

Advertising Standards Authority

annual report 2012



ADVERTISING STANDARDS AUTHORITY

DID YOU KNOW?

- It is free for consumers to complain about advertisements.
-
- Over 75% of complaints are made online at www.asa.co.nz.
-
- Three revised codes were released in 2012, the Code for Advertising and Promotion of Alcohol, the Code for Comparative Advertising and the Code for Environmental Claims. A new codes booklet is available online or from the ASA office.
-
- To help understanding of the application of the ASA codes to social media platforms, the ASA released a guidance note, available on our website, www.asa.co.nz
-
- 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.
-
- Both the Complaints and Appeal Boards have public member majorities and public member Chairs.
-
- The ASA has a freephone number for consumers and advertisers, 0800 AD HELP (234 357).
-
- Advertising revenue across all media was 2.164 billion dollars in 2012.
-
- 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, **www.asa.co.nz**.
-
- The ASA also has a fast-track competitor complaints service called Adjudication with the Attendance of Parties (AWAP).

INDEX

From the Chairman	Page 4
From the Chief Executive	Page 5
Members and Officers	Page 6
Important Issues	Page 7
Advertising Standards Complaints Board	Page 9
Liquor Promotions Complaints Board	Page 10
Advertising Standards Complaints Appeal Board	Page 11
Adjudications with the Attendance of Parties	Page 12
ASA Codes of Practice	Page 14
The Most Complained About Ads	Page 15
Statistics Overview	Page 20
Complaints by Media	Page 21
Complaints by Product	Page 22
Complaints by Code / Rule	Page 23
New Zealand Advertising Industry Turnover	Page 24

FROM THE CHAIRMAN

This is my last report as Chairman of the Advertising Standards Authority (ASA), bringing to an end 14 years of direct involvement with the organisation. The success of the ASA is due to the high level of engagement from the wider advertising industry and I have valued the opportunity to represent magazine publishers at the ASA table.

I would also 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.

The Chairman of the Advertising Standards Authority (ASA) guides 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.

Consumer complaints are heard free-of-charge 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 2012, a total of 1076 formal complaints were received about 693 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 valuable work of the Complaints Boards is due in no small measure to the significant contributions of the Chairs, Jenny Robson, Chair of the Complaints Board, Euan Abernethy, Chair of the Appeal Board and Penny Mudford, Chair of the Liquor Promotions Complaints Board. The ASA is very grateful for all the work they do on behalf of consumers in advertising self-regulation.

I would also like to thank fellow ASA members, in particular Deputy Chair Lindsay Mouat, for their energy and wise counsel in support of industry self-regulation. I would like to take this opportunity to acknowledge the contribution of Rick Friesen, representing free-to-air television, who stepped down at the end of 2012. Rick made a wonderful contribution to the ASA over a number of years.

Finally, I would like to acknowledge and thank the many other industry colleagues I have worked with whilst I have been with the ASA. It has been the collaborative attitude that has made any role I had most enjoyable and rewarding.

John McClintock | Chairman

FROM THE CHIEF EXECUTIVE

The last year has presented the ASA with some interesting challenges. While complaints were down by about 9% on the previous year, the Secretariat was kept busy improving complaint processes and working on code revisions and the development of guidance notes.

Three revised codes were released in October 2012 to come into effect on 1 January 2013. Two of the older codes, comparative and environmental claims, have been re-formatted and revised following consultation with a range of stakeholders.

The new combined alcohol code dealing with advertising and promotion resulted from a recommendation of the review panel that a single code would be easier for consumers and industry to deal with. Guidance notes to assist with code interpretation are also now available.

Social media platforms and advertising codes were debated in 2012 with the ASA introducing a guidance note on how the codes would apply to advertiser-controlled social media environments. Copies of the revised codes and new guidance notes are on our website, www.asa.co.nz.

To support the development of advertising regulation in the Asia-Pacific region, I was pleased to speak at an APEC dialogue in Hanoi, Vietnam towards the end of 2012. The dialogue was organised by the Australian Advertising Standards Bureau. Further details about this opportunity are on page 8.

As the ASA is most often in the media as a result of decisions made, information about the complaints boards and their workloads along with the top ten most complained about ads in 2012 is included in this report on pages 9 and 15.

Like many organisations, the ASA has had some funding challenges in the last couple of years. Media diversification and the movement of advertising spend from mainstream media and traditional media agencies has impacted on our income. In 2012, following a further review of expenses it was agreed that an increase to the advertiser levy was required from \$5 per \$10,000 media spend to \$6. The ASA continues to work with the advertising industry to raise awareness about the levy and the value of advertising self-regulation, to ensure a wider funding base.

I congratulate Dr Alison Hopkins, the Complaints Manager and her team, Clare Jackson Wright, Clare Dengate Thrush and Catherine Saunders on the work they have done again this year to support an efficient complaints process.

My sincere thanks goes to the ASA Management Committee and Deputy Chairman, Lindsay Mouat, for the additional support in 2012 to help address the funding challenges.

