



**ADVERTISING  
STANDARDS  
BUREAU**

Level 2, 97 Northbourne Avenue, Turner ACT 2612  
Ph: (02) 6262 9822 | Fax: (02) 6262 9833  
[www.adstandards.com.au](http://www.adstandards.com.au)

Mr Elton Humphery  
Committee Secretary  
Community Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

[community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

17 June 2008

Dear Mr Humphery

### **Supplementary submission/response: Alcohol Toll Reduction Bill 2007**

The Advertising Standards Bureau (ASB) would like to provide the Committee with:

- a response to concerns raised by Professor Sandra Jones about the ASB's submission to the inquiry into the Alcohol Toll Reduction Bill 2007 (the Inquiry), as detailed in Attachment 1 to her submission to the Inquiry; and
- a factual update on the ASB's processes and procedures which came into operation from October 2005, subsequent to the research undertaken by Ms Jones and her colleagues from May 2004-March 2005, as detailed in the report contained in Attachment 2 to her submission.

#### **1. Response to Ms Jones' concerns**

Firstly, I would like to state upfront that it was never the ASB's intention to mislead the Committee, nor to suggest that the University of Wollongong study was not independent.

##### *1.1 Number of presentations given*

We are happy to correct our submission to state that the University of Wollongong made "one presentation" in June 2006 rather than a series of presentations.

## *1.2 Accuracy of report findings*

We understand that, from the perspective of Ms Jones and her colleagues, the presentation accurately reported their findings from the study undertaken from May 2004 to March 2005.

However, in the view of the ASB and armed with the full knowledge of our own policies and procedures, the presentation contained misperceptions about the role of the ASB and contained assertions about the way in which the alcohol advertising system worked that were incorrect or outdated at the time the presentation was given.

In response to the assertions that the ASB considered then (and considers now) to be incorrect or outdated, CEO Fiona Jolly made efforts to provide Ms Jones with relevant details about modifications to the complaints procedure and to point out some factual errors in Ms Jones' presentation to the media in June 2006, in the hope that these could be corrected before the final report.

For example, in correspondence in August 2006, Ms Jolly informed Ms Jones that, of the complaints mentioned in the presentation, 8 (not 5) were referred to ABAC – a correction appears in parenthesis at page 35 of the final report provided at Attachment 2 to Ms Jones' submission.

Ms Jones' presentation also included a statement that the complaints process is “geared toward conventional forms of advertising – newer forms of advertising (web, outdoor, viral marketing) are difficult to monitor” and the final slide titled “Where to from here?” recommended “Lobbying for review of and changes to current alcohol advertising regulation system including ... Consideration of non-traditional media”. In response to this, Ms Jolly pointed out in her correspondence with Ms Jones that:

“More recently, in June 2006, the Australian Association of National Advertisers (AANA) modified the Advertiser Code of Ethics. ASB now has jurisdiction to consider internet advertising, point of sale advertising, direct mail and direct to consumer advertising”.

A further example of an assertion the ASB considered inaccurate in Ms Jones' presentation is the criticism that we “do not regulate ‘once-off’ promotions”. This criticism also appears in the final report at page 37, where Ms Jones refers to the “lack of regulation of once-off promotions” and claims that “[t]his is an important loophole in the process, as it means that a message which would be deemed inappropriate were it to be part of an ongoing campaign is not reviewed where it is a limited-term promotion; thus allowing the advertiser to continue to utilise potentially inappropriate messages to promote alcohol products”. Ms Jones again makes this claim in Attachment 1 to her submission, referring to one of the ASB's response letters in support of her claim.

We can confirm that our standard letter of response for withdrawn or discontinued advertisements that are not going to be referred to the Advertising Standards Board (the Board) stated “that the Board does not **usually** consider advertisements that have been withdrawn or discontinued” (our emphasis). This reflects the ASB policy on such advertisements, but does not state the policy in full.

Ms Jones’ report and Attachment 1 to her submission suggest that the Board *never* considers once-off promotions or other withdrawn/discontinued advertisements. This is incorrect and fails to consider the ASB’s policy in this area, which Ms Jones was informed of in the August 2006 correspondence from Ms Jolly.

