

# Bugger... it's ok!

THE CASE FOR ADVERTISING SELF-REGULATION



asa

ADVERTISING STANDARDS  
AUTHORITY

[www.asa.co.nz](http://www.asa.co.nz)





All marketing communication should be legal, decent, honest and truthful.



All marketing communication should be prepared with a due sense of social and professional responsibility and should conform to the principles of fair competition, as generally accepted in business.



No communication should be such as to impair public confidence in marketing.



CONSOLIDATED International Chamber of Commerce CODE OF ADVERTISING AND MARKETING COMMUNICATION PRACTICE



## INTRODUCTION

THE ADVERTISING STANDARDS AUTHORITY IS COMMITTED TO A FAIR, EFFECTIVE, EFFICIENT CODES AND COMPLAINTS SYSTEM FOR CONSUMERS.

***Bugger, it's okay – the case for self-regulation*** has been developed to provide an information resource for those who have questions about advertising self-regulation and how it works.

Almost everyone will, at some time, have bought goods, used a service or attended an event as a result of information from an advertisement. Advertising can inform, entertain and persuade and is now brought to us across a large variety of channels including so-called new media such as sms and the Internet.

Advertisements, however, also have to meet tests of truthfulness and acceptability within society. Complaints about advertisements are therefore heard by an independent Complaints Board to determine whether or not the boundaries laid down in the ASA Codes of Practice have been breached.

Information about the theory of self-regulation, the New Zealand system and international best practice is included in this booklet, along with responses to common criticisms from opponents of self-regulation.

We hope you find it interesting and informative.

Hilary Souter, Executive Director

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## FACTS AND FIGURES

1. It takes only a single complaint about an advertisement to activate the process at the Advertising Standards Complaints Board (ASCB). Anyone can complain about advertising for free by contacting the Advertising Standards Authority (ASA).
2. All complainants receive a copy of the ASA Codes of Practice booklet detailing the process and the codes.
3. More than 5000 booklets are distributed each year on request to many individuals and organisations.
4. In 2007, 668 advertisements were the subject of complaints – an increase of 35 percent over the 493 advertisements complained about in 2006. The most common means of complaining is via the online form on the ASA website: [www.asa.co.nz](http://www.asa.co.nz)
5. Despite the increased number of complaints, the average time taken to process them was 25 working days, the same as 2005.
6. ASA codes are regularly updated, including public consultation processes.
7. A commissioned UMR Research survey has shown that 87 percent of New Zealanders are aware they can formally complain about advertisements.
8. All decisions about advertising complaints are released to the public and the media via the ASA website, where all decisions since 2000 are part of the searchable decisions database.

### DID YOU KNOW?

IN 1991, THE NEW ZEALAND GOVERNMENT SUPPORTED THE JURISDICTION OF ADVERTISING PASSING TO SELF-REGULATORY BODIES.



## NON-GOVERNMENT ORGANISATION

THE ADVERTISING STANDARDS AUTHORITY (ASA) IS NOT A GOVERNMENT ORGANISATION.

THE ASA IS FUNDED BY THE ADVERTISING AND MEDIA INDUSTRIES.

ITS PRIME FUNCTION IS TO SELF-REGULATE ADVERTISING IN NEW ZEALAND.

### INDEPENDENT

- Central to self-regulation is a complaints process that is independent.
- The Advertising Standards Complaints Board (ASCB) has a majority of public members and the Chairman must be a public member.
- Members from the advertising and media industries are in the minority on the ASCB.
- Press advertisements call for public nominations and a wide range of government and non-government organisations are invited to nominate candidates. The public members appointment panel includes the Chief Ombudsman (the panel must be unanimous about appointees).
- The appointment of public members includes consultation with such bodies as the Ministry of Consumer Affairs and the Ministry of Health.

### FLEXIBLE

- Complaints can be made direct to the complaints body via the online complaints form at [www.asa.co.nz](http://www.asa.co.nz) or for the price of a stamp, even in handwriting - "please ensure hand written complaints are legible" - says the Advertising Codes of Practice booklet.
- Unlike court proceedings with legal representation, there is

no cost to the consumer to complain to the ASCB.

- The codes booklet advises complainants how to write a complaint. It suggests complainants look through the codes to select the most appropriate one to cover their complaint and to be specific about the actual detail of what concerned them about the advertisement. The codes booklet is available online at [www.asa.co.nz](http://www.asa.co.nz)

### TIMELY

- The average time to process a complaint, from receipt to notification of the Board decision, was 25 days in 2007.
- The ASCB meets monthly.
- Court cases are lengthier processes. A major advertising court case over misleading airline advertisements, prosecuted by the Commerce Commission, concerned advertisements placed up to June 2004. The trial was in 2005 and the decision issued in June 2006.

### DID YOU KNOW?

THE AVERAGE TIME FOR A COMPLAINT TO BE DECIDED WAS 25 DAYS IN 2007.



## HOW IT WORKS

### THE PROCESS OF MAKING A COMPLAINT AGAINST AN ADVERTISEMENT IS SIMPLE:

#### 1. WRITE US A LETTER

Anyone wishing to complain writes to the ASCB about any advertisement in any media. The biggest growth in complaints recently is about advertisements on websites being misleading.

#### OR USE THE ONLINE COMPLAINTS FORM

A complaint can be forwarded using the online complaint form on the ASA website ([www.asa.co.nz](http://www.asa.co.nz)). About 70 percent of complaints are now received this way. A copy of a print advertisement needs to be sent to the Board, as does the time, date and channel of a radio or television advertisement, or the location of a billboard.

