

Review of the Regulation of Alcohol Advertising

Information for stakeholders

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<http://www.ndp.govt.nz>

How to Have Your Say

Your input is important in helping to identify problems and potential solutions. Please take this opportunity to have your say.

You may comment on this review by making a submission on your own behalf or on behalf of an organisation.

How to make a submission

You may make a submission in any of three ways.

1. Print out the submission form from the back of this report. Write your comments on the form, then post it to:

Steering Group
Review of the Regulation of Alcohol Advertising
C/- Jo Burgi
Ministry of Health
PO Box 5013
Wellington

2. Download the submission form in Microsoft Word format and save it to your computer, fill it in and email it to advertisingreview@moh.govt.nz.
3. Email your comments to advertisingreview@moh.govt.nz

Submissions close at 5 pm on **31 October 2006**.

Following analysis of the submissions, the steering group will release a report summarising consultation feedback.

Please note that your submission may be the subject of requests under the Official Information Act 1982. If there is any part of your submission that you consider could be properly withheld under the Act, please include comment to this effect along with reasons why you want the information withheld. If you are an individual as opposed to an organisation, your personal details will be omitted from the submission if you include the following statement at the front of your submission and sign it:

- 'I do not give permission for my personal details to be released to persons requesting my submission under the Official Information Act 1982.'

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Introduction

Purpose of this document

The purpose of this document is to find out what you think about how alcohol advertising is regulated in New Zealand.

Most countries around the world have some form of standards for alcohol advertising (eg, standards about what and when advertising is and is not allowed). This is because the misuse of alcohol can cause serious social, economic and health problems.

The current approach to the regulation of alcohol advertising in New Zealand is based on voluntary, self-regulation by industry.

The Government initiated the Review of the Regulation of Alcohol Advertising to see whether the current regulatory approach supports the Government's policy of minimising the harm from alcohol and other drugs. The review is to:

- determine whether the current regulatory framework for alcohol advertising supports the aims of the Government in regard to alcohol policy
- identify ways to strengthen and improve that support, if required.

Role of the steering group

The Government has appointed a steering group to manage this review and communicate with stakeholders as outlined in the terms of reference (see Appendix A).

The steering group comprises individuals from the Ministries of Health, Justice, Culture and Heritage, Youth Development, and Social Development, the Alcohol Advisory Council of New Zealand (ALAC), the Advertising Standards Authority, and the Broadcasting Standards Authority, as well as two independent members. For a list of members, see the National Drug Policy New Zealand website (<http://www.ndp.govt.nz/alcohol/review-regulation-alcohol-advertising.html>).

The steering group must advise the Government by the end of 2006.

The steering group has developed this document to help anybody wanting to contribute to the review. The document begins with background information then overviews the key issues.

Scope of the review

The review is looking at 'advertising' in a wide sense, as follows:

- the content of advertisements
- the media used for advertisements (eg, radio and television, print (eg, newspapers and magazines), electronic and interactive media)

- the placement of advertisements, that is, when and where advertisements appear (eg, on the internet, in magazines, at the movies, in bus stops and on billboards) and under what limitations
- the methods, effects, limitations and conditions of sponsorship
- packaging (as it relates to advertising)
- point-of-sale promotions and material
- competitions, giveaways and loyalty card schemes
- product placement
- liquor-branded merchandise (eg, hats, t-shirts)
- ‘guerrilla marketing’ (low-cost, less visible advertising using non-traditional media, eg, online promotions, events, competitions, word-of-mouth promotion or even graffiti) and ‘viral marketing’ (ie, a form of marketing that encourages people to pass a marketing message to other people)
- health warnings in advertisements.

The review is also looking at:

- how advertisements are checked for compliance with the regulatory framework before they are published (pre-vetting)
- the Code for Advertising Liquor
- areas of responsibility, accountability and enforcement in relation to alcohol advertising
- complaints and appeals in relation to alcohol advertising
- the ongoing review, monitoring and evaluation of alcohol advertising
- research and information needs about alcohol advertising
- public and industry education
- legislation related to alcohol advertising
- the relationship between alcohol advertising and broadcasting regulations about promotion.

Submission form

At the back of this document is a submission form you may download, complete and send to the steering group.

The form is to help you to focus your response, but you are welcome to make comments about anything you believe is relevant to this review.

For more information about how to make a submission, see ‘How to have your say’ earlier in this document.

Role of this consultation

To make sure the review is effective, the steering group must gather *all* interested parties' views. This will help the steering group to find out:

- whether the current approach to regulating alcohol advertising needs to be changed
- if changes are necessary, whether they can be made within the current regulatory framework.

After the review, the steering group will advise the Government and the Government will decide what happens next. No major changes will be made to the regulatory framework without further consultation with stakeholders. This is in line with the Government's usual policy development process.

Who is being consulted

The steering group is seeking detailed input from:

- individuals and groups in the wider community, including those bringing the perspective of Māori, Pacific peoples, consumers, parents, young people and sports clubs
- industry, including the media and advertising, liquor, hospitality and retail industries
- non-governmental organisations and researchers with an interest in the issues
- relevant government departments and agencies.

In addition to written submissions, special efforts will be made to engage in effective and appropriate ways with young people, Māori, Pacific peoples, such as face-to-face meetings. A version of this paper has been developed for young people and will be available from Monday 4 September on the National Drug Policy New Zealand website (<http://www.ndp.govt.nz/alcohol/review-regulation-alcohol-advertising>). This is because written submissions alone are not an effective way to engage with these groups. The steering group will also get technical advice from individuals and organisations with specialist knowledge.