Ms Jolly advised Ms Jones that, under ASB policy, if a complaint is received and the advertisement has been discontinued or has finished, the ASB is not obliged to consider the advertisement but has discretion to consider the advertisement. In making a decision about whether or not to bring a discontinued advertisement to the Board the ASB will consider:

- the date on which the advertisement was last broadcast/published viz a viz the date of the complaint;
- whether the advertisement could reasonably be considered to be current or recent at the time the complaint was made;
- whether there is some intention on the part of the advertiser to re-publish or broadcast the advertisement; and
- whether the complaint raises a significant issue of public interest.

Ms Jolly advised that in two of the cases Ms Jones referred to, the complaints were made some months after the advertisement had appeared and last been run:

- in the case of the Tooheys New Fan Cam, the only complaint was received more than four months after the advertisement had been run and the advertiser advised that it would not reuse the advertisement;
- in the case of the Kahlua “Alluring Kahlua” advertorial, the only complaint was received two months after the advertorial had ceased to appear.

At the time of these advertisements running, no complaints were received by the ASB.

Ms Jolly also advised Ms Jones that, in regard to the magazine advertisements for Frangelico (“Suits me at the weekend” and “Make it a habit”) and the Galliano “Ralph promotion”, in all cases the advertiser had advised that the advertisement/promotion would not be used again. As pointed out to Ms Jones, the Board does have discretion to consider advertisements that have finished or been withdrawn, but in these instances declined to do so having regard to the policy stated above.

Ms Jolly also informed Ms Jones that since late 2005, more advertisements in the withdrawn/discontinued category are now referred to the Board, particularly those that

most clearly raise issues under the AANA Code of Ethics. This has been largely based on the view that the complaint raises a significant issue of public interest.

We can also advise that, when an advertisement is withdrawn or discontinued prior to a complaint being considered by the Board, the advertiser is informed that the advertisement must not be shown or must be modified before it can be shown again.

Having stated our policy, as previously advised to Ms Jones, the ASB is pleased to give consideration to the current wording of its standard response letters to ensure that the responses better reflect our policy in this area to provide clarity for complainants.

### *1.3 Currency of report findings*

The fact that the report stated the time period of the study as May 2004 – March 2005 does not alter the fact that the assertions contained in the report were outdated at the time that the report was presented or published because it was based on data that was at least 14 months old at the time of presentation to the media and nearly three years old by the time of the online publication date. The cases referred to in the study occurred during the period in which revisions to the ABAC system were being implemented and prior to significant enhancements to ASB's administration of the advertising self-regulation system (introduced from October 2005).

We consider that the report is incomplete in its failure to even acknowledge the changes to the system that came into effect well before the report findings were published. The ASB was not contacted prior to the presentation of the preliminary results of the study to the media or even informed of its intended release. As a result, the ASB was not able to respond to the findings or offer additional information to the researchers prior to that presentation that would have enabled a more complete picture of the processes under review. However, when the ASB became aware of the presentation and the research Ms Jones and her colleagues had undertaken, as stated earlier, CEO Fiona Jolly contacted Ms Jones to inform her of enhancements made to the ASB's processes and also to correct some factual errors in the presentation that could have been identified earlier had the researchers sought the ASB's response to their preliminary findings.

Numerous references in the report to the "current process" or "current system" suggest that the conclusions the authors draw are based on procedures that are current at the time of report. The authors' use of such loose language and their failure to distinguish between the systems in place at the time of review and the current system (as advised by Ms Jolly prior to publication of the report) serves only to mislead readers of the report.

The ASB is always receptive to feedback provided by researchers and the public in relation to our administration of the complaints resolution process for advertisements. However, the ASB strongly refutes the suggestion in Attachment 1 to Ms Jones' submission that the ASB's modifications and improvements to the complaint resolution process were made in response to Ms Jones and her colleagues' research findings and that

the changes advised to Ms Jones in August 2006 were merely “promised changes after the fact ... not dissimilar to suggesting that no-one should ever be issued a speeding ticket if they promise to slow down after being detected exceeding the speed limit”.

