



FreeTV

Commercials Advice

Television Commercials Production Checklist

A checklist of matters covered by legislation, standards, codes and guidelines which might affect the production and placement of television commercials.

July 2005

This Checklist is for guidance only and is not necessarily comprehensive, nor applicable to the circumstances of every case. It is not a substitute for specific advice in relation to a commercial, including, where appropriate, legal or other professional advice. Compliance with this Checklist does not guarantee that a CAD number will be issued in relation to any specific commercial. Further, even if a CAD number is provided, that number does not guarantee that the commercial will be broadcast by an individual television station, as decisions relating to acceptance of a commercial for broadcast, the times during which it can be broadcast and the terms of agreement with any advertiser or advertising agent are a matter for each television station.

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CAD'S Service

Commercials Advice Pty Limited (CAD) is operated on behalf of the members of Free TV Australia, the free-to-air commercial television broadcasters. CAD's objective is to provide a timely, consistent and cost-efficient service which meets the needs and expectations of all our customers: broadcasters, advertisers, advertising agencies, production houses and the general public.

CAD provides the following services:

(a) Classification

Classification of commercials under the *Code of Practice*. The *Code of Practice* contains a detailed classification system which is designed to ensure that only material which is suitable for a particular classification zone is broadcast in that zone. Commercials must be classified before they can be broadcast on television.

(b) Issue of Classification Number (CAD Number)

CAD will issue a CAD Number after a commercial has been classified. A broadcaster may make acceptance of a commercial for broadcast conditional on the commercial having a current CAD Number.

(c) An Information Service

CAD provides an information service at both pre-production and finished commercial stages, which directs the attention of advertisers, agencies and production houses to legislative and regulatory requirements relevant to commercials.

To assist advertisers, the Television Production Checklist contains a general overview of the main legislative requirements affecting commercials. However, CAD does not provide legal advice. It is the responsibility of each advertiser to ensure that their commercials comply with State and Federal laws applicable to advertisers, including the *Trade Practices Act 1974* and Fair Trading Acts and relevant voluntary codes and guidelines e.g. the Advertiser Code of Ethics and ACCC Advertising & Selling Guidelines.

The Checklist

This Checklist has been produced by CAD to assist the producers of Television Commercials during their production process. The Checklist is an alphabetical guide to the classification criteria that CAD will have regard to in classifying commercials and the compliance requirements and guidelines to which advertisers should have regard to, to ensure their commercials comply with legal requirements.

The Checklist is provided for guidance only and is not necessarily comprehensive, nor applicable to the circumstances of every case. It is not a substitute for specific advice in relation to a commercial, including, where appropriate, legal or other professional advice.

Pre-Production Pre-check Service

Producers are encouraged to discuss the content of a commercial at concept, script, storyboard or offline stages of production, to obtain an indication of the likely classification and to be directed to any content requirements.

Discussions prior to production are in complete confidence. CAD numbers are only issued on completed commercials.

Scripts/storyboards can be forwarded to CAD via fax, mail or email to cad@freetvaust.com.au and should be marked "**For Pre-Production Comments**" with an indication of the date/time comments are required. Please allow a minimum of 3 working days for this service.

Further Information

This Checklist should be read in conjunction with CAD's Procedures Guide which is available to download from our website www.freetvaust.com.au.

Glossary of Terms and Abbreviations

AANA	Australian Association of National Advertisers www.aana.com.au
ACCC	Australian Competition and Consumer Commission www.accc.gov.au
ACMA	Australian Communications and Media Authority www.acma.gov.au
Advertiser Code of Ethics	The code adopted by the AANA for advertising self regulation in Australia which covers all forms of advertising.
AFA	Advertising Federation of Australia www.afa.org.au
ASMI	Advertising Self-Medication Industry www.asmi.com.au
BSA	Broadcasting Services Act 1992
CAD	Commercials Advice Pty Limited www.freetvaust.com.au
Code of Practice	Commercial Television Industry Code of Practice
CTS	ACMA Children's Television Standards
Legislation	Commonwealth and State legislation governing or having application to marketing and advertising.
OFLC	Office of Film and Literature Classification www.oflc.gov.au
TISSC	Telephone Information Services Standards Council www.tissc.com.au

Acknowledgment

CAD acknowledges the assistance of the Australian Competition and Consumer Commission in providing the information which forms the basis of the Checklist sections entitled Discounts, Prices and Value.

Abbreviations

Care should be taken with the use of abbreviations and symbols that may not be widely understood by the community, particularly when referring to prices or conditions. In order to avoid the risk of misleading viewers, it is recommended that abbreviations are not used and references are stated in full.

For example:

Annual Percentage Rate or per annum (p.a.)	not A.P.R.
Per Person	not P.P.
Postage and Handling	not P & H
Recommended Retail Price or Rec. Retail Price	not R.R.P.
To Approved Purchasers	not T.A.P.

Advance Australia Fair

See: *National Anthems*

Advocacy

Under certain circumstances advocacy advertising by lobby and other interest groups may fall within the political matter provisions of the *Broadcasting Services Act 1992* (BSA) Schedule 2, Sections 1, 3 and 4. This applies to both election and non-election periods.

In such circumstances, an authorisation tag must appear immediately after the commercial. It must be separate from the content of the commercial but included in the overall length.

See: *Election Advertising* for the form of the authorisation tag.

