

Advertising Standards Bureau Submission:

Issues Paper

Australian Consumer Law Review

(May 2016)

The Advertising Standards Bureau (Bureau) appreciates the opportunity to provide comments on the Australian Consumer Law (ACL) Review Issues Paper (Issues Paper) of March 2016.

Role of the Bureau

The Bureau administers the complaints resolution component of the advertising self-regulation system.

The Bureau is secretariat for the Advertising Standards Board (Standards Board) and the Advertising Claims Board (Claims Board). The Bureau promotes the work of both boards and the role of the Bureau in the advertising self-regulation system. The two boards have separate and distinct roles in considering complaints about advertising against the advertising codes they administer.

Currently, the Bureau administers seven codes of practice and industry initiatives relating to advertising and marketing communications across all media in Australia.

The Standards Board is the independent body established to determine complaints about advertising and marketing communications against the principles set out in the relevant advertising codes. The Standards Board makes 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 Claims Board provides a competitive complaint resolution service, designed to determine competitor complaints involving issues of truth, accuracy and legality of advertising.

Role of advertising self-regulation

The current advertising self-regulation model is working well to maintain high advertising standards and ensure consumer trust and protection is met for the benefit of all of the community.

Self-regulation provides a free and fast route for consumers to express their views about advertising and to have an impartial body to contact. The self-regulation system is funded by industry and receives no government funding, other than from government agencies in their capacity as advertisers. Responsible advertisers support the system by agreeing to a levy being applied to their advertising spend – just 0.05 per cent of advertising spend.

The Bureau, together with the Australian Association of National Advertisers (AANA) which develops and maintains the primary advertising codes underpinning the self-regulation system, are committed to providing a self-regulation system that meets international and Australian Best Practice Standards. The Bureau operates on the principles of transparency, accountability and robust decision making with a commitment to continuous improvement.

Relationship between advertising self-regulation and the ACL

A key purpose of the Bureau is to ensure the general standards of advertising are in line with community values. In this way, the self-regulation system complements and supports the legal provisions contained in the ACL.

Currently the Bureau handles a limited number of consumer complaints raising issues about misleading and deceptive behaviour in advertising and marketing communications under the AANA Food and Beverages Advertising and Marketing Communications Code (Food Code) and the AANA Environmental Claims in Advertising and Marketing Code (Environmental Code). The provisions in these codes are not intended to replicate the existing legislative provisions of the ACL, but provide a set of rules and principles of best practice to which advertisers voluntarily agree to be bound.

The Practice Note to the Food Code makes clear that the Standards Board will “not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive...” but considers “whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest”. The Practice Note to the Environmental Code provides similar guidance.

At this stage, the Standards Board does not consider consumer complaints about misleading and deceptive advertising more generally under the AANA Code of Ethics, although competitor complaints in this area are currently determined by the Claims Board.

At times there are overlaps in the complaint process managed by the Bureau and the complaint processes relating to the ACL. The Bureau works with the ACCC and relevant State and Territory fair trading and consumer affairs bodies to ensure consumers’ voices are heard by the most appropriate body relating to their complaint. With government regulators having compliance and enforcement priorities of their own to meet with limited resources, cooperation between our organisations can help to fill in any gaps.

The Issues Paper

The Bureau does not have specific comments in relation to the questions raised in the Issues Paper.

However, we note that the Bureau continues to work toward developing strong relationships with the Australian Competition and Consumer Commission (ACCC) and State and Territory fair trading and consumer affairs bodies.

We look forward to further updates in regard to the ACL Review in due course.