The Complaints Board said that while adult entertainment advertising and its placement clearly raised issues for the newspaper's readership, this was a matter for the New Zealand Herald to address and ruled to not uphold the complaints.

2011 Complaints Overview

Number Received and Processed

In 2011 the ASCB received 1197 formal complaints, about 759 advertisements. This compares with 1164 complaints about 792 advertisements in 2010.

Of the 1197 formal complaints

438 were duplicates.

353 were deemed to have “no grounds to proceed” for a variety of reasons, but usually “previous decision”, “no jurisdiction” or “no prima facie case.”

81 were withdrawn, resolved, no adjudication or adjourned.

There were therefore 325 substantive advertisements dealt with by the ASCB.

83 were upheld.

106 were settled. The parties accepted that there was a breach and the advertisement was withdrawn.

136 were not upheld.

Upheld Rate

The upheld/settled rate was 58%.

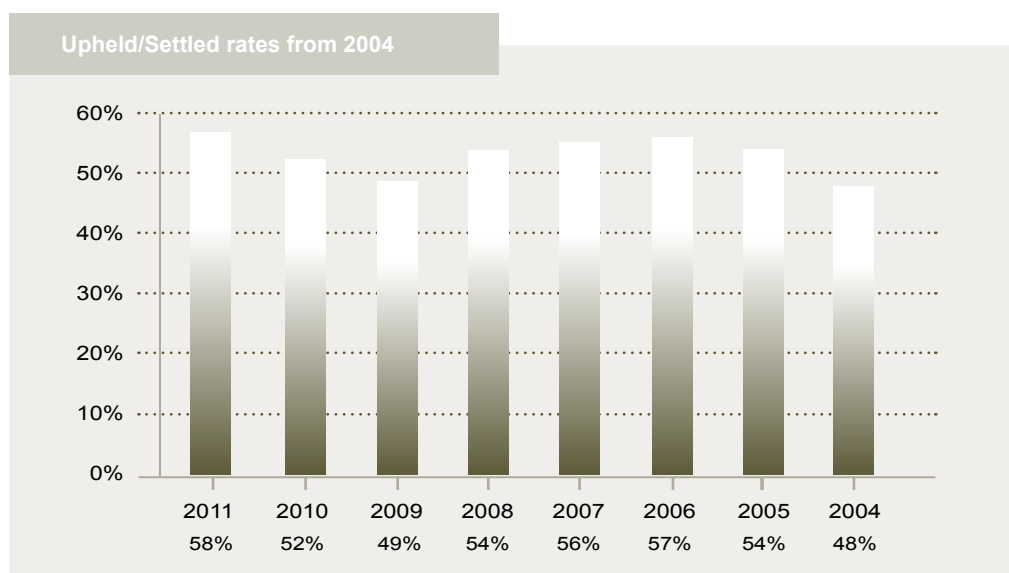
This compares with:

2010 - 52%	2009 - 49%	2008 - 54%
2007 - 56%	2006 - 57%	2005 - 54%
2004 - 48 %		

Source of complaints

Complaints are received via post, email, our online complaints form on www.asa.co.nz and by referral from other agencies.

In 2011 75% of complaints were received via our online complaints form, 14% were received by post and 6% by email. The remaining 5% were referred by the Broadcasting Standards Authority (2%) or TVNZ (3%).



