

# MCA's advertising codes

Angela McAdam reports on the TPC's inquiry into the administration of the Media Council of

Australia's ad codes which found the system in need of some fine tuning only

**E**xcept for some minor difficulties, the Media Council of Australia's (MCA) advertising codes are generally operating in the manner envisaged by the Trade Practices Tribunal when it authorised them. These are the findings of the Trade Practices Commission in its first report monitoring operation of the codes.

The MCA advertising codes include the Advertising Code of Ethics (imposing general standards for all advertising) and the Cigarette, Alcoholic Beverages, Therapeutic Goods and Slimming Codes. These codes came into effect on 1 June 1989.

## How the codes work

**E**ach of the four advertising codes stipulates the principles by which all advertisements for the given products must conform. For example, the Alcoholic Beverages Code states that advertisements for alcohol should not have a strong or evident appeal to children. Nor should they suggest that alcohol consumption is a necessary aid to relaxation.

Virtually all commercial media, through their membership in the MCA, have agreed to abide by the codes. In addition, advertising agencies and advertisers abide by them.

The advertising codes set out pre-clearance procedures, complaint-handling mechanisms and penalties for breaches. Code councils are also established. Their role is to review the operation of the codes in light of changing legal requirements and community standards and attitudes. They are composed of industry, media and public representatives.

Procedures under the specific product codes require that all television ads be cleared by the Commercial Acceptance Division of the Federation of Australian Commercial Television Stations. Radio ads must be cleared by the Federation of Australian Radio Broadcasters, while print ads are cleared by the Australian Publishers' Bureau. Outdoor and cinema ads are cleared by the relevant industry associations which cover those media.

The public can take complaints about offensive ads for the given products to the Advertising Standards Council (ASC), a body established by the MCA, advertisers

and advertising agencies. It investigates and adjudicates on them, and if it finds an advertisement has breached a code, can call for the ad to be withdrawn from publication immediately by the relevant media proprietor.

Penalties, ranging from reprimands to monetary penalties or suspension or cancellation of accreditation of advertising agencies, can be imposed if advertising material is found to be in breach of any of the codes.

## How the codes evolved

**T**he MCA codes call for some practices which have significant anti-competitive effects. In some cases they operate in front of the legal system in dealing with matters which may breach the law.

Because of their anti-competitive nature, the MCA sought authorisation from the Trade Practices Commission. Through its authorisation process, the Commission can grant immunity from prosecution to some agreement for arrangements which would otherwise be unlawful under the *Trade Practices Act*. It grants authorisation only if the party seeking it can demonstrate that the public benefits which are likely to arise from the agreements or arrangement will outweigh any anti-competitive effects.

In January 1986, the Commission granted authorisation to the MCA and its affiliated organisations to adopt their proposed codes as standards governing advertising. This Commission decision was subsequently challenged before the Trade Practices Tribunal by the Australian Consumers' Association.

The Tribunal finally confirmed the authorisation of the codes in December 1988, but not before the MCA had modified them to be sensitive to and reflective of community standards and values.

The Tribunal stipulated that the codes were "living codes" and that the MCA had the ability to change them so they would "respond flexibly to the changing needs of Australian society and to deficiencies ... revealed in practice".

One proviso set by the Tribunal in handing down its decision was that the Commission should monitor the codes' operation and be "vigilant" in doing so.

The Commission set down three objectives in monitoring the codes. It said it would consider whether the:

- codes had been changed in line with changing community standards;
- pre-clearance and complaint handling systems were operating as the Tribunal envisaged; and
- system was operating in a way that allowed the benefits anticipated by the Tribunal to be achieved.

As part of its monitoring process it invited comments from a wide range of individuals and organisations. A total of 67 parties were consulted or made submissions. They included State and Territory health and consumer affairs departments, publishers and broadcasters, advertising bodies, anti-smoking lobbies and women's organisations. All submissions, except those for which confidentiality was sought, have been made publicly available through the Commission's offices.

The Commission concluded that, except for shortcomings in three areas, the MCA system appeared to be operating as envisioned by the Tribunal.

It found that the issues of alcohol and cigarette advertising were the most controversial. Deep divisions of opinion exist in these areas and, as the Tribunal anticipated, it is impossible to accommodate all or even most viewpoints within a voluntary framework.

## Cigarette and alcohol ads

**P**ublic representatives of the Cigarette Advertising Code Council complained that they were constantly outvoted by industry representatives, who dominated the composition of the Council. The Commission found some validity in these claims but concluded that, at the very least, genuine public input was being made, even if the public representatives hadn't been able to have as much impact as they would have liked.