#### 2. NOT ACCEPTED

The Chairman of the Complaints Board decides whether the complaint is accepted for hearing by the ASCB. Grounds for not accepting a complaint are:

- *If the matter complained of is not an advertisement.*
- *If complaints about the same advertisement had previously been decided.*

In Complaint 06/259 about a television advertisement for the Hyundai Santa Fe showing a toddler undertaking a range of adult tasks

#### DID YOU KNOW?

THE BIGGEST GROWTH IN COMPLAINTS RECENTLY IS ABOUT ADVERTISEMENTS ON WEBSITES BEING MISLEADING.



including driving a car, the Complaints Board agreed that it was not in breach of the advertising codes due to the level of extreme hyperbole. In Complaint 08/176, about a similar Hyundai advertisement, this time for the i30 car, the Chairman ruled that the previous decision applied and there were no grounds for the complaint to proceed.

- *If there is no prima facie case.*

The Chairman ruled there were no grounds for a complaint to proceed against an advertisement for a TAB Sports Rugby World Cup competition shown during TV3 News (07/441). The complainant thought gambling should not be advertised during times when children were watching TV. The Chairman said the advertisement for a legal product was shown during news when a range of adult themes and images could be seen, and so did not, in his view, have strong or evident appeal to minors. It met the high standard of social responsibility required by the Code for Advertising Gaming and Gambling and there was no apparent breach.

#### 3. ACCEPTED

If a complaint is accepted, the ASCB writes to the advertiser, the advertising agency and the media (including for television the Television Commercial Approvals Bureau) seeking comment on a copy of the complaint within 14 days.

The Chairman can declare a matter "Settled" if the advertiser acknowledges an error has been made and the advertisement is withdrawn before the matter is referred to the Board.

In Complaint 02/08 and 02/08a, the advertiser of a professional body piercing studio which claimed

to be the “only” one in the South Island agreed to remove the word “only” from future Yellow Pages advertising and change a radio advertisement. The Chairman was of the opinion that the matter had been resolved and could be regarded as settled. As the principles of self-regulation had been fulfilled, it would serve no further purpose to place the matter before the Board.

There’s a high rate of settled complaints after an explanation is given by the advertiser. Sometimes, it is simply that a consumer has misinterpreted or misheard the advertisement and with more information about the advertisement or the intention of the advertisers, the matter can be resolved.

#### 4. UPHELD, NOT UPHELD

The ASCB reviews all the evidence. It is guided by the Chairman to consider the complaint in the light of various parts of the codes, which are applicable to the advertisement. If there is not unanimous agreement, the Board can decide whether the complaint is upheld or not upheld, by majority vote.

#### 5. WITHDRAW ADVERTISEMENT

If a complaint is upheld, the advertiser, agency and media are requested to withdraw or amend the advertisement. There is invariably compliance with this aspect of the self-regulation regime applying to advertisements in New Zealand.

#### 6. APPEAL

There is an Advertising Standards Complaints Appeals Board. Appeals can be heard on the grounds that:

- a) new evidence is available;
- b) natural justice was not followed;
- c) the decision was against the weight of evidence.

A Toyota RAV car advertising campaign was withdrawn after the ASCB upheld complaints about the evident issues of safety, as a man and woman fought in a humorous but edgy manner over a new car. The appeal by Toyota, including new polling showing that many members of the public found the advertisement acceptable, was allowed, and the advertisement could screen after 8.30pm in adult viewing time.





## WHAT IS SELF-REGULATION?

SELF-REGULATION IN THE ADVERTISING SECTOR IS THE RECOGNITION OF THE ADVERTISING INDUSTRY (ADVERTISERS, AGENCIES AND THE MEDIA) THAT ADVERTISING SHOULD COMPLY WITH A SET OF ETHICAL RULES.

The European Advertising Standards Alliance, (EASA) regarded as an authoritative voice on self-regulation, says:

“Advertising should be legal, decent, honest and truthful, prepared with a sense of social responsibility to the consumer and society as a whole and with due respect to the rules of fair competition.”

This wording echoes the International Code of Advertising Practice, revised five times since its adoption in 1937 by the International Chamber of Commerce (ICC). The code is regarded as an expression of

the business community’s recognition of its social responsibilities for commercial communications.

The ICC says the code is designed primarily as an instrument for self-discipline but it is also intended for use by the Courts as a reference document within the framework of applicable laws.

The New Zealand Advertising Codes of Practice began with the principles of the International Code of Advertising Practice as their basis.



### GOVERNMENT SUPPORT

In 1991, the New Zealand Government supported the jurisdiction of advertising passing to self-regulatory bodies established by the advertising industry. This was a recommendation of a Cabinet paper after a review of the Broadcasting Standards Authority.

The Cabinet minute from the Committee on Enterprise, Growth and Employment (CEG (91) 211) referring to the recommendation, said, “The Department of the Prime Minister and Cabinet, Treasury and Department of Justice have been consulted and concur.”

The Minute reported, “The Minister of Communications recommends that the committee...

(e). agree that the industry should have the opportunity to become self-regulating.”

### BEST PRACTICE

A Round Table on Advertising Self-Regulation chaired by the European Union Director-General for Health and Consumer Protection, Robert Madelin, discussed best practice in advertising self-regulation (Self-Regulation in the EU Advertising Sector, July 2006 – the Madelin report).

