

# Advertising Standards Authority

*Natural Health Products New Zealand Compliance Workshop*

*29<sup>th</sup> May 2018*

# Advertising Standards Authority

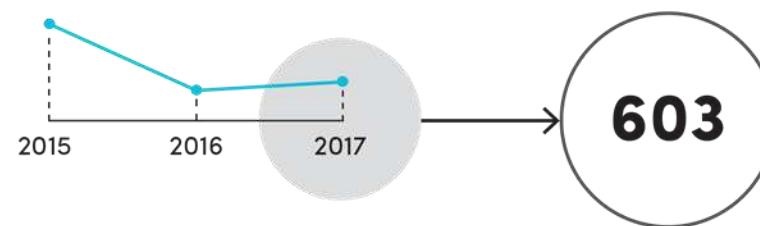
- Tripartite process - Advertisers / Agencies / Media
- Front of house – setting the standards and processing complaints
- Behind the scenes – information service, pre-vetting referral, decision compliance, competitor complaints, advice on complaints process, advocacy, training and education, guidance note development, media management and government relations

# 2017 Complaints

▲ | +3%

## Complaints

*INCREASE FROM 2016*



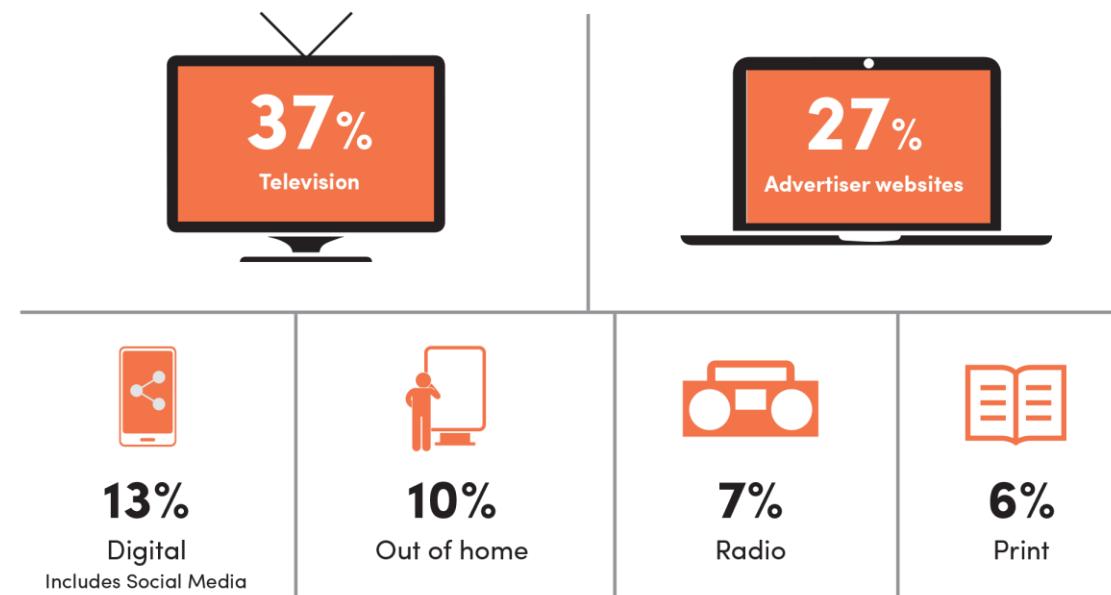
# 2017 Decision Outcomes



# 2017 Most complaints by issue



# 2017 Most complaints by medium



# 2017 Most complaints by product or service



# OUR VISION

Every ad a  
responsible ad

# Why is Compliance Important?

- Best defence against the risk of more regulation
- Maintains / builds Consumer trust in advertising
- Keeps sector standards high to maintain / build reputation
- Complaints can taint a whole sector
- Complaint decisions are made public
- Journalists love a good decision story
- Important where consumer knowledge is low and they're likely to believe what they read / hear

# **Definition of an Advertisement**

**“Advertising and advertisement(s)”** means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

# Identification of Advertising

- New [ASA Guidance Note on the Identification of Advertisements](#) released 28<sup>th</sup> February 2018
- Guidance requested from consumers and industry
- Lines between content and advertising are progressively blurring
- Particularly relevant to online influencers and companies that utilise influencers as part of their marketing strategy

# Step 1. What is an advertisement?

Content controlled directly or indirectly by the advertiser

# Step 2. Identification of Advertising

## Code of Ethics, Rule 1

**Identification** – Advertisements should be clearly distinguishable as such, whatever their form and whatever the medium used; when an advertisement appears in a medium which contains news or editorial matter, it must be presented so that it is readily recognised as an advertisement.