Refer: *Guidelines for the Broadcasting of Political Matter* – www.acma.gov.au

Alcoholic Beverages

The *Alcohol Beverages Advertising Code* is the voluntary advertising code of the alcohol industry. It has been in operation since 1 July 1998 and was prepared in agreement with the Australian Associated Brewers Inc (AAB), and the Distilled Spirits Industry Council of Australia Inc (DSICA). In April 2004, these bodies and the Winemakers' Federation of Australia and the Liquor Merchants Association of Australia Ltd agreed to abide by an updated Code. These alcohol industry bodies recommend that all of their members comply with the Code. The Code covers all advertising for alcohol. A copy of the *Alcohol Beverages Advertising Code* is available from CAD or from the AFA's website www.afa.org.au.

The Alcohol Advertising Pre-vetting System (AAPS), established by the AAB and DSICA, pre-vet all alcohol advertisements for compliance with the Code. A copy of the AAPS

application form is available from CAD, from the AFA's website or by contacting the AAPS Adjudicator on (02) 9955 2838.

Mandatory compliance requirements for the scheduling of alcohol advertisements are set out in ACMA CTS 23 and Clauses 6.7–6.13, *Code of Practice*.

ANZAC

Use of the word "Anzac" is regulated under the Protection of Word "Anzac" Regulations. The Regulations prohibit the use of the word "Anzac" without the authority of the Minister for Veterans' Affairs, in connection with any trade, business, calling or profession. The word "Anzac" will be deemed to have been used if it is applied to any goods manufactured, produced, sold or offered by sale or if it is used as the name or part of a name of any firm or company registered in Australia.

For enquiries on the use of the word "Anzac" please contact the Commemorations Branch of the Department of Veterans' Affairs on (02) 6289 6067 or refer to the website www.dva.gov.au/commem/news/protection.htm.

Audio Levels and Loudness

Advertisements should not be excessively noisy or strident, and licensees must do everything reasonably possible to ensure that commercials do not sound louder than adjacent programming.

Free TV has prepared Operational Practice 48 – *Audio Levels and Loudness* which sets out limits on the use of compression, limiting and equalisation in the production of television commercials. OP 48 applies to all commercials, whether delivered by video tape or in a digital delivery format, and whether SDTV, HDTV or analogue.

Producers will be required to certify that their advertisements comply with OP 48 as a condition of acceptance for broadcast. This will require a declaration of compliance (on the ID Board or the CAD form) when the advertisement is submitted by the advertiser to the broadcaster and/or CAD.

Additionally, Free TV Operational Practices 24, 29 and 36 provide advice in an Annex on audio signal processing, including compression, and the final mix of a soundtrack. OPs 24, 29 and 36 provide advice and recommendations for definition of a compression profile related to any processing applied AFTER the final mix.

Audiological Services

Advertising by Audiologists is subject to the *Audiological Society of Australia Code of Ethics*.

Audiologists may advertise their services provided the advertisement is not false or misleading nor contain offensive content. Further, advertising by Audiologists is governed by a Code of Ethics, please refer to <http://www.audiology.asn.au/ethics.htm> for more information.

Refer: Audiological Society of Australia
Tel: (03) 9416 4607

Australian Flag

See: *National Anthems*

Australian Made

See: *Country of Origin*

Australian National Anthem

See: *National Anthems*

Betting

See: *Gambling/Gaming*

Bicycles

See: *Children (Children and Bicycles), Road Safety (Road Rules)*

Brothels/Escort Agencies

Legislation in New South Wales, Queensland, the Northern Territory, Victoria and the ACT prevent the advertising of prostitution services.

Builders' Licence Number

In New South Wales, Queensland and South Australia, commercials for builders, renovation companies, pool builders, kitchen installers etc are required to display the builders' licence or registration number on screen. Commercial producers will need to refer to relevant state and territory Builders' Licensing Boards for confirmation of the requirements in the state or territory in which they wish to advertise.

Car Hire

Commercials which advertise a car hire or rental for a price per day or other time period should clearly state any applicable exclusions or conditions. If supers are used they must be clearly readable. If a daily rate is not available unless the vehicle is hired for a particular period of time, e.g. \$10 a day but only if the car is hired for fourteen (14) days, then the hiring time period required must be stated.

Otherwise, commercials should not be misleading or deceptive. At present, there is no other specific regulation of advertising in the car rental industry. However please note that the Ministerial Council on Consumer Affairs is currently discussing the possibility of specific

regulation and advertisers should refer to relevant state fair trading bodies and the ACCC for further updates.

Children

Advertising directed to Children

Commercials or community service announcements directed to children must comply with the requirements set out in the CTS 10 and 17 to 23 inclusive. Further, the AANA operates a voluntary self-regulation scheme and have published a *Code for Advertising to Children*, including restrictions on food advertising which may promote an unhealthy lifestyle: See Appendix 2 to the *Code of Practice* Code for specific details. The restrictions on food advertising are similar to Clause 6.23 in the *Code of Practice*.

The following are some useful guidelines for the production of commercials in accordance with CTS 10, in particular the prohibition on the presentation of 'images or events which depict unsafe uses of a product or unsafe situations which may encourage children to engage in activities dangerous to them'.

Children and Bicycles

Road safety authorities suggest that when children are depicted in advertisements as bicycle riders, such advertisements should:

- not show a child who appears to be less than nine years old riding on any road;
- show children who appear to be between the ages of nine and thirteen only on quiet streets;
- show all children wearing safety helmets, closed-in footwear and bright clothing.

Children and Dangerous Substances

The depiction of medicines, disinfectants, antiseptics, insecticides and caustic substances within reach of children without close parental supervision is best avoided, and children should not be shown using these products in any way.

Children and Fire, Electricity and Explosives

An open fire in a domestic scene in an advertisement should generally have a fireguard clearly visible if a child is included in the scene.

