



**ADVERTISING
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The Secretary
Senate Standing Committee on Environment,
Communications and the Arts
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[By Email]

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Dear Sir/Madam

Advertising Standards Bureau submission: Inquiry into the sexualisation of children in the contemporary media environment

The Advertising Standards Bureau (ASB) makes this submission to provide information to assist the deliberations of the Senate Environment, Communications and the Arts Committee Inquiry into the sexualisation of children in the contemporary media environment (the Inquiry).

This submission provides information pertinent to paragraph (c) of the Inquiry's terms of reference:

“examine strategies to prevent and/or reduce the sexualisation of children in the media and the effectiveness of different approaches in ameliorating its effects, including...change in media and advertising regulation...”

The submission describes and supports advertising industry self-regulation and the codes and processes which are in place and already followed by the advertising industry in Australia.

Executive Summary

- The ASB plays an important role in maintaining high standards of advertising in Australia through industry self-regulation.
- National advertising in Australia is regulated through a voluntary system of compliance with industry codes (the Codes) established by the Australian Association of National Advertisers (AANA) and administered by the ASB through a complaint resolution process undertaken by the Advertising Standards Board (the Board).

- To enhance the Board's decision-making process, the ASB conducted research into prevailing community standards in 2007. The Board has taken into account feedback from the research which suggested the community was more conservative than the Board in its attitude toward sex, sexuality and nudity. This research will be conducted every 2-3 years.
- To date, the ASB has received very few complaints relating to advertisements that could be described as sexualising children. Many complaints received related to advertisements of a kind that the community would find acceptable and were accordingly dismissed.
- Under the current Codes, advertisements that allegedly sexualise children are dealt with under general provisions relating to matters of sex, sexuality and nudity and advertising to children.
- From **18 April 2008**, a revised *AANA Code for Advertising and Marketing Communications to Children* will apply, specifically covering the issue of sexualisation of children. The revised code will:
 - provide the Board with a clearer mandate to uphold complaints about advertisements which sexualise children;
 - provide the public with a specific Code provision against which they can make complaints about advertisements that allegedly sexualise children; and
 - provide advertisers with the clear message that advertisements which sexualise children are unacceptable.

The detail of this submission is provided at Appendix 1 to this letter. Included is:

- an outline of the advertising Codes under which the Board makes decisions regarding the sexualisation of children;
- information about complaints received by the ASB about the sexualisation of children; and
- background information about advertising self-regulation, the operations of the ASB, the Board and the complaint resolution process.

I would appreciate the opportunity to elaborate on the comments provided in this submission if required by the Committee.

Yours sincerely



Alison Abernethy
Chief Executive Officer

Advertisements that sexualise children

Codes under which the Board makes decisions regarding sexualisation of children

Advertisements raising issues relating to the sexualisation of children can be considered by the Board under sections 2.3 and 2.4 of the AANA Code of Ethics (Ethics Code), and the AANA Code for Advertising to Children (Children's Code).

Importantly, the AANA has recently undertaken a review of the Children's Code, to ensure it keeps pace with prevailing community standards. One of the issues considered by the review was the sexualisation of children in advertising. The ASB provided input to this review taking into account the findings of its own independent research and feedback from the Board and the public. The collaborative approach to the review demonstrates the industry takes seriously its responsibilities in relation to self-regulation and seeks to accommodate issues of concern to the community.

As a result of this review, section 2.4 of the revised Children's Code comes into operation from 18 April 2008, as follows:

2.4 Sexualisation

Advertising or Marketing Communications to Children:

- (a) must not include sexual imagery in contravention of Prevailing Community Standards;
- (b) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.

As far as is relevant, sections 2.3 and 2.4 of the Ethics Code provide:

- 2.3 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.
- 2.4 Advertising or Marketing Communications to Children shall comply with the AANA's Code for Advertising & Marketing Communications to Children í

The ASB understands that the AANA is making its own submission to the Inquiry, which we expect will provide further information regarding the revisions to the Children's Code.

The ASB considers that the revision of the Children's Code will:

- provide the Board with a clearer mandate to uphold complaints about advertisements which sexualise children;
- provide the public with a specific Code provision against which they can make complaints about advertisements that allegedly sexualise children; and
- provide advertisers with the clear message that advertisements which sexualise children are unacceptable.

The full text of the Ethics Code is provided as an attachment to this submission (**Attachment A**).

The full text of the revised Children's Code is provided as an attachment to this submission (**Attachment B**).

Complaints to ASB about sexualisation of children

Since the Board was established, the number of complaints that may be regarded as concerning the sexualisation of children has been negligible. The ASB does not hold statistics on cases that would fall within this category, as such cases have previously been considered under section 2.3 of the Ethics Code, which covers a broader range of issues relating to sex, sexuality and nudity.

