



6 – ADVERTISING SELF REGULATION

There is no Australian government regulator of the advertising and marketing communications industry as a whole in Australia. Responsibility for the monitoring of advertisements and dealing with consumer and competitor complaints falls to the advertisers themselves through a formal mechanism of self-regulation.

6.1 Introduction

The Australian Association of National Advertisers (**AANA**) is the peak advertising industry body representing the rights and responsibilities of Australia's major advertisers and their industry partners. On behalf of its members the AANA's mandate is to maintain and evolve the advertising codes which underpin the system of self-regulation in Australia.

This has been achieved through the release of the AANA Code of Ethics in 1997 which covers advertising and marketing communications in any medium over which a brand owner has reasonable control. The Code has been amended over time in conjunction with the introduction of new specific Codes in order to keep up with the ever-changing technological landscape, changing consumer behaviour, as well as changes within the advertising, marketing, and media industry. In late 2015, the AANA Codes were extended to include consumer facing public relations material, and in early 2017 disclosure requirements were incorporated under provision 2.7 in relation to the distinguishability of advertising or marketing communications.

The AANA promotes consumer confidence in and respect for general standards of advertising through the national system of advertising self-regulation, Ad Standards.

Ad Standards administers the national system of advertising self-regulation through the Ad Standards Community Panel and the Ad Standards Industry Jury:

- Ad Standards Community Panel - provides a complaint resolution service for consumers and –

interprets advertising Codes to assess a wide variety of material.

- Ad Standards Industry Jury - provides a system of alternative dispute resolution designed predominantly to determine complaints involving issues of truth, accuracy and legality of advertising between competitors in the market, on a user pays cost recovery basis.

It is Ad Standards responsibility is to ensure that all advertising, wherever it appears, meets the high standards laid down in Industry Codes, particularly the Codes administered by Ad Standards.

The system of self-regulation in Australia is fully supported by other important industry bodies including The Communications Council, Public Relations Institute of Australia, Public relations Council, and the Media Federation of Australia.

6.2 Ad Standards

What does the Ad Standards Community Panel do?

The Ad Standards Community Panel (**Community Panel**) provides a complaint resolution service for consumers. The Community Panel provides determinations on complaints about most forms of advertising in relation to issues including the use of language, the discriminatory portrayal of people, concern for children, portrayals of violence, sex, sexuality and nudity, and health and safety. Determinations are made under appropriate sections of the Code of Ethics, and other Codes relating to food and beverages, advertising and marketing to children, and environmental claims as prescribed by the AANA.

What constitutes advertising?

The Community Panel will determine complaints under the Code of Ethics in relation to any advertising or marketing communications. The definition is very broad and includes any material which is published or broadcast on any medium or activity which is undertaken by, or on behalf of an advertiser or marketer but generally does not include labels, packaging or public relations communications.

Likewise, the medium on which advertising is published or broadcast is defined very broadly to include any media whatsoever including cinema, internet (including social media), outdoor, print, radio, telecommunications, TV or direct to consumer media including new and emerging technologies.

Community Panel determinations

In relation to consumer complaints, the Community Panel will consider:

- the complaint(s) received;
- all relevant advertising/marketing communications submitted by the advertiser/marketer;

- the advertiser/marketer's response (if any);
- all relevant provisions of the Codes and Initiatives; and
- any other relevant supporting materials or other representations or submissions.

Following consideration, the Community Panel will make a determination as follows:

- Determination – complaint upheld. A complaint is upheld if Ad Standards determines there is a breach of a Code or Initiative. The advertiser is required to remove or amend the offending advertisement as soon as possible after receiving a copy of the draft case report.
- Determination – complaint dismissed. A complaint is dismissed if the Community Panel determines there is no breach of a Code or Initiative.

6.3 Code of Ethics

Ad Standards makes their determinations in accordance with the AANA's Code of Ethics. The Code of Ethics has been adopted by the AANA as an integral part of its promotion of advertising, marketing, and consumer public relations self regulation. The object of this Code is to ensure that advertisements are legal, decent, honest and truthful and that they have been prepared with a sense of obligation to the consumer and society and fair sense of responsibility to competitors.

The current Code of Ethics came into force on the 1 January 2012. Consumers can lodge complaints with Ad Standards under Section 2 of the Code of Ethics if the complaint is about advertising material pertaining to:

- Portrayal of sex/sexuality/nudity
- Portrayal of people
- Objectification
- Language
- Violence
- Health and safety

Other codes

The AANA Code of Ethics incorporates by direct reference the following additional Codes administered by Ad Standards which must be complied with (if applicable) in addition to the Code of Ethics:

- **AANA Food & Beverages Advertising & Marketing Communications Code** – The object of this Code is to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing food and beverage products in Australia. Food and beverage advertising can also be considered under other industry initiatives.
- **AANA's Code of Advertising & Marketing Communications to Children** - The object of this

Code is to ensure that advertisers develop and maintain a high sense of social responsibility in advertising to children in Australia.

- **FCAI Motor Vehicle Code** – The object of this Code is to provide guidance to advertisers in relation to appropriate standards for the portrayal of images, themes and messages relating to road safety.

Advertising in respect of alcoholic beverages is governed by the Alcoholic Beverages Advertising Code (**ABAC**). All complaints about alcohol advertising are sent to the ABAC Chief Adjudicator. The Chief Adjudicator determines whether the complaint raises issues solely under the Advertising Standards Bureau's jurisdiction or if the complaint also raises issues with the ABAC. If the complaint raises issues with the ABAC, the ABAC Complaints Panel considers the complaint.

6.4 Appealing an Ad Standards determination

If the consumer(s), who originally complained about an advertisement, the advertiser, or the marketer, are unhappy about a Community Panel determination regarding a particular advertisement, they may ask for an independent review of the determination.

Requests for review of a Community Panel determination must be received within 10 business days of the date of final letter of notification of a determination from Ad Standards and must relate to a determination taken by the Community Panel within the previous month.

Grounds for review

Reviews may be undertaken if the request meets at least one or all of the following grounds:

- Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.
- Where there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence).
- Where there was a substantial flaw in the process by which the determination was made.

The independent reviewer's role is to assess the validity of the process followed by the Community Panel, or to assess any new material provided by parties to the case. The independent reviewer does not provide a further merit of a case. Their role is to recommend whether the Community Panel's original determination should be confirmed or be reviewed.