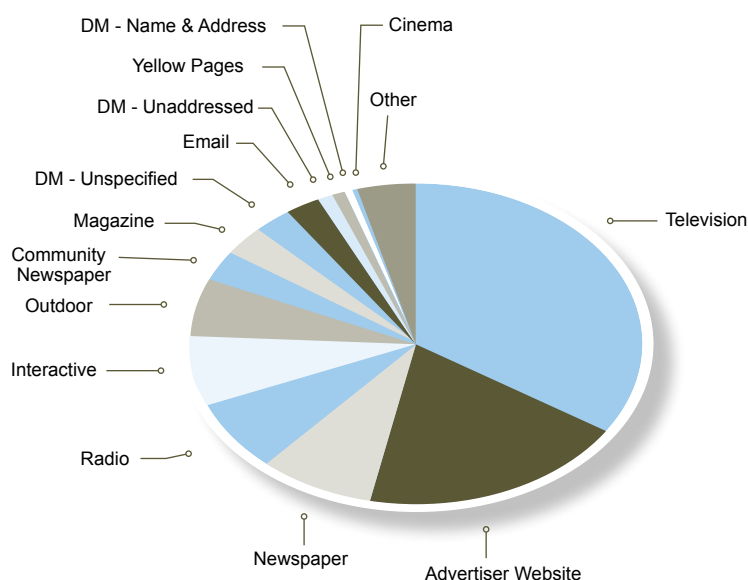
COMPLAINTS BY MEDIA

As in previous years, television is the most complained about medium with regard to advertisements.

In 2011 33% of the complaints were about television advertisements. This is a small increase from 30% in 2010. Newspapers accounted for 9% or 73 of the complaints received in 2011, a decrease on the 12% in 2010. Interactive advertisements on third party sites (7%) and advertisers' own websites (21%) attracted a total of 28% of the complaints.

	2011	2010	2009	2008	2007
Television	272	263	292	256	241
Advertiser Websites	171	140	124	96	80
Newspaper	73	105	95	72	85
Radio	60	74	80	52	55
Interactive	56	56	38	34	29
Outdoor	52	45	58	58	42
Magazine	23	29	70	29	23
Community Newspaper	23	26	28	19	27
DM - Unspecified	22	32	32	48	49
Email	12	15	8	9	7
DM - Unaddressed to box	9	18	18	10	5
Yellow Pages	4	1	3	2	5
DM - Addressed	3	4	3	9	6
Cinema	1	3	1	1	0
Other	39	39	18	31	45
TOTAL*	820	850	869	730	699

**Please note: Complaints can be received about advertisements in more than one medium*

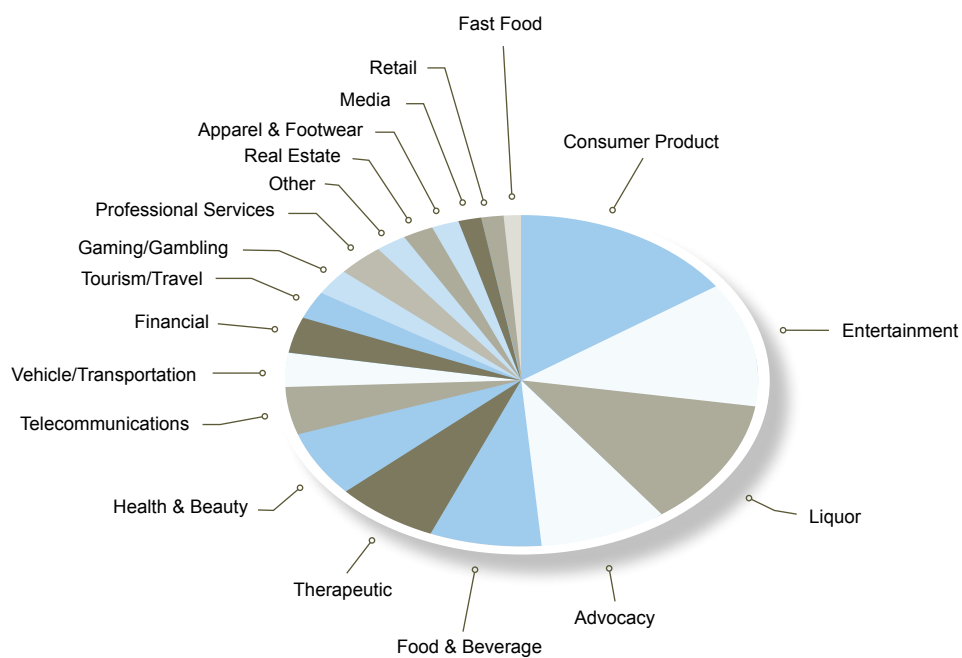


COMPLAINTS BY PRODUCT

The category of consumer products accounted for 16.5% of the complaints in 2011, a small decrease from 19% in 2010.

Other significant categories included entertainment (11.2%), liquor (10.8%), advocacy (9.5%), and therapeutic products and services (7.5%).

