



ADVERTISING  
STANDARDS  
BUREAU

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**Alcohol Advertising**

Australian National Preventive Health Agency  
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28 February 2013

Dear Sir/Madam,

**Advertising Standards Bureau submission: alcohol advertising & the effectiveness of current regulatory codes in addressing community concerns**

The Advertising Standards Bureau (Bureau) appreciates the opportunity to provide a submission in response to the Australian National Preventive Health Agency (ANPHA) Issues Paper, *Alcohol Advertising: The Effectiveness of Current Regulatory Codes in Addressing Community Concerns* (Issues Paper).

This submission provides a general overview of the advertising self-regulation system and the role of the Bureau in that system, as well as a brief outline of the Bureau's role as it relates to alcohol advertising. It then addresses the scope and effectiveness of the advertising complaint resolution process administered by the Bureau and aspects of the process aimed at reducing the exposure of alcohol advertising to children.

The comments in this submission are limited to the role of the Bureau in relation to administering complaints about alcohol advertising and the role of the Advertising Standards Board (Standards Board) in considering the compliance of alcohol advertising with the Australian Association of National Advertisers (AANA) advertising codes. Information about the Alcoholic Beverages Advertising Code (ABAC) and the adjudication process specific to the ABAC is not within the Bureau's remit and is not covered in this submission.

**1. Executive Summary**

- The self-regulation system is industry funded and well supported by all parts of the industry – advertisers, advertising agencies, media buyers, media operators and industry associations.

- The Bureau is responsible for the administration of the complaint resolution component of the advertising self-regulation system, supporting the work of the Standards Board, which is the body established to consider complaints about advertising and marketing communications against the provisions set out in the relevant advertising codes.
- High standards of advertising are maintained through the interaction of the various parts of the self-regulation system:
  - through the existence and development of appropriate codes and initiatives relating to advertising standards;
  - the voluntary compliance of advertisers;
  - the efforts of other industry stakeholders in ensuring compliance, supporting industry education and public awareness programs, and supporting enforcement where required; and
  - the operation of the complaint resolution process.
- The complaint resolution process managed by the Bureau is an effective and efficient way to respond to consumers' concerns about advertising.
- The Bureau is the one-stop-shop for all complaints relating to advertising and is the appropriate point of contact for all alcohol advertising complaints.
- Complaints relating to alcohol advertising are copied to the ABAC Chief Adjudicator to determine whether the complaint also raises issues with the ABAC, in which case the complaint is also considered by the ABAC Complaints Panel.
- The complaint process is transparent and accessible to all consumers, with easy to follow steps and support throughout the process provided by Bureau staff.
- The vast majority of advertising and marketing communications in Australia comply with the relevant codes and do not receive any complaints, while the majority of those complained about are not found to be in breach of the codes. Where a breach is found, the Bureau has a record of nearly 100 per cent compliance by industry with Standards Board determinations – demonstrating the commitment of the vast majority of advertisers to the system and to maintaining high standards of advertising.
- If required, the Bureau is supported in enforcing compliance with Standards Board determinations by the various sectors of the media.

## **2. The advertising self-regulation system**

Australia's system of advertising self-regulation is recognised as world class. The current system was established by the AANA in 1998. It recognises that advertisers share an interest in promoting consumer confidence in and respect for general standards of advertising.

Self-regulation of the advertising industry has been achieved by establishing a set of rules and principles of best practice to which the industry voluntarily agrees to be bound. These rules are expressed in a number of advertising codes and industry initiatives. The rules are based on the belief

that advertisements 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.

The current advertising self-regulation model is working well to maintain high advertising standards and ensure consumer trust and protection is met for the benefit of all of the community.

### **3. Role of the Bureau**

The Bureau administers the advertising complaints resolution service that supports the regulation of advertising standards in Australia. The Bureau is secretariat for the Standards Board and the Advertising Claims Board (Claims Board), the bodies appointed to adjudicate public and competitor complaints and to ensure compliance with the relevant codes and industry initiatives.

Members of the Standards Board are community representatives, independent of the industry and appointed following a publicly advertised application and interview process. Members of the Claims Board are legal practitioners sourced from a register of lawyers experienced in advertising and/or competition and consumer law.