Key points in the executive summary which determined the Best Practice Model [with New Zealand practice in brackets] were under four headings.

#### 1. EFFECTIVENESS

- Provide copy advice [**New Zealand** has pre-vetting systems for liquor and therapeutic advertising and most media provide copy advice services. The most formal of these is provided by the Television Commercial Approvals Bureau];
- Establish and publish performance objectives, an explicit objective being that it should be easy to find through which channel to complain [**New Zealand’s** ASCB is accessed through the ASA, especially its website];
- Ease with which any form for the submission of complaints is completed and standard speed [**help with** complaints is available online, through a freephone 0800 234 357 and in the Codes booklet. Average speed of New Zealand complaint resolution is 25 working days];
- Duty to publish decisions [**all ASCB** decisions are published on the ASA website and released to the Media];
- Recommend to the advertising industry minimum standards for training of new advertising recruits about compliance standards [**education is** a key priority for the ASA];
- Sanctions. The minimum sanction should be timely withdrawal of advertising copy. [**all New Zealand** media support compliance in this area].



## 2. INDEPENDENCE

Openness, independence and transparency are seen as critical points for the public acceptability of the self-regulation on advertising.

- Adjudication bodies should be composed of a substantial proportion of independent persons [**the ASCB** and the Appeal Board have a majority of public members];
- Include possible cooperation with statutory authorities for the appointment of the independent persons [**the ASA** consults with the Ministries of Health, Consumer Affairs, Culture and Heritage, Te Puni Kokiri, and the Commerce Commission and Securities Commission for Board appointments, as well as advertising publicly];

All adjudication body members should be subject to rules on the avoidance of conflict of interests and on the declaration of interests [**any conflicts** of interest are properly declared];

Composition, nomination process, independence and integrity of its members are the key determinants for the credibility of the system.

## 3. COVERAGE

Advertising self-regulation should aim to cover all forms of commercial or marketing communication [**texts and website advertisements** are now dealt with in the complaints process, which embraces all forms of advertising including direct marketing];

Legislation underpins self-regulation of individual

marketing sectors [**In New Zealand**, for example, Section 4 of the Medicines Act 1981 deals with Medical Advertisements and with its legal sanctions underpins the Therapeutic Products and Therapeutic Services Advertising Codes]. About 50 New Zealand laws impact on advertising and self-regulatory bodies must keep abreast of emerging techniques [**the ASCB** has a mandate to advise the ASA about issues of concern arising with advertising].

## 4. FUNDING

An appropriate level of funding is also essential to ensure that the self – regulatory body has the resources required to carry out its functions to a high standard. [**The ASA** is funded by the advertising and media industries. It receives no direct government funding.]

### DID YOU KNOW?

THE MOST COMMON MEANS OF COMPLAINING IS VIA THE ONLINE FORM.



## IT'S THE LAW

SELF-REGULATION DOES NOT REPLACE THE LEGAL FRAMEWORK THAT AFFECTS ADVERTISING. SELF-REGULATION WORKS AS A COMPLEMENT TO THE LAWS OF THE COUNTRY OF WHICH THERE ARE MANY AFFECTING ADVERTISING.

In fact, there are about 50 pieces of legislation that impact on, or in some way restrict, advertising in New Zealand.



These include, the Fair Trading Act 1986, Consumer Guarantees Act 1993 and the Bill of Rights Act 1990 (s14 Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form).

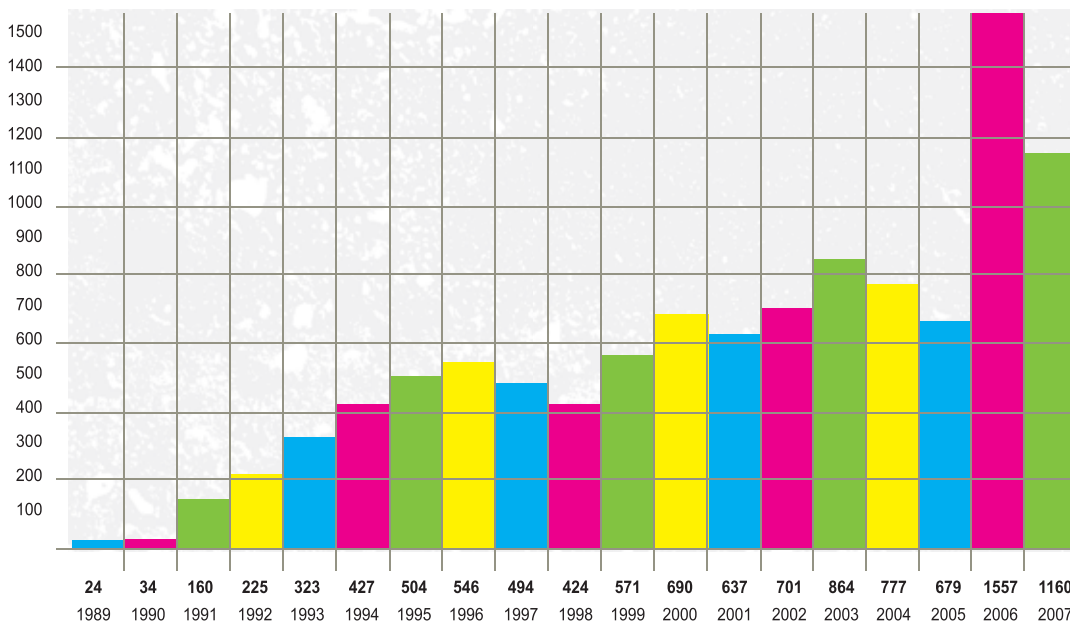
*But among the many other laws affecting advertising are:*

- **Defamation Act 1992** (an Act to amend the law relating to defamation and malicious falsehoods covers any news medium for the dissemination of,

among other things, advertisements and New Zealand newspapers consisting wholly or mainly of advertisements).