	2011	2010	2009	2008	2007
Consumer Product	125	141	159	115	82
Entertainment	85	27	30	38	38
Liquor	82	114	83	35	31
Advocacy	72	64	69	68	44
Food & Beverage	70	86	80	81	67
Therapeutic	57	67	68	34	38
Health & Beauty	46	38	29	23	19
Telecommunications	30	30	51	32	74
Vehicle/Transportation	26	18	29	38	29
Financial	25	45	32	35	27
Tourism/Travel	24	40	46	33	29
Professional Service	23	30	38	36	9
Gaming/Gambling	21	4	7	9	6
Other	15	15	12	26	31
Real Estate	13	10	15	5	18
Media	12	32	33	29	37
Apparel & Footwear	12	13	12	9	16
Retail	11	11	28	46	40
Fast Food	10	7	8	11	33
Total	759	792	829	703	668

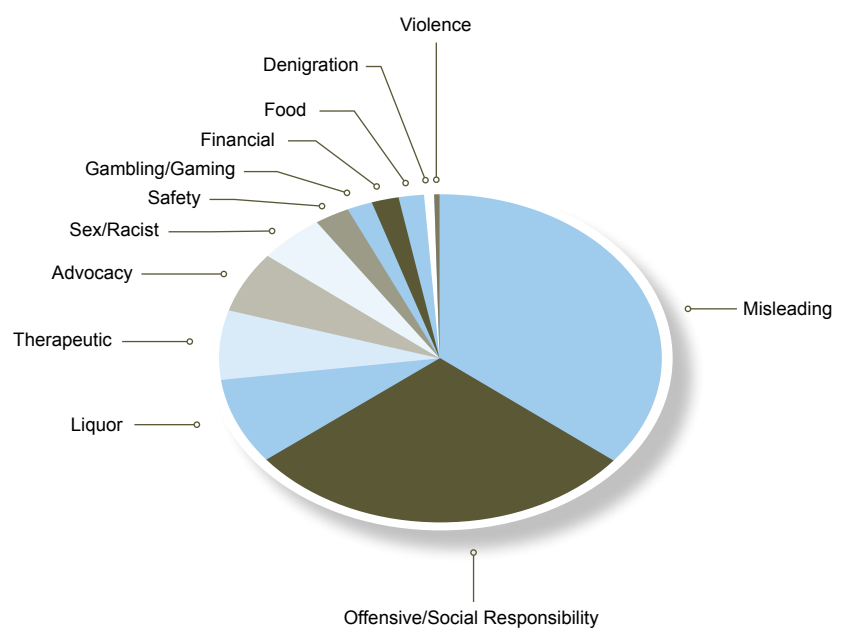


COMPLAINTS BY CODE / RULE

Issues complained about are reflected in the breakdown of the primary code or rule under which a complaint was considered.

In 2011, 37% of all complaints raised issues about misleading advertising, a slight increase on 2010. The second highest area of complaint relates to offensiveness and / or social responsibility with 26% of complaints in 2011. This compares to a 24% share in 2010. Requirements under the Code for Advertising Liquor, the Therapeutic Products and Services Codes and the Advocacy Rule under the Code of Ethics, are the other significant areas of complaint.

	2011	2010	2009	2008	2007
Misleading	282	281	348	270	280
Offensive/Social Responsibility	198	193	205	234	231
Liquor	65	103	80	31	23
Therapeutic	60	62	44	40	23
Advocacy	48	52	47	33	13
Sexist/Racist	39	31	27	17	12
Safety	18	17	11	12	15
Gaming/Gambling	14	2	5	2	5
Finance	12	8	15	19	13
Food	12	18	10	25	20
Denigration	4	16	14	1	0
Violence	2	5	1	0	6
Children	0	0	3	3	1
Other	5	4	19	16	26
Total	759	792	829	703	668