Children should not be shown using matches or any gas, kerosene, petrol, mechanical or mains powered appliance which could lead to their suffering burns, electrical shock or other injury, unless the commercial contains an explicit safety message.

Children and Heights

Children should not be seen leaning dangerously out of windows or over bridges, or climbing dangerous cliffs.

Small children should not be shown climbing up to high shelves or reaching up to take things from a table above their heads.

Children and Road Safety

The portrayal of the following should be avoided:

- Children unattended in street scenes unless they are obviously old enough to be responsible for their own safety;
- Children playing on the road, unless it is clearly shown to be a play-street or other safe area;
- Children stepping carelessly off the pavement or crossing the road without due care; or
- Children playing on agricultural machines (including tractor drawn carts or implements) or on backs of trucks.

Preferably, children should be seen:

- wearing seat belts or approved child restraints when passengers in cars
- using zebra crossings in crossing the road; and
- generally, behaving in accordance with accepted road safety principles.

A useful reference is the RTA's *Media Handbook: How to Present Road Safety* which is out of print but copies are held by CAD.

Children and Safety Generally

Where one or more children appear in a commercial, commonsense precautions should be taken to avoid portraying actions which could be dangerous if performed by children when unsupervised by adults. If such actions are portrayed, consideration should be given to the inclusion of specific safety messages.

Competitions directed to Children

A commercial which includes a competition directed to children must comply with the ACMA's (previously the ABA) Children's Television Standards and the Commercial Television Industry Code of Practice. A commercial for a trade promotion lottery in NSW cannot depict a child participating in a lottery activity or winning or collecting a prize.

Refer: Section 6 and Advisory Note – *Commercials or Community Service Announcements Directed to Children, Code of Practice*

NSW Dept of Gaming and Racing Fact Sheet 2 – *Community Gaming – Lotteries*

Chiropractors/Osteopaths

In Victoria, Western Australia, New South Wales, Tasmania and Queensland advertising must not overstate or make false claims regarding the therapeutic benefits of chiropractic therapy. There are also advertising Codes of Practice in Victoria and Western Australia which outline further restrictions on advertising in those states. Advertisers should consult the relevant state legislation and/or Code of Practice for details.

In the ACT, New South Wales and the Northern Territory, only registered chiropractors can use the title "*Chiropractor*" in advertising.

Cinema

Commercials for cinema, DVD, video, video disc or interactive films must comply with Clauses 6.17, 6.18, and 6.19 of the *Code of Practice*. Commercials will be scheduled in accordance with Sections 2 and 3 (Classification and Program Promotions respectively) of the *Code of Practice*.

Refer: Section 2 *Classification* of the *Code of Practice* for full scheduling details.

Even when film footage is not shown in the commercial, inclusion of the film title, ticket giveaways or other encouragements to see a film are likely to require the censorship classification to be displayed in the commercial. Clause 6.18 of the *Code of Practice* requires that a commercial for a film must display the OFLC's classification. Commercials for "X" rated films are not permitted to be broadcast.

Some films may be exempt from classification under certain criteria. To determine if any film is exempt from classification, seek advice from the OFLC. Please refer to the OFLC's Determined Markings for advice on the display of classification information.

See: *Video Movies*

Refer: OFLC – www.oflc.gov.au

Claims

No claim may be either false or misleading. Commercials must comply in all respects with the provisions of Part V of the *Trade Practices Act 1974* and any other relevant legislation. As a number of cases concerning Part V of the *Trade Practices Act* have concerned the price, performance and availability of products, CAD will consider these sorts of claims particularly closely.

The CAD may require written substantiation of claims made in a commercial, or if it considers necessary, a warranty that the commercial complies with the *Trade Practices Act*.

The ACCC's publication, *Advertising and Selling* provides useful guidelines to assist advertisers. Copies can be downloaded from the ACCC website – www.accc.gov.au. This publication highlights that the ACCC will focus on the fine print in television commercials.

See: *Comparative Advertising, Disclaimers & Other On-Screen Text, Free Goods and Services, Price*

Classification

PLEASE NOTE: Each classification listed appears as the first alpha-numeric in the CAD classification number and provides advice to stations regarding placement of the commercial in the appropriate time zone under the requirements of the *Code of Practice*.

Children

“C”

Definition: General Unrestricted

May be broadcast at any time, except during P (Preschool) programs.

Product Description: Commercials which comply with the CTS.

General

“G”

Definition: General

May be broadcast at any time except during P and C (Children’s) programs or adjacent to P or C periods.

Product Description: Commercials which comply with the G classification criteria in Section 2, Appendix 4 of the *Code of Practice* and provided the content is very mild in impact and does not contain any matter likely to be unsuitable for children to watch without supervision.

General/Warning

“W”

Definition: General/Care in Placement

May be broadcast at any time except during P and C programs or adjacent to P or C periods. Exercise care when placing in cartoon and other programs promoted to children or likely to attract a substantial child audience.

Product Description: Commercials which comply with the G classification criteria in Section 2, Appendix 4 of the *Code of Practice* but require special care in placement in programs promoted to children or likely to attract a substantial child audience.

General/Premium Telephone Services Commercials

“Y”

Definition: General/Premium Telephone Services Commercials Directed to Children

May not be broadcast in a G program that has a substantial child audience starting before 5.00pm.

Product Description: Commercials which involve the use of a premium charge telephone service which is directed to children or is placed in a G program that has a substantial child audience starting before 5.00pm and which do not meet the requirements of Clause 6.25 of the *Code of Practice*.

