

# The regulation of advertising to children in Australia

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Peter Le Guay continues our series of legal briefings in conjunction with the Global Advertising Lawyers' Alliance by outlining the state of affairs in Australia.

**T**HE REGULATION of advertising to children in Australia has developed in much the same way as the regulation of advertising generally in Australia. That is, the federal and state (or territory) consumer protection legislation and federal broadcasting legislation is supported by a myriad of industry-specific codes of practice and guidelines.

## Legislation

### Consumer protection legislation

The main consumer protection legislation regulating advertisements to children and advertising generally in Australia includes the federal Trade Practices Act 1974 (TPA), and the corresponding Fair Trading Acts (FTAs) of the eight states and territories of Australia. In essence, the consumer protection provisions in the TPA and the FTAs prohibit corporations or persons from engaging in conduct that is misleading or deceptive, or is likely to mislead or deceive. In addition, corporations or persons are also prohibited from making certain false or misleading representations in relation to the promotion by any means of the supply or use of goods or services. In both situations civil remedies are available (including restraining orders and damages), and for false or misleading representations criminal sanctions are also applicable by way of the imposition of substantial fines.

### Broadcasting legislation

The Australian Broadcasting Authority (ABA) was established by the Broadcasting Services Act 1992 and is responsible for, among other things, assisting the television, radio and internet industries in developing their codes of practice, as well as developing and administering programme standards about Australian content in children's programmes on commercial television. In particular, the ABA's Children's Television Standards (CTS) are an acknowledgement by the ABA that children require special consideration in areas such as advertising and the presentation of material that may be harmful to them.

The CTS distinguish between two types of children's programmes namely, C programmes (for children aged up to 14 years) and P programmes for pre-school children (for children who have not yet started primary school). The C and P classifications also establish specific broadcast time bands which are subject to a range of content and other restrictions as set out in standards 10 and 13–23 of the CTS and include such things as:

- what is regarded as suitable material for both programmes and advertisements
- classification of advertisements
- maximum advertising time
- separation of advertisements and sponsorship announcements

- repetition of advertisements
- content of advertisements
- undue pressure in advertisements
- clarity of presentation in advertisements
- disclaimers and premium offers
- competitions
- promotions and endorsements by programme characters
- advertising of alcoholic drinks.

### **Codes of practice and industry guidelines relevant to children**

The various industry-specific codes of practice and guidelines relevant to advertising to children usually form part of a broader industry-specific code of practice or guidelines, and generally are not legally binding. They are, however, an integral part of the advertising self-regulation system in Australia, and advertisers and marketers in Australia are expected to adhere to and comply with them. Sanctions vary from code to code though in certain media, such as broadcasting, failure to comply with the provisions of a code generally will mean that the proposed advertisement will not be cleared for broadcasting to the general public. Without clearance approval, broadcasters in Australia will not broadcast an advertisement.

#### **Advertiser code of ethics**

The Australian Association of National Advertisers (AANA) developed an advertiser code of ethics in the late 1990s 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'. Whilst the code of ethics mirrors much of the general consumer protection legislation, it specifically prohibits advertisements for

children's products from containing anything which is likely to cause alarm or distress to children.

#### **AANA principles and advisory notes for advertising to children**

In addition to the advertiser code of ethics the AANA has developed, in association with the Advertising Federation of Australia (AFA), specific principles and advisory notes for advertising to children, which relate to all forms of media including interactive electronic media, and are intended to help and encourage responsible children's advertising. The principles complement the ABA's CTS, as well as a range of other relevant industry codes of practice. For the purpose of the principles, children are defined as meaning all children aged 14 years and under. The principles provide recommendations in respect of the following issues concerning children's advertisements:

- product presentations and claims
- sales pressure
- safety
- promotions, competitions and clubs.

#### **Commercial radio codes of practice and guidelines**

These codes do not make any specific references to advertising to children although, among other things, they prohibit a licensed radio broadcaster from broadcasting a programme which involves the misuse of alcoholic liquor or the use of illegal drugs, narcotics or tobacco. Furthermore, licensed radio broadcasters must not broadcast a feature programme which involves an explicit sexual theme, unless it is broadcast between the hours of 9.30 pm and 5 am and an appropriate warning is made prior to the commencement of the programme and at hourly intervals during

the broadcast of the programme. In addition, advertisements must not be presented as news programmes, or any other type of programme, and must comply with all other codes of practice so far as they are applicable.

### **Commercial television industry code of practice**

This code of practice regulates the content of commercial television in accordance with current community standards, and in particular ensures that viewers are assisted in making informed choices about their own and their children's television viewing; it operates alongside the ABA's CTS. The code also assists in the regulation of the classification and placement of commercials and community service announcements.