Reducing alcohol-related harm to individuals, families/whānau and communities are the review's central concerns, and the steering group is committed to taking a balanced and fair approach and to considering all concerns and suggestions.

Background Information

This section provides information about:

- alcohol in New Zealand
- the background to the review
- the Government policy context
- research on the impact of alcohol advertising
- the advertising environment in contemporary New Zealand
- the current regulatory framework.

Background to the review

Like virtually all other consumer products, alcohol is advertised in a range of ways and in a variety of media. Advertising of alcohol brands was not allowed on broadcast media until 1992. Since then, there has been a significant increase in expenditure on alcohol advertising¹ and changes in alcohol marketing practices.

In December 2004, Parliament's Health Select Committee considered the petition of Dr Viola Palmer and 2869 others. The petition expressed concern about alcohol advertising in New Zealand and asked for government action.

The Government's response was to ask the Inter-Agency Committee on Drugs (IACD) to explore the need for a government-led review of the regulatory framework for alcohol advertising and outline the options for such a review.

The IACD reported four conclusions.

- Government policy on alcohol is one of minimising alcohol-related harm and changing the New Zealand drinking culture. Therefore, the regulatory framework for alcohol advertising needs to minimise the exposure to alcohol promotions of people under the legal age for purchasing alcohol and adequately address the range and sophistication of modern promotional techniques.
- While voluntary industry self-regulation and industry-based reviews have the stated goal of ensuring socially responsible liquor advertising, the current system does not control young people's overall exposure to marketing messages and does not take into account the trend towards advertising methods that do not use traditional broadcasting media.
- The policy of voluntary industry self-regulation has not changed significantly since 1993, yet the social context surrounding alcohol has changed considerably since then. Changes have occurred in marketing practices, telecommunications technology, the trends in the use and misuse of alcohol and other drugs, government policy, the availability of alcohol, the types of alcohol available (such as the emergence of ready-to-drink alcoholic beverages) and the minimum legal age for purchasing alcohol.

¹ Casswell S, et al. Report: Alcohol and Moderation Advertising Expenditure and Exposure: 1996. Auckland, Alcohol & Public Health Research Unit.

- Research into how young people respond to alcohol advertising shows that their levels of advertising recall and their liking for the advertisements themselves influence young people's views of drinking alcohol. This can influence how much they drink now and will drink in the future.

In June 2005, the Ministerial Committee on Drug Policy considered the IACD's report and agreed that a government-led review of the regulatory framework for alcohol advertising was needed. The IACD then developed the details for this review, which were approved by Cabinet in May 2006. The terms of reference are reproduced in Appendix A.

Alcohol in New Zealand

Alcohol has long been used in many cultures around the world for diverse reasons. Alcohol is a deeply ingrained part of New Zealand life and we often use it to help us socialise, relax, celebrate and commiserate.

At the same time, alcohol is a drug and, like all drugs, it has both benefits and harms. Most New Zealanders enjoy alcohol safely most of the time, and its production, distribution and sale contribute to the economy. But when alcohol is misused, the damage can be considerable. In New Zealand, the harm caused by alcohol consumption, particularly 'risky' or heavy per occasion consumption,² impacts more heavily on younger people, men and Māori. The National Alcohol Strategy (Minister of Health 2001: 8) identifies the most significant types of alcohol-related harm in New Zealand as being:

- deaths and physical health problems from alcohol-related conditions
- alcohol dependence and other mental health problems
- effects on unborn children
- drink-driving fatalities and injuries
- drownings
- violence both within and beyond the home
- workplace injuries and lost productivity.

Research has shown that New Zealand has a drinking culture that accepts intoxication as a norm. ALAC has conducted surveys of drinking patterns and has found that young people drink in much the same way as adults do. For more information, see ALAC's website (<http://www.alac.org.nz>).

A survey conducted in 2003 found that overall:

- 635,000 adults drink at least once a week and binge drink³

² ALAC's guidelines for low-risk drinking recommend no more than four standard drinks in one session for women, and no more than six in one session for men, with a weekly maximum of 14 and 21 respectively (with at least two alcohol-free days per week).

³ 'Binge' drinking refers to the drinking pattern of consuming large amounts of alcohol in one session. See footnote 2.

- 1.2 million drinkers think bingeing is an acceptable way to drink, or regularly binge themselves (ALAC 2004).

Young people are especially vulnerable to alcohol-related harm, as they are still growing and developing physically, mentally and emotionally. They are also in the process of forming personal identities, and tend to be in a risk-taking phase of their lives.

National drug surveys show an increase in the level of risky drinking among young people. Survey data show that the numbers of young women aged 16–17 who had four or more drinks at one sitting at least once a week increased from 10 percent in 1995 to 21 percent in 2000. In the same period, the proportion of young men aged 16–17 who reported drinking enough to feel drunk at least once a year also increased from 71 percent to 84 percent (APHRU 2001).

Government policy context

Policy

The focus of the Government’s alcohol policy is to minimise harm through a preventive/population-based approach and change the drinking culture from one that accepts intoxication as a social norm to one where bingeing and intoxication are unacceptable. One of the New Zealand Health Strategy’s priority population health objectives is ‘minimising harm caused by alcohol and illicit and other drug use to individuals and the community’ (Minister of Health 2000: 13).

Reducing harm from alcohol and other drugs is also one of the five issues for priority action identified in *Opportunity for All New Zealanders*, the Government’s summary of its overall social policy (Minister for Social Development and Employment 2004).

Harm minimisation approaches

Preventive and population-based approaches to minimise alcohol-related harm fall into three categories:

- supply control
- demand reduction
- problem limitation.

Demand reduction approaches include ‘responsible marketing’ and the regulation of alcohol promotion. The National Alcohol Strategy identifies four objectives for responsible marketing (Minister of Health 2001: 33).