I would also like to take this opportunity to acknowledge the significant contribution of the ASA Chairman, John McClintock. John is stepping down from ASA involvement after 14 years, and roles as both ASA Deputy Chairman and Chairman. John is a staunch supporter of advertising self-regulation both on behalf of the magazine industry and the wider advertising community and we sincerely thank him for his interest, support and enthusiasm.

Hilary Souter | Chief Executive

MEMBERS AND OFFICERS 2012

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 2012 year.

Lindsay Mouat, Chief Executive of the Association of New Zealand Advertisers was elected as Deputy Chairman for the 2012 year.

Hilary Souter was the Chief Executive.

Advertising Standards Authority Management Committee 2012

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

Sue McCarty, Chief Executive, New Zealand Marketing Association

Rena bird ad falls foul of watchdogs | *NZ Herald online 3/4/12*

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 2012 the Complaints Board received 35 complaints under the Code for Advertising Liquor, just under half of the 71 complaints received in 2011. From the 35 complaints, 20 were accepted to be heard by the Complaints Board, where 10 were upheld or settled, nine were not upheld and one was ruled no jurisdiction. The Chairman ruled that there were no grounds to proceed or the complaint was withdrawn for 15 of the complaints.

Sale and Supply of Alcohol Act 2012

This Act was assented to in December 2012 and will come into effect on 18 December 2013. Section 237 restricts the irresponsible promotion of alcohol and includes sub-sections on advertising discounts over 25%, targeting minors, promotion of free alcohol and incentivised purchase of alcohol products.

Therapeutic Advertising

In 2012, 64 complaints were dealt with under the Therapeutic Products Advertising Code and the Therapeutic Services Advertising Code, an increase on the 56 complaints received in 2011. Thirty five complaints were upheld or settled by the Complaints Board. Thirteen were not upheld, 12 were deemed to have no grounds to proceed and four other complaints were either withdrawn, resolved or ruled to be outside the jurisdiction of the Complaints Board.

The ANZTPA Regulatory Scheme

During 2012, further steps were taken towards the trans-Tasman harmonisation of therapeutic products. The ASA was very involved in the process to establish the trans-Tasman advertising code and complaints system from 2002 until it was put on hold in 2007. The ASA has again registered its interest with the Australia New Zealand Therapeutic Products Agency, and offered its experience in operating a version of the trans-Tasman code in effect since 2006 as the Therapeutic Products Advertising Code.

Revised Codes

Three revised codes were released in 2012. The combined Code for Advertising and Promotion of Alcohol, the Code for Comparative Advertising and the Code for Environmental Claims were released in October 2012. In addition, the ASA has also developed guidance notes to assist with code interpretation. Current guidance notes cover claim substantiation, the application of the codes to social media platforms and additional assistance with alcohol code interpretation.

The Guidance Note on Social Media generated significant interest within the advertising industry. The ASA has a broad definition of 'advertisement' and agreed that if social media platforms were being used by advertisers to promote their brands, then it was likely that at least some of the content would be covered by the codes of practice. The guidance note provides information about the approach that will be taken when considering jurisdiction if complaints are received about material on advertiser-controlled social media platforms.

Sexy Women, Manly Men? | NBR 16/3/12

APEC Advertising Standards – Principles and Practice Dialogue

In November 2012, the Chief Executive attended an APEC Dialogue on the principles and practice of advertising standards. The dialogue was supported by the APEC Committee on Trade and Investment and organised by the Australian Advertising Standards Bureau. Seventeen of the 21 APEC economies met in Hanoi, Vietnam for the two day meeting. ASA New Zealand presented a paper on funding advertising self-regulation and also took part in a panel discussion on advertising regulation and new media.

The dialogue was an excellent opportunity to discuss advertising regulation and how different economies approach it. The International Chamber of Commerce made a presentation on its marketing code, in use worldwide, and the European Advertising Standards Alliance highlighted its work in best practice advertising regulation.

A report on the dialogue, encouraging ways to provide support in advertising regulation particularly in emerging economies, has been tabled with the APEC Committee on Trade and Investment and been referred to the Standing Committee on Standards and Conformance. Discussions are on-going about future opportunities to progress this work.

ASA Funding Challenges

In the 2011 annual report, the ASA noted the funding challenge it faced, like many other organisations in an economy that had been slow to recover from the global financial crisis. Along with reducing expenditure, where possible, the ASA increased the levy from 0.05% of media expenditure to 0.06% (\$6 per \$10,000 media spend) in April 2012. In addition, the ASA took the opportunity to remind major advertisers of the value of self-regulation and the importance of their on-going support.

Levy revenue in 2012 was just under \$400,000. A further change from opt-in to opt-out to simplify levy collection has been signalled and will come into effect in April 2013. This is in line with a number of other countries, particularly Australia, who moved to the opt-out model in 2008.

The wider advertising industry continues to be committed to credible, robust advertising self-regulation and the ASA intends to be at the forefront of efficient and effective complaints processing going forward.