The code is supplemented by the Television Commercials Production Checklist which has been developed by Commercials Advice Pty Limited (CAD), and provides a detailed checklist of the issues to be considered in producing a television advertisement for public broadcast, whether aimed at children or the public generally. The CAD is administered on behalf of the members of Commercial Television Australia Ltd (CTVA) (formerly the Federation of Australian Commercial Television Stations (FACTS)), which are free-to-air commercial television broadcasters. In relation to children, the CAD checklist confirms the requirement for advertisements to comply with the ABA's CTS 10 and 13–23 inclusive. It also provides guidelines in respect of the prohibition of the presentation of 'images or events which depict unsafe uses of a product or unsafe situations which may encourage children to engage in activities dangerous to them'. These sorts of activities include the following:

- children and bicycles

- children and dangerous substances
- children and fire, electricity and explosives
- children and heights
- children and road safety
- children and safety in general.

In addition, Australia's two public broadcasters, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service Corporation (SBS), both have their own individual codes of practice (although the ABC is commercial-free).

### **Telephone Information Services Standards Council code of practice**

The Telephone Information Services Standards Council (TISSC) is an independent self-regulatory body funded by the Telephone Information Services industry. In relation to children, the TISSC code of practice regulates the maximum cost of children's premium rate services. It also states that any advertisement for a children's premium rate service must not encourage repeat calling of the service (or encourage children to call any other premium rate service). The advertisement must also contain a warning that callers under 14 years of age must not use a service without the permission of a responsible adult. In addition, the code generally requires advertisements to comply with the AANA advertising code of ethics, and the relevant broadcasting laws, standards and codes of practice.

### **Australian Direct Marketing Association's online marketing guidelines**

The Australian Direct Marketing Association (ADMA) has developed industry guidelines for online marketing and specifically in relation to children. The guidelines encourage members to display a notice on their website that invites parents and guardians to monitor and share in

their children's online experiences whenever possible, and in the collection of data from children marketers are required to encourage children to consult with their parents before furnishing any data.

### **The internet industry code of practice**

This code places an obligation on internet service providers (ISPs) to insert prominent notices on packaging (in which the internet access account is marketed) to the effect that persons under the age of 18 years should obtain the consent of a parent, teacher or other responsible adult prior to using the internet access account. ISPs are also obliged to install a procedure in the registration process for an internet access account in which the person opening the account confirms that they are not under the age of 18 years or, if they are, that they have obtained the consent of a parent, teacher or other responsible adult. The code also regulates content in respect of children, as well as the provision of information for parents to control their children's access to internet content.

### **Alcohol and tobacco**

Alcohol advertising in Australia is self-regulated with advertisers subject to a voluntary code that obliges alcohol industry members not to encourage over-consumption or under-age drinking and further states that any adult featured in advertising must be over 25 years of age.

Tobacco advertising is strictly controlled in Australia through both federal and state (or territory) legislation, and is generally prohibited. The aim of the legislation is to limit the exposure of children and young people to any form of persuasion to smoke and the legislation also prohibits the association of smoking with social

success, business advancement and sporting prowess.

### **Recent developments**

The current debate regarding childhood obesity in New South Wales and the advertising and marketing of 'junk food' to children has prompted advertising industry groups, in conjunction with the ABA, to review the relevant advertising codes of practice as they relate to children. The New South Wales Childhood Obesity Summit took place on 10–12 September 2002 and a number of resolutions were agreed with regard to the advertising of food to children, especially those aged 0–8 years.

The resolutions are very detailed and are industry specific. The areas covered by the resolutions are early childhood, family and community, school education, health, sport, recreation and fitness, local government, commercial food industry, media, and transport and planning.

As far as the media industry is concerned, the main resolutions were as follows:

- that the AANA, together with the AFA, undertake a review of the existing code on advertising to children and to consult with the ABA on the implementation of that code
- that the CTVA engage in a widespread public consultation on the commercial television industry code of practice in conjunction with the ABA
- that an independent review by the Federal Government be conducted on the current regulatory frameworks governing food advertising in the media to children so as to ensure both maximum clarity and effectiveness of

the regulations and their operation, and a media environment that promotes balance, healthy eating and lifestyle choices

- that a systematic, scientific review of the potential impact of media and food advertising on diet, physical activity and childhood obesity be undertaken
- that a national public awareness/information campaign be designed and implemented in conjunction with, or including the development of, relevant support networks. The key elements of the campaign should include:
  - (a) positive images to inform families, institutions and individuals and empower them to make healthy choices about nutrition, physical activity and sedentary lifestyles
  - (b) consistent core messages across key environment settings, e.g. school, work, home, community and food outlets
  - (c) recognition of cultural diversity and the concerns and needs of different groups within the community
- that the New South Wales Government convene a high-level group with representation from print and electronic media, young people, health and other appropriate research experts to develop, implement and evaluate a strategy to
  - (a) inform print and electronic media, including indigenous and ethnic media, about the significance of childhood obesity, and its health and social consequences
  - (b) encourage the presentation of positive role models and positive messages about healthy, balanced food choices and physical activity across all aspects of the media.

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