PG – Parental Guidance

“P”

Definition:

Parental Guidance Recommended

May be broadcast during the following hours, except during P and C programs or adjacent to P or C periods:

- Weekdays 8.30am–4.00pm
- Weekdays 7.00pm–6.00am
- Weekends 10.00am–6.00am

Exercise care when placing in cartoon and other child – appeal programs.

Product Description:

Commercials which comply with the PG classification criteria in Section 2, Appendix 4 of the *Code of Practice* and which contain careful presentations of adult themes or concepts which are mild in impact and remain suitable for children to watch with supervision.

M – Mature

“M”

Definition:

Recommended for Viewing Only by Persons 15 and Over

May be broadcast during the following hours, except during P and C programs or adjacent to P or C periods:

- Weekdays (schooldays):
 - 8.30pm–5.00am (see Note 1)
 - 12 noon–3.00pm (see Note 2)
- Weekdays (school holidays) & Weekends:
 - 8.30pm–5.00am (see Note 1)

Note 1: not in G or PG programs or sport starting at or continuing past 8.30pm.

If the program continues past 10.30pm, this restriction ceases to apply.

Note 2: see Clause 2.10.3 of the *Code of Practice* for time zone difference adjustment.

Product Description:

Commercials which comply with the M classification criteria in Section 2, Appendix 4 of the *Code of Practice*.

MA – Mature Adult

“A”

Definition:

Suitable for Viewing Only by Persons 15 and Over

May be broadcast between 9.00pm and 5.00am on any day, except in G or PG programs or sport starting at or continuing past 8.30pm.

If the program continues past 10.30pm, this restriction ceases to apply.

Product Description: Commercials which comply with the MA classification criteria in Section 2, Appendix 4 of the *Code of Practice*.

MA/S – Mature Adult/Sex Lines

“S”

Definition: Sex Line Advertisements within MA Viewing Period

May be broadcast between the hours of 11.00pm and 5.00am on any day but not in a religious or sports program or in drama with a religious theme.

Refer: Clause 6.16 of the *Code of Practice*.

Product Description: A commercial for a sex-line or similar product or service which complies with the MA classification criteria in Section 2, Appendix 4 of the *Code of Practice*.

AV – Adult Violence

“V”

Definition: Suitable For Viewing Only By Persons 15 and over because of Violence

May be broadcast between the hours of 9.30pm and 5.00am on any day, except in G or PG programs or sport starting at or continuing past 8.30pm.

If the program continues past 10.30pm, this restriction ceases to apply.

Product Description: Commercials which comply with the AV classification criteria in Section 2, Appendix 4 of the *Code of Practice*.

Betting/Gambling and Liquor

Betting/Gambling

“B”

Definition: Commercials Relating to Betting or Gambling

Except in a news, current affairs or sporting program, an advertisement relating to betting or gambling must not be broadcast:

- Between 6.00am and 8.30am on any day
- Between 4.00pm and 7.00pm on weekdays (Different restrictions apply in South Australia – see Note 1)
- Between 4.00pm and 7.30pm on weekends.

Note 1: In South Australia the restriction between 4.00pm and 7.30pm weekdays includes advertisements for SA Lotteries, SA TAB, Adelaide Casino (Skycity) and Licensed Racing Clubs. These advertisements will be given a B placement code by

CAD. The exception for news, current affairs and sporting programs does not apply in SA between 4.00pm and 7.30pm on weekdays. There is no restriction on SA Lotteries advertisements outside 4.00pm and 7.30pm weekdays.

Product Description:

Any commercial relating to betting or gambling, such as the TAB, clubs promoting poker machines or gambling facilities, casinos, race clubs which feature bookies etc.

Does not include:

- A commercial relating to such things as Government lotteries, lotto, keno or contests. Except in South Australia – see Note 1 above.
- A commercial relating to entertainment or dining facilities at places where betting or gambling take place, or a tourism commercial which incidentally depicts betting or gambling, provided in each case that the contents do not draw attention to betting or gambling in a manner calculated to directly promote their use.

Refer: Clauses 6.14.1 and 6.14.2 of the *Code of Practice*.

M/Liquor

“L”

Definition:

Mature – Liquor/Alcoholic Drinks

A direct advertisement for alcoholic drinks may be broadcast only during the following periods:

- Between 8.30pm and 5.00am on any day
- Between 12.00 noon and 3.00pm on school days (but see Clause 2.10.3 for time zone difference adjustment)
- On weekends and public holidays as an accompaniment to the live broadcast of a sporting event: “live” defined in Clause 6.12 (note that a sporting broadcast ‘delayed against the gate’ for contractual reasons, is now to be counted as ‘live’).

During the live broadcast of a sporting event, where the event is simulcast to a number of licence areas and a direct advertisement for alcohol is permitted in the area where the event is held (if the event is held outside Australia and advertisements are permitted in a majority of metropolitan licence areas, then advertisements are permitted in all broadcast areas).

Product Description:

Commercials which meet the criteria for direct advertisements for alcoholic drinks defined in Clauses 6.7–6.11 of the *Code of Practice*.

Cinema Films, DVDs, Videos and Games

PG-Classified Material/G-Style

“F”

Definition: G-style Commercials for PG-classified, Cinema Films, DVDs, Videos, or for G8+ Classified Games

Must not be broadcast in P (Preschool) or C (Children’s) programs or in breaks adjacent to P or C periods. May be broadcast at any other time.

Product Description: Commercials which comply with the criteria for G promotions in Clause 3.8 of the *Code of Practice*.

M-Classified Material/G-Style

“H”

Definition: G-style Commercials for M15+ Classified, Cinema Films, DVDs, Videos, or Games

Must not be broadcast in:

- P or C programs or in breaks adjacent to P or C periods.
- Cartoon programs in the G zone.
- Programs with a substantial child audience –
 - Between 4.00pm and 6.00pm on weekdays*
 - Between 6.00am and 10.00am on weekends.