COMPLAINTS BOARDS

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.

The members of the Advertising Standards Complaints Board in 2012 were:

Public Members

Ms Jenny Robson (Chair) (Consultant, Wellington)

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

Dr Greg Simmons (Public Health Physician, Taranaki) (to March 2012)

Ms Margaret McKee (Director, Wellington)

Mr Alex Handiside (Policy background, mental health, youth, local government, Wellington)

Dr Deborah Read (Public Health Consultant, Wellington) (from April 2012)

Industry Members

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

Ms Lynley Belton (General Manager, Fairfax Magazines, Auckland)

Mr Grant Maxwell (General Manager, Y&R, Wellington)

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

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

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

A breakdown of complaints statistics dealt with by the Advertising Standards Complaints Board is on page 21.

Vagina ad reference a break in TV taboo | *Sunday Star Times* 15/7/12

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).

Members of the Liquor Promotions Complaints Board (LPCB) in 2012 were:

Public Members

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

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

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.

Following the review of the Code for Advertising Liquor, and recommendations made by the review panel, the ASA agreed to have one code for the advertising and promotion of alcohol and one complaints board to hear complaints. As the Advertising Standards Complaints Board (ASCB) was the larger board which dealt with complaints about all other advertising, the ASA agreed that the ASCB would deal with all alcohol complaints and the LPCB would be dis-established.

The LPCB met for the last time in March 2012 and was dis-established with effect from 30 June. The Board dealt with two complaints at its final meeting. A complaint about packaging was not upheld and a complaint about the name of an alcohol retailer was found to be outside the jurisdiction of the code. These decisions are available on the ASA website, www.asa.co.nz.

The ASA wishes to sincerely thank the Chairman of the LPCB, Penny Mudford, and the public and industry members for their excellent work in establishing key precedent decisions in alcohol product naming, packaging and promotion.

‘Jesus heals Cancer’? The ASA to decide | *NZ Herald online 29/2/12*

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 38 appeals lodged during the 2012 year, down from 75 in 2011. Of the total appeal applications received, 23 did not meet the grounds for appeal and were declined. The majority of these were submitted by the Complainant, and restated the original concerns. 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.

Sixteen appeal applications were reviewed by the Chairperson of the ASCAB, 21 by the Chairman of the ASCB, and one was reviewed by the Acting Chairman.

Fifteen appeal applications were accepted. Nine complaints proceeded to the Complaints Board where three appeals were allowed and six dismissed. The Appeal Board dealt with six cases. Four appeals were dismissed and two others were dismissed in part and allowed or settled 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 2012 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 is the public member alternate and **Mr Martyn Turner** and **Mr Paul Elenio**, 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 an adjudication with the attendance of parties (AWAP). The AWAP system is designed to process complaints made by one competitor against another. Its focus is on providing parties with a speedy and efficient extrajudicial process and decision, based on the Advertising Codes of Practice.

Following 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, 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 2012 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 2012

In 2012, there were 12 AWAPS, up from nine in 2011. Four of these proceeded to a hearing, where two were upheld, and one was upheld in part, and one was not upheld.

Fujitsu General New Zealand v Black Diamond Technologies Limited

The Advertiser, Black Diamond Technologies (BDT), ran an advertising campaign for Mitsubishi Electric heat pumps that included billboard, print and radio advertisements containing claims that Mitsubishi Electric Heat Pumps are known to heat more effectively and quietly than any other heat pump in New Zealand. The Complainant, Fujitsu, considered the advertisements to be misleading, or likely to mislead the public as to some of the qualities of the heat pumps that BDT imports into New Zealand under the Mitsubishi Electric brand name.

The Panel noted that “quietness” was a promotion position of Mitsubishi Electric. However, it said that the claims in the newspaper, billboard and radio advertisements that Mitsubishi Electric Heat Pumps are the “quietest” or are known to heat more “effectively and quietly than any other heat pump in New Zealand” had either not been adequately substantiated or were without qualifiers that would moderate the claims that it had made and, therefore, the combination of the above issues meant that the advertisements were likely to mislead the consumer as to the operation of the heat pump. As such, the Panel unanimously ruled that the advertisements were in breach of Basic Principle 3 and Rule 2 of the Code of Ethics and upheld the complaint.

2Degrees Mobile v Telecom NZ

The Complainant, 2Degrees Mobile, said the use of the word “best” in reference to Telecom NZ’s package of minutes, texts and data was misleading as it gave the impression that particular offer was best for all consumers in all circumstances.

The Panel agreed with the Advertiser that the likely consumer take-out of the advertisements would be that the product was the best value for the specific combination of services for the offered price. The Panel considered

that the advertisement contained sufficient information for consumers to judge for themselves if the product was likely to meet their needs, and was unlikely to mislead consumers that the product would be best for all consumers in all circumstances.

The Panel was unanimously of the view that the advertisements were not in breach of the Code for Comparative Advertising nor the Code of Ethics and the complaint was not upheld.