- **Sale of Liquor Act 1989** (Section 154a An offence to promote excessive consumption of alcohol.)
- **Weights and Measures Act 1987** (Part 2, Use of weights and measures for trade, Section 10 Obligation to use metric system in advertising goods for sale).
- **Smoke-free Environments Act 1990** (Part 2, Control of smoking products, Section 22 Advertising of tobacco products).
- **Gambling Act 2003** (relating to prize competitions / advertising online gambling).

### ASCB NUMBER OF COMPLAINTS FROM 1989 TO 2007



*In 2007 1160 complaints were received about 668 advertisements.*

- **Electoral Act 1993** (Section 221a, Electoral advertisements).
- **Electoral Finance Act 2007** (Part 2, subpart 6, General rules governing election advertisements).
- **Major Events Management Act 2007** (including restrictions on unauthorised use of emblems and words relating to Olympic Games and Commonwealth Games).
- **Flags, Emblems, and Names Protection Act 1981** (relating to the protection of various emblems and words (for example, forbidding unauthorised use of the word Anzac or making false claims of Government patronage in advertising).
- **Human Rights Act 1993** (Section 67 (2): "...use of a job description with a gender connotation such as "postman" or "stewardess" shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.").
- **Securities Act 1978** ("...advertising that is reasonably likely to induce persons to subscribe for securities of

an issuer, being securities to which the communication relates and that have been, or are to be, offered to the public for subscription.").

- **Hazardous Substances and New Organisms**

**Act 1996** ("HSNO") relating to requirements for the advertising of hazardous substances which include fireworks.)

- **Medicines Act 1981** (Section 4 Medical Advertisements. For example, section 57 says that the words relating to medical warnings in an advertisement on television must be exposed in clearly legible lettering for a length of time sufficient to enable them to be read by the ordinary viewer).

**Drink, Don't Drive.  
Bloody Legend.**





## THE CODES

THE ADVERTISING CODE OF ETHICS CONTAINS THE BASIC PRINCIPLES BY WHICH ADVERTISEMENTS ARE JUDGED.

*They must*

- Comply with the law;
- Not impair public confidence in advertising;
- Not mislead or deceive or be likely to mislead or deceive the consumer;
- Be prepared with a due sense of social responsibility to consumers and to society; and
- Respect the principles of free and fair competition generally accepted in business.

*Then there are 12 specific Codes for:*

Advertising to Children
Comparative Advertising
Environmental Claims
Financial Advertising
Advertising of Food
Advertising Gaming and Gambling
Advertising Liquor
People in Advertising
Therapeutic Products Advertising
Therapeutic Services Advertising
Advertising Vehicles
Advertising of Weight Management

**DID YOU KNOW?**

IN INTERPRETING THE CODE, EMPHASIS WILL BE PLACED ON THE PRINCIPLES AND THE SPIRIT AND INTENTION OF THE CODE.



A statement repeated throughout the codes is: "In interpreting the code, emphasis will be placed on the principles and the spirit and intention of the code." For example, an advertisement that adheres to the letter of a particular guideline may be in breach if it does not comply with the principles and respect the spirit and intention of the code.

In complaints hearings by the ASCB, the Chairman refers to the specific sections of codes under which the Board should consider a complaint. Codes can be quite detailed, strict and very clear.

**VITAMINS**

For example in the Therapeutic Products Advertising Code under Requirement 2 of the section, Advertising Medicines to Consumers (Advertisements must contain the mandatory information to encourage responsible use) an advertisement for vitamins must not represent that vitamin supplements:

- are a substitute for good nutrition or a balanced diet; and/or
- are superior to, or more beneficial than, dietary nutrients, or that
- normal health may be affected by not taking vitamin supplements.

Advertisements for therapeutic products containing claims for weight management, meaning weight loss, measurement reduction, clothing size loss and weight control/maintenance, must have an appropriate balance between those claims and references to healthy energy-controlled diet and physical activity.

**ALCOHOL AND BOATS**

In the Code for Advertising Liquor, Principle 3 (1) states that "liquor advertisements shall not depict or imply the consumption of liquor in potentially hazardous situations

or include any unsafe practices". This applies to showing or implying people in motor vehicles or boats drinking alcohol, doing so while participating in swimming or other water sports, or other activities where drinking liquor is potentially hazardous. It is possible to show liquor being drunk after the activity has ended, provided that no unsafe practice is involved.

### CELEBRITIES AND CHILDREN

Following a broadly consultative review of the Code for Advertising to Children in 2006, three additional guidelines were added to this code's Principle 2, "Advertisements should observe a high standard of social responsibility."

*These are:*

- "2 (j) Children should not be encouraged in advertisements to participate in gambling or gaming.
- 2 (k) Advertisements should not undermine the role of parents in educating children to be healthy and socially responsible individuals.