Despite these problems, several significant changes have been made to the Cigarette Advertising Code. Cigarette ads are no longer allowed to portray people. In addition, outdoor ads can no longer be displayed within 200 metres of a school boundary, and tobacco ads cannot be placed in magazines if 30 per cent of the readers are under the age of 18.

These changes have been stimulated by various agreements reached between the tobacco industry and several State governments. The code has also been amended to reflect Commonwealth legislation which banned print advertising of cigarettes from 28 December 1990.

One serious shortcoming the Commission found was that the tobacco industry may not have complied with the code to ensure that the mandatory health warnings appearing in cigarette advertisements were rotated regularly.

There are claims and counterclaims about the validity of the study. Despite the criticisms, the Commission felt that it raised serious questions about whether requirements of the Cigarette Advertising Code were being met. The Commission indicated that the MCA should have conducted its own survey to check the level of compliance.

The Commission found conflicting views on the operation of the Alcoholic Beverages Advertising Code.

On the one hand, the Code Council felt that it was functioning fairly effectively, judging by the low number of complaints it received. Several amendments had been made to the code, mainly to clarify its meaning. For example, one provision prohibited the appearance of adults under the age of 25 years in alcohol ads. That was amended to allow younger people to be shown, but only if they appeared in situations where they would naturally be, such as family barbecues or licensed family restaurants.

Other issues had been considered by the Code Council, included the definition of low alcohol beers, advertising in publications which are not members of the MCA, and one-off promotions.

### **Appointment of members**

**A** number of concerns were raised with the Commission about the appointment of members to code Councils, particularly public members. These included complaints about the number of nominees Ministers were required to put forward to fill public member vacancies. In addition, there were questions about the overly strict interpretation of the rule stating that public members were not to be 'representatives' of any organisation or government agency.

The Commission recommended that the MCA rules governing appointments be streamlined and that serious consideration be given to adopting the same procedures as were used for selecting industry nominees and those from the Department of Health (ie. relevant Ministers would nominate one

public member only for each vacancy).

It also recommended that consideration be given to paying the expenses of public representatives to attend Code Council meetings where such representatives bear the costs personally.

Some public members of Code Councils expressed concern that they did not have adequate access to research facilities, particularly compared with what industry representatives had. The Commission recommended that the MCA and ASC survey public members about research facilities and if they found them inadequate, develop a program to offer additional facilities where practical.

### *'concerns were raised ... about the appointment of members to code Councils'*

The Commission received strong representatives from women's organisations about the portrayal of women in advertising and the adequacy of the existing codes to deal with the issue. Complaints about stereotyping and the portrayal of women on a sexist or derogatory fashion represented about 8 to 11 per cent of all complaints received by the ASC.

The Commission recommended that the Advertising Code of Ethics Committee continued to consult with organisations interested in women's issues and that it review the adequacy of the clauses of the Code of Ethics which deal with the portrayal of women in advertising.

### **Assessment of the ASC**

**V**arious parties raised concerns with the Commission about the Advertising Standards Council which adjudicates on complaints concerning alleged breaches of the codes. There were questions about the ASC's membership, its decisions in certain cases and delays in making them, its independence and its jurisdiction.

The Commission said, "while not everyone will agree with the decisions of the ASC and with its interpretation of the codes, the Commission can see no reason to question the integrity of its members or the conduct of its proceedings".

It, however, made a number of suggestions on possible improvements to the ASC's operations.

It found that membership of the ASC was not as widely represented as it could have been, in particular, the average age

of public members was over fifty and most came from a background in public affairs. It recommended that, in making future appointments to the ASC, the Chairman attempt to appoint members with a wide diversity of backgrounds.

Finding a widespread lack of public awareness of the ASC and its role, the Commission recommended that the Council, together with the MCA and their affiliated bodies, should continue their campaign to lift public awareness.

In what it considered to be a serious shortcoming, the Commission found that the ASC was very late in publishing its 1989 annual report and case reports for the latter half of 1989. As regular reporting is central to the MCA system's credibility, the Commission recommended the ASC publish its annual report within four months of the end of the year.

The Commission also noted that from July 1991 the ASC would publish the date on which it received and determined each complaint. This will enable an objective assessment of the time taken for ASC adjudication.

### **Penalties**

**T**he Commission was concerned about the lack of public reporting of penalties imposed by the Australian Media Accreditation Authority (AMAA), the body which has the power to impose penalties on agencies which have breached the Advertising codes.

The Commission recommended that where complaints have been upheld by the ASC, the complainant should be advised of the penalty imposed and the reasons for the AMAA's decisions. Penalties and reasons should also be published by the AMAA or in reports of the ASC.

The Commission believes that implementation of its recommendations will enhance the ability of the MCA system to deliver public benefits. It indicated it will conduct another public assessment of the MCA system next year.

*Angela McAdam works in the Information Services Branch of the Trade Practices Commission*