

# **An overview of Advertising Self Regulation in action in Queensland**

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- Worked in advertising industry as a copywriter for more than a decade
- PhD in Integrated Marketing Communication
- Founding President of Australia and New Zealand Academy of Advertising
- Member of Executive American Academy of Advertising
- Recipient of AAA Billy I Ross Education Award
- Deputy Editor Journal of Marketing Communications
- Research into Advertising Self Regulation from 1999

# Overview

- Difference between controversial products and controversial advertising
- How advertising is regulated
- The overlap between government regulation and self regulation
- How advertising self regulation operates in Australia
- Performance evaluation

# Advertisements considered offensive on two dimensions

- Offensive products
- Offensive execution

# Offensive products

- Most studies concentrated on advertising of potentially offensive or controversial products (Waller 1999; Prendergast, Ho and Phau 2002; Waller 2005).

# Controversial Execution

- Creative execution for any kind of product can make the advertisement controversial.
- Uses controversial words, images and messages to gain attention.

# Advertising Regulation

- Through Law
- Through Self Regulation

# Government Regulation

- Stop unlawful conduct
- Undo harm caused by contravention of the code (through corrective advertising or restitution)
- Impose fines or penalties



# Advertising Self Regulation

- Governments in 45 countries support self regulation.
- Self regulatory frameworks are typically country specific and an artifact of the national regulatory environment and culture (Boddewyn 1989, Rotfeld 1992).
- However, the importance of protecting customers from deceptive advertising is universal.

# Controlling or self regulating advertising (Boddewyn 1992)

- Developing standards
- Making these standards widely known and accepted by practitioners
- Advising advertisers and agencies about the 'grey areas' before they advertise
- Monitoring compliance with standards
- Handling complaints from customers and competitors
- Penalizing bad behaviour – publicizing wrongdoings and denying access to media

# Benefits of Self Regulation

- Apply statutory rules since “first principal of ethical behaviour is respect of the law”.
- More flexible in dealing with “soft” issues like taste, decency and sexism.
- Relieves the administration agencies and courts of burdensome, costly and complex tasks.
- Faster than government intervention, e.g. In 2012, the time taken by the ASB to finalise all cases from receipt of complaint to publication of final case report was 36 calendar days.

# Overlap between the Law and Self Regulation

- A good part of the Law reflects generally accepted community and market standards.
- The role of self regulation is to have such standards “internalized” by practitioners and to create “moral adhesion” to them.
- That is, the role of self regulation is not to apply additional norms, but to reinforce norms from the community, market and state.

# International Chamber of Commerce

- “The distinction and preference between rules of self regulation and statutory regulation is too simplistic. There is a large category of rules of self regulation which are applied by the courts as rules of law, and there are statutory rules which the self regulatory bodies use as professional recommendations. It is also a mistake to think that professional rules are less restrictive than laws; they affect the freedom of the business quite as much and sometimes more.” (1978)

# Limitations of Self Regulation

- Yet there are limitations to what self regulation can achieve (Boddewyn 1989).
- Commonly assumed that if the market system fails, then government regulation will take over.
- But shared feeling that the government reaction may be overreaction, restrictive rather than representative of social good and detrimental to marketing practice (Kerr 2007; Shaver 2003).

# Government Regulation in Australia

- Australian Communications and Media Authority Act 2005
- Competition and Consumer Act 2010.

# ACMA

- Statutory authority within federal government portfolio of Broadband, Communications and the Digital Economy.
- ***Responsible for regulation of broadcasting, the internet, radio communications and telecommunications.***
- Achieves this through broadcast license conditions set out in Broadcasting Services Act 1992 and industry codes of practice such as Commercial Television Industry Code of Practice and Commercial Radio Australia Code of Practice.



# ACCC

- Formed in 1995 to administer Trade Practices Act 1974.
- ***Ensures that individuals and business comply with Commonwealth's competition, fair trading and consumer protection laws.***
- Schedule 2 Section 29 relates to misleading and deceptive advertising.
- Under this act, an injunction can be sought to prevent a further breach of act; an order made to publish an ad to rectify misleading information; or pecuniary penalty.

# Self Regulation in Australia

- Current system began in 1998
- Australian Association of National Advertisers (AANA) responded to research conducted in consultation with industry, government and consumers, and filled the remit of the Australian Parliament to introduce an independent complaint resolution process.
- Advertising Self Regulation is handled by the Advertising Standards Bureau.