NZ Steel v Carter Holt Harvey

The Advertiser, Carter Holt Harvey, ran a website (www.framingfacts.co.nz) that had been designed to assist the consumer in understanding the benefits of using the Advertiser's wood products in home building, making particular comparisons with steel framing. The complaint referred to five different sections of the Advertiser's website that discussed thermal performance, energy efficiency, environmental impact, fire performance, and corrosion resistance.

The Complainant, NZ Steel, said the Advertiser made a number of incorrect, misleading or unsubstantiated claims on the website when comparing timber framing to steel framing.

The Panel expressed the view that the advertisement did not confine itself to informing consumers about the positive merits of timber framing, but disparaged a competing product, steel framing, in breach of the Code for Comparative Advertising. The Panel also considered the overall tone of the Framing Facts website may mislead consumers by the comparison between the timber and steel framing. The Panel ruled to uphold the complaint on four of the five issues raised.

Architectural Profiles Limited v Fletcher Aluminium

The complaint was made by Architectural Profiles Limited against Fletcher Aluminium about a number of advertisements that formed a nation-wide campaign with the wording "New Zealand's Smoothest Sliding Doors". The brochure distributed by the Advertiser showed images of two of the sliding doors, provided factual information about the technology, and beneath the body copy was the following statement: "Fletcher Aluminium. The Home of New Zealand's Smoothest Sliding Doors". The same line was repeated on number of websites including www.pacificsuite.co.nz and www.fletcheraluminium.co.nz.

The Complainant said depiction of the Advertiser's product as "New Zealand's smoothest sliding doors" was misleading and unsubstantiated.

The Panel stated the phrase used throughout the campaign was presented as an absolute claim about a feature that is of high interest to those wanting to buy sliding doors. In the Panel's view, the claim had not been substantiated and therefore the advertisements were likely to mislead or deceive consumers. Accordingly, the Panel ruled that the advertisement was in breach of the Code of Ethics.

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 (eg. Advertising to Children) or product areas (eg. 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**

Also available:

- Guidance note on **substantiation**
- Guidance note on **social media**

THE MOST COMPLAINED ABOUT ADVERTISEMENTS

1

12/015

53 Complaints - Settled**Insensitive Implications. Libra Tampon Advertisement Settled.**

The advertisement for Libra tampons appeared on television, YouTube and Facebook, and featured a woman and a drag queen preening themselves in a competitive nature. After they had mirrored each other's actions, the woman then takes out her Libra tampons and smiles. The drag queen – unable to compete in this instance - walks out of the restroom. The words “Libra gets girls” appeared on the closing screen. Complainants felt the advertisement was discriminatory and advocated transphobia with an underlying ridicule that transgender women are not real women and thus degrading them. Others were offended at the implication that if you do not menstruate you are not a woman, yet they pointed out that many natural women do not menstruate.

The response of the Advertiser detailed the humorous intent of the advertisement to colour its catch phrase “Libra gets girls”. However, it continued: “...we regret having offended anyone and that was not our intention.”

The Complaints Board said the Advertiser had been very responsive to consumer feedback when it became apparent that offence had occurred. The Advertiser had removed all versions of the advertisement across the various media within their control. Noting this action in accordance with the principles of self-regulation, the Complaints Board ruled the matter was settled.

2

12/221

52 Complaints - Upheld (in part)**In The Deep End. Rock Jump Scene Breaches Code.**

The television advertisement celebrating Kiwibank's 10th anniversary showed children participating in a number of activities. Each scene in the montage was linked by one of the children asking viewers if they would “stand up” for certain values or attitudes that were visually articulated in the scenes.

Many of the complaints related to the scene where the boy jumped off the rock into the river seemingly without adult supervision. Other Complainants considered the advertisement would encourage children to challenge authority and disregard rules.

When considering the rock jumping scene, the majority of the Complaints Board said most viewers would have the overall impression that it was a new spot being tried by the boy. The majority agreed that while the advertisement was intended for an adult audience, the scenarios held significant appeal to children and the boy's river jump may also result in copycat behavior. Therefore, the majority of the Complaints Board found that this scenario had shown the boy behaving in a dangerous way and, coupled with the tag line “I'd stand up for trying something new, and even a bit crazy,” encouraged a disregard for safety and upheld the complaint in relation to this part of the advertisement.

THE MOST COMPLAINED ABOUT ADVERTISEMENTS IN 2012 (Continued)

3

12/100

29 Complaints - Upheld**“Jesus Heals Cancer” Claim Breaches Code**

The billboard advertisement for Equippers Church Hawke’s Bay appeared on the outside of the church in Tamatea, Napier and stated that “JESUS HEALS CANCER. Equippers Church. But not as you know it.”

Complainants said the advertisement was disrespectful and hurtful to those that have lost loved ones to cancer or are caring for those with cancer. Others said the statement could not be substantiated and the advertisement may encourage some cancer sufferers to stop conventional medical treatment.