However, statistics are available in relation to the number of complaints about advertisements under each section of the Code received from 2004 to 2007. This is provided at **Attachment C**. The rationale for decisions made under section 2.3 of the Ethics Code are provided in the case reports available on the ASB website.

Complaints that come before the Board on the issue of sexualising children often concern advertisements that many in the community would regard as acceptable – for example, advertisements which show babies having their nappies changed. An example of a case regarding such a complaint that was dismissed by the Board is included at **Attachment D** for your reference (Case 188/06).

Two further examples of cases dismissed by the Board, where the complaints made reference to the impact of the advertisements on children, are included at **Attachments E and F** (Case 286/05 and Case 52/08).

An example of a case the Board upheld relating to an advertisement falling within the category of sexualising children is included at **Attachment G** (Case 420/06).

Background

Self-regulation of the Australian advertising industry

Advertising in Australia is administered through a national system of self-regulation. The self-regulation system recognises that advertisers share a common interest in promoting consumer confidence and respect for general standards of advertising.

Funded through a levy paid by Australian advertisers, this proven system of advertising self-regulation has operated since 1998 following extensive consultation with the industry, the government and consumer representatives.

The self-regulation system accords with the views of organisations such as the International Chamber of Commerce that it is in the best interest of communities to avoid excessive regulation in the field of advertising and commercial communications that would hinder free trade and affect economic growth and development.

The self-regulation system relies on the following codes of practice administered by the ASB (see role of the ASB below):

- Ethics Code
- Children's Code - a revision of this Code (AANA Code for Advertising and Marketing Communications to Children) will apply as of 18 April 2008
- AANA Food and Beverages Advertising and Marketing Communications Code
- Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising
- Alcohol Beverages Advertising Code (ABAC) management scheme (complaints under this scheme are accepted by ASB and forwarded for consideration by the ABAC chief adjudicator).

The first two codes listed above, the Ethics Code and Children's Code, include provisions relevant to combating the sexualisation of children in advertisements (refer above).

Role of the ASB

The ASB is established for the purposes of:

- Establishing and monitoring a self-regulatory system to regulate advertising standards in Australia
- Promoting confidence in, and respect for, the general standards of advertising on the part of the community and the legislators
- Explaining the role of advertising in a free enterprise system

- Running other regulatory systems as contracted from time to time.

The ASB administers the complaints resolution component of the advertising self-regulation system. The ASB accepts complaints about advertisements for determination by the Board and the Advertising Claims Board (Claims Board). The Board's role is considered in further detail below. The role of the Claims Board is outside the scope of this submission.

Continuous improvement of the ASB

The ASB approaches its role with a view to continuous improvement, taking into account input from the public and the industry, and considering international practices relating to advertising self-regulation.

The ASB performs effectively against international best practice. This is supported by the ASB and AANA's recent score of 100% compliance with the World Federation of Advertisers' gold standard for advertising and marketing communications self-regulation. The essential criteria required of Australia's self-regulation system in meeting this standard are:

- Universality (covering all advertising and backed by advertisers/agencies and media)
- Sustained and effective funding
- Efficient and resourced administration
- Universal and effective codes
- Advice and information
- Prompt and efficient complaint handling
- Independent and impartial adjudication
- Effective sanctions
- Efficient compliance and monitoring
- Effective industry and consumer awareness.

A further measure of the ASB's performance against international best practice is its recent short-listing for a European Advertising Standards Alliance (EASA) award recognising the efficiency of its complaints process. EASA is a non-profit organisation bringing together national advertising self-regulation organisations in Europe. While EASA's primary membership is European, its corresponding members include New Zealand, Canada, South Africa and Australia. The ASB became a corresponding member of EASA in 2006.

With the appointment in 2005 of an inaugural Chief Executive Officer, the ASB has undergone a substantial remodelling which has included a range of initiatives to improve the transparency and accountability of its complaint handling service.

The initiatives aimed to:

- Inform the public about the role of the ASB and promote community awareness of the complaints process
- Improve the efficiency, timeliness and effectiveness of complaint handling procedures
- Work with and educate advertisers and the advertising industry in relation to the industry codes of practice and the role of the ASB in administering those codes
- Maintain the independence and effectiveness of the Board (discussed below under Role of the Board).

Informing the public

Since 2005, the ASB has been working to raise its profile and make its target audience and stakeholders aware that the advertising industry has an effective, accountable and transparent complaints avenue in place.

A major website redevelopment has improved communication with the public by publishing every case report online. The case reports outline the complaint(s) made by the public, the advertiser's response to the complaint and the Board's decision and reasons for its decision.