- Ensure that all alcohol advertising/sponsorship conforms to the relevant codes of practice.
- Minimise the exposure of young people to alcohol marketing messages.
- Minimise the use of marketing strategies that may cause or contribute to alcohol-related harm.
- Ensure that any new detrimental alcohol marketing strategies are identified early, and do not become established in New Zealand.

Alcohol advertising in contemporary New Zealand

Alcohol advertising has been under the Advertising Standards Authority's sole jurisdiction since 1993.

Since 1993, the social context surrounding alcohol has changed considerably. Significant changes have occurred in marketing practices, telecommunications technology, the trends in the use and misuse of alcohol and other drugs, government policy, the availability of alcohol, the types of alcohol available (such as the emergence of ready-to-drink alcoholic beverages) and the minimum legal age for purchasing alcohol.

Since 1993 alcohol advertising strategies have proliferated and diversified in New Zealand. This is consistent with worldwide trends. According to the World Health Organization (WHO, 2004: page 63):

- the role of different types of sponsorships is becoming increasingly important as the alcohol beverage industry in many countries is moving away from traditional advertising in broadcast media.

Advertisers use a broad range of media, including the Internet and interactive texting. Sponsorship, competitions and pricing strategies are important promotional methods, often used in an integrated way. Advertisers commonly make use of the music and sports industries to promote alcohol products and brands. In New Zealand, sport has long been associated with alcohol through sponsorship.

Music is an important tool for advertisers, because it generates an emotional response from people. One way to utilise this response is to create an association between a brand and popular music. Advertisers often use radio stations and concerts to promote alcohol.

A key feature of modern advertising is brand-building. Advertisers look for commonly held beliefs in society (or in a part of society) and the intersections between those beliefs and the product the advertiser wants to sell. The advertisers then aim to make the product part of a shared cultural experience. Once brands are accepted on this level, they become more powerful. Brand alcohol advertising becomes part of the shared cultural experience of drinking.

In 1999 the minimum legal age for purchasing alcohol was lowered from 20 to 18, adding a new group of potential customers to which promotional strategies could be directed.

The liberalisation of liquor licensing has meant increased competition between licensed premises. More competition has meant more and varied promotional strategies. The result is more advertising in the overall environment, from pubs and clubs advertising events and specials to supermarkets and bottle stores advertising discounted alcohol products.

Impact of alcohol advertising

As with all advertising, alcohol advertising enables producers and retailers to market products by informing consumers about the product or by attracting customers to a brand. We know alcohol advertising influences consumers' choices about the brand of alcohol they choose and the outlet they buy from. But there is still much debate about whether advertising affects how much alcohol people drink and how they drink, or if alcohol advertising influences drinking cultures and societal norms about drinking or merely reflects aspects of an existing culture.

Numerous studies have been conducted into the affects of alcohol advertising or promotion. Research into the effects of advertising is complex and the results are often inconclusive because not all the factors involved can be tested.

There are two basic types of study. Econometric studies look at population level data to examine the link between advertising expenditure and alcohol consumption figures. Qualitative studies survey individuals about their drinking attitudes and behaviour and try to determine whether this is linked to individuals' exposure to alcohol advertising.

Most econometric studies have tended not to show a link between expenditure on alcohol advertising and overall consumption levels. However, several qualitative studies have concluded that alcohol advertising influences young people's drinking beliefs or behaviours.

A comprehensive review of survey research in 2002 concluded that the research consistently indicates small but statistically significant connections between exposure to and awareness of alcohol advertising and young people's drinking beliefs and behaviours (Cooke et al 2002). Further research has been published since this review.

In 2003 a World Health Organization-commissioned book reviewed the international evidence about alcohol promotion. It reached two conclusions.

- Increasingly sophisticated marketing aims to attract, influence and recruit new generations of drinkers.
- The range and sophistication of marketing influences are not adequately addressed by industry codes of self-regulation (Babor et al 2003).

During the review the steering group will consider all relevant research on alcohol advertising, paying particular attention to New Zealand-based research.

Regulatory framework

Just as laws exist for fair trading and consumer protection, laws exist in relation to the advertising of products. Some products, particularly those that might cause harm if misused, require specific regulation and advertising rules.

Alcohol is a regulated product because of its potential to cause harm. Therefore New Zealand, like other countries, has specific rules for advertising alcohol products.

The current approach to the regulation of alcohol advertising in New Zealand is based on voluntary, self-regulation by industry. Voluntary self-regulation is based on the philosophy that rules are best enforced through persuasion and incentives rather than through punishment.

The then government established New Zealand's system of voluntary self-regulation for alcohol advertising in 1993 and gave primary responsibility for regulating broadcast alcohol advertising to the Advertising Standards Authority. Before then broadcast alcohol advertising had been the Broadcasting Standards Authority's responsibility.

More details about current jurisdiction and controls are provided in Appendix B.

Advertising Standards Authority

The Advertising Standards Authority (ASA) oversees the standards for media advertising and develops codes of practice for the advertising industry (including the Code for Advertising Liquor).

The ASA is made up of 14 representatives from media and advertising industry groups, including the Association of New Zealand Advertisers, and is monitored by the Ministry for Culture and Heritage in relation to broadcasting matters.

Advertising codes of practice

Advertising codes of practice set standards for all media advertising. In New Zealand, the overarching Code is the Advertising Code of Ethics. This sets out basic principles and rules, including the principle that "all advertisements should be prepared with a due sense of social responsibility to consumers and to society".