The work of the Advertising Standards Bureau is not underpinned by any Government legislation.

### **4. Alcohol advertising regulation**

Australia has a quasi-regulatory system for alcohol advertising. Guidelines have been negotiated with government, consumer complaints are handled independently, but all costs are borne by industry.

The Bureau is the one-stop-shop for all complaints relating to advertising and is the appropriate point of contact for all alcohol advertising complaints.

The Bureau assesses complaints relating to alcohol advertising against the AANA Advertiser Code of Ethics (Code of Ethics) and the AANA Code for Advertising and Marketing Communications to Children (Code for Children). If the complaint raises issues under these codes, the complaint is considered by the Standards Board, which will make a decision as to whether to uphold or dismiss the complaint.

On receipt of a complaint relating to alcohol advertising, the Bureau also sends a copy of the complaint to the ABAC Chief Adjudicator. The Chief Adjudicator determines whether the complaint also raises issues with the ABAC. If the complaint raises issues with the ABAC, the complaint is also considered by the ABAC Complaints Panel.

A complaint about alcohol advertising that raises issues within both jurisdictions will therefore be considered by both the Standards Board and the ABAC Complaints Panel against the relevant codes.

If the ABAC Complaints Panel upholds the complaint, the advertiser is asked to modify or withdraw the advertisement in question. The Bureau is informed of the ABAC Complaints Panel decision and, in the case of an upheld complaint, the advertiser's response.

The complainant is informed of the decisions of both the Standards Board and the ABAC Complaints Panel, as relevant. Case reports are prepared separately for both decisions and made available publicly.

It is possible for the Standards Board and the ABAC Complaints Panel to arrive at different decisions about the same advertisement as each body assesses the advertisement against different codes.

## **5. Scope of advertising complaint process**

The advertising self-regulation system applies broadly to advertising and marketing communications in Australia. The Standards Board adjudicates on compliance with the advertising codes in relation to advertising and marketing communications of organisations across Australia, including large and small business, community organisations and government. Complaints about advertising and marketing communications in all forms of media are considered.

The scope of the Code of Ethics is founded on the definition of “advertising or marketing communications” as follows:

“Advertising or Marketing Communications means any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,

but does not include Excluded Advertising or Marketing Communications.”

The Practice Note to the Code of Ethics makes clear that the code applies to material in “any media, including online and social media (the Code is technology neutral)”. This means the code can continue to be applied as new advertising and marketing techniques evolve using new media.

Alcohol advertising is subject to the same self-regulatory codes and complaint process that applies to complaints about all advertising and marketing communications. In 2012, 1.47% of complaints (by product category) related to alcohol. This compared to 3.78% in 2011 and 5.19% in 2010.

Complaints about alcohol advertising in *any* media that raise issues under either the Code of Ethics or Code for Children are referred to the Standards Board for determination (in the same manner as any other advertising or marketing communication). For example, as noted in the Issues Paper, the Standards Board recently considered and upheld a complaint against Fosters Australia, Asia & Pacific (Case 0271/12) relating to material contained on a Facebook page, including user generated content.

As noted earlier, alcohol advertising is also subject to an additional layer of regulation in the form of the specific code, the ABAC, and an additional, separate adjudication process undertaken by the ABAC Adjudication Panel. The Bureau and ABAC Chief Adjudicator work in parallel processes to assess whether the complaint is a matter requiring adjudication by the Standards Board or ABAC Adjudication Panel or both.

## 6. Effectiveness of advertising complaint process

The effectiveness of the complaint resolution process administered by the Bureau is addressed below against some key principles for effective self-regulation.