- 2 (l) Persons, characters or groups who have achieved particular celebrity status with children shall not be used in advertisements to promote food or drink in such a way so as to undermine a healthy diet, taking into account the Ministry of Health's "Food and Nutrition Guidelines" for children."

### HEALTHY EATING

The Code for Advertising of Food now includes in its introduction: "Advertisements should not undermine the Healthy Eating, Healthy Action (HEHA) policy of Government, the Ministry of Health 'Food and Nutrition Guidelines' nor the health and wellbeing of individuals. The key applicable messages in the HEHA policy are the need for people to eat a variety of nutritious foods, less fatty, salty and sugary foods and more vegetables and fruits."



## GOVERNMENT REGULATION vs SELF-REGULATION



THE PROS AND CONS OF GOVERNMENT REGULATION AND SELF-REGULATION HAVE BEEN WELL EXAMINED.

The debate about self-regulation or government regulation was addressed by a comprehensive paper from the Ministry of Consumer Affairs which looked at the pros and cons of both sides ("Market self-regulation and codes of practice", A policy paper, April 1997).

Some crucial findings from the paper came under several headings.

### GOVERNMENT REGULATION

*Advantages of Government regulation:*

- universal coverage;
- compulsion;
- legal enforceability;

*Disadvantages of Government regulation*

- impose costs;
- stifle innovation;
- be of limited effectiveness;
- regulation itself can be inflexible;
- government agencies may lack the information to make the best policy decisions;
- direct costs of developing government regulation are high and borne by taxpayers;
- costs of enforcing government regulation, and efficiencies lost from regulation, can be high;
- government regulation gives little guidance for

compliance, setting minimum standards with generalities;

- with government regulation, businesses focus on meeting minimum legal standards rather than customer satisfaction; and
- government regulation can be a blunt instrument and impose unintended costs (on the customers of other competitive industries) without any tangible benefits.

### SELF-REGULATION

Self-regulation can be the best option:

#### WHEN

1. Government regulation is unlikely e.g. only a segment of the market is affected;
2. It promotes compliance in a market sector where there is overarching legislation;
3. A market sector widely agrees to controls to improve trading standards; and
4. The objective is to provide consumer benefits above legal minimum standards.

A Code of Practice can be a useful adjunct, or alternative even, to legislation. It can provide a positive marketing approach to satisfy the customer rather than just the legal standard, which proceeds generally from a negative basis.

### SELF-REGULATION ADVANTAGES

Examples include:

#### SELF-REGULATION CAN

- *Cut transaction costs.*  
Measures which reduce the costs of explaining how you can have redress, for example, can improve the efficiency of the market.
- *Promote improved trading practices.*  
The sector concerned has some "ownership" of the

#### DID YOU KNOW?

THE ASA HAS A REGULAR PROGRAMME OF EDUCATION ABOUT THE COMPLAINTS PROCESS.





rules and the process for developing them. Industry members covered by the Code may be the best placed to spot breaches and take enforcement action.

- *Be more flexible and relevant.*

A flexible rule-setting process with market participants can generally be developed, changed, or updated readily, so regulations remain relevant. They do not require the close scrutiny of Cabinet, Parliament, and government agencies. This is quicker and less costly than preparing laws.

- *Provide more accurate coverage.*

Rules in legislation tend to be general and universal. Self-regulation can deal with specific performance standards or contract terms in a transparent way not possible in regulation.

- *Enhance understanding and access.*

A Code of Practice may improve access to the law for customers by using language suited to consumers and traders. It may set performance standards which

make the trader's obligations clearer and allow cheap and speedy resolution of disputes.

- *Provide customer focus.*

A self-regulatory scheme can aim to satisfy customer needs and promote better customer satisfaction, unlike government regulation which leans towards setting minimum standards and legally enforceable rights.

All of the New Zealand Advertising Codes of Practice are to be applied in the spirit of the codes as well as the specific requirements. This helps to remove the emphasis on using legal loopholes which might be seen in court hearings.

Complainants are helped to make their complaints with pointers in the Codes booklet to use clear, plain, precise language and to point to a relevant Code which may assist.

## NEW ZEALAND ADVERTISING AND SELF-REGULATION



THE ASA AND THE ADVERTISING AND MEDIA INDUSTRIES ARE COMMITTED TO SELF-REGULATION IN NEW ZEALAND.

There are issues to be addressed with any regime of self-regulation and these were raised by the Ministry of Consumer Affairs policy paper “Market self-regulation and codes of practice.”

The ASA response to each point is set out below.

1. A Code of Practice may not be a practical solution where the problem is wider than a specific industry group, where industry members cannot agree or lack a representative body to enforce a Code.

### RESPONSE

- *The New Zealand Advertising Codes of Practice are focused on the advertising industry. The industry agrees to coverage by the codes. For comprehensive coverage, the ASA’s membership comprises the Association of New Zealand Advertisers Inc (ANZA), the New Zealand Marketing Association, the Communications Agencies Association of New Zealand (CAANZ) and New Zealand’s 11 principal media organisations, including television, newspapers, magazines, internet, radio and direct marketing groups.*
2. A Code of Practice may be difficult to enforce and may not impose meaningful sanctions on industry players. If there is insufficient commitment to an enforceable Code, the sanction-making power of regulation may be preferable.

### DID YOU KNOW?

ADVERTISEMENTS ARE REQUIRED TO NOT UNDERMINE THE ROLE OF PARENTS IN EDUCATING CHILDREN TO BE HEALTHY AND SOCIALLY RESPONSIBLE INDIVIDUALS.

