

National Women's Council of Ireland
Submission to the Advertising Standards Authority for Ireland (ASAI)
2013 Review of the Code of Advertising Standards and the Code of Sales Promotion Practice

Founded in 1973, the National Women's Council of Ireland (NWC) is the leading national women's membership organisation in Ireland. We seek full equality between men and women. We represent and derive our mandate from our membership, which includes over 170 member groups from a diversity of backgrounds, sectors and locations.

Our vision is of an Ireland and of a world where there is full equality between women and men and our mission is to lead and to be a catalyst for change in the achievement of equality between women and men.

The NWC greatly appreciate this opportunity to contribute to the Advertising Standards Authority or Ireland review of the Code of Standards for Advertising, Promotional and Direct Marketing in Ireland

The ASAI as an Independent System of Self-Regulation:

The NWC welcomes the fact that the ASAI is an independent body which actively facilitates members of the public who may wish to make a complaint. With regard to our own work, when we receive complaints in relation to a public advertisement, either by telephone or in writing, we always advise that the complainant makes contact with the ASAI and formally make such a complaint to the Authority. It would be helpful to the NWC to know whether such complainants will receive a written outcome.

The NWC also welcomes the ASAI's use of 'case studies', that when an advertisement is amended or withdrawn having contravened the codes, the cases or outcomes are published; and the ASAI 'Case Reports' are released to the media and / or available on the website. This represents a transparent system and an important point of public reflection.

Scope and Reach

Promotion of Positive Practice

The Code administered by ASAI is rooted in the common principles established by the International Chamber of Commerce which require that all marketing communications

- should be legal, decent, honest and truthful
- should be prepared with a sense of responsibility to consumers and to society
- should respect the principles of fair competition generally accepted in business

NWC believe there is scope to interpret the second of these principles "a sense of responsibility to consumers and to society" as offering a mandate that extends beyond prevention or prohibition into positive social contribution.

For example; **2.16** of the current Code states that "*Marketing communications should respect the dignity of all persons and should avoid causing offence on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the traveller community*".

NWC would suggest that this be separated into two separate sentences to underscore a positive as well as a preventative responsibility e.g.; "Marketing communications should respect the dignity of all persons. Marketing communications should avoid causing offence on grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the traveller community".

Similar dual emphasis on positive social responsibility as well as the prevention of social offence should be reflected across other aspects of the code.

Gender Balance and Diversity in Representation

One way in which we believe the ASAI could actively support demonstration of a 'sense of responsibility' is through the inclusion of recommendations around the promotion of equality in advertising.

The lack of Gender Balance is a concern recognised across the wider broadcasting arena. Research in Ireland has shown that on average less than one quarter or 23% of the voices on air are women and Women represent just one fifth of on air voices in news and current affairs broadcasting.¹(1) Such imbalance can negatively impact attitudes toward male and female participation in our society, and contribute to the reinforcement of negative gender stereotypes.

This is also reflected internationally and increasing attention has been drawn to this issue by as research such as that produced by the Davis Institute in the United States which documented that males outnumber females 3 to 1 in most films, 80.5% of all working characters are male compared to just 19.5% female and 83% of film and TV narrators are male. Females are also underrepresented behind the camera, with 4.8 males working in production to every one female.²

As one example of growing social concern around these issues, the Bechtel code, a limited tool to assess gender equity in film, has been incorporated within the national Film rating structures in

Although these issues reflect the wider broadcasting and media arena rather than advertising, similar concerns might be reflected within the advertising area and Code recommendations. .

The Code could encourage advertisers and promoters to take active steps to support and reflect gender and diversity within their advertisements. Practical recommendations which might be considered or included within the code include

- Ensuring that any extended or multi-part advertising campaign in broadcast or print reflects an appropriate gender balance.
- Neutral or non-gender specified roles (for example bus drivers, shop assistants or office workers) could be cast to reflect an appropriate gender balance.
- So far as possible, crowd scenes could be cast to reflect gender balance.
- Gender balance within the allocation of speaking parts in broadcast advertisements should be promoted including 'voiceover', 'narrator' or 'voice of authority' roles.

The NWCI welcome the recommendation within **2.7** of the current code which states that "*Where appropriate, marketing communications should use generic terms that include both the masculine and feminine gender; for example, the term 'business executive' covers both men and women.*"

It is also important that advertisements seek to reflect the wider diversity of women across age, race, sexual orientation, disability and other areas.