The Complaints Board said that despite the church’s intention to convey “a message of hope,” it was of the view the statement on a billboard was provocative enough to be likely to cause serious offence to those people who were dealing with, or knew people who were dealing with, cancer. In addition, the Complaints Board reiterated that while the claim by the Advertiser was one of belief and faith, it did not consider that personal religious belief was enough to substantiate such an absolute claim, even taking into account the Advertiser was a church. The complaints were upheld and the advertisement was in breach of the Code of Ethics.

The Advertiser appealed this decision, but the appeal was dismissed by the Appeal Board who agreed with the Complaints Board decision in this instance.

4

12/616

25 Complaints - Upheld**DotCom Billboard Removed**

The billboard advertisement for Tui Beer followed its familiar convention of making an irreverent statement in order to disagree with it. The latest in the campaign stated: “She clearly married Dotcom for his body. Yeah Right.”

Complainants said the advertisement clearly insinuated that Mr Dotcom has an unattractive body and that Mrs Dotcom married him for his money which they said was highly offensive to the Dotcoms and themselves. Others said the advertisement was “hurtful and insulting” to overweight people in general.

The Complaints Board said while the advertisement was intended to be humorous, the statement was disparaging of, and derogatory to, both Mr Dotcom and his wife in a highly personal way which was not saved by the allowance for the use of humour.

The Complaints Board ruled to uphold the complaints. The Advertiser advised the billboards had been removed.

Agent pinged for ‘simplistic summary’ | *Stuff.co.nz* 27/7/12

THE MOST COMPLAINED ABOUT ADVERTISEMENTS IN 2012 (Continued)

5

12/378

*18 Complaints - No Grounds to Proceed***Candid Content about Feminine Hygiene Not Likely to Cause Offence**

The television advertisement for Carefree Acti-fresh Panty Liners was presented by a woman who appeared naked and who stated during the advertisement that: "You know even that bit of discharge in between our period is our body working to keep the vagina healthy."

Complainants were offended at the use of the word "vagina" and the statement about vaginal discharge and felt it was inappropriate to be played when children were watching television.

The Chairman said that there was nothing pejorative about the anatomically correct name for a body part, especially when taking into account the product being advertised. She also said that while some people may be uncomfortable about the direct way in which the subject matter was discussed, there was nothing wrong with advertising a feminine hygiene product. The Chairman ruled there were no grounds for the complaint to proceed.

6

12/466

*18 Complaints - No Grounds to Proceed***Horror Hyperbole Halts Complaint**

The television advertisement for Quickflix featured two actors on location for a horror movie talking in between scenes. One of the men was playing the part of a zombie character and had chainsaw sticking out of his chest while the other man was a policeman. A voice then yelled "action" and the actors resumed their roles with the man playing the policeman trying to kill the zombie with the chainsaw.

Complainants said it was inappropriate to show an advertisement that contained such violent scenes during family viewing time and they were upset that their children had been exposed the advertisement.

The Acting Chairman said the scenario was clearly hyperbolic and unrealistic as the man playing the zombie character was shown drinking a cup of coffee and chatting during a break from filming with the prop chainsaw still through his chest. When addressing the timing issue, the Acting Chairman noted the advertisement was rated "PGR" which meant that it could be played after 7pm or during news or current affairs shows. He said this was not a time zone dedicated to younger viewers but rather was a time in the early evening when children watching were likely to be doing so with parental guidance. Therefore, the Acting Chairman noted it had been aired at times which were appropriate to its rating and ruled there were no grounds for the complaint to proceed.

Hauraki's "Amped" Hangover ads okay in Herald but not billboards | NBR 15/8/12

THE MOST COMPLAINED ABOUT ADVERTISEMENTS IN 2012 (Continued)

7

12/029

17 Complaints - Not Upheld**Late Time Slot Saves Durex Advertisement**

The television advertisement for Durex promoted the new range of adult products including Play 2 in 1 lubricant and Durex Play Vibrations. The advertisement showed a montage of women experiencing sexual pleasure – sometimes with partners, other times on their own.

Complainants said the advertisement was offensive; was inappropriate for children to see, encouraged young people to have sex; did not mention the importance of protection against unwanted pregnancies; and will encourage people to treat sex less seriously.

The Complaints Board said the advertisement promoted intimate adult products in the lead-up to Valentine's Day in a tasteful and relatively discreet manner and nothing in the advertisement was explicit, or graphic. It also said that the innuendo of sexual pleasure portrayed by the women was not enough to cause widespread or serious offence to a mainly adult audience, noting that the advertisement screened after 9.30pm.

The Complaints Board ruled that the advertisement did not reach the threshold to cause serious or widespread offence and breach the Advertising Codes.

8

12/585

15 Complaints - No Grounds to Proceed**Fearless Feline. Hyperbole Saves Car Crazy Cat**

A television advertisement showed a cat that wanted to ride in its owner's new Toyota car. The premise was that as the cat only travelled in the car to go to the vet, the cat caused itself a number of injuries to require vet trips. Complainants considered the advertisement to be offensive in its portrayal of the harm to the cat and that it may encourage animal cruelty.