### RESPONSE

- *The commitment of the New Zealand advertising industry to the code is shown:*
    - a) *financially by ASA members and by advertisers who are levied; and*
    - b) *by a total commitment to the process of the adjudication - If a complaint is upheld by the Board the advertiser, in accordance with self-regulatory principles, is requested to voluntarily immediately withdraw the advertisement. The media are similarly requested not to publish or broadcast an advertisement which is held to be in breach of the Codes of Practice. The requests are invariably followed.*
3. Self-regulation can have an adverse impact on competition and market efficiency if the sector concerned attempts to use self-regulation as a way of restricting competition.

### RESPONSE

- *In New Zealand, Principle 5 of the Basic Principles of the Advertising Codes of Ethics is:*

*“All advertisements should respect the principles of free and fair competition generally accepted in business.”*
4. Self-regulation needs strong and committed support for its development, implementation, and enforcement. A Code of Practice must be implemented with the unanimous agreement in practice of the industry sector to which it applies.

### RESPONSE

- *The membership of the ASA is a sign of the commitment of the industry to making the codes work. Over the past 15 years there has been prompt compliance with requests by the*



**Advertising Standards Complaints Board for an advertiser to withdraw an advertisement or campaign when a complaint is upheld.**

5. Effective self-regulation requires active consumer participation at all stages of development and implementation. For a Code to be effective, consumers must know about it and how to enforce their rights under it.

**RESPONSE**

- *The Codes developed by the ASA are 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 involved. For the year-long review of the Code for Advertising to Children and the Code for Advertising of Food the ASA set up a special review committee with senior officials from the Health Ministry, and the Families Commission and independent experts*

*on children’s advertising and public health. Public submissions were invited both directly from known individuals and organisations and by advertising the review.*

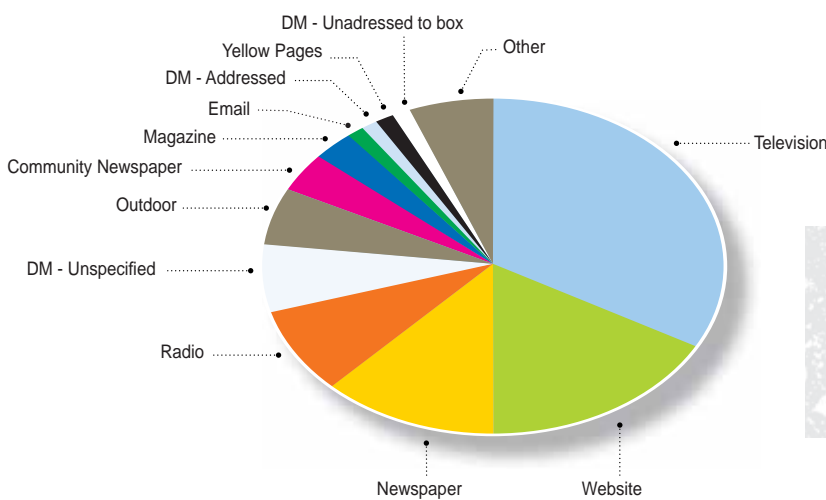
*The ASA has a regular programme of education about the complaints process. More than 5000 codes booklets with tips about complaints are distributed to the public annually, the website is regularly updated and both it and 0800 ADHELP offer free assistance. A commissioned UMR research survey showed that 87% of New Zealanders are aware they can formally complain about advertisements.*

6. Any form of consumer regulation must provide efficient solutions to market problems.

**RESPONSE**

- *The effective compliance of the industry with the decisions of the Complaints Board and the free and easy access for members of the New Zealand public to this process accord with the best practices of self-regulation.*

**ASCB COMPLAINTS BY MEDIA**



*In 2007 the largest number of complaints were received about television advertising followed by websites.*



## DECISIONS, DECISIONS

SOME 3,500 ADVERTISING COMPLAINT DECISIONS ARE AVAILABLE FOR VIEWING ON THE ASA WEBSITE, COVERING MORE THAN EIGHT YEARS OF ASCB HEARINGS.

Some decisions set precedents, some are the most complained about, many exemplify the tests for whether advertisements might cause widespread or serious offence, or have been prepared with social responsibility.

Over the past five years, the Complaints Board have upheld approximately 50% of the complaints it has considered. In 2007, 57% of complaints were upheld.

### TOP 5

While a single complaint is enough for an adjudication, sometimes an advertisement will hit a chord of discontent that registers in many duplicate complaints.

**1. UPHELD** – In 2006, 685 complaints were received about the unsolicited direct mailing of a small cardboard wallet with a sealed condom to promote a pizza called Lust. Under the Code of Ethics, the majority of the Board did not find the promotion and the wording it used offensive as an advertising message per se, but because of method of distribution agreed

- a) the promotion was likely to cause serious and widespread offence in a number of communities (Rule 5 Offensiveness), and
- b) was in breach of Rule 4 (Decency) in light of generally prevailing community standards. (06/417)

### DID YOU KNOW?

IN ADDITION TO THE ASA CODES OF PRACTICE, ABOUT 50 PIECES OF LEGISLATION IMPACT ON, OR IN SOME WAY RESTRICT, ADVERTISING IN NEW ZEALAND.