2.18 of the current Code states that "*marketing communications should be responsive to the diversity in Irish society*" and encourages advertisers to "*respect the principle of equality in any depiction of groups*". We believe this principle should be extended further to recommend that advertisements should not promote or imply artificial homogeneity within society.

Responsibility for the Code

The NWCI welcomes article **2.6** of the Code which states "*Primary responsibility for observing the Code rests with advertisers. Others involved in the preparation and publication of marketing communications, such as agencies, media and other service providers, also accept an obligation to abide by the Code*".

However we believe that this obligation to abide by the code to those involved in "preparation and publication" is not at present adequately reflected across other recommendations within the Code. The inclusion of targeted recommendations for these aspects of the Advertising Industry would be welcomed.

¹ Research by Lucy Keaveney and Dolores Gibbons on behalf of NWCI, based on 2010 and 2012 sample surveys.

² Stacy Smith, Ph.D. at USC Annenberg School for Communication & Journalism for the Davis Institute

Wider Application of the Code

An area of great concern for many within Irish society has been the public display and promotion of distressing images such as that of a dead foetus by a number of organisations and groups. Related concerns have been expressed around distressing messages, such as the billboards which talked about abortion ‘tearing a woman’s life apart’ during Summer 2012 and caused great distress to women.

A very large number of complaints about such images and messages have been made to the ASAI by many concerned individuals and groups, including member organisations within the NWCI. However the Authority has not to date taken further steps to act in this area.

Two reasons that have been cited to suggest that such materials might not fall under the rubric of the ASAI code include the claim that these communications do not have a commercial purpose and the section **1.5 (f)** exclusion of *“marketing communications whose principal purpose is to express the advertiser’s position on a political, religious, industrial relations, social or aesthetic matter or on an issue of public interest or concern;*

NWCI believe that both of these arguments are strongly contestable. Firstly, while the advertiser/promoter of such materials may not be operating for commercial gain, others engaged in the ‘preparation and publishing’ of the materials, such as printers, billboard companies or media, are operating for commercial profit and have a recognised ‘obligation to abide by the code’.

Furthermore, section **2.28** of the Code, looking at “Fear and Distress” clearly envisages a role for advertising and promotion beyond the commercial and aimed at the promotion of behavioural change. “

“A marketing communication should not cause fear or distress without good reason such as the encouragement of prudent behaviour or the discouragement of dangerous or ill-advised actions. In such cases the fear aroused should not be disproportionate to the risk “

The groups responsible for the production of distressing promotional materials in relation to the issue of abortion have often made public statements of goals such as the encouragement or discouragement of particular behaviours. However the NWCI believe that they would strongly fail any assessment of proportionality or risk. There is widely documented evidence of the considerable distress which such images and messages cause to members of society and women in particular, including women who may have had an abortion in the past and women who may have experienced miscarriages. There are also concerns in relation to **2.11** of the code in terms of substantiation and scientific accuracy.

NWCI also believe that these materials fall outside the section **1.5 (f)** exclusion “as their overall goal is not the expression of *“the advertiser’s position”* on a public issue but the direct and disproportionate influencing of behaviour in others.

Timeliness

Sanctions in relation to these regulations are somewhat limited and can sometimes be insufficiently timely. Such sanctions as occur may at times actually serve to benefit the product/company in terms of contributing to or acting as free additional advertising – a strategy to address this concern should be developed. It is important that regulation of the code should be independent of the industry it seeks to regulate.

Decency and Propriety

The NWCI welcome recommendations made by the current Code under the section on Decency and Propriety, particularly **2.16, 2.17, 2.18** and **2.19**. and the further recommendations which flow from these principles in other sections of the Code.

However we believe that these recommendations could be further strengthened. There is scope as earlier discussed for the inclusion of more positive directives. There is also potential for a more robust

engagement with the issue of pornography and sexual exploitation. Crucially, there is a need for greater clarity around many of the guiding terms used throughout the code and within this section in particular.

Clarity of Terminology

Article **2.21** states that *‘Compliance with the Code is assessed on the basis of the standards of taste, decency and propriety generally accepted in Ireland, taking account of the characteristics of the likely audience, the media by means of which the marketing communication is communicated, the location and context of the marketing communication, the nature of the advertised product and the nature, content and form of any associated material made available or action recommended to consumers.’*

However it is not clear how the standards “generally acceptable in Ireland” are assessed. There is a similar lack of clarity around terms such as “*public sensitivities*” or “*grave or widespread offence*” although advertisers are asked to take these concerns seriously while “*considered by some to be distasteful*” or “*offensive to some people*” are not given the same weighting. Fear and distress are rightly recognised as an area for concern however it does not make clear how distress experienced by an individual or number of individuals might be weighted against intent of the advertiser or lead to removal of an advertisement.