To cover the entire range of advertising activity, other codes have been developed. For the purposes of the codes:

- the word 'advertisement' is to be taken in its broadest sense to embrace any form of advertising that promotes the interest of any person, product or service, imparts information, educates, or advocates an idea, belief, political viewpoint or opportunity (ASA 2006A).

A complaint about an alcohol advertisement can be made under a number of codes. The most common are the Code for Advertising Liquor, Advertising Code of Ethics or Code for People in Advertising.

Code for Advertising Liquor

The primary mechanism for regulating New Zealand's alcohol advertising is the Code for Advertising Liquor. The Code aims to make sure alcohol advertising (including sponsorship advertising) (ASA 2003):

- is conducted in a way that does not conflict with or detract from the need for responsibility and moderation in alcohol merchandising and consumption
- does not encourage alcohol consumption by minors (ie, people aged under 18).

A full version of the Code for Advertising Liquor is available online at <http://www.asa.co.nz/codes/codes.htm>.

Review of the Code for Advertising Liquor

The Code for Advertising Liquor was amended in 1993 to reflect the change of jurisdiction to the Advertising Standards Authority.

The Code was independently reviewed in 1994 and the resulting report recommended that the Code be made stricter and apply to all media, not just radio and television. The Advertising Standards Authority adopted these recommendations.

Further reviews occurred in 1998 and 2003, and resulted in only limited changes.

Advertising Standards Complaints Board

The Advertising Standards Authority funds a separate self-regulatory body called the Advertising Standards Complaints Board. The Board decides whether to uphold complaints about advertisements that may be in breach of the codes.

Public representatives and advertising industry representatives make up the Board's membership. While most of the public members do not have health sector experience, members do have a range of expertise. The Advertising Standards Complaints Board has five public members and four industry representatives. The Chairperson is a public member.

From 1 June 2004 to 31 May 2006, the board considered 67 complaints under the Code for Advertising Liquor: 19 were not accepted as there were no grounds to proceed; 25 were upheld; four were withdrawn by the complainant; and 19 were not upheld.

Advertising Standards Complaints Appeal Board

The Advertising Standards Complaints Appeal Board decides appeals of Advertising Standards Complaints Board decisions. The Appeal Board has two public members and one industry representative. The Chairperson is a public member.

Liquor Advertising Pre-vetting System

The Association of New Zealand Advertisers developed the Liquor Advertising Pre-vetting System (LAPS) so advertisers could check their advertising concepts complied with the Code for Advertising Liquor before they produced their advertisements.

Most liquor advertisers have agreed to abide by the Code and not produce brand liquor advertisements that have not received LAPS approval.

The LAPS Code Consultative Committee meets twice a year to review broadcast and print advertisements. It invites representatives from government agencies and non-governmental organisations to its meetings as appropriate.

In 2004, LAPS approved 358 alcohol advertisements: 33 percent were outdoors; 22 percent were on television; 19 percent were in magazines; 11 percent were on radio; and the remainder were in newspapers, at points of sale, on websites and in other media.

Themes

This section overviews the key themes that have been highlighted during previous reviews, in complaints to the Advertising Standards Complaints Board, and by non-governmental and other public interest organisations.

Not everyone will agree that the issues listed below are problems that need addressing, and you are welcome to raise any other matters.

In this section we ask questions to help you to focus your responses. These questions are collated into the submission form at the end of the document.

1 Placement and volume of advertisements

Current situation

The Code for Advertising Liquor requires that no alcohol advertising be directed at minors (including placement). It contains a specific limitation on the placement of alcohol advertisements only in regard to television broadcasting, namely that alcohol advertisements are not allowed on television from 6 am to 8.30 pm. Such advertisements shall not exceed six minutes per hour, and there shall be no more than two advertisements for liquor in a single commercial break.

Issues

Volume of advertising

When all forms of alcohol advertising are taken into account, the total volume of advertising has increased considerably since 1992. The most targeted group is that aged 18–30. This means people under the minimum legal purchase age are potentially exposed to a high volume of alcohol advertising.

The Code for Advertising Liquor deals mostly with the *content* of advertisements rather than the overall volume of advertising and people's exposure to it. Some studies have shown that teenagers' high recall of alcohol advertising can be related to their heavier drinking patterns (for example, see Casswell et al 2002: 1427–37).

"Watershed" time on television

Because many children and adolescents watch television later than 8.30 pm, some people believe the 8.30 pm threshold allows too many people under the minimum legal purchase age to be exposed to a greater amount of alcohol advertising than is desirable. (The threshold was changed from 9 pm after an independent review of the Code for Liquor Advertising in 2003.)

This issue is also being considered as part of the Law and Order Select Committee's work on the Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill. The Bill proposes that the threshold becomes 10 pm for radio and television.

Radio

No time threshold exists for alcohol advertising on radio, because youth-oriented radio stations have audiences that become proportionately younger as the evening gets later. However, alternative policies for radio could be considered.

Placement of advertisements in other media

Outdoor advertising (eg, in bus shelters) and billboards are widespread forms of alcohol advertising that have no limitations on their placement. Everybody, including children and young people, is exposed to this outdoor advertising.

Questions

- What do you think about the overall amount of alcohol advertising in the New Zealand environment?
- Do you think problems exist with the overall amount of alcohol advertising in New Zealand? If so, what solutions do you suggest?
- What do you think about the placement of alcohol advertising in the New Zealand environment?
- Do you think problems exist with the placement of alcohol advertising in New Zealand? If so, what solutions do you suggest?

2 Sponsorship

Current situation

Any type of event may be sponsored by an alcohol company, and the advertiser does not need to consider the likely audience.

Principle 5 of the Code for Advertising Liquor contains standards about sponsorship credits and advertisements. One of those standards states that advertisements shall not contain a sales message or show product or packaging.

