



**Submission to the Telecommunications Carriers' Forum**

**on the**

**Draft Mobile Messaging Services Code**

**from the**

**Advertising Standards Authority of New Zealand (Inc.)**

July 2010

## 1. Introduction

- 1.1 Thank you for the opportunity to comment on the TCF Draft Mobile Messaging Services Code.
- 1.2 The ASA notes that a significant amount of the Draft Code relates to service provision and is not directly relevant to the ASA.
- 1.3 The ASA is supportive of the initiative to develop a wider Code to provide clear guidelines to all those involved in mobile messaging services.

## 2. Information about the ASA

- 2.1 The Advertising Standards Authority (ASA) is the self-regulatory body that regulates advertising standards in New Zealand.
- 2.2 The ASA has the following members:
  - Association of New Zealand Advertisers (Inc)
  - Communication Agencies Association of New Zealand (Inc)
  - Interactive Advertising Bureau of New Zealand
  - Letterbox Media
  - Magazine Publishers' Association (Inc)
  - Newspaper Publishers' Association (Inc)
  - New Zealand Television Broadcasters' Council
  - New Zealand Community Newspapers
  - New Zealand Cinema Advertising
  - New Zealand Marketing Association (Inc)
  - New Zealand Post Limited
  - Outdoor Media Association of New Zealand
  - Pay Television Group
  - Radio Broadcasters Association (Inc)
- 2.3 The ASA was established in 1973 and became an incorporated society in 1990.
- 2.4 The role of the ASA is to regulate advertising of products and services as permitted by law, including the right to freedom of information under the New Zealand Bill of Rights Act 1990.
- 2.5 The ASA has developed Advertising Codes of Practice, which include the Code of Ethics and 12 specialised codes. The ASA also has a code covering the naming, labelling, packaging and promotion of liquor.
- 2.6 The ASA funds and resources a separate and independent Advertising Standards Complaints Board (ASCB) that hears complaints from members of the public at no cost to them. There is a right of appeal to the Advertising Standards Complaints Appeal Board (ASCAB) which is also funded by the ASA.
- 2.7 Both Complaints Boards have a public member majority.

2.8 If a complaint is upheld by the ASCB the advertiser, advertising agency and media are requested to withdraw the advertisement immediately. These requests are invariably complied with.

3. **Specific Comments on the Draft Code**

3.1 The ASA comments generally relate to parts C and F of the Draft Code, with regard to Advertising and Promotion.

3.2 Section 8.2 refers to television and video commercials and section 8.3 to radio commercials with regard to specific requirements for these media. I note that there are also specific requirements for a range of media for chargeable messaging services.

3.3 The ASA would suggest that the requirement in 8.2 for television advertisements to refer to where terms and conditions for messaging services can be found, should be a requirement in all media. While it may be fair to assume a print ad, given the space and nature of the medium, may automatically include this detail, the same assumption may not be correct with regard to a billboard.

3.4 Therefore if the key requirement is that advertisements refer to where terms and conditions can be found, that requirement should be for all media.

3.5 Section 12 covers service specific requirements – advertising and promotion. Section 12.1.1 says that advertising for operator assisted chat services should not imply age-restricted content, dating service or peer to peer chat service. Some of this type of advertising is likely to appear in adult entertainment columns in newspapers – which arguably implies age-restricted content – and in addition could refer to an R18 age restriction in the advertisement – would either of these issues be enough to trigger a breach of 12.1.1? Perhaps the wording could be amended to allow for the advertising to specify if there are age restrictions for users?

3.6 Section 14 refers to Marketing for Children. With regard to the age references in 14.1 and a preference for consistency, the TV “getting it right for children” policy, the Broadcasting Standards Authority and the ASA codes define children as “all persons below the age of 14”.

3.7 Section 14.1 also specifically refers to compliance with the Code for Advertising to Children. A second child-focused code comes into effect on 1 August. This Code is called the Children’s Code for Advertising of Food, and it would be appreciated if reference to this code could also be included in section 14.1.

3.8 The ASA acknowledges the references to the Authority and complaints about advertising in Section 33. In particular, the ASA notes the requirement for TSPs to provide details for the Content Service Provider or the Content Provider for a messaging service. To ensure an efficient process, it would be helpful once the Code is in place to have a key contact at each TSP we can go to for these details once a complaint is received. Industry providers may also wish to advise the ASA if they should be consulted as a party to a complaint

or whether the TCF (for example) wishes to receive copies of relevant decisions once released.

**4 Further information**

4.1 Further to our discussion during the consultation meetings in Wellington, I will forward to you separately the contact details for the media members of the ASA. I think it would be helpful to alert them all to the existence of the Code and the advertising requirements, once it is in place.

4.2 I hope these comments are useful. If there are other matters that the TCF would like specific feedback from the ASA on, or that arise out of the consultation process, please contact the Authority.