There are a number of factors which the NWCI believe should be considered in assessing ‘*public sensitivity*’ or likelihood of causing offence. These might include the research and increased public awareness around issues of gender equality as discussed earlier, the growth in medical conditions associated with body-image or the increase in bullying and suicide amongst teenage girls.

However, the first important step is greater clarity around the process by which these terms are assessed or reviewed and a clear route through which groups such as the NWCI can contribute to that process.

Stereotyping and Dignity of the Person.

NWCI welcome the explicit recommendation in **2.17** and **2.18** of the Code against the use of stereotypes, and against sexual stereotyping in particular.

NWCI would note that in addition to stereotypes that are demeaning there are stereotypes which while not explicitly demeaning, do serve to reinforce a limited perception of women as individuals. These can include certain gender-stereotypes around occupation as discussed earlier in this submission.

In terms of building on recommendation **2.18** and the ‘dignity of the person’, it is important that women should be given their own status and voice within any communication and not simply be presented as ‘Mr.Murphy’s wife’ or a ‘Mother of four’.

Women should never be depicted in terms of body parts as opposed to as a whole person. For example an advertisement should not focus on a woman’s legs or breasts to the detriment of depicting the person as a whole. Similarly, advertisements depicting older women or men should not emphasize hands or other body parts that may display signs of aging or vulnerability over images of the person as a whole.

Pornography and Exploitation

The NWCI and our membership share a serious concern around the growth of the sex industry in Ireland. and the increasing use of women’s bodies to draw attention to and sell goods or services.

Constant exposure to these images clearly contributes to their normalisation, to a blunting of sensibilities and the internalisation of dangerous and misleading perceptions around sexual oppression, harassment and sexualised violence.

The NWCI views pornography as a violation of human rights, a form of sexual exploitation, in particular of women and children. Pornography degrades women, promotes a climate of sexual hostility and exploitation and encourages the notion that a woman’s worth depends on her sexual appeal to men. Sexual objectification, common to pornography, portrays women (and children), as depersonalised sexual beings rather than multi-faceted human beings deserving equal rights with men. Pornography therefore plays an active role in

reinforcing unequal power relationships between men and women and there is abundant evidence to demonstrate that pornography use contributes significantly to violent behaviour towards women.

Pornography peddles falsehoods about men, women and human relationships; and its use is damaging to relationships between men and women, as it dehumanises the other person, the relationship, and intimacy.

One of the ways in which pornography operates to differentiate women from men is through images and poses which show men in positions of power and control over women or show women in positions of sexual or physical submission. Poses and images recognisably similar to those seen in a pornographic context can sometimes appear in more general advertisements. Even when such poses or images do not contain significant nudity or relate to the promotion of any sexual product, their use in a wider context can serve to normalise and reinforce gender perceptions and power dynamics expressed in pornography.

Research from the Davis institute finds women four times more likely to be dressed in sexually suggestive clothing and in her testimony to Levenson Inquiry in the UK. Anna van Heeswijk emphasized "We have to ask ourselves what kind of story does it tell to young people when men are depicted in newspapers wear suits or sports gear are shown as active participants while women are sexualised objects who are essentially naked or nearly naked

The NWCI would urge the ASAI should review its current definitions of acceptable levels of pornography; and take all necessary action within its remit to curtail the growth of the sex industry here in Ireland. Those in breach of regulations should be publicly criticised.

While NWCI welcome the wider recommendations around this issue under 'Decency and Propriety', particularly [2.17](#) and [2.19](#) we would encourage the ASAI to consider inclusion of a specific area within the code designed to target these concerns.

We would also urge the ASAI to include specific recommendations in relation to oppose the offering of unsolicited pornographic advertising images for films in hotels and to support the implementation of a European Code of Conduct in consultation with the sector involved.

Unsolicited pornographic material advertised through email and pop-up windows is another cause for concern, particularly for parents. Severe cross-border penalties should be put in place to deter companies from subjecting unsuspecting Internet users to emails and pictures with pornographic content.

Directives against incitement to hatred of women should be explicitly included in the code. Images used to promote products which depict crimes being committed against women should never be acceptable.