The Broadcasting Standards Authority is responsible for liquor promotion within television and radio programmes (eg, televised sports matches) and the sponsorship of programmes.

The ASA's Code for Advertising Liquor does not apply to BSA complaints. The "Restrictions on Promotion of Liquor" standards apply, which are found in each of the Radio, Free-to-air, and Pay Television Codes of Broadcasting practice (see <http://www.bsa.govt.nz/codesstandards.htm>). The main standard says:

- In the preparation and presentation of programmes, broadcasters must observe restrictions on the promotion of liquor appropriate to the programme genre being broadcast. Liquor Promotion should be socially responsible and must not encourage consumption by people who are under the legal age to purchase liquor.

Issues

The ASA Code states that alcohol advertisements should not refer to 'heroes of the young'. Some people consider that sponsorship negates this rule, particularly in relation to sports sponsorship.

Sports sponsorship both uses and strengthens the strong association of drinking with sport. This association is part of New Zealand's overall drinking culture, but it is a culture that often features binge drinking, which can lead to harm.

Advertisers are permitted to sponsor youth-oriented clubs and events such as rock concerts, televised music programmes and university student unions and social events.

The Advertising Standards Complaints Board has no mechanism to enforce the naming, packaging or merchandising of products. Therefore packaging is often used to make a link between a sports team ('heroes of the young') and the alcohol product.

Questions

- What do you think about the current level and nature of alcohol sponsorship in New Zealand?
- Do you think there are problems with alcohol sponsorship, and if so, what solutions do you suggest?

3 Naming, packaging and merchandising, and point-of-sale material

Current situation

Principle 2 of the Code for Advertising Liquor states that the naming, packaging and merchandising of products must comply with the *National Guidelines on the Naming, Packaging and Merchandising of Alcoholic Beverages* (ALAC 2000), as it relates to advertising.

The Advertising Standards Complaints Board deals with complaints about the advertising of products in breach of these guidelines.

Point-of-sale material includes signage, leaflets and flags. These are covered by the Code for Advertising Liquor. Such material may promote a brand or price.

Issues

No mechanism exists to enforce the packaging guidelines, so non-compliant packaging is common. Also, although alcohol advertising cannot show the All Blacks (who are 'heroes of the young'), packaging such as six-packs of beer can feature the All Blacks.

Liquor-branded equipment and clothing are highly visible to young people and children.

Questions

- What do you think about the naming, packaging and merchandising of alcohol and point-of-sale material?
- Do you think problems exist with the naming, packaging and merchandising of alcohol and point-of-sale material? If so, what solutions do you suggest?

4 Newer types of advertising and liquor-branded merchandise

Current situation

Alcohol advertising is shifting from broadcast media advertising (ie, radio and television) towards other forms of advertising, including interactive Internet advertising, advertising through cell phone text messages, competitions, loyalty card schemes, liquor-branded merchandise and giveaways.

'Guerrilla marketing' describes low-cost, less visible advertising using non-traditional media (eg, online promotions, events, competitions, word-of-mouth promotion or even graffiti).

'Viral marketing' is a variation of guerrilla marketing, and refers to marketing using texting, the Internet or word of mouth (ie, it encourages the recipient of the advertising to pass it on to others).

An emerging form of new media promotion is television content streamed directly to cell phones and media players.

The Code for Advertising Liquor covers all these types of advertising but they present special challenges for regulation and enforcement.

The Broadcasting Standards Authority's standards apply to product placement on television. Product placement is not widely used in New Zealand.

The New Zealand Television Broadcasting Council's guidelines for sports programmes prohibits the broadcast of the 'premeditated staging of athletes holding packaged alcohol products for television'.

Issues

Modern advertising campaigns use innovative forms of advertising, together with sponsorship and broadcast advertising, to build sophisticated campaigns that can appeal strongly to younger audiences.

It can be difficult to control young teenagers' exposure to Internet sites, cell phones and competitions. These new types of advertising mean young people's exposure to advertising is higher than it used to be. They present particular challenges for effective regulation and enforcement.

Questions

- Do you think particular problems are associated with newer forms of advertising (eg, texting, the Internet, competitions) or the regulation of them? If so, what solutions do you suggest?
- What do you think about liquor-branded merchandise (eg, clothing, bags)?
- Do you think problems exist with liquor-branded merchandise? If so, what solutions do you suggest?

5 Content of advertisements

Current situation

The 'content' of advertisements means the messages and images portrayed in the advertisement. The Advertising Standards Complaints Board considers complaints about the content of alcohol advertisements in light of the principles and standards contained in the Code for Advertising Liquor.

Price is a determining factor in the level of demand for alcohol: research shows that lower prices are associated with more harm to high-risk groups and higher prices are associated with less harm to these groups. Point-of-sale promotions often feature heavily discounted prices to attract customers, as do retail flyers and signs. The Code for Advertising Liquor covers point-of-sale advertising material but does not mention the advertising of price or point-of-sale promotions. However, point-of-sale promotions at licensed premises are subject to section 154A of the Sale of Liquor Act 1989, which makes it an offence to conduct an alcohol promotion that is 'likely to encourage persons on the licensed premises to consume alcohol to an excessive extent'.

The National Protocol on Alcohol Promotions (ALAC 2006) defines acceptable and unacceptable promotions. Unacceptable promotions are those that encourage excessive drinking by offering low-priced drinks within a short timeframe.

A health advisory statement does not have to be included with an alcohol advertisement. This is a requirement in some overseas countries.