Such claims by Ms Jones are grossly misleading. More importantly, it shows she is still missing the point that the system changes referred to in correspondence from Ms Jolly in August 2006 all occurred *prior* to the presentation of her findings to the media and well before publication of her report. Those changes were part of the ASB’s ongoing commitment to continuous improvement. They were not “promised changes” only offered after viewing Ms Jones’ findings and are certainly not worthy of her speeding ticket analogy. The changes were implemented well before the ASB was made aware that a presentation of the researchers’ findings had been made to the media (in June 2006) or even that the research had been undertaken. The changes were largely implemented following the appointment of the ASB’s inaugural CEO in October 2005.

In Ms Jolly’s correspondence with Ms Jones in August 2006, she stated that the “modifications to the complaints procedure, which were made prior to your report, are an appropriate response to several of the matters raised in your research. I would be disappointed if your final research did not acknowledge such modifications”.

#### 1.4 “Worked with”

In regard to our statement that:

“CEO Fiona Jolly worked with the researchers to correct their factual errors before the final report was published”,

we are simply referring to Ms Jolly’s efforts to provide Ms Jones with updated information about modifications to the ASB’s complaints procedures (made prior to her presentation in June 2006) and to point out certain factual errors based on the ASB’s own records. As noted earlier, the correspondence between Ms Jolly and Ms Jones took place in August 2006, following Ms Jones’ June 2006 presentation.

## 2. Update on ASB procedures since research undertaken

To ensure that the Committee has a current and complete picture of the complaint resolution processes administered by the ASB and Board, we address below some of the assertions made in the report prepared by Ms Jones and her colleagues that are out-of-date, incomplete or inaccurate. In our view, much of the report findings are either redundant or ignore key aspects of the ASB’s policies and procedures.

We consider it is particularly important to provide this update to the Committee in light of the reliance on the report by others who made submissions to the inquiry<sup>1</sup> and, in

---

<sup>1</sup> For example, the submission by the Australasian Faculty of Public Health Medicine (Submission 57).

particular, the apparent confusion about the currency of the research suggested by the inaccurate reference during the public hearings to the research having been undertaken in 2008.<sup>2</sup>

Our comments are generally limited to the role of the ASB in administering complaints about alcohol advertising. Most of the ASB's current procedures were introduced in 2005, although there have also been some further enhancements since that time. We recommend that the Committee consider our response in conjunction with the submission from the ABAC Management Committee, providing information on the administration and adjudication of the Alcoholic Beverages Advertising Code (ABAC).

### *2.1 Period of research*

The report refers to the review by the Ministerial Council on Drug Strategy in 2003, which led to the revised ABAC, which "came into operation in 2004".

It is important to note that the code changes were agreed by governments and the peak industry bodies and came into effect in May 2004. The research undertaken during May 2004 – March 2005 accordingly covered the period of implementation of the changes to the ABAC scheme and the monitoring of their implementation.

The authors state under "Limitations" that their "study took place during a period when the regulatory authorities, and the industry, were under more scrutiny than normal and thus both the advertising and the responses to complaints may have been influenced by this situation". Yet, they fail to acknowledge the most important limitation on the study, that this period was the implementation period for the new ABAC, a period of transition in which many new processes were being implemented.

### *2.2 "Only industry self-regulation"*

Jones and her colleagues reference a report of the Alcohol and Public Policy Group, involving "119 countries surveyed in 1996" and then state that "Australia, along with the United Kingdom, is one of those [countries] which utilise only industry self-regulation". The system of regulation of alcohol advertising at the time the research was conducted (2004/05) and now, is not *only* industry self-regulation, but rather is a quasi-regulatory system, administered by a management committee which includes industry, advertising and government representatives.

### *2.3 AANA Code of Ethics and ABAC*

The report makes reference to Section 2 of the AANA Code of Ethics, which has been revised. A copy of the current AANA Code of Ethics is attached as **Attachment 1**.

---

<sup>2</sup> At page 73 of the Proof Committee Hansard.

## *2.4 The Complaints Process*

The ASB will normally only accept written complaints – via the online complaint form or by post or facsimile. Complaints submitted by email are redirected to the ASB website. However, in exceptional circumstances, if a complainant is unable to write, oral complaints may be accepted and recorded by ASB staff.

Complaints received by the ASB which fall within section 2 of the AANA Code of Ethics are referred for consideration by the Board. Complaints received by the ASB about alcohol advertising are considered by the Board in relation to their compliance with section 2 of the AANA Code of Ethics and at the same time are independently considered by the chief adjudicator of the ABAC Adjudication Panel to determine if the complaint raises issues under the ABAC. Following meetings between the ABAC management committee and ASB staff in 2005, all complaints about alcohol advertising are referred to ABAC by ASB regardless of the issues raised in the complaint. This was not always the case, but has been the case since late 2005.