While acknowledging the concerns of the Complainants, the Chairman considered the scenes in the advertisement to be hyperbolic in nature and the Complainants had taken an extreme interpretation of the advertisement. She held that the intent of the Advertiser was to create an advertisement that was quirky and humour-based, rather than displaying or promoting any message of animal cruelty. The Chairman ruled there were no grounds for the complaints to proceed.

'Sickening' Zombie ad edited after complaints | *NZ Herald online 15/8/12*

THE MOST COMPLAINED ABOUT ADVERTISEMENTS IN 2012 (Continued)

9

12/379

14 Complaints - No Grounds to Proceed**Hell Pizza Escapes Censure for Use of Religious Symbol**

The television advertisement for Hell Pizza promoted their thin base pizza. During the advertisement an upside down cross could be seen.

Complainants found the use of the inverted cross in the advertisement offensive.

Taking into account precedent decisions on similar complaints, the more secular nature of New Zealand society, the fleeting glimpse of the image and the threshold relating to offensiveness, the Chairman ruled there were no grounds for the complaint to proceed.

10

12/127

12 Complaints - No Grounds to Proceed**Important Safety Message Justifies Graphic Crash Sequence**

The NZ Transport Agency television advertisement depicted in slow motion the effects of a head-on collision.

Complainants said the graphic nature of the car crash shown in the advertisement was upsetting for adults and was inappropriate for children to see.

The Chairman acknowledged the slow motion depiction were graphic and hard hitting and was sympathetic to the distress caused to the Complainants. However, she said the intent of the advertisement was to educate the public, and to raise awareness of the risks of speeding. She said the advertisement from the Government agency responsible for road safety education contained an important message regarding what is a serious matter of public interest and ruled there had been no apparent breach of the Advertising Codes.

STATISTICS OVERVIEW

Complaints Received and Processed

In 2012, the ASCB received **1076** formal complaints, about **693** advertisements. This compares with **1197** complaints about **759** advertisements in 2011.

From the 1076 formal complaints:

383 were duplicates

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

44 were withdrawn, resolved, no adjudication or adjourned.

There were therefore **264** substantive advertisements dealt with by the ASCB.

60 were upheld.

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

108 were not upheld.

Upheld Rate

The upheld/settled rate was 59%.

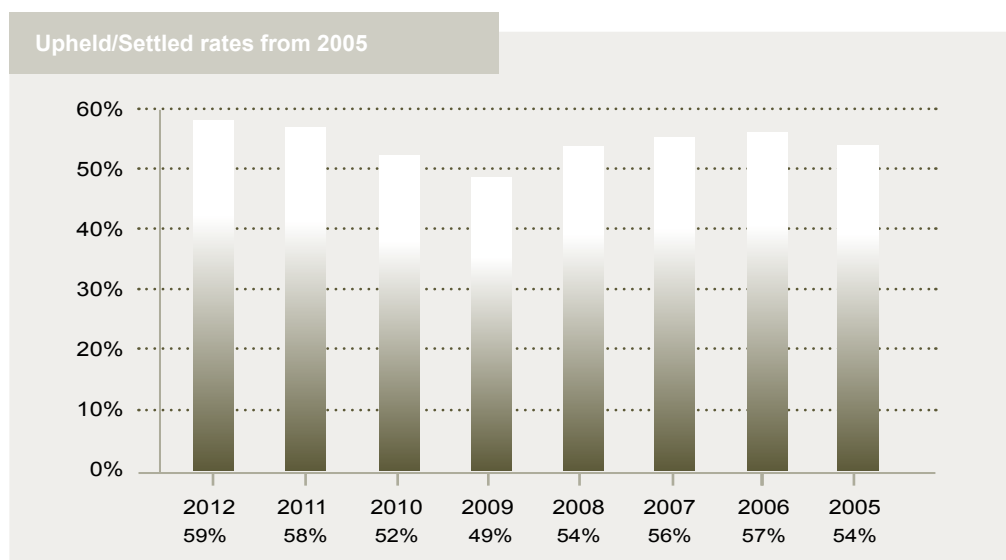
This compares with:

2011 – 58% 2010 – 52% **2009 – 49%** 2008 – 54% **2007 – 56%** 2006 – 57%
2005 – 54% 2004 – 48% **2003 – 46%** 2002 – 50% **2001 – 50%**

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 2012 78% of complaints were received via our online complaints form, 10% were received by post and 7% by email. The remaining 5% were referred by the Broadcasting Standards Authority or broadcasters.