**2. RESOLVED** – A petition from 550 people complained about a radio advertisement for tertiary education which they said slighted country line dancers. The advertiser defended it for the targeted youth market and its humour but expressed regret at any offence caused and withdrew the advertisement. The Board considered self-regulation principles had been fulfilled and the matter resolved. (97/43 and 97/43a)

**3. NOT UPHELD** – In 1999, 120 complaints were received about repeated use of the word “bugger” (including by a dog) in a humorous vehicle television advertisement set on a farm. After examining dictionary and popular uses of the word, the Board said taking the issues of context, medium and audience into account the advertisement was unlikely to cause widespread offence. (99/23)

**4. UPHELD** – A group of chanting butchers dancing along the footpath with their hands in the air in a television advertisement were mimicking the religious, vegetarian Hare Krishna group in an offensive way, more than 80 complainants said. The Board agreed, saying it caused serious offence on the grounds of ethical and religious belief (Code for People in Advertising, Basic Principle 3) and was not saved by humour. An application for appeal by the advertiser was not accepted. (03/20)

**5. NOT UPHELD** – A television advertisement of a nappy-wearing toddler boy driving a vehicle to the beach and picking up a hitchhiking little girl on the way to surf, drew 71 complaints. In a decision taking 28 pages, the Board reviewed the advertiser’s explanation about the computer-generated aspects. The majority of the Board agreed the fantasy element and the unrealistic depictions in the advertisement were not likely to encourage a disregard for safety and considered that the advertisement had been prepared with a due sense of social



*responsibility. In response to concerns about copycat behaviour, the advertising agency offered to change the screening time. (06/259)*

### PRECEDENT SETTING

**UPHELD** – Liquor advertisements have to observe a high standard of social responsibility. A sketch of a rugby player in a newspaper liquor advertisement was of an All Black and was an “identifiable hero of the young” and therefore a breach of Principle 4 (3) of the liquor advertising code (91/105), that says liquor advertisements shall not use or refer to heroes or heroines of the young.

**UPHELD** – Conditions for trade-ins and guarantees at the bottom of a newspaper advertisement for cars was held to breach Rule 2 of the Advertising Code of Ethics, “Truthful Presentation,” because, the Board said, an advertiser “should draw the attention of the viewer or

reader to the conditions or qualifications in an obvious way” (94/90).

**NOT UPHELD** – A television advertisement showed a man walking away from the camera wearing nothing but a pair of socks. Complaints that it offended against prevailing standards of decency were not upheld (93/54, and again 96/194). The Board was of the opinion the use of nudity in the advertisement was not gratuitous but a humorous pun on the slogan, “He won’t want to wear anything else,” and unlikely to cause serious or widespread offence.

**UPHELD** – A complaint by a financial planning organisation against a newspaper advertisement that claimed to be from the “only major independent financial company to survive the last seven years” (in 1991) was upheld. The Board ruled the onus of proof is on an advertiser to substantiate claims made and a



comparative advertisement can be about comparisons with an industry, not a specific competitor. In some circumstances, substantiation should be in the advertisement. (91/28)

**UPHELD** – A complaint about the claims of “independence” by a financial organisation which owned the investment vehicles it was promoting was upheld. The Board was of the view that any financial adviser who received remuneration from issuers of financial products in relation to the sale and servicing of those products could not claim to be “independent.” The advertisement was likely to confuse and mislead consumers. (97/167a and b)

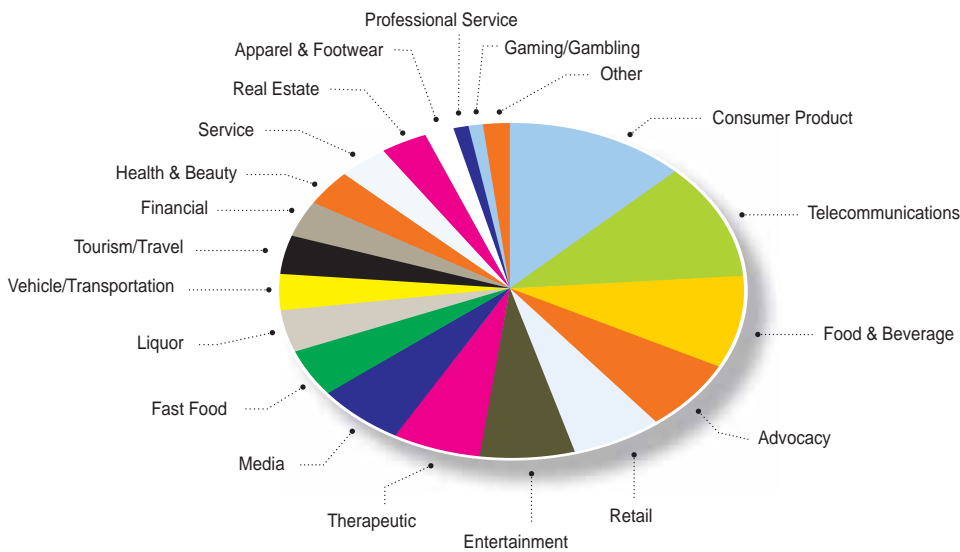
**ADVERTISEMENTS ARE ALL ABOUT**

- **CONTEXT** – The language and mayhem meant to shock in Land Transport New Zealand advertisements about drunken driving may upset some, but the Board has frequently ruled they are acceptable because they have a social purpose to do with the public safety on the roads.