*This rule is subject to an exception which allows G style ads for M classified material in news, current affairs, sporting events and other programs that are not promoted to children and are not likely to attract substantial numbers of children.

Product Description: Commercials must comply with the criteria for G promotions in Clause 3.8 of the *Code of Practice*.

PG and M-Classified Material/PG-Style

“J”

Definition: PG-Style Commercials for PG and M15+ Classified Cinema Films, DVDs, Videos, or for G8+ and M15+ Classified Games

Must not be broadcast:

- Between 6.00am and 8.30am on weekdays
- Between 4.00pm and 7.00pm on weekdays
- Between 6.00am and 10.00am on weekends
- P or C programs or in breaks adjacent to P or C periods
- In G programs which start at 3.30pm on a weekday or are broadcast between 7.00pm and 8.30pm on any day.

Product Description: Commercials which comply with the criteria for PG promotions in Clause 3.9 of the *Code of Practice*.

MA-Classified Material/G or PG Style**“K”**

Definition: G or PG Style Commercials for MA15+ Classified Cinema Films, DVDs, Videos, or for MA15+ Classified Games

Must not be broadcast:

- Between 5.00am and 7.30pm on any day
- In G programs broadcast between 7.30pm and 8.30pm on any day.

Product Description: Commercials which comply with the criteria for G or PG promotions in Clauses 3.8 and 3.9 of the *Code of Practice*.

R-Classified Material/G or PG Style**“Q”**

Definition: G or PG Style Commercials for R18+ Classified Cinema Films, DVDs and Videos

Must not be broadcast between 5.00am and 8.30pm on any day. Exercise care when placing in G programs starting at or continuing past 8.30pm.

If the program continues past 10.30pm, this restriction ceases to apply.

Product Description: Commercials which comply with the criteria for Clauses 3.8 and 3.9 of the *Code of Practice*.

M-Classified Material/M Style**“T”**

Definition: M Style Commercials for M15+ Classified Cinema Films, DVDs, Videos, and Games.

May be broadcast:

- From 12 noon until 3.00pm schooldays except during P and C programs or adjacent to P or C periods (and see Clause 2.10.3 for time zone difference adjustment).
- Between 8.30pm and 5.00am on any day, except in G or PG programs or sport starting at or continuing past 8.30pm.

If the program continues past 10.30pm, this restriction ceases to apply.

Refer: Clause 3.11 of the *Code of Practice*.

Product Description: Commercials which comply with the M classification criteria in Section 2, Appendix 4 of the *Code of Practice*.

MA and R-Classified Material/M Style

“R”

Definition: M Style Commercials for MA15+ and R Classified Cinema Films, DVDs, Videos and MA15+ Classified Games

May be broadcast between 8.30pm and 5.00am on any day, except in G or PG programs or sport starting at or continuing past 8.30pm.

If the program continues past 10.30pm, this restriction ceases to apply.

Refer: Clause 3.11 of the *Code of Practice*.

Product Description: Commercials which comply with the M classification criteria in Section 2, Appendix 4 of the *Code of Practice*.

MA and R Classified Material/MA Style

“A”

Definition: MA Style Commercials for MA15+ and R Classified Cinema Films, DVDs, Videos, or MA15+ Classified Games

May be broadcast between 9.00pm and 5.00am on any day, except in G or PG programs or sport starting at or continuing past 8.30pm.

If the program continues past 10.30pm, this restriction ceases to apply.

Refer: Clause 3.11 of the *Code of Practice*.

Product Description: Commercials which comply with the MA15+ classification criteria in Section 2, Appendix 4 of the *Code of Practice*.

MA and R Classified Material/AV Style

“V”

Definition: AV Style Commercials for MA15+ and R Classified Cinema Films, DVDs, Videos or MA15+ Classified Games

May be broadcast between the hours of 9.30pm and 5.00am on any day, except in G or PG programs or sport starting at or continuing past 8.30pm.

If the program continues past 10.30pm, this restriction ceases to apply.

Product Description: Commercials which comply with the Adult Violence classification criteria in Section 2, Appendix 4 of the *Code of Practice*.

Closed Captions

Closed captions enable people who are deaf or hearing impaired to understand television commercials.

The Commonwealth Government, NSW and all State and Territory Governments have policies in place requiring their commercials to be captioned.

For technical recommendations refer to the Free TV Operational Practice 42 – Distribution, Transmission and Monitoring of Closed Captions Online 21/334. This OP describes the technical/operational practices associated with the distribution to and subsequent monitoring and transmission by broadcasters of Closed Caption data on line pair 21/334 of an analogue SD signal.

Of importance are:

- use of television lines 21 and 334 for insertion of closed caption data;
- monitoring of closed captions; and
- transmission of closed captions.

Coats of Arms

See: *National Symbols*

Community Service Announcements

Community Service Announcements (CSAs) are those announcements which promote a charitable cause or activity or which constitute a service to the community, and which are broadcast free of charge by a television station.

Unpaid community service announcements for organisations that have a charitable, public health or educational purpose may contain unlimited amounts of overseas footage. Such material is exempt from the station quota on foreign content.

Individual stations may reserve the right to restrict the use of the terms “community service announcement”. Allocation of free air-time for CSAs is a matter for individual stations.

CSAs are required to be classified prior to scheduling in the same manner as paid commercials.

Refer: Clauses 5.5.2 and 6.6 of the *Code of Practice*.

Comparative Advertising

Comparative commercials must compare like with like and must not be misleading or deceptive.