Section 5 : Sectoral Rules

Children

The NWCI would encourage ASAI to ensure that those provisions within **Section 5** relating to children be subject to a thorough review to ensure that it is compatible with not only the letter but the spirit of the new constitutional commitment to Children's Rights and the

The NWCI welcome ASAI'S recognition of the particular vulnerability of children. This is particularly relevant in relation to the concerns around pornography, sexualised imagery, gender stereotyping and negative or competitive body-imagery as discussed elsewhere in this submission.

The NWCI also notes the WHO International Code of Marketing of Breastmilk Substitutes position that 'in view of the vulnerability of infants in the early months of life and the risks involved in inappropriate feeding practices, including the unnecessary and improper use of breastmilk substitutes, the marketing of breastmilk substitutes requires special treatment, which makes usual marketing practices unsuitable for these products.

While many of the recommendations in this section relate to older children, the vulnerability of infants and very young children who are not in a position to give consent to the use of their image should be considered with stricter and clearer guidelines around the use of images of infants in the promotion of products.

Subsection **5.9 (b)** on Food and Beverages states that marketing communications for food and beverages addressed to children should not mislead children as to the potential benefits from consumption of the product, either physically, socially or psychologically. In the case of infants and very young children, advertising of foods and infant feeding products is aimed at parents and there should also be a recommendation that marketing communications for food and beverages for infants and young children should not mislead parents and adults as to potential physical, social or psychological benefits from consumption of the product.

The NWCI also supports the view that sponsorship restrictions should be considered in relation to Breastmilk substitutes and events targeted at new parents.

Alcoholic Drinks

NWCI suggest that the sectoral recommendations in relation to marketing communications for Alcoholic Drinks should explicitly reflect the General Rules on Decency and Propriety. We welcome the reinforcing of to **2.19** and the avoidance of *“exploitation of sexuality and the use of coarseness and undesirable innuendo”* and would encourage more direct reference to **2.17** on avoidance of *“sex-stereotyping and any exploitation or demeaning of men and women”* and the use of *“offensive or provocative copy or images”*.

The recommendation on alcohol and sexual success should include explicit reference to sexual consent. We support the RCNI wording: (d) [verbal or visual content] should not suggest by word or allusion that the consumption of alcohol implies sexual consent or increased likelihood of sexual consent, by its consumer.

Clear links should also be made between the standards set under Alcoholic Drinks and the rules around promotional marketing practices. For example **7.6 (a)** which directs that *‘Anyone depicted in an alcohol marketing communication should be aged over 25 and should appear to be over 25’* should also be followed through in relation to promotional campaigns – ensuring that those involved in direct promotion are and appear to be over 25. Similarly, directives against sex-stereotyping should also be reflected in promotional activities.

The NWCI welcome the detailed guidelines in relation to the ‘Social Dimension’ and ‘Health and Safety’. We note with interest the recommendations that advertisers should not only refrain from inferring or exaggerating positive associations with alcohol but should also refrain from implying any negative associations with abstinence from alcohol. **7.4(b)** states that marketing communications should not imply “that those who do not drink or less likely to be acceptable or successful than those who do” while **7.7(c)** directs that *“Abstinence or moderation should not be presented in a negative light”*.

The NWCI believes that this kind of framing could usefully translate to other Sectors within the Code, and the areas of ‘Health and Beauty’ and ‘Slimming’.in particular.

Health, Beauty and Slimming

Existing recommendations within the Code place considerable and appropriate focus on questions of accuracy in the marketing of ‘Health and Beauty’ and ‘Slimming’ products. They emphasise that any suggested benefits in this area should be underpinned by a rigorous and scientific evidence base

However in relation to ‘beauty’ and ‘slimming’ products in particular, NWCI suggest that the ASA to extend their focus and reflect concerns around exaggerated social benefit as well as medical benefit. We are asking for inclusion of new recommendations that ‘marketing communications should not make exaggerated claims as to the impact of beauty or slimming products on social, personal or sexual success. Moreover those who do not use particular beauty products or slimming products should never be portrayed in a negative light’.

Such guidelines are particularly important given the increase in body-dysmorphic conditions and eating disorders amongst young women and men and recent high-profile cases of suicide amongst teenage girls. At workshops held by the Y Factor, a youth initiative of the NWCI, many young women perceived considerable pressure around advertising and body-image and expressed anxiety and concern around this issue.