# Structure of ASB

- ***Advertising Claims Board*** – adjudicates complaints between competitors on a user pays basis – deals with Section 1 of the Code.
- ***Advertising Standards Board (ASB)*** – deals with larger number of complaints from the general public on issues of health and safety, use of language, discriminatory portrayal of people, the protection of children, portrayal of violence, sex, sexuality and nudity – Section 2 of the Code.

# Membership of the ASB Board

- Aim to make the ASB completely independent from the advertising industry and more representative of the general public (Kerr and Moran 2002).
- 20 person board comprises broad spectrum of Australians including those working in business, media, religion, human rights, women's rights, children's welfare, students
- Diversity of ages, opinions, ideals and gender balanced.
- Members are recruited through public advertisements for fixed term.

# How self regulation works

- A member of the general public can lodge a comment or complaint to the ASB.
- The Board evaluates on the complaint against the AANA authored Advertiser Code of Ethics, inviting comment from the advertiser and issuing a determination.
- If upheld, the advertiser is asked to modify or withdraw the offending advertisement.
- But there is no enforcement mechanism.
- Typically the default is that the media remove the offending advertising.

# AANA Code of Ethics

- AANA states, “The object of this Code is 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.”

# Advertiser Code of Ethics

- 1.1 Advertising or Marketing Communications shall comply with Commonwealth law and the law of the relevant State or Territory.
- 1.2 Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive.
- 1.3 Advertising or Marketing Communications shall not contain a misrepresentation, which is likely to cause damage to the business or goodwill of a competitor.
- 1.4 Advertising or Marketing Communications shall not exploit community concerns in relation to protecting the environment by presenting or portraying distinctions in products or services advertised in a misleading way or in a way which implies a benefit to the environment which the product or services do not have.
- 1.5 Advertising or Marketing Communications shall not make claims about the Australian origin or content of products advertised in a manner which is misleading.

## Section 2

- 2.1 Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.
- 2.2 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product advertised.
- 2.3 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and relevant programme time zone.
- 2.4 Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising & Marketing Communications to Children applies.



## Section 2

- 2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.
- 2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.
- 2.7 Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertising or marketing communications to which the Federal Chamber of Automotive Industries Code of Practice applies.
- 2.8 Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code.

# Additional Codes

- AANA Code of Advertising and Marketing Communications to Children
- AANA Food and Beverages Advertising and Marketing Communications Code
- AANA Environmental Claims in Advertising and Marketing Code
- Australian Food and Grocery Council Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry
- Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children
- Product Codes – Therapeutic Goods Code, the Alcoholic Beverages Advertising Code, the Weight Management Industry Code, Federal Chamber of Automotive Industries Advertising for Motor Vehicles Voluntary Code of Practice.

# Media Clearance Systems

- OMA members receive copy and reject it.
- Members send copy to OMA to get an opinion or advice.
- If approved, the advertisements are posted. If when a complaint is lodged and ASB upholds the complaint, OMA remove the ad immediately.
- OMA members are 100% compliant.

# Outdoor Media Association

- OMA Code of Ethics
- OMA Alcohol Advertising Guidelines
- OMA Environment and Sustainability Statement
- OMA Content Review Policy

# 2012 Complaint Statistics

- 1280 complaints made about matters within the ASB jurisdiction.
- 404 ads found to be consistent with the code
- 69 ads found to breach the code.
- 3 ads were not modified or discontinued after a complaint was upheld.

# Area of Complaint 2012

- Discrimination and vilification 28.5% (+7.8%)
- Sex, sexuality and nudity 23.4% (-9%)
- Exploitation and degradation 14%
- Language 12.7% (+6%)
- Health and Safety 9.5% (-4%)
- Violence 5.92% (-6%)

# Outdoor Complaint Stats

- OMA ran more than 12,000 different advertisements in Queensland in 2012.
- 83 outdoor ads were considered by the ASB in 2012.
- 14 of these were in breach of the code.
- 11 of these were not hosted by OMA members.
- 3 outdoor ads or 0.01% of the 30,000 outdoor ads nationally breached the code.
- None of these 3 were specific to Queensland.
- None of these breaches were in the area of sex, sexuality and nudity.