Some guidelines to consider when preparing commercials which name or draw comparison with another product or service are:

- The intent and connotation of the commercial should be to inform and not discredit or unfairly attack competitors, competing products or services.
- When a competitive product is named, it should be one that exists in the marketplace as significant competition.

- The advertising should compare related or similar properties or ingredients of the product, dimension to dimension, feature to feature.
- The identification should be for honest comparison purposes.
- If a competitive test is conducted it should be done by an objective testing source, preferably an independent one, so that there will be no doubt as to the veracity of the test.
- In all cases the test should be supportive of all claims made in the advertising that are based on the test.
- The advertising should never use partial results or stress insignificant differences to cause the consumer to draw an improper conclusion.
- The property being compared should be significant in terms of value or usefulness of the product to the consumer.
- Comparatives delivered through the use of testimonials should not imply that the testimonial is more than one individual's thought unless that individual represents a sample of the majority viewpoint.
- It is advisable to seek legal advice on proposed comparative advertising before commencing production. You may also be well advised to discuss the proposed commercial with CAD at scripting or pre-production stage.

Refer: ACCC publication – *Advertising and Selling* – www.accc.gov.au

Competitions

Where a trade promotion lottery involving a game of chance is advertised, a permit to operate the lottery may need to be obtained. A permit is not required for a game of skill but advertisers will need to provide a copy of the terms and conditions of entry when submitting the commercial to CAD.

See: *Children, Classification (Betting/Gambling and Liquor), Telephone Services, Trade Promotion Lotteries*

Condoms

Commercials for condoms on television need to comply with Clause 6.15 of the *Code of Practice*, which limits broadcast to PG, M, MA and AV times, unless the material contains a public health or safety message and satisfies Clause 2.5 of the Code of Practice.

Condoms are considered to be therapeutic goods. All advertising for condoms should be pre-approved by the ASMI. However, certain representations within condom advertising have already been approved (and do not have to be pre-approved by ASMI for each commercial), namely representations to the effect that condoms:

- may help reduce the risk of transmission of sexually transmissible disease (STDs); and/or
- may help reduce the possibility of pregnancy.

See: *Therapeutic Goods and Devices*

Copyright

The issuing of a CAD Number does not imply any consent to the use of copyright or any other intellectual property. Clearance of copyright and other intellectual property is a matter between the advertising agency and the copyright owner or his/her agents.

Cosmetics

Products may not make therapeutic claims unless included in the Australian Register of Therapeutic Goods. This applies to products presented as cosmetics. The National Co-ordinating Committee on Therapeutic Goods (NCCTG), has issued guidelines on cosmetic claims in an effort to provide guidance in determining whether a product claim is acceptable/unacceptable for a cosmetic, e.g. helps reduce the signs of ageing would be acceptable whereas reduces the ageing process would not. Copies of the guidelines are available from CAD. An advertisement for a cosmetic product which makes therapeutic claims may require pre-clearance from ASMI.

See: *Therapeutic Goods*

Country of Origin

Section 53 (eb) of the *Trade Practices Act 1974* prohibits false and misleading claims about the place of origin of goods. A publication is available from the ACCC titled, Country of Origin Claims and the *Trade Practices Act* which provides guidance to advertisers. Also available from the ACCC are guidelines for specific industries making country of origin claims e.g. electrical industry, food and beverage industry, furnishing industries, textiles, clothing and footwear industries and the toy industry.

Refer: ACCC website – www.accc.gov.au

Credit

See: *Finance*

Criminal Activity

An advertisement which encourages participation in a criminal activity could constitute the offence of aiding and abetting. Such advertisements are not acceptable.

Currency

Section 16 of the *Crimes (Currency) Act 1981* prohibits the defacing or destroying of Australian coin or currency notes unless consent has been given by either the Reserve Bank or the Treasury.

Section 19 of the *Crimes (Currency) Act 1981* prohibits the designing, making, printing or distributing of representations of currency notes capable of misleading people to believe they

are genuine currency notes, unless consent has been given by either the Reserve Bank or the Treasury.

Those wishing to use representations of currency in commercials should discuss the concept with the Reserve Bank.

Refer: Reserve Bank of Australia website – www.rba.gov.au

Defacement of Property

Commercials should not portray any wilful defacement of or damage to property, or any incitement or encouragement of crimes against property, which would constitute a legal offence.

Defamation

Advertising should not include defamatory material. Any commercial that contains an express or implied statement that will damage a person's reputation, or will cause that person to be shunned or ridiculed by other people is considered defamatory material.

The publication of defamatory material constitutes defamation and both the advertiser and the broadcaster could be liable unless a defence can be established, such as truth or public interest.

If a commercial may contain a defamatory statement, legal advice should be sought before the commercial is submitted to CAD for classification. CAD may seek their own legal advice as to their risk prior to broadcasting any commercial which may contain a defamatory statement.

Dentists

Commercials for dentists, dental technicians and dental prosthetists should only refer to registered practitioners. The commercial should not be false and misleading and must not disparage the professional service of another person or another registered practitioner. Commercials should not promote any unnecessary or inappropriate use of dental services.

Each state and territory apart from the Northern Territory has a dental registration board that regulates advertising of dental services in that State or Territory. Advertisers should consult the relevant State and Territory legislation for further details.

Digital Television

The Australian Electrical & Electronic Manufacturer's Association (AEEMA) has produced a voluntary Marketing Code for digital television equipment. This Code outlines the standard descriptions to be used in advertising digital television set top boxes and digital television sets. The Code was developed in consultation with the ACCC and any breaches of the Code will be referred to the ACCC for investigation.