The Board complaint resolution process is a free service. A single written complaint is sufficient to initiate the complaint process.

Complaints are promptly assessed as to their appropriateness for submission to the Board for determination. The ASB, as secretariat for the Board, replies to all complainants informing them of the status of their complaint.

Complaints are not forwarded to the Board if they do not fall within section 2 of the AANA Code of Ethics. An example would be complaints about unpaid community service announcements.

The ASB also notifies the relevant advertiser of the complaint and requests a written response. The complaint and this response, along with copies of the relevant advertising or marketing communication, are dealt with at the next meeting of the Board.

## *2.5 Expert assessment of advertisements*

The Board is not intended to be a panel of expert judges similar to that used by Jones and her colleagues for the purpose of their research. While using an expert panel to assess a number of advertisements against the provisions of the ABAC and the AANA Code of Ethics is an interesting exercise, it misses the point that advertising self-regulation, as reflected in the ASB system and the AANA Code of Ethics, is based on prevailing community attitudes and standards rather than those of any particular individual or group. Decisions of an expert panel may result in decisions different to those of a Board of community people, but there is no guarantee that such decisions would be in line with community standards.

The Board determines complaints through a panel of public representatives from a broad cross-section of the Australian community. The Board represents a diverse cross-section of views and skills, a broad range of age groups and is gender-balanced. Individual Board members do not represent any particular interest group and are individually and collectively clearly independent of the industry.

The Board meets on a monthly basis. The Board will also meet between meetings, usually by teleconference if the ASB, as secretariat, considers that a matter should be considered as a matter of urgency.

The Board discharges its responsibilities with fairness, impartiality, detailed discussion and thorough consideration of all issues, and with a keen sense of prevailing community values in its broadest sense. Its task is often a difficult one and the outcomes of its determinations will not and cannot please everyone.

## 2.6 *Scope of research*

We note that the research undertaken by Jones and her colleagues identified a total of 142 unique alcohol advertisements in magazines and 65 television advertisements. From this total, 14 advertisements were identified that the authors considered were in breach of the codes – eight television commercials and 6 magazine advertisements. That is, a total of 6.76% of the alcohol advertisements identified during the monitoring period were considered by the authors of the report to be in breach of the codes. This suggests that, even if the authors' views could be taken to be on a par with the prevailing views of the broader Australian community, then the vast majority of advertisers in the alcohol industry were complying with the ABAC and the AANA Code of Ethics and the quasi-regulatory system was working effectively, even in those early stages when the revised ABAC was being implemented.

In relation to magazine advertisements, the report notes that these were coded as direct advertisements, competitions, advertorial, product promotion and product placement. It is important to inform the Committee that the Board only has jurisdiction to consider issues that are within section 2 of the AANA Code of Ethics.<sup>3</sup> For a complaint to fall within section 2 of the AANA Code of Ethics, the issue raised must relate to an “advertisement” within the definition of the AANA Code of Ethics.

In 2004, when the research was undertaken, the following definition applied:

---

<sup>3</sup> However, in the interests of the self-regulation system, matters that are raised that are not strictly within section 2 of the AANA Code of Ethics, but are unable to be referred to any other regulatory or self-regulatory body, can be considered by the Board. This type of matter may include complaints about the content of an advertisement, such as depictions of cruelty to animals, causing alarm and distress, discrimination on grounds of occupation, and environmental concern. The Board will generally only consider such matters where the advertisement generates a number of complaints and the Board is unable to uphold complaints about such “other” matters unless the Board finds that there is also a breach of a substantive provision of section 2 of the Code.



*In this Code, the term “advertisement” shall mean matter which is published or broadcast, other than via internet, direct mail, point of sale or direct distribution to individuals, in all of Australia or a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public, or a segment of it, to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organization or line of conduct.*

The current wording of the definition is contained in the attached copy of the current AANA Code of Ethics.

Some of the material considered in the report would have been excluded from consideration by the Board on the basis that it was not an “advertisement”, but rather editorial or promotion of magazine competitions.