### *Stakeholder consultation*

- The current system of advertising self-regulation was established by the AANA following extensive consultation with industry, consumer and government representatives.
- Recent changes to the AANA Code of Ethics followed a public consultation process, which sought feedback from the community and other stakeholders on the application of the code.
- The Bureau maintains an ongoing dialogue with various stakeholders in the complaint resolution process, recognising that this is an important factor in its continued effectiveness. Stakeholders include other industry bodies (eg the Outdoor Media Association, Free TV Australia, The Communications Council), as well as government departments (eg the Australian Competition and Consumer Commission and Australian Communications and Media Authority) and consumers.
- The Bureau works closely with other industry bodies to ensure their members are aware of the Bureau's complaint process and that complaints they receive are referred directly to us.
- The Bureau also works with government departments at the state and federal level in ensuring complaints relevant to the role of the Bureau are forwarded to us for consideration. This includes providing information sheets to government bodies to ensure the complaints referred to the Bureau do in fact fall within the Standards Board's remit. For example, the Bureau has actively engaged with the ANPHA about its roles and responsibilities.
- Ongoing interaction with consumers is fundamental to the complaint resolution process, which relies on consumers lodging complaints and feedback about advertising and marketing communications with the Bureau. Consumer feedback is also sought through regular research projects undertaken by independent researchers on behalf of the Bureau.

### *Industry commitment*

- The self-regulation system is founded on the rules to which advertisers and marketers voluntarily agree to be bound, as set out in relevant industry codes and initiatives. Compliance with these codes and initiatives is monitored via the complaint resolution process administered by the Bureau, working as secretariat to the Standards Board and the Claims Board.
- The compliance rate with Standards Board decisions is almost 100%, demonstrating the commitment of advertisers and marketers from all sectors in supporting the self-regulation process.
- The system has a high level of industry participation and industry support is fundamental to the system's success. For example:
  - Participating **advertisers** demonstrate their support for self-regulation by instructing their advertising agencies to adhere to the various codes of advertising standards, by agreeing to the levy being applied to their media expenditures, and by complying with decisions of the Standards Board.
  - Participating **advertising agencies** support the system by monitoring the various codes and determinations made by the Standards Board and consulting with their advertiser clients.



- Participating **media buyers** support the system by collecting and remitting the levy through their accounting systems.
- Participating **media operators** support the system by promoting self-regulation through information and advertising material prepared by the Bureau. They also support the system by assisting with the removal of advertisements if appropriate.
- A range of information and resources is published under “Advertiser know-how” on the Bureau website, aimed at assisting advertisers to understand their compliance requirements. This section of the website also directs advertisers towards research and other information that can help them to ensure their advertising and marketing communications remain in line with current community standards. This information includes research reports, past case reports, and *Determination Summaries* (which provide details of past Standards Board determinations in relation to particular sections of the Code of Ethics).

#### *Publicity and consumer awareness*

- The complaint process is accessible to all members of the public. Complaints may be made via an online complaint form, by post or facsimile.
- The complaint process is a free service and provides fairness for complainants and advertisers. Process steps are clearly set out and available to all on the Bureau website, along with information about how the Standards Board makes its determinations. Members of the public without access to the internet are able to contact the Bureau and request information about the complaint process.
- Where there are changes to the complaints process, the Bureau distributes information both in the media and through its own distribution channels.
- Consumer awareness of where to complain about advertising is important to the Bureau. The Bureau has undertaken research at various times to gain an understanding of the level of unprompted awareness of the Bureau among consumers and awareness campaigns have been conducted to increase the level of awareness:
  - A survey undertaken as part of community awareness research in 2006 indicated a low level of *unprompted* awareness of the Bureau at only 10 per cent.
  - In response, the Bureau developed an awareness raising campaign, commencing in June 2008, featuring television, print and radio advertisements encouraging the community to complain to the Bureau if it has concerns about advertising.
  - Surveys of spontaneous awareness were again undertaken in 2009 and 2010, with significantly higher levels of awareness than in 2006 (63 per cent in 2010 and 67 per cent in 2009).
  - A further public awareness campaign utilising outdoor/transport media was conducted in the latter part of 2011.
  - Community perceptions research was again undertaken in 2012, with results showing a continuing high level of unprompted recognition of the Bureau (62 per cent).
- In addition to public awareness campaigns, the Bureau provides information to organisations and government agencies about our processes and encourages them to forward complaints to us if they believe they fall within our remit. For example, complaints are regularly forwarded to the Bureau from television and radio stations and from State departments of fair trading.

- Links and information about the Bureau are also included on the websites of various industry bodies, such as the AANA, the Outdoor Media Association and Free TV Australia, and of government departments, such as the Australian Communications and Media Authority, Department of Broadband, Communications and the Digital Economy and the Australian Competition and Consumer Commission. This helps to ensure consumers seeking to make a complaint about advertising are directed to us. Information about the Bureau and how to make a complaint is also available on a number of consumer lobby group websites.