Also since 2005, the ASB has ensured that each Board meeting is followed by a media release outlining key decisions of the Board. This release also serves to notify the media that all case reports have been published on the website and are freely available to the Australian public. This process highlights the increased transparency of Board decision-making.

Community awareness

The ASB conducted research into community awareness of the advertising complaints process in late 2006. The research found that while only 10 per cent of Australians were aware of the ASB without being prompted, awareness increased to 65 per cent after prompting.

An interesting comparison of these findings can be made against the results of a survey released in 2007 by EASA. 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 per cent, rising to 17 per cent after prompting.

The results of the ASB community awareness research also found that 78 per cent of Australians believed the role of the ASB was important, indicating that the advertising complaints system has penetrated into some of the community. This is reflected in statistics which have shown a rise in advertising complaints every year since self-regulation began in 1998.

The ASB plans to conduct a public education campaign later this year to further increase awareness in the general Australian public of the ASB, its aims and activities. The campaign will be launched on 9 July 2008 by Senator Stephen Conroy, Minister for Broadband, Communications and the Digital Economy. The objectives are to increase awareness of the public complaints process administered by the ASB and to encourage consumers to visit the ASB website. It is expected that

the campaign will also encourage members of the community to lodge complaints if they consider that an advertisement breaches a provision of the relevant Codes.

Improving complaint handling procedures

The website redevelopment referred to above has also greatly enhanced the transparency, accessibility, fairness and efficiency of the complaint handling service by:

- automating many of the processes which were previously undertaken manually (eg. lodgement of complaints, generation of response letters and case reports for complainants and advertisers) thus reducing response time;
- introducing a screening and referral page (designed to reduce the number of complaints received outside the ASB charter); and
- providing complainants with appropriate referral information if their complaint is outside the ASB charter.

Working with and educating the industry

The ASB's industry partners include:

- The Australian Communications and Media Authority
- The AANA
- The Advertising Federation of Australia (AFA)
- Commercials Advice Pty Ltd
- Free TV Australia
- Internet Industry Association
- Commercial Radio Australia
- Australian Direct Marketing Association
- Australian Publishers Bureau
- ABAC
- Media Federation of Australia
- Australian Direct Marketing Association
- Distribution Standards Board
- The Outdoor Media Association
- Telephone Information Services Standards Council
- State Government Consumer Affairs departments

Over the last three years, the ASB has formed close links with industry partners. In addition, it has conducted information sharing events with its industry partners and has invited them to present information at regular training sessions for Board members.

An example of ASB's industry collaboration is its involvement in the AFA's Advertising Codes and Regulations workshops, conducted under the AFA Accreditation program. The workshops are a joint initiative of the AFA, AANA, ASB and Free TV and aim to address the need for agency staff to remain up to date with an increasingly complex regulatory environment. In September 2006, more than 300 agency staff across five states participated in the workshops, which were instrumental in helping agencies meet their compliance requirements. The next round of seminars is scheduled for

mid-2008. They will cover the AANA Food and Beverages Advertising & Marketing Communications Code, the Children's Code, Motor Vehicles Code and the Ethics Code.

In addition to its cooperation and collaboration with local industry representatives, the ASB has formed links with its counterparts in other countries to help identify best practice approaches to self-regulation through knowledge sharing. As noted above, in 2006 the ASB became a corresponding member of EASA. EASA sets international benchmarks for best practice in advertising self-regulation and is the single authoritative voice on self-regulation issues. It promotes high ethical standards in commercial communications by means of effective self-regulation, while being mindful of national differences of cultural, legal and commercial practice. Through this membership, the ASB is exposed to the latest information, knowledge and experience in best practice policy and implementation of advertising self-regulation. The ASB provides information to EASA regarding the Australian process and shares information on operational and policy matters.

Role of the Board

The sole function of the Board is to decide complaints about advertisements by applying the relevant codes. The centre-piece of the self-regulation system is therefore the dedication, composition and independence of the Board.

The Board provides a free public service of complaint resolution. It 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.

The Board makes its determination under appropriate sections of the Ethics Code and Children's Code (as relevant to this submission), as prescribed by the AANA, by following principles laid down by the AANA in consultation with the community and the advertising industry.

The public-mindedness, dedication and independence of the Board continues to earn it the admiration and respect of both the Australian community and the industry. The Board discharges its responsibilities with fairness, impartiality 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.

Maintaining an independent and effective Board

The Board is made up of people from different walks of life with a diverse cross-section of views and skills. It also represents 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. On the rare occasion in which an individual member has had a connection with a party concerned in a particular determination, that Board member absents herself or himself from the meeting. Profiles of current members of the Board are included as an attachment to this submission (**Attachment H**).