***Where it's obvious and well understood by the audience that it's an ad, a change to how the ad is identified is unlikely to be necessary.***

# Use of Influencers and Native

Content controlled by an advertiser or their partner organisation (e.g. PR Company, Advertising Agency) must be identified as advertising.

*Opinion from an influencer without advertiser control is unlikely to be advertising*

# The Advertising Standards Code

- Consolidation to eliminate repetition (release date 1<sup>st</sup> July 2018)
- One Code for all advertisements – ‘Due Standard’

## Six Codes Into One

- Advertising Code of Ethics
- Code for Comparative Advertising
- Code for Environmental Claims
- Code for Advertising of Food
- Code for People in Advertising
- Code for Advertising Vehicles

# The Advertising Standards Code

Additional Codes remain for risk areas / vulnerable audiences – ‘High Standard’

- Alcohol
- Children and Young People
- Gaming and Gambling
- Financial
- Therapeutics and Health

# Common Pitfalls

- Focusing only on the Therapeutic and Health Advertising Code
- The Advertising Standards Code
  - Safety
  - People in advertisements

# Therapeutic and Health Advertising Code

- HIGH standard of social responsibility (content and placement)
- Structured to reflect current legislation so it should be consistent with e.g. the Medicines Act and the Dietary Supplements Regulations
- NHP Bill language used (where possible) to define e.g. 'health benefit'

# Therapeutic and Health Advertising Code

This Code covers all words and visual depictions in all advertising for therapeutic products (medicines and medical devices), **natural health products and dietary supplements**, health services and methods of treatment. This Code **may also apply when therapeutic or health claims are made in advertisements for other products or services not defined in this code**. This Code does not apply to labels or packaging. However, **when a label or packaging appears in an advertisement it forms part of the advertisement and therefore any visible aspects are covered by this Code**.

# Therapeutic and Health Advertising Code

## Definitions

**'Natural Health Products and Dietary Supplements'** – Products for the primary purpose of bringing about a health benefit to the person who uses the product. May include Natural Health Products, Dietary Supplements, Herbal Preparations and Traditional Medicines.

**'Health Benefit'** – Means any one of the following benefits:

- 1.the maintenance or promotion of health or wellness
- 2.nutritional support
- 3.vitamin or mineral supplementation
- 4.maintaining the normal structure or function of the body

# Substantiation of claims

## ASA Code of Ethics

**Rule 2. Truthful Presentation** – Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

# Substantiation of claims

## ASA Therapeutic and Health Advertising Code

### **Rule 2(a)**

Advertisements shall be accurate. Statements and claims shall be valid and shall be able to be substantiated. Substantiation should exist prior to a claim being made.

## Fair Trading Act

*It is an offence under the Fair Trading Act to make a claim in an advertisement that cannot be substantiated. Advertisers must be able to back up a claim before the claim is made in an advertisement. This Commerce Commission [Fact Sheet](#) provides an overview of the substantiation provisions of the Fair Trading Act.*

# Substantiation for a health benefit claim?

## Tips

- The ASCB is made up of 9 members, 5 public and 4 from the advertising industry. There is one medical doctor on this board. If you need to defend a complaint about alleged misleading claims, consider their likely interpretation of the substantiation you provide.
- Think about how you might defend a claim before you make the claim in an advertisement.
- Have suitable substantiation on-hand before you make a health benefit claim in an advertisement.

# Substantiation for a health benefit claim?

## Tips

- Does your evidence;
  - Show the ingredient(s) in your product that you make the claim about are able to survive the digestive processes, can be detected in the body where the benefit is claimed and have the supportive activity at the site or sites in the body you claim?
  - Are your studies in humans?
  - Are the studies well designed? Are there any limitations to the studies that would reduce the impact of the results?
  - Have the studies been published in peer-reviewed journals?