#### *2.7 Complaints about advertisements previously considered by the Board and number of complaints received*

The report states that “the ASB will only make a determination on an advertisement once (ie will not consider subsequent complaints or the number of complaints made about an advertisement)”. Later, the authors also state that an important issue with the current complaints process is the “lack of consideration of the number of complaints received. The regulatory board does not distinguish adequately between an advertisement which receives one complaint and an advertisement which receives 100 complaints”.

In making its determination, the Board takes into account *all* complaints received up until the date of determination. In regard to any further complaints received after the determination has been made, complainants are provided with a copy of the case report stating the determination made and reasons for determination. Prior to April 2008, Board determinations were final and an advertisement would not be reconsidered by the Board for a period of five years, except in exceptional circumstances as determined by the ASB Chief Executive Officer. Since April 2008, complainants may request a review of a Board determination under an independent reviewer process.

The role of the Board is to assess whether a particular advertisement complies with section 2 of the AANA Code of Ethics. Advertisements referred to the Board are considered against the *whole* of section 2 – the Board is not confined to considering only the issue(s) raised by the complainant(s). If the advertisement is in breach in any way, the complaint is upheld – this will be the case even where the Board finds the advertisement did not breach a particular subsection that was complained about, but did breach another subsection.

It is not accurate to state that the Board will not consider the number of complaints made about an advertisement. The Board does not explicitly factor the number of complaints received about an advertisement into its assessment of whether an advertisement breaches

any part of section 2 of the AANA Code of Ethics. The Board is, however, aware of how many complaints have been received and takes into account all complainants' views in making its decision.

If the Board based its decisions on the number of complaints received, rather than on the compliance of the advertisement with section 2 of the AANA Code of Ethics, this would significantly diminish the Board's capacity to uphold complaints. Many of the advertisements considered by the Board are the subject of only one complaint. In the view of the ASB and the Board, that one person's complaint has as much weight as any other person's complaint.

The advertiser is informed of the number of complaints received and receives full copies of all complaints (including any complaints received after Board determination). Often, advertisers will act to discontinue an advertisement because of the type of concerns raised in a single complaint or because of the volume of complaints received. This is an example of the self-regulation system working as it should. Where the Board has been scheduled to consider an advertisement at its meeting, but the advertiser has chosen to voluntarily withdraw the advertisement in response to complaints received by the ASB or by the advertiser directly, the Board is not required to consider the advertisement but may do so having regard to the policy described above at 1.2.

The ASB takes into account the volume of complaints in relation to particular issues for the purpose of providing feedback to the Board or to other stakeholders. For example, the Board has requested ASB as secretariat to undertake research in the areas of violence and discrimination and vilification because of the significant concerns that have been raised in these areas recently. The ASB has also previously provided information to the AANA and Advertising Federation of Australia, for the information of their members, in regard to increasing numbers of complaints about internet advertising and the ASB's position in regard to such complaints.

## 2.8 *Call for community research*

The authors state that “the current system may not [be] performing an adequate job of representing community standards or protecting the community from offensive or inappropriate advertisements. However, a more definitive answer to this question requires research with members of the community to determine the extent to which they perceive such advertisements to be in breach of the self-regulatory codes” and that “we believe there is a clear need for further research to investigate consumer views of appropriate messages and images in advertising. As there is no definitive definition or updated specification of community standards, there remains no yardstick against which compliance with, or breach of, community standards can be judged. Without a sound understanding of what consumers perceive to be acceptable and unacceptable, it is clearly not possible for the regulatory board to ensure that advertisements are consistent with community standards, particularly in terms of taste and decency”.

Interestingly, again in correspondence with Ms Jones in August 2006, Ms Jolly advised:

“For your information I can let you know that in early 2007 the ASB will be conducting research to assess community reaction to advertisements with the aim of increasing the Board’s awareness of community standards on a number of issues.”

This is not mentioned in the report by Jones and her colleagues.