The Code can be obtained from the AEEMA website – www.aeema.asn.au.

Disclaimers & Other On-Screen Text

Disclaimers must be clearly legible and easily comprehensible and held on screen long enough for **all** text on screen, **not just any disclaimer**, to be read by the average viewer to avoid rendering a commercial potentially misleading under the *Trade Practices Act*.

Disclaimers are generally used to expand or clarify an advertised offer or to make minor qualifications and should, where possible, be introduced at the same time as the representations they qualify.

Disclaimers should appear for sufficient time on screen for them to be understood by the audience. Important disclaimers should be reinforced by voice-overs. Refer to ACCC publication – *Advertising and Selling*.

To assist in making the process easier for producers when submitting final commercials for CAD numbers, CAD makes the following recommendations.

Duration on Screen

CAD recommends allowing a minimum of 0.2 seconds per word or 2 seconds minimum duration if less than 5 words, taking into account all text on screen at the same time as any disclaimer.

Registered trademark legal lines need not be included in the calculation of duration on screen for other text.

Text Size

Taking into account the duration of on-screen text and the additional factors below, the size of text and choice of font should allow any disclaimer to be easily read.

Additional Factors

Some other factors to be taken into account when producing a commercial to ensure all on-screen text is clearly readable are:

- The contrast between text and its background must allow for the text to be clearly legible.
- If the background is moving, on-screen text may need to be placed on a single-coloured box.
- Certain colour combinations e.g. white on yellow or red may increase the difficulty of reading any on-screen text.
- Fading text in and out of vision is not recommended unless the text is held on for a longer than perhaps otherwise necessary duration to allow for the fact that at some points the text will be less visible.

Discounts

Section 53(e) of the *Trade Practices Act*, prohibits false claims regarding the price of goods or services. All discounts must be genuine. It may be a breach of the *Trade Practices Act* to

claim a discount off a recommended or list price which is not normally charged by the seller or its competitors.

In relation to other “savings” claims, the ACCC considers that there is even more chance of misleading consumers if you claim savings but don't quote the normal price. For example:

- “\$9.99 – *reduced*” is misleading if your normal selling price is \$10.
- “*Below cost*” – if the stated price does not allow for discounts, rebates or other allowances you get from a wholesaler or manufacturer.
- “*Now at special low prices*” – if you have in fact been charging the advertised prices for some time. This sort of advertising may be acceptable if you make it clear that prices are low.
- “*Closing down sale*”, “*fire sale*”, “*forced sale*”, or “*clearance sale*”, are misleading if the implication that you have reduced prices is false.
- Consumers may also be misled through the use of the term “*up to*” (e.g. up to 50% off) especially where those words are in very small print. If only some items are reduced by this amount then the discount claim must make this clear. This means such words as “*up to*” should be of a similar size to the rest of the wording and not so small that consumers are likely to overlook them.
- Where percentage discounts or similar savings are quoted in a commercial, it is likely to be assumed by the audience that the discount or saving is a reduction off the advertiser's normal selling price unless otherwise stated in the commercial. CAD may require a letter of substantiation from advertisers confirming that the savings offered are genuine.

See: *Abbreviations, Price*

Refer: ACCC publication – *Advertising and Selling*– www.accc.gov.au

Election Advertising

Advertisements containing political matter must comply with the relevant provisions of the BSA and during an election, with the provisions of the Commonwealth, State and Local Government Electoral Acts.

CAD will also review election advertisements prior to broadcast for the purposes of classification and protecting broadcasters from liability for publishing defamatory material. The party or candidate authorising the advertisement is expected to ensure that the advertisement complies with all relevant laws including the applicable Electoral Act and the laws of defamation. CAD reserves the right to require further substantiation relevant to defamation assessment.

Schedule 2, Sections 1, 3 and 4 of the BSA require the following:

1. An authorisation must appear immediately after the commercial. It must be separate from the content of the commercial and included in the overall length. The authorisation must be written (see point 2) and spoken (see point 3).
2. The written authorisation must contain:
 - (a) the name of all the speakers in the commercial itself (excluding the speaker of the authorisation);

- (b) where the broadcasting of political matter was authorised by a political party:
 - (i) the name of the political party;
 - (ii) the town, city or suburb in which the principal office of the political party is situated; and
 - (iii) the name of the natural person responsible for giving effect to the authorisation;
- (c) where the broadcasting of the political matter was authorised by a person other than a political party:
 - (i) the name of the person who authorised the broadcasting of the political matter; and
 - (ii) the town, city or suburb in which the person lives or, if the person is a corporation or association, in which the principal office of the person is situated.

3. The spoken authorisation must include all the written information above but may exclude the names of the speakers. The spoken announcement must be at the same time as the written announcement and not commence before the written announcement appears. There should be no music or SFX under the spoken announcement.

Examples:

Sample authorisation tag where authorised by a political party	
Cut to GRAPHIC with no other visual on screen	V/O to commence once the GRAPHIC appears with no music or SFX under
<i>Authorised by (name) for the (name of political party), (town, city or suburb of where the principal office of the party is located)</i> <i>Spoken by/Speakers (names of all people who speak in the body of the commercial)</i>	<i>Authorised by (name) for the (name of political party), (town, city or suburb of where the principal office of the party is located).</i>
OR if the person who speaks is also the person who authorises it the tag can read as follows:	
<i>Spoken and authorised by (name), for the (name of the political party), (town, city or suburb)</i>	<i>Authorised by (name) for the (name of the political party), (town city or suburb)</i>

Sample authorisation for an independent candidate or where otherwise not authorised by a political party	
Cut to GRAPHIC with no other visual on screen	V/O to commence once GRAPHIC appears with no music or SFX under
<i>Authorised by (name), (town, city or suburb in which the person lives or, if the person is a corporation or association, in which the principal office of the person is situated).</i>	<i>Authorised by (name), (town, city or suburb in which the person lives or, if the person is a corporation or association, in which the principal office of the person is situated).</i>
<i>Spoken by/Speakers: (names of all people who speak in the body of the commercial)</i>	
OR if the person who speaks is also the person who authorises it the tag can read as follows:	
<i>Spoken and authorised by (name), (town, city or suburb)</i>	<i>Authorised by (name), (town city or suburb)</i>
NOTE: There is no requirement to state the candidate is an Independent in the tag.	