A health advisory statement in an advertisement is different from a health message requirement for the labelling of products. (ALAC is applying to Food Standards Australia New Zealand to amend the Australia New Zealand Food Standards Code (FSANZ 2006) to require a health advisory label on packaging aimed at pregnant women.)

Issues

The Advertising Standards Complaints Board has been criticised for not taking public health issues into sufficient consideration in their deliberations and for allowing advertisers to push the limits of the Code for Advertising Liquor.

The result of this has been advertisers being able to use sex and sexual themes to promote alcohol, despite the Code prohibiting this. They may use scenes and music that appeal to young people. Advertisements can also escape capture by the Code by

using humour and hyperbole and presenting fantasy images in the context of an individual's imagination.

Questions

- What do you think about the content of alcohol advertisements?
- Do you think problems exist with the content of alcohol advertisements? If so, what solutions do you suggest?

6 Complaints

Current situation

The current regulatory framework for alcohol advertising is complaints based in that it operates primarily by dealing with complaints about specific advertisements on a case-by-case basis. The Advertising Standards Complaints Board is alerted to possible breaches of the Code for Advertising Liquor when it receives complaints from the public or interest groups. Likewise the BSA, which operates under procedures set down in the Broadcasting Act 1989, considers complaints upon referral, after the relevant broadcaster has first issued a ruling.

Information about the complaints process and the Code are on the Advertising Standards Authority's website (<http://www.asa.co.nz>). There is a high level of compliance by advertisers when the board makes a decision. In most cases advertisers withdraw an advertisement when the Board upholds a complaint.

In 2005, the average time taken from receipt of a complaint until notification of the result was 25 working days (ASA 2006B: 2).

Issues

The complaints-based nature of the system means it does not have a mechanism for dealing with concerns about the overall volume of alcohol advertising or the amount of alcohol advertising young people are exposed to.

While the average time taken to deal with a complaint is 25 working days, it can take several weeks for an advertisement to be judged as being in breach of the Code for Advertising Liquor (or longer if the decision is appealed), by which time the advertising campaign may have run its course. However, the Board can and does fast-track complaints about potentially serious breaches.

Many advertisers and agencies engage solicitors to present their views to the Board and arguments often focus on technicalities that require the Board to spend time considering the matter and balancing the consumer perspective with legal arguments. Most complainants are not in a position to mount the same technical arguments. This means the public's interests may not be represented by the same level of expertise as industry stakeholders' interests.

Questions

- Are you familiar with the process for making complaints about advertisements?
- Have you used the complaints process in regard to an alcohol advertisements? How did you find the process?
- Do you see any problems with the complaints system and/or the complaints-based nature of the regulatory system? If so, what solutions do you suggest?

7 Reviews

Current situation

Every few years the ASA initiates a review of the regulatory framework to take stock of developments, address emerging trends or problems and amend policies. Under the ASA's administration independent panels conducted reviews in 1994, 1998 and 2003.

Issues

Some people believe that decisions on review processes are public policy matters that should not be left entirely to an industry body. In particular, public interest groups criticised the 2003 review for bringing forward the watershed time for television advertising to 8.30 pm.

Questions

How and when do you think the regulation of alcohol advertising should be reviewed?

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Appendix A: Review Terms of Reference

Review of the Regulation of Alcohol Advertising Terms of Reference

Goal of the Review

1. The goal of the review is to assess whether or not the current regulatory framework for alcohol advertising is in harmony with the aims of the Government in regard to alcohol policy, and if not, what must be done to achieve this. New Zealand's regulatory framework for alcohol advertising should:
 - ensure alcohol advertising does not conflict with or detract from the need for responsibility and moderation in liquor consumption
 - support a change in cultural norms away from acceptance of binge drinking towards moderate drinking and a low tolerance of drunkenness
 - minimise overall exposure of alcohol advertising to children and young people under the minimum legal purchasing age.

Steering Group

2. A Steering Group has been appointed to oversee the Review of the Regulation of Alcohol Advertising ('the Review') and develop recommendations for the lead Minister (Hon Damien O'Connor, Associate Minister of Health) as to how best to achieve the goal of the review.

Functions of Steering Group

3. The functions of the Steering Group are to:
 - direct the work of the working group on the Review providing guidance and feedback as required
 - provide progress reports to the lead Minister, to the MCDP, and to the Interagency Committee on Drug Policy (IACD) on a regular basis.
 - provide a conduit for communication between the working group and other interested parties.

Membership of Steering Group

4. The Steering Group membership is:
 - Dr Ashley Bloomfield (Chair), Chief Advisor Public Health, Ministry of Health
 - Dr Mike Macavoy, Chief Executive, Alcohol Advisory Council of New Zealand
 - Phil Knipe, Policy Manager (Commercial, Property and Regulatory), Public Law, Ministry of Justice
 - Nonnita Rees, Policy Manager, Ministry for Culture and Heritage
 - Alison Taylor, General Manager, Ministry of Youth Development
 - Dr Ruth Richards, Principal Analyst, Strategic Social Policy Group, Ministry of Social Development
 - Hilary Souter, Executive Director, Advertising Standards Authority
 - Jane Wrightson, Chief Executive, Broadcasting Standards Authority
 - Tim Harding, consultant with alcohol and drug treatment and policy expertise
 - Tim Rochford, Lecturer in Maori Health, Wellington School of Medicine

Scope of the Review

5. The following is a list of aspects of advertising that the review will consider:

- the content of advertisements
 - the media for advertisements, eg broadcast advertising, print media, electronic and interactive media
 - placement, ie when and where the advertisements appear, (including the internet, magazines, cinema, bus stops and billboards) and under what limitations
 - methods and effects, limitations and conditions of sponsorship
 - packaging (as it relates to advertising)
 - point-of-sale promotions
 - point-of-sale material
 - competitions and give-aways, loyalty cards
 - product placement
 - liquor-branded merchandise
 - 'guerilla marketing' and 'viral marketing'⁴
 - health warnings in advertisements.
6. With regard to the regulatory framework for advertising, the scope of the review extends to:
- the pre-vetting of advertisements
 - the Code for Advertising Liquor
 - areas of responsibility, accountability and enforcement
 - complaints and appeals
 - ongoing review, monitoring and evaluation
 - research/information needs
 - education of stakeholders and the public
 - relevant legislation
 - the relationship between alcohol advertising and broadcasting regulations about promotion.
7. Recommendations may be made in regard to processes, structures, organisations, specific rules about advertising, and any amendments to legislation.