The ASB issued a media release about the results of the research on 4 December 2007 – information about the research is attached as **Attachment 2** for your information. The aim of the research was to determine if the Board’s decisions are in-line with prevailing community standards on advertising in Australia. The research is to be conducted every two to three years. The research is part of an ongoing commitment to best practice in advertising self-regulation and shows the commitment of the ASB and the Board to revisiting community standards. The Board has occasionally faced criticism that its decisions are out of step with prevailing community standards. The research in 2007 examined the validity of these claims and demonstrated that they are generally unfounded. Where the research did show a gap between Board positions and views of the community, the Board has taken on this feedback and applied it to its subsequent decisions. The research is an important way for the Board to survey the community and reassess their understanding of ever-changing community standards. It serves as a benchmark (or “yardstick” to use the term referred to by Jones et al) against which existing Board members can make determinations and as an important educational tool for future Board members.

Interestingly, in Ms Jones recommendations regarding the Alcohol Toll Reduction Bill’s proposal for all alcohol ads to be pre-approved by a government body (at page 2 of her submission), she states that she would advise that the body be:

“involved in supporting mechanisms that ensure community perceptions are at the heart of this process and that surveys of community perceptions are taken at regular intervals as any panel (no matter how thoughtfully composed) will ever be fully representative of the Australian community. Even if we make a concerted effort at a single moment in time to understand ‘community standards’ they are unlikely to remain static; this is particularly important given the changing demographics of our community over the coming years...”

These same sentiments can equally be applied to the Board in its role representing the broader community and succinctly summarise the reasons that the ASB undertook research into community standards in 2007 and will continue to undertake such valuable research on a regular basis. We cannot (and should not) guarantee that such research will always give the Board a “clean report card”, but we can guarantee that the research will serve to support and educate the Board to help ensure that its decisions remain in line with ever-evolving community standards.

## *2.9 Regulation of once-off promotions*

Our policies and procedures in regard to once-off promotions and withdrawn/discontinued advertisements are discussed above at 1.2.

## *2.10 Complaint based system*

The authors claim it is “problematic to have a regulatory system which is entirely dependent on members of the general public lodging a complaint before consideration is given to whether an advertisement breaches the advertising code”.

This fails to acknowledge the pre-vetting role via the Alcohol Advertising Pre-vetting System within the ABAC scheme, which is specific to alcohol advertising, as well as the pre-vetting applicable to advertisements on commercial television (where advertisements are classified by Free TV’s Commercials Advice division).

## *2.11 Awareness of complaint process*

The report also claims that a “substantial proportion of members of the public who may be offended by, or concerned about, an alcohol advertisement may not have sufficient knowledge of the complaint process and/or may not feel confident to make a complaint”.

In regard to the first part of that criticism, we would point out that the ASB undertakes its own advertising and promotion in relation to the complaint handling process and invites people to complain about matters that concern them. Various government, industry bodies and other organisations with an interest in advertising, list the ASB’s contact details on their website, including the Australian Communications and Media Authority, the Department of Broadband, Communications and the Digital Economy, the Classification Board, Free TV Australia and the Outdoor Media Association. Additionally, members of the public can, of course, contact the relevant media operators that broadcast or published an advertisement and complaints are in fact often forwarded to the ASB from media operators, such as television stations. A simple internet search for “advertising complaint” will also direct interested persons to the ASB website.

A recent major website redevelopment has greatly enhanced the accessibility and efficiency of the complaint handling service. The introduction of a screening and referral page directs complainants to the most relevant agency for their complaint, reducing the number of complaints received that fall outside the ASB’s charter. Increasing the amount of information available on our website has also provided the community with a valuable and user-friendly resource. As of March 2008, our website is consistently averaging 250-300,000 hits per month. Increases in the number of complaints received at the ASB indicate awareness about the complaints-handling process is continuing to rise.

Additionally, the ASB undertook research in 2006 to test public awareness about advertising self-regulation and lodging complaints about advertising. Telephone interviews were conducted with 600 respondents across Australia, using Australian Bureau of Statistics population data to ensure participants were representative of the general public within each state and territory. While only 10% of those surveyed were aware of the ASB without being prompted, awareness increased to 65% after prompting.

As noted in our submission to the Inquiry, an interesting comparison of these findings can be made against the results of a survey released in 2007 by the European Advertising Standards Alliance (EASA), a non-profit organisation bringing together national advertising self-regulation organisations in Europe. The survey was conducted across 13 European countries to test public awareness of advertising self-regulation and lodging complaints about advertising. The survey showed that in Europe, spontaneous awareness of the advertising complaints process was 3%, rising to 17% after prompting.