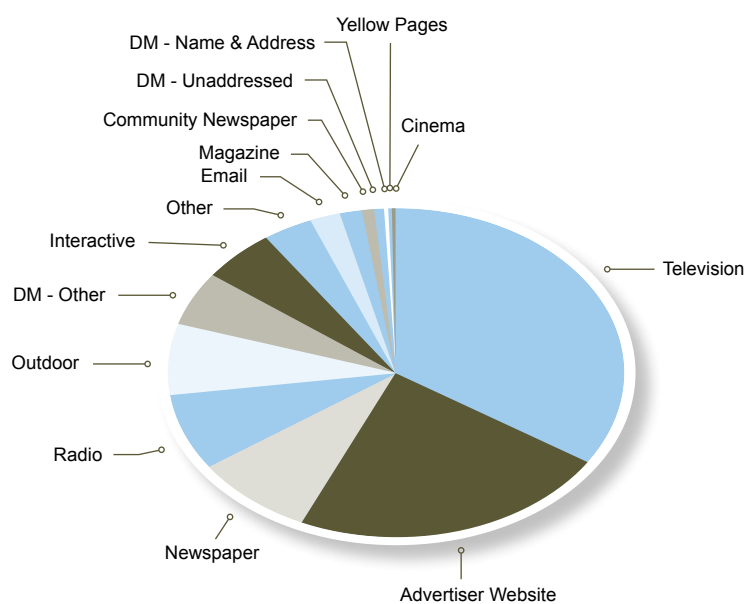
COMPLAINTS BY MEDIA

In 2012 37% of the complaints were about television advertisements.

This is an increase from 33% in 2011. Interactive media, including advertisements on third party sites (5%) as well as advertiser websites (23%) attracted a total of 28% of the complaints and daily and Sunday newspapers accounted for 7% of the complaints and daily and Sunday newspapers accounted for 7% of the complaints received in 2012, the same as radio.

	2012	2011	2010	2009	2008
Television	273	272	263	292	256
Advertiser Websites	174	171	140	124	96
Newspaper	52	73	105	95	72
Radio	52	60	74	80	52
Outdoor	42	52	45	58	58
DM - Unspecified	38	22	32	32	48
Interactive	37	56	56	38	34
Email	19	12	15	8	9
Magazine	12	23	29	70	29
Community Newspaper	8	23	26	28	19
DM - Unaddressed to box	5	9	18	18	10
Yellow Pages	2	4	1	3	2
DM - Addressed	2	3	4	3	9
Cinema	1	1	3	1	1
Other	24	39	39	18	31
TOTAL	741	820	850	883	730

Please note complaints can be received about advertisements in more than one media.

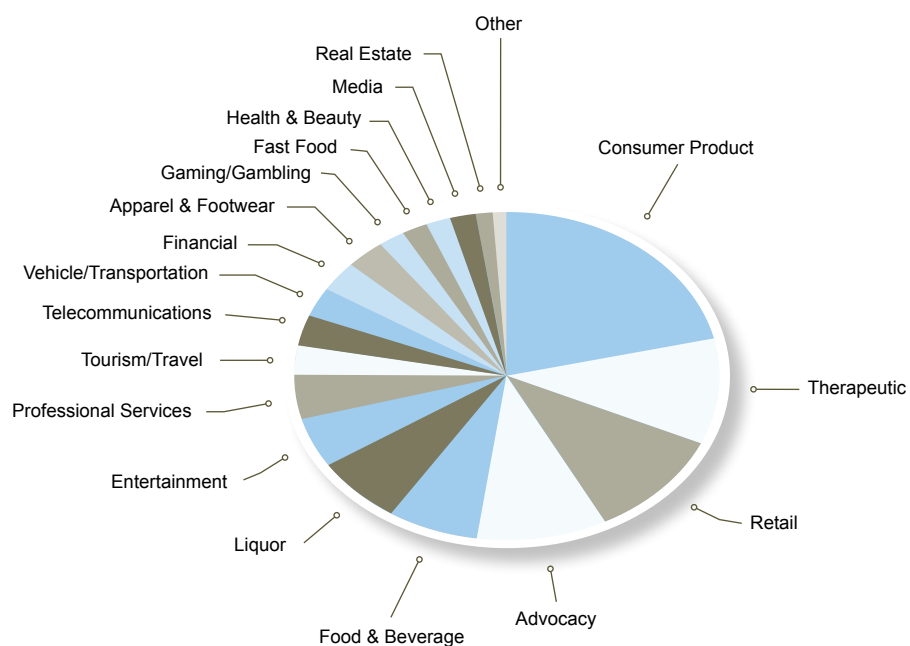


COMPLAINTS BY PRODUCT

The category of consumer products accounted for 22% of the complaints in 2012, an increase from 16.5% in 2011.

Other significant categories included therapeutic products and services (11.7%), advocacy (9.5%) and retail (9.5%).