#### *Transparent and robust decisions*

- The Bureau is committed to a high standard of transparency with regard to Standards Board determinations.
- All case reports are made publicly available on the Bureau website promptly after determination. Case reports contain details about the complaint, a description of the advertisement, the advertiser response and the Standards Board's determination, along with a summary of the reasons for its decision.
- Members of the Standards Board are individually and collectively clearly independent of the industry. Members come from a broad range of age groups and backgrounds and the Standards Board is gender-balanced. The diverse membership ensures decisions are made without being influenced by vested interests and stakeholders.
- The Standards Board takes its responsibility regarding the adjudication of complaints relating to advertising very seriously. The deliberation of complaints about all advertisements is undertaken in accordance with established high standards and processes in line with international best practice.
- In 2010, the Bureau developed a series of 'Determination Summaries', available to all from the Bureau website. The purpose of the Determination Summaries is to provide a general overview of Standards Board determinations on complaints about particular issues covered by the advertising codes. The summaries are not 'how to' guides and are not intended to operate in the manner of binding legal precedents, but are designed to assist the advertising industry, consumers and the Standards Board itself in understanding how the Standards Board has viewed particular issues covered by the codes that have been the subject of complaints in the past.

#### *Management of the process*

- The Bureau receives all complaints relating to alcohol advertising, which are then assessed in parallel processes by the Bureau, to determine if the complaints are eligible for consideration by the Standards Board, and by the ABAC Chief Adjudicator, to determine if the complaints are eligible for consideration by the ABAC Adjudication Panel.
- The Bureau is committed to a high standard of transparency in the complaint process. Complaints are promptly assessed as to their appropriateness for submission to the Standards Board for determination. The Bureau, as secretariat for the Standards Board, responds to all complainants, informing them of the status of their complaint and keeps complainants and advertisers informed of the progress of complaints throughout the process via written correspondence.

### *Monitoring and reviewing*

- The Bureau undertakes regular research on community standards to measure current community perceptions about various provisions of the advertising codes.
- Findings of community standards research is communicated to the Standards Board through training and reflected in their determinations.
- Research reports are published on the Bureau website. Past research includes:
  - Community perceptions research 2012
  - Review of independent review process 2011
  - Community perceptions of sex, sexuality and nudity in advertising research report 2010
  - Violence research report 2009
  - Discrimination and vilification research report 2009
  - Community standards research 2008.

### *Cost effectiveness*

- The self-regulation system is funded by industry and receives no government funding.
- Responsible advertisers support the system by agreeing to a levy being applied to their advertising spend.
- Self-regulation provides a free and fast route for consumers to express their views about advertising and to have an impartial body to contact.

## **7. Reducing the exposure of alcohol advertising to children and young people**

The ABAC is “designed to ensure that alcohol advertising will be conducted in a manner which neither conflicts with nor detracts from the need for responsibility and moderation in liquor merchandising and consumption, and which does not encourage consumption by underage persons”. It sets out the standards to be applied to advertisements for alcohol beverages, including provisions requiring that advertisements must not encourage under-age drinking and must not have a strong or evident appeal to children or adolescents.

In addition to the specific provisions contained in the ABAC that are aimed at reducing the exposure of alcohol advertising to children, the Children’s Code also contains a provision requiring that advertising or marketing communications to children must not be for, or relate in any way to, *alcohol products* or draw any association with companies that supply alcohol products. Alcohol products is defined to mean “products which have some association with alcohol including alcoholic beverages, food products that contain alcohol or other Products that are associated in some way with alcohol including in the sense of being branded in that way”.

The Standards Board also considers the application of the Code of Ethics when considering advertising or marketing communications relating to alcohol products. For example, the Standards Board may have regard to Section 2.6 of the Code of Ethics if complainants raise the issue of depictions of underage drinking. Section 2.6 provides that “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.



If you would like further information about the Bureau's role in the regulation of alcohol advertising,  
I would be happy to discuss this with you.

Yours faithfully,



Fiona Jolly  
Chief Executive Officer