Results from the public awareness research were also encouraging on the perception of the advertising complaints system in Australia – only 18% of respondents said that they would not complain about an advertisement because they thought it would have no effect. 35% of respondents cited the main barrier for lodging complaints as too much of a hassle or could not be bothered. The results also found that 78% of respondents believed the role of the ASB was important. This is reflected in statistics which have shown a rise in advertising complaints every year since self-regulation began in 1998.

However, the ASB believes there is still scope for greater education and, with this in mind, a public education campaign is being launched on 9 July 2008. We expect that the campaign will increase awareness in the community about the complaints process and hope that it addresses the latter point raised by the authors, if there are any potential complainants who do not feel confident to make a complaint.

#### *2.12 Penalties for breach and non-compliance*

The report states that “under the current self-regulatory system, there are no penalties for advertisements which breach the code and compliance with the recommendations of the regulatory boards is voluntary. This means that, on the rare occasion that a complaint is upheld, the advertiser is not legally obliged to remove or amend the advertisement”.

Like all self-regulatory systems, the basis of the advertising self-regulation system is the codes that the ASB administers and the commitment to comply with those codes by participants of the system. The first, proactive step by participants is the establishment of the codes of conduct that they commit to comply with. The role of the complaints process that the ASB administers is more of a safeguard aimed at ensuring that participants continue to comply with the codes, having regard to ever-changing community standards.

Advertisers that are members of the AANA (which represents 85% of advertising spend in Australia) have an obligation as part of that membership to comply with the AANA codes and to abide by Board decisions. However, Board determinations are not limited to advertisers that are members of the AANA and non-members have complied with Board decisions in the past and will continue to do so, because of the sanctions that are in place.

The Board does not have the power to compel in the form of financial penalties or the authority of law, in the same way that governments have power to compel action of citizens. However, an upheld determination by the Board can have significant impact on a brand and its bottom-line, which should not be discounted.

Since 2005, each Board meeting is followed by a media release outlining key decisions of the Board and notifying the media that all case reports have been published on the ASB website and are freely available to the public. The impact of potential press coverage on a brand's reputation, coupled with the financial impact on an advertiser of having to abandon or significantly revise its advertising or marketing campaign can be very serious, particularly where the campaign crosses several different media. An upheld determination can also impact the relationship between the advertiser and its advertising agency.

Importantly, if an advertisement is found to breach section 2 of the AANA Code of Ethics and the advertiser does not respond to the opportunity to modify or discontinue the advertisement within the allowed time frame, the Board can do any or all of the following:

- Include the advertiser's failure to respond in the case report;
- Forward the case report to media proprietors;
- Post the case report on the ASB's website; and
- If appropriate, refer the case report to the appropriate government agency or industry organisation.

An example of the effectiveness of these sanctions is a recent case involving an advertiser that is not a member of the AANA. In this case, the Board upheld complaints about the relevant advertisement. The advertiser felt compelled to act on the determination of the Board when alerted by the ASB to the above sanctions that the Board can impose for failure to act on the determination.

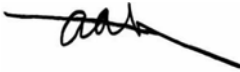
In relation to the second point listed above, it should be noted that the various media associations, such as Free TV Australia, Commercial Radio Australia and the Outdoor Media Association, have publicly stated their commitment (on behalf of their members) to complying with determinations of the Board. If necessary, the ASB will ask the associations and/or their members to take action to remove/discontinue an advertisement that is the subject of an upheld complaint.

For example, action has previously been taken by the Outdoor Media Association at the request of the ASB where an advertiser declined to comply with the Board's determination and remove an advertisement. In this case, the Outdoor Media Association arranged removal of the advertisement. More recently, an advertiser refused to respond to ASB contact regarding the obligation for him to remove his advertisement. Negotiation with relevant newspaper media in the relevant jurisdiction resulted in no further publication of the advertisement. Through this involvement of the media associations, in supporting the self-regulation system, there has been 100% compliance by advertisers and affiliated organisations with Board determinations.

\* \* \* \* \*

I appreciate the opportunity to provide the Committee with this update regarding the ASB's role in the administration of alcohol advertising and I would be happy to elaborate on any of the comments provided here, if required by the Committee.

Yours sincerely,



Alison Abernethy  
Chief Executive Officer