Since 2005, a number of changes have been made to the structure and procedural arrangements of the Board, including:

- Expansion of the Board from 12 to 16 members to ensure it remains broadly representative of the age, gender, cultural, professional and geographic make-up of the Australian community; and
- Appointment of new members to the Board for fixed three year terms, and at staggered intervals to ensure that the Board retains a strong community understanding, involvement and focus and a mix of experienced and new members.

The number of complaints upheld by the Board has increased, suggesting the new Board structure has brought about more robust scrutiny of the Ethics Code.

Additionally, the ASB has undertaken a number of significant research projects designed to inform its strategic decision-making. One such project was conducted in 2007 to determine if the Board's decisions are in line with community standards on advertising in Australia. This research was a world-first among countries supporting advertising self-regulatory systems. The research will be undertaken every 2-3 years.

The research demonstrated that Board decisions generally reflect community standards on the key provisions of the Ethics Code. However, the research also showed that the community is more broadminded about politically incorrect statements when used with humour, but were more conservative than the Board in their attitude towards sex, sexuality and nudity. Board members have embraced the community feedback and since the research was released at the end of 2007, Board members have taken the results into account in their consideration of complaints under the Code.

One of the issues that the ASB has pursued as a result of its membership of EASA is the introduction of a review process for Board decisions. This process, and the appointment of Ms Deirdre O'Connor as the Independent Reviewer of Board decisions, commenced in April 2008. The introduction of the Independent Reviewer process is part of the ASB's commitment to international best practice, and ensures a fairer and more transparent process than was available previously.

The complaints process

Some important aspects of the Board complaints process are:

- Complaints will only be forwarded to the Board for determination where the matter constitutes an advertisement for the purposes of the Ethics Code.
- The Board has jurisdiction to consider issues that are within section 2 of the Ethics Code. However, in the interests of the self-regulation system, matters that are raised that are not strictly within section 2, but are unable to be referred to any other regulatory or self-regulatory body, can be considered by the Board. The Board will generally consider such matters where the advertisement generates a number of complaints.
- A single complaint provides an opportunity for scrutiny of an advertisement against community standards in accordance with the Ethics and Children's Codes.

- A large proportion of advertisements (cases) come before the Board having been triggered by only a single complaint.
- The Board considers complaints in light of section 2 of the Ethics Code as a whole and accordingly may apply any part of section 2 in reaching a determination. It is not limited, in its considerations, to issues raised by the complainant.
- If an advertisement is found to breach section 2 of the Ethics Code and the advertiser does not respond to the opportunity to modify or discontinue the advertisement within the allowed time frame, the Board will:
 - if appropriate, refer the case report to the appropriate government agency;
 - include the advertiser's failure to respond in the case report;
 - forward the case report to media proprietors; and
 - post the case report on the ASB's website.
- Since the ASB was established, there has been only one advertiser who has declined to comply with the Board's determination and remove the advertisement. In this case, the relevant media agency (the Outdoor Media Association) arranged the removal of the advertisement. There is therefore 100% compliance by advertisers and affiliated organisations with Board determinations.
- Original complainants and advertisers may, from April 2008, request an independent review of a Board decision regarding a particular advertisement.

A copy of the complaints process is included as an attachment to this submission (**Attachment I**).

An outline of the independent review process is provided as an attachment to this submission (**Attachment J**).

Conclusion

The Codes administered by the ASB as part of Australia's system of self-regulation aim to ensure that advertisements are prepared with a sense of obligation to the consumer and society.

The ASB, and in particular the Board, recognises the important responsibility it has to the community to ensure advertising content meets prevailing community standards in accordance with the Codes.

The Board takes its responsibility regarding issues surrounding the sexualisation of children very seriously. Decisions to dismiss such complaints arising under the existing provisions of the Ethics and Children's Codes have been made with the appropriate and careful consideration it gives to all cases.

From April 2008, the Children's Code includes a specific provision dealing with advertisements that sexualise children, which will greatly enhance the Board's ability to combat advertising falling within this category.

Index of Attachments

Attachment A – AANA Code of Ethics

Attachment B ó AANA Code for Advertising and Marketing Communications to Children

Attachment C ó Advertising Standards Bureau 2007 Statistics

Attachment D ó Case Report (Complaint reference number 188/06)

Attachment E ó Case Report (Complaint Reference Number 286/05)

Attachment F ó Case Report (Complaint Reference Number 52/08)

Attachment G ó Case Report (Complaint Reference Number 420/06)

Attachment H ó Profiles of current board members

Attachment I ó Advertising Standards Board Complaints Process

Attachment J ó Independent Review Process