- **MEDIUM** – Billboards seen by all including schoolchildren differ from magazines or targeted radio or television programmes for specialised audiences, for example. A beer advertisement using graffiti (05/262) failed the high social responsibility test when it appeared on a billboard. While the product had a target audience of 25-34 year-olds, the Board observed, quoting an earlier decision, “once a billboard goes up, the advertisement is no longer confined to that audience and any communication or message extends to people of all ages and in fact the public at large.”
- **AUDIENCE** – The audience for 6.00pm news is adult and so advertisements at this time are not necessarily suitable for children. Otherwise, the news hour would be only what was fit for children to watch. Complaints about an advertisement for a medicine focused on its screening during the



**ASCB COMPLAINTS BY PRODUCT**



*In 2007 complaints were received across all listed categories*



TV One 6.00pm News bulletin. The Board said both the advertiser and the media had employed a high standard of social responsibility in the construction and placement of the advertisement, and just as women had a right to information about sanitary protection products, men had a similar right to know about products which could enhance their health and well-being. (01/301)

- **PRODUCT** – Once advertising of female sanitary products appalled complainants but now such advertisements are commonplace as society's views have changed. A product may be necessary for one sector of society, but displease another group – for example, animal procedures unpleasant to the general populace but advertised to farmers during televised rugby matches.

### GOVERNMENT ADVERTISING

Advertisements from the government or a party in government are not free from scrutiny. Complaints were upheld against an ACC television advertisement promoting “an oversimplified message” about coverage (07/091) and against a Labour Party website advertisement for KiwiSaver which used the word “guarantee” in a way that was considered ambiguous (07/314). Labour Party Deputy Leader and Finance Minister, Dr Michael Cullen, subsequently said the

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Party's KiwiSaver policy advertisement would be altered, taking into account the ruling.

### WEBSITE

Website advertisements are now common and complaints have arisen from these, mostly regarding whether they are misleading or not. Sometimes this is a matter of layout or information. A complaint stating that it was not clear on a website whether prices for electronic parts included GST was settled when the advertiser added the information to the front page (07/324). Similarly, a complaint about apparently misleading rates for accommodation was settled when the website was updated (07/417).

### OVER BEFORE IT'S OVER?

Some complainants worry that an advertising campaign is finished before the complaint is heard. However many businesses which advertise frequently will return to seasonal campaigns annually and have to pay attention to the decisions of the ASCB as it affects their advertising.

For example, the complaint against The Warehouse “What a Pig Easter Egg 1 kg” campaign was upheld on the grounds of lack of social responsibility in food advertising. An altered campaign resurfaced the next year with a young teen model not a toddler by the large egg.

A complaint against this was upheld on similar grounds. In 2006, a complaint against The Warehouse Easter egg campaign which had moved away from depicting children, showed a smaller egg and appealed to “the footy fan” was dismissed.

The ASCB commented that the advertiser had taken steps to comply with the advertising codes in its advertising in this case.

## LAPS, TAPS AND TVCAB

IN ACCORDANCE WITH BEST PRACTICE PRINCIPLES, THERE IS A RANGE OF PRE-VETTING IN PLACE.

Pre-vetting includes an organisation that pre-vets all advertising on television, along with other media, agencies and advertisers that have a variety of checking mechanisms in place. In particular, independent pre-vetting is required for liquor and therapeutic advertising.

### LAPS

The Association of New Zealand Advertisers (ANZA) is responsible for administering the advertising industry's voluntary system of pre-vetting all liquor advertisements. The Liquor Advertising Pre-Vetting System (LAPS) was introduced at the time liquor advertising in broadcast media was approved. Liquor advertisers, their advertising agencies and all media agreed to introduce a system which would make every endeavour to ensure compliance with advertising codes and particularly with the Code for Advertising Liquor. The ASA also appoints a special panel made up of representatives from the public, government agencies and industry to review the self-regulatory code from time to time and there is a public consultation process.

### TAPS

The Therapeutic Advertising Pre-vetting System (TAPS) developed from the voluntary Therapeutic Advertising Advisory Service (TAAS). It was set up

#### DID YOU KNOW?

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to assist advertisers, advertising agencies and the media to comply with the Advertising Standards Authority Code for Therapeutic Advertising. TAPS was introduced with the support of the then Associate Minister of Health and most organisations with interests in advertising of therapeutic products. ANZA manages and operates the system of pre-vetting a wide range of advertisements making therapeutic claims on behalf of the media. Three experienced independent consultants act as adjudicators.

### TVCAB

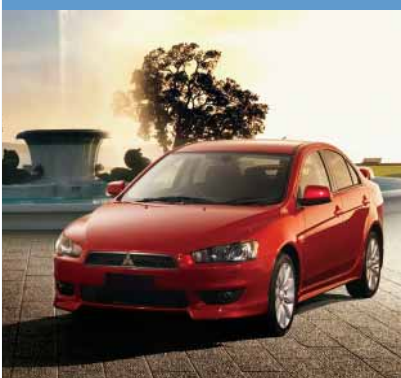
The Television Commercial Approvals Bureau is responsible for monitoring television advertisements prior to their first screening. This bureau is supported by both television companies running the free-to-air broadcast channels.

Advice and script assessment is free but final approval and classification is given only on the finished commercial. Overseas advertisements to be aired in New Zealand must also be submitted to the TVCAB for classification. No commercial will be screened until advice of acceptance and classification is received by the channel from the TVCAB.





The ASA gratefully acknowledges the advertisers and advertising agencies that provided images for this booklet to illustrate the case for self-regulation.







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