# Substantiation for a health benefit claim?

## Tips

- What's not considered 'suitable' substantiation;
  - Anecdotal evidence from customers or customer testimonials;
  - Newspaper, magazine or Wikipedia articles;
  - Sales material from the manufacturer;
  - Low return rate or money back guarantee.

See the ASA's [Guidance Note on Responding to a Complaint about Misleading Claims](#)

# Testimonials

## Therapeutic and Health Advertising Code

**Rule 2(f)** Patient testimonials and healthcare professional endorsements in advertisements, **where not prohibited by law, shall comply with the Code, be authenticated, genuine, current, and typical and acknowledge any valuable consideration. Exceptional cases shall be represented as such**

# Testimonials

- Testimonials in advertisements to consumers about a benefit from a medicine or medical device or method of treatment are not permitted by law (Section 58 (1) (c) (iii) Medicines Act)
- Testimonials about natural health products that claim a therapeutic benefit are not permitted by law (i.e. appearing to be a medicine or medical device)
- Applies to User Generated Content on social media sites and websites where the site is controlled by the advertiser (or a third party e.g. influencers)
- Monitor posts, remove testimonials & explain to consumer

# Customer Reviews

Section 58 (1) (c) (iii) Medicines Act doesn't refer to 'testimonials' or 'customer reviews'

## 58 Further restrictions on advertisements

- (1) Subject to section 60, no person shall publish, or cause or permit to be published, any medical advertisement that—
  - c) directly or by implication claims, indicates, or suggests that a medicine of the description, or a medical device of the kind, or the method of treatment, advertised—
    - (iii) has beneficially affected the health of a particular person or class of persons, whether named or unnamed, and whether real or fictitious, referred to in the advertisement;

# What to do if you receive a complaint?



# Responding to a Complaint

- All parties to an ad
- Read our helpful online guide <http://www.asa.co.nz/industry/how-to-respond-to-a-complaint/>
- Use the TAPS service if you haven't already – make any appropriate changes to your ad if you need to or withdraw it to try and settle the complaint
- If you wish to defend the complaint, take the time to put together a high quality succinct response focused only on the issues raised in the complaint
- Think about the ASCB audience when you write a response
- **Your best defence is being prepared:**
  - Have your substantiation on-hand
  - Consider your content, the product / service advertised and time and place the advertisement appears
  - What could a sceptic complain about?

# Consequences of a Complaint

- No financial penalty if a complaint is upheld
- Time taken to respond to a complaint
- Cost in changing or removing an advertisement
- Reputational risk for advertiser
- Reputational risk for sector

# Advertising Health Services

## Definition

**'Health Services'** – Services that offer a method of treatment (see definition below for method of treatment) for a range of medical conditions OR services that offer support for normal healthy body functions. Providers may or may not be registered health professionals (as defined in the NZ Medicines Act). May include (but not limited to), services for Medicine, Surgery, Physiotherapy, Nursing, Rehabilitation, Diagnostics, Psychotherapy, Counselling, Fertility, Sterilisation, Relaxation Massage, Homeopathy, Naturopathy, Chiropractic, Acupuncture, Traditional Chinese medicine and Ayurvedic medicine.

## Guidance Note on Advertising Health Services

# NEED OUR HELP? WANT TO KEEP UP TO DATE?

- [www.asa.co.nz](http://www.asa.co.nz)
- [asa@asa.co.nz](mailto:asa@asa.co.nz)
- Connect with us 
- Stay in touch and up to date
  - <http://www.asa.co.nz/contact-us/>
    - Newsletter, Current News and 'Decisions' email
- Claire Hofer [claire@asa.co.nz](mailto:claire@asa.co.nz) or 021 391173
- Use the [TAPS service](#) – its an excellent investment
- Read the relevant [TAPS Guidelines](#)

# ASA Jurisdiction

A key consideration for the ASCB is whether the advertisement targeted New Zealand audiences

- Size and composition of the New Zealand audience.
- Accessibility of the product to New Zealand consumers.
- Whether best endeavours have been made to exclude advertisements which would clearly breach the Advertising Codes e.g. live presentations of overseas events to a substantial number of New Zealanders.

# Thank You