# Sexualization of Children

- In 2012, only two advertisements were found to be in breach of Section 2.4 of the Code.
- Queensland Theatre Company.
- These ads were displayed on the theatre itself.
- “advertisements with appeal to younger people which contain sexualised images or poses are to be used with caution. Models which appear to be young should not be used in sexualised poses”.
- OMA had advised QTC that the billboards would be in breach of the code and worked with them to improve images on their billboards.

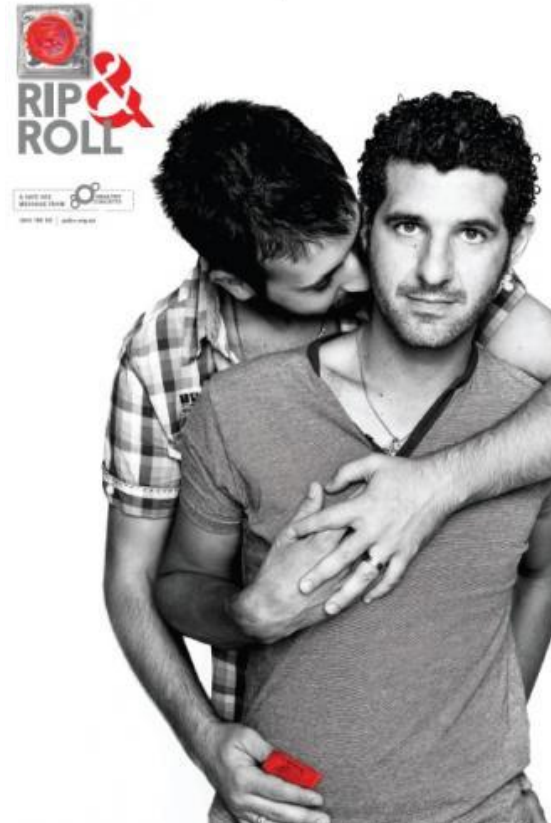


# Who complains

- Most people don't complain (Boddewyn 2012).
- ASB records 1998-2009 suggest the typical complainant is female (60%), aged between 30-54 (52%), living in NSW or Victoria.
- Volkov, Harker and Harker (2005) profiled 1210 complainants and found them to be highly educated, earning a higher income and in a professional occupation. Typically older females.
- Lobby groups.

# Online has empowered a new voice

- 220 complaints to the ASB – complaint dismissed.
- 25,000 complaints on social media in less than 24 hours when the advertisement was removed by AdShel.



# Community Perceptions Research 2012

- Purpose is to ensure the ASB and the industry are aware of community standards
- Tests five core provisions of AANA Code of Ethics
- Highlighted shift in language and health and safety issues
- Community generally more conservative than the Board in terms of strong language.

# So is it working?



# International appraisal

- Globally, greater devolution of control to advertising self regulation bodies (Canada, UK).
- Complementary appraisals of self regulation by independent observers and scholars (Moyer and Banks 1977, Wyckham 1987, Boddewyn 2012).
- Evidence that practitioners are internalizing advertising standards (Boddewyn 2012).
- International push for best practice in self regulation through EASA and APEC.

# Appraisal of Self Regulation in Australia

- Two parliamentary inquiries have recommended that self regulation remain (including House of Representatives Standing Committee on Social Policy and Legal Affairs report into the regulation of billboard and outdoor advertising 2011).

# ASB commitment to continuous improvement

- Joined the European Advertising Standards Alliance (EASA) in 2006 to ensure access to appropriate best practice model.
- In line with EASA, ASB increased Board numbers, meeting frequency, introduced an independent review process, prepared determination summaries as guides for industry and communities, set international benchmarks with community perceptions research.
- ASB won Bronze Award at EASA Best Practice Awards 2012 – remit on social media and leading APEC dialogue.

# OMA

- Good example of Boddewyn's ideal to “internalize advertising standards”.
- Number of internal codes and practices - including the OMA Code of Ethics and Content Review Policy.
- Members have been 100% compliant with the ASB decisions.



# Confucius says

- “Lead the people with governmental measures and regulate them by law and punishments, and they will avoid wrongdoing but have no sense of honour or shame. Lead them by virtue and regulate them by rules of propriety and then will have a sense of shame, and moreover, set themselves right.”