Consultation

8. The Steering Group will consult with community representatives, public health NGOs and researchers, industry stakeholders, and relevant government and non-government agencies.

Timeframe

9. The review is expected to be completed by the end of 2006.

⁴ The terms "guerilla marketing" and "viral marketing" refer to the newer types of marketing that utilise inexpensive, non-traditional media, such as on-line competitions and text messages.

Appendix B: Jurisdiction and Controls

JURISDICTION AND ENFORCEMENT IN THE CURRENT REGULATORY FRAMEWORK

Jurisdiction

The system for regulating alcohol advertising is voluntary self-regulation administered by an independent body using codes of practice and a complaints process. The Advertising Standards Authority (ASA) is an independent organisation with responsibility for self-regulation of all advertising. This role was conferred by way of the Broadcasting Amendment Act 1993. Before then alcohol advertising had been the Broadcasting Standards Authority's (BSA) responsibility.

The ASA oversees the standards for media advertising and develops codes of practice for the advertising industry (including the Code for Advertising Liquor (CAL)). Sections 8(2) and (3) of the Broadcasting Act 1989 now acknowledge the jurisdiction of the Advertising Standards Complaints Board (ASCB), part of the ASA but with a separate board, to consider complaints about advertising. Details about the operation of the system were further outlined in a Cabinet Minute. (For more on the codes of practice and functions of the ASA and ASCB, see the "Regulatory framework" section of the discussion document).

The BSA is a Crown entity responsible for overseeing the maintenance of acceptable standards in programmes (as opposed to advertising) on radio and television, specifically by way of determining formal complaints and approving codes of broadcasting practice.

With regard to alcohol, the BSA's jurisdiction is over alcohol promotion within programming. The Broadcasting Act 1989 requires broadcasting codes to include 'restrictions on the promotion of liquor'. The three codes, covering free-to-air TV, pay TV and radio, each include a standard setting out these restrictions: for instance, broadcasters must avoid "advocacy of excessive liquor consumption" in programmes.

Section 8(2) of the Broadcasting Act allows the BSA to hear a complaint about a broadcast advertisement if neither the broadcaster nor advertiser recognises the jurisdiction of the ASCB in relation to the complaint.

The BSA recently reviewed the broadcasting standards concerning restrictions on liquor promotion which led to revised standards taking effect from December 2004.

Enforcement

Voluntary self-regulation is designed to work through persuasion and cooperation rather than punitive means. To this end, the ASA educates advertisers and the Association of New Zealand Advertisers (ANZA) runs the Liquor Advertising Pre-vetting System to help its members abide by the CAL. The CAL has a number of principles that advertisers should adhere to. When a complaint is upheld, the media is asked to discontinue the advertisement. Most of the liquor and advertising companies in New Zealand are members of the ASA and comply with the directions of the ASCB. Enforcement may be

a problem where a media company is not a member, or where there is no media company involved, such as with packaging and guerilla marketing.

The BSA has legislated powers to censure, fine and award costs against offending broadcasters (but not advertisers or programme makers).

Over page is a table outlining jurisdiction and existing controls in relation to various aspects of advertising.

Advertising aspect	Jurisdiction and existing controls
The <i>content</i> of advertisements	CAL (developed by the ASA)
The <i>media</i> for advertisements, eg broadcast advertising, print media, electronic and interactive media	CAL for all types - including advertisements portraying liquor packaging or merchandise but not in relation to the actual packaging or merchandise. BSA codes of broadcasting practice for TV and radio programming, specifically the restrictions on promotion of liquor. The codes are: the <i>Free-to-air Television Code of Practice</i> , the <i>Code of Broadcasting Practice for Pay Television</i> and the <i>Code of Broadcasting Practice for Radio</i> (these codes all contain the same rules in relation to liquor). All available at http://www.bsa.govt.nz/codesstandards.htm NZTBC has developed <i>Guidelines for the Promotion of Liquor in Sports Programmes</i> .
<i>Placement</i> of ads, ie when, where the ads appear, (including the internet, magazines, cinema, billboards) and under what limitations	The only specific limitation on placement is for TV – none between 6 am and 8.30 pm. After 8.30 pm, (the time for the commencement of programmes classified Adults Only) no more than six minutes per hour is allowed for TV liquor advertising, and no more than one ad per commercial break. In addition, the CAL requires that all liquor advertising not be directed at minors (including placement).
Sponsorship	No limitations on what may be sponsored. Principle 5 of the CAL contains rules on sponsorship credits and sponsorship advertisements. BSA broadcasting codes cover sponsorship credits that appear during broadcast events, eg televised sports matches and sponsorship of programmes (eg the former Montana Sunday Theatre and Standard 11 of the <i>Free-to-air Television Code of Practice</i>).
Packaging	Principle 2 of the CAL states that products being advertised must comply with the <i>National Guidelines on the Naming, Packaging and Merchandising of Alcoholic Beverages</i> (ALAC), and the ASCB has upheld complaints about advertising of products in breach of the guidelines. However because the ASA has no jurisdiction over the packaging industry, there is a lack of enforcement of the <i>National Guidelines</i> , and non-compliant packaging is common.
Point-of-sale promotions	Section 154A of the Sale of Liquor Act 1989 makes it an offence to conduct an alcohol promotion that is “intended or likely to encourage persons on the licensed premises to consume alcohol to an excessive extent”. This is aimed at point-of-sale promotions. The <i>National Protocol on Alcohol Promotions</i> (ALAC) defines acceptable and unacceptable promotions. It is part of bar managers’ host responsibility to have policies on alcohol promotions. Public Health officers are involved in enforcing Section 154A. The CAL does not contain reference to the advertising of pricing strategies or to the national protocol.
Point-of-sale material	Eg signage, leaflets. Leaflets and brochures are covered by the CAL.