Online bullying and the rise of image 'rating' are another major area of concern. The NWCI would ask the ASAI to consider inclusion of a recommendation against the promotion of 'competitive body-image' asking advertisers to refrain from the use of 'rating systems' or 'winner/loser' dichotomies in any communications around this sensitive area.

Breastmilk Substitutes and Health

One area of specific concern for some members of the NWCI, particularly the 20 organisations in the Baby Feeding Law Group Ireland (BFLGI), is the advertising and promotion of breastmilk substitutes. These are defined by the BFLGI as including infant formula, other milk products (follow on, toddler, growing up milks & specialised formulae), foods and beverages, including complementary foods, when marketed or otherwise represented to be suitable, with or without modification, for use as a partial or total replacement of breastmilk; feeding bottles and teats.

NWCI support the submission made by the BFLGI to the ASAI and specific support around particular recommendations is reflected throughout this submission. In terms of the Health Sector, NWCI also support the extension online digital remit of the Code to cover specialised marketing communications addressed to the medical and allied professions of the Code and include marketing communication in relation to breastmilk substitutes addressed to the medical and allied professions.

Substantiation, Honesty and Truthfulness

Section 3 - Promotional Marketing Practices and Section 4 -Distance Selling

NWCI would encourage the ASAI to press for greater protection and recourse for consumers in relation to the sharing of personal contact details with other companies and market researchers. NWCI would note the potential distress, confusion or offence induced by unsolicited marketing materials, whether received online or through the post. Some members have reported concerns around the unsolicited receipt of Breastmilk substitute marketing materials. Another concern is in relation to unsolicited promotion of financial products or services. This is of particular concern in relation to older people, especially those older people living alone, a large majority of whom are women.

With these individuals in mind, guidelines on honesty, truthfulness and recognisability should be enforced with particular rigour in relation to direct marketing and distance selling. Any marketing communication which adopts the appearance or style of an invoice, cheque or other formal letter should communicate with absolute clarity that it is not an official correspondence. Sectoral consideration might be given to introduction of a common agreed and prominent symbol to clearly indicate when a communication is an advertisement.

Truthfulness and Reputation

Recommendations **2.9** and **2.10** **emphasise that advertisers should be able to** "*substantiate all claims, whether direct or indirect, expressed or implied, that are capable of objective assessment.*" and that "*Marketing communications should not present statistics in such a way as to exaggerate the validity of an advertising claim, or give the unjustified impression that there is validity to the claim.*"

NWCI suggest inclusion of a further recommendation against any communication that might exaggerate invalidity of a rival claim or create unjustified impression of invalidity of rival claim or cast unjustified aspersion as to the quality or credibility of a competitor or other party.

Substantiation

In relation to recommendation **2.11** which states that Marketing communications should not:

(a) misuse, mischaracterise or misleadingly cite any technical data, e.g. research results or quotations from technical and scientific publications;

(b) use scientific terminology or vocabulary in such a way as to falsely or misleadingly suggest that an advertising claim has scientific validity.

NWCI suggest inclusion of economic and sociological e.g. 'technical, scientific, economic or sociological' . It should be also be made clear that recommendations **2.27** on 'Matters of Opinion" and **2.12** which state that where there is 'division of informed opinion....the claim should not be portrayed as universally accepted' may apply to the economic and sociological as well as the scientific area.

International Standards and Codes

NWCI recommend that in the relevant Section or Appendix on *Statutes, Statutory Instruments and other Codes* the ASAI should include a designated section on EU Statutes, Instruments and Codes and another section on International Commitments, Instruments and Codes.

We would suggest that the section on Europe might include reference to 'equality between women and men' as a fundamental value of the EU, enshrined in Article 3 of the TEU and Article 8 of the TFEU, along with further EU policy instruments such as the Commission's Strategy for Equality between Women and Men 2010-2015, the Council's European Pact for Gender Equality (2011-2020) the European Pact for Gender Equality and Europe 2020.

We further recommend that the WHO International Code of Marketing of Breastmilk Substitutes & subsequent relevant WHA Resolutions around restrictions in relation to the marketing, advertising and promotion of these products / equipment be explicitly referenced both within the International section and other sections of the Code as appropriate.

To promote timely engagement with emerging best practice, an annual or biannual update of relevant national and international instruments and codes could be conducted in-between the current and subsequent review. For example, EU regulations on infants and follow on formulae (to be enforced from 2016) should be incorporated from 2016.

Lastly, the NWCI would encourage the ASAI to play an active leading role in pressing for and promoting best practice and instruments of best practice across the wider European and International Advertising sector.