	2012	2011	2010	2009	2008
Consumer Product	151	125	141	159	115
Therapeutic	81	57	67	68	34
Advocacy	66	72	64	69	68
Retail	66	11	11	28	46
Liquor	47	82	114	83	35
Food & Beverage	48	70	86	80	81
Entertainment	33	85	27	30	38
Professional Service	31	23	30	38	36
Tourism/Travel	23	24	40	46	33
Telecommunications	21	30	30	51	32
Vehicle/Transportation	20	26	18	29	38
Financial	19	25	45	32	35
Apparel & Footwear	18	12	13	12	9
Gaming/Gambling	15	21	4	7	9
Fast Food	14	10	7	8	11
Health & Beauty	14	46	38	29	23
Media	13	12	32	33	29
Real Estate	9	13	10	15	5
Other	4	15	15	12	26
Total	693	759	792	829	703

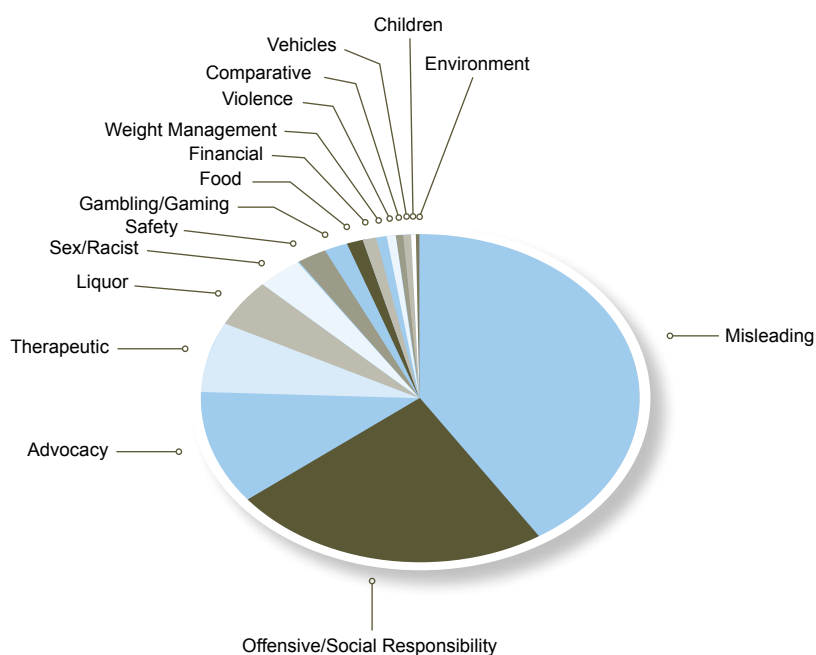


COMPLAINTS BY CODE / RULE

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

In 2012, 41% of all complaints raised issues about misleading advertising, an increase from 36% in 2011. The second highest area of complaint relates to offensiveness and / or social responsibility with 24% of complaints in 2012. This compares to a 27% share in 2011. Requirements under the Advocacy Rule in the Code of Ethics, the Therapeutic Products and Services Codes and the Code for Advertising Liquor are the other main areas of complaint.

	2012	2011	2010	2009	2008
Misleading	282	260	281	348	270
Offensive/Social Responsibility	167	196	193	205	234
Advocacy	81	47	52	47	33
Therapeutic	56	56	62	44	40
Liquor	38	65	103	80	31
Sexist/Racist	24	40	31	27	17
Safety	15	18	17	11	12
Gaming/Gambling	9	13	2	5	2
Food	7	12	18	10	25
Finance	5	12	8	15	19
Violence	3	2	5	1	0
Denigration	2	4	16	14	1
Children	1	0	0	3	3
Other	3	5	4	19	16
Total	693	730	792	829	703



NZ ADVERTISING INDUSTRY TURNOVER

	2012		2011		2010		2009		2008	
	\$ M	%	\$ M	%	\$ M	%	\$ M	%	\$ M	%
TELEVISION	614	28.4	618	28.4	607	28.4	570	27.9	647	27.9
NEWSPAPERS	540	24.9	582	26.7	627	29.3	623	30.5	760	32.8
INTERACTIVE	366	16.9	328	15.1	257	12.0	214	10.5	193	8.3
RADIO	248	11.5	247	11.3	241	11.3	236	11.5	268	11.6
MAGAZINES	210	9.7	209	9.6	219	10.2	217	10.6	249	10.7
OUTDOOR	67	3.1	83	3.8	70	3.3	68	3.3	74	3.2
ADDRESSED MAIL	58	2.7	50	2.3	53	2.5	53	2.6	56	2.4
UNADDRESSED MAIL	54	2.5	55	2.5	58	2.8	61	2.6	61	2.6
CINEMA	7	0.3	7	0.3	8	0.4	6	0.3	9	0.4
TOTAL	2164	100.0	2179	100.0	2137	100.0	2045	100.0	2317	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 2012

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 by PwC 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 2012 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 and Mobile advertising. 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 98% 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.

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.

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.

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

Ground Floor, 79 Boulcott Street, PO Box 10 675, Wellington

Telephone (04) 472 7852 | Free Phone 0800 AD HELP (234357) | Facsimile (04) 471 1785

Email asa@asa.co.nz | Website www.asa.co.nz