Competitions and give-aways, loyalty cards	Covered by CAL principles, but no specific rules. Section 154A and the National Protocol on Alcohol Promotions also applies. The Gambling Act 2003 also lists liquor as a banned prize in sales promotion schemes relating to gambling. It is also a breach of the Sale of Liquor Act to give away liquor with a purchase on unlicensed premises (deemed to be sale of liquor on unlicensed premises).
Liquor-branded merchandise	Other than the sponsorship rules, there appears to be no regulation of the sale of liquor-branded merchandise. Retailers may have guidelines on this.
Product placement	BSA rules on programming apply. Also, the NZTBC's guidelines for sports programmes prohibits the broadcast of "premeditated staging of athletes holding packaged liquor products for television."
Guerilla marketing	A catch-phrase for any newer type of 'below-the-line' advertising using low-cost, non-traditional media, eg DIY online promotions, and PR stunts, events and competitions. Some methods are surreptitious, eg by word-of-mouth or graffiti. CAL applies in theory but difficult to regulate or enforce.
Viral marketing	A type of guerilla marketing, it usually refers to text messages, online or word-of-mouth types. Covered by the CAL but difficult to enforce.
Health warnings in advertisements	No policy in New Zealand currently. There is a distinction between health messages in advertisements and health messages on product labels. ALAC is in the process of applying to Food Standards Australia NZ to amend the Australia NZ Food Standards Code to require health advisory messages on labels warning about the dangers of drinking during pregnancy.

Submission Form for the Review of the Regulation of Alcohol Advertising

The questions in this form are designed to focus responses and make it easier for submissions to be analysed. Participants should feel free to leave some questions without a response, or to add any additional issues and comments they believe are relevant.

When answering the questions, please give reasons and explanations wherever possible. If there is insufficient space below, feel free to attach supplementary papers.

Submissions close at **5 pm on 31 October 2006**.

Note: You do not have to provide personal information if you prefer not to.

This submission was completed by:

Name:

Address:

Email:

Organisation:

Position:

Are you submitting this as:

- an individual
- on behalf of a group or organisation
- other (please specify)

General questions about alcohol advertising

1. In your view, what is the role of alcohol advertising in New Zealand? Is this role changing?

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2. Are there potential benefits and harms from alcohol advertising that are not identified in this paper?

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3. What role do you consider alcohol advertising plays in shaping attitudes towards drinking in New Zealand?

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4. What is your view of the overall amount of alcohol advertising in New Zealand?

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8. Do you think there is currently the right balance between the right to freedom of expression and the potential benefits of alcohol advertising, and the potential harms?

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9. The overarching principle of the Code for Advertising Liquor (and all advertising regulation in New Zealand) is the principle of social responsibility that states, “all advertisements should be prepared with a due sense of social responsibility to consumers and to society”.⁵ What do you think “social responsibility” means in the context of alcohol advertising?

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⁵ Advertising Code of Ethics – Principle 4, www.asa.co.nz.

Themed questions

The following questions are collated from the “Themes” section of the Information for Stakeholder Engagement document.

Placement of advertisements

10. Do you think problems exist with the overall amount of alcohol advertising in New Zealand? If so, what solutions do you suggest?

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11. What do you think about the placement of alcohol advertising in the New Zealand environment?

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12. Do you think problems exist with the placement of alcohol advertising in New Zealand? If so, what solutions do you suggest?

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Sponsorship

13. What do you think about the current level and nature of alcohol sponsorship in New Zealand?

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14. Do you think there are problems with alcohol sponsorship? If so, what solutions do you suggest?

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Naming, packaging and merchandising, and point-of-sale material

15. What do you think about the naming, packaging and merchandising of alcohol and point-of-sale material?

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16. Do you think problems exist with the naming, packaging and merchandising of alcohol and point-of-sale material? If so, what solutions do you suggest?

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Newer types of advertising, and liquor-branded merchandise

17. Do you think particular problems are associated with newer forms of advertising (eg, texting, the Internet, competitions) or the regulation of them? If so, what solutions do you suggest?

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18. What do you think about liquor-branded merchandise (eg, clothing, bags)?

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19. Do you think problems exist with liquor-branded merchandise? If so, what solutions do you suggest?

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Content of advertisements

20. What do you think about the content of alcohol advertisements?

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21. Do you think problems exist with the content of alcohol advertisements? If so, what solutions do you suggest?

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Complaints

22. Are you familiar with the process for making complaints about advertisements?

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23. Have you used the complaints process in regard to alcohol advertisements? How did you find the process?

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24. Do you see any problems with the complaints system and/or the complaints-based nature of the regulatory system? If so, what solutions do you suggest?

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Reviews

25. How and when do you think the regulation of alcohol advertising should be reviewed?

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Anything else?

26. Please note down any further comments you may have.

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