NZ ADVERTISING INDUSTRY TURNOVER

	2011		2010		2009		2008		2007	
	\$ M	%	\$ M	%	\$ M	%	\$ M	%	\$ M	%
TELEVISION	618	28.4	607	28.4	570	27.9	647	27.9	654	28.0
NEWSPAPERS	582	26.7	627	29.3	623	30.5	760	32.8	826	35.4
INTERACTIVE	328	15.1	257	12.0	214	10.5	193	8.3	135	5.8
RADIO	247	11.3	241	11.3	236	11.5	268	11.6	274	11.7
MAGAZINES	209	9.6	219	10.2	217	10.6	249	10.7	257	11.0
OUTDOOR	83	3.8	70	3.3	68	3.3	74	3.2	78	3.3
UNADDRESSED MAIL	55	2.5	55	2.6	58	2.8	61	2.6	65	2.8
ADDRESSED MAIL	50	2.3	53	2.5	53	2.6	56	2.4	36	1.5
CINEMA	7	0.3	8	0.4	6	0.3	9	0.4	10	0.4
TOTAL	2179	100.0	2137	100.0	2045	100.0	2317	100.0	2335	100.0

The ASA provides a collection point for the above figures and the information below about how each sector reports its total revenue. The figures are issued once a year, and are for calendar years. Any queries about the figures should be directed to each media sector.

Explanatory notes for the year ended 31 December 2011

Television:

This figure includes all cash revenue, including agency commission, excluding GST from free to air (including Prime) and pay television. The figures are independently collected for ThinkTV and reported to the ASA as a total revenue figure.

Newspapers:

This figure includes all cash revenue, including agency commission, excluding GST from all daily, Sunday and community newspaper titles in New Zealand. The revenue includes display, retail, classified and insert advertising. The figures are sourced from the member newspapers of the Newspaper Publishers' Association of New Zealand and the Community Newspapers Association of New Zealand. NOTE: Newspapers advise the figure reported is not a comparative measure with other main media which derive the majority of their revenue from National and Retail advertising sources.

Interactive:

The online advertising expenditure figure is based on gross amounts charged to advertisers and inclusive of any applicable agency commissions. The 2011 figures include Display Advertising which includes banners, skyscrapers, rich-media, streaming advertising, email, online video and other forms of interactive Display advertising; Classifieds, which includes revenues from ads placed to buy or sell an item or service and Search & Directories Advertising which includes revenues from online Directories and search engine listings. The figures are supplied via PwC, an independent auditor on behalf of the Interactive Advertising Bureau (IAB NZ). For further info visit www.iab.org.nz

Radio:

This figure includes all cash revenue, including agency commission, excluding GST from members of the Radio Broadcasters Association (RBA). Actual returns

comprised 99% of the total radio advertising revenue for 2011. The total also includes an estimate for non-RBA members, iwi and student radio based on direct industry knowledge and projections based on market share. The figure is sourced from the Radio Broadcasters Association.

Magazines:

This figure includes cash revenue, including agency commission, excluding GST from the majority of members of the Magazine Publishers Association (MPA). For some MPA member and non-member publications, an estimate has been made. The figure does not include revenue from classified advertising. It is estimated that MPA members represent 65% of magazine advertising revenue in New Zealand. The figure is sourced from the Magazine Publishers Association.

Outdoor:

This figure includes all cash revenue, including agency commission, excluding production, installation and GST from members of the Outdoor Media Association of NZ (OMANZ). The revenue data is independently collected for OMANZ. The figure also includes actual returns from four other

companies involved in outdoor or ambient advertising.

Unaddressed Mail:

This figure includes all cash revenue excluding GST, from the letterbox media companies. These companies are Reach Media and PMP Distribution. The revenue recorded is drawn from the cost of delivery. This total represents 95 % of the unaddressed mail advertising revenue in New Zealand.

Addressed Mail:

This figure is an estimate based on the cost of delivery only. It does not include production or associated costs. It is compiled using volume and expenditure estimations from Nielsen Media Research's MailPix system. The Nielsen estimations (at standard postage rates) are validated and adjusted using New Zealand Post's own volume and expenditure data taking discounting into account to produce the final market revenue estimation. The figure is sourced from New Zealand Post.

Cinema:

This figure includes all cash revenue, including agency commission, excluding GST from the two major companies involved in cinema advertising in New Zealand.



ADVERTISING STANDARDS AUTHORITY

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