The longest single line in the authorisation should not extend beyond the standard TV essential width. An authorisation graphic must be held on screen long enough and be large enough for the average viewer to read its contents. After the voice-over, the essential 0.5 seconds of silence at the end is in addition to this period.

See: *Advocacy, Political Matter*

Environmental Claims

Care needs to be taken that claims or representations regarding environmentally sound products do not overstate or misrepresent the environmental friendliness of particular goods. All such claims must be fully substantiated.

When making “environmentally friendly” claims, advertisers may need to take account of the production processes, packaging and waste disposal aspects of a particular product, as well as its intrinsic value.

Refer: ACCC publication – *News for Business – Self-declared environmental marketing claims* available from the ACCC website www.accc.gov.au.

Finance

Commercials must comply with Commonwealth and State legislation. Any commercials for shares, debentures, unsecured notes or mortgage debentures or prospectuses must comply with the Corporations Law. Unless exempt, such commercials must make clear that the public may only apply for shares, debentures, etc by way of a disclosure document, such as a prospectus, or profile statement which will contain or be accompanied by an application form.

Consumer Credit

The *Uniform Consumer Credit Code* regulates credit offered to consumers and requires any commercial on behalf of a credit provider which states or implies that credit is available to comply with the Credit Code.

Credit providers include banks, finance companies, credit unions, building societies, retailers providing credit and any other person or company providing credit in the course of any business.

Although the advertising provisions of the Credit Code do not require a commercial to refer to an annual percentage rate, if a commercial states the amount of a repayment, it must also state the applicable annual percentage rate(s). Further, if a commercial contains an annual percentage rate **and** if credit fees and charges are payable, it will need to contain a statement:

- disclosing that fees or charges are payable; or
- specifying the amount of the fees and charges payable; or
- specifying the amount of some of the fees and charges payable and that other fees and charges are payable.

If the commercial is for fixed term consumer credit, and if an annual percentage rate is disclosed, the commercial will also need to disclose the “comparison rate” and the legislatively prescribed warning.

Some comparison rate rules:

- Comparison rates must be calculated based on the amount and term in a legislated standard list that is most typical of the credit product being advertised. The list can be found at www.creditcode.gov.au. Comparison rates must be disclosed as a percentage per annum (p.a.);
- Credit advertisements containing a comparison rate must:
- clearly state the amount and term on which a comparison rate is based, the name of the credit product being advertised, the annual percentage rate as well as a statement as to where the comparison rate schedule is available;
- be accompanied by a prescribed warning about the accuracy of the comparison rate; and
- the comparison rate must be no less prominent than any annual percentage rate or amount of repayment.

Refer: The Consumer Credit Code Website – www.creditcode.gov.au.

CAD requires a letter of substantiation for each commercial which includes the advertising of credit. The letter should be supplied on the advertisers’ letterhead and take the form of the draft below:

(Insert Advertisers name and address)

.....
.....
.....

hereby indemnifies CAD and any person to whom it provides advice (“the Indemnified”) against all liability claims or proceedings whatsoever arising from publication of television commercial(s) key numbered

.....
and warrants and represents to the Indemnified that the information contained in the abovementioned commercial(s) is correct and in the opinion of the Advertiser and their legal advisers, publication of the commercial(s) does not contravene the provisions of the Consumer Credit Code.

.....
Signed by Title/Position in Company
Name:.....

NB: Responsible officer to sign

Financial Services Reform Act 2001(Cth)

Advertising for financial products must:

- be undertaken by the holder of an Australian Financial Services Licence;
- identify the issuer (and in some instances the seller) of the product;
- indicate that a Product Disclosure Statement is available and where it can be obtained; and
- indicate that a person should consider the Product Disclosure Statement in deciding whether to acquire or continue to hold the product.

Superannuation benefits

Commercials which refer to early access to superannuation benefits need to take special care that they are not misleading or deceptive. Commercials which suggest that members of the public can freely access their superannuation benefits or are equivalent to cash available for ready use are likely to be misleading and deceptive. Expressions describing benefits as “your money” or “cash” should be avoided.

Firearms

Commercials for the sale of firearms are subject to State or Territory regulation. Particular care should be exercised when depicting use and handling of guns in commercials. Such commercials may require a restrictive classification prior to broadcast.

Most States and Territories have rules for advertising firearms which require only licensed firearm dealers to advertise firearms.

Certain States or Territories have additional requirements as set out below:

- In **Victoria** the serial number of the firearm must be shown: *Firearms Act 1996*.
- **Queensland** also requires that the serial number of the firearm must be shown: *Weapons Act 1990*.

- In the **Northern Territory** an advertisement must show the serial number of the firearm unless the sale is by a dealer licensed for that particular firearm: *Firearms Act 1997*.
- In **South Australia** a person (other than a licensed dealer in firearms) who advertises a firearm for sale must include in the advertisement a statement that transfer of possession of the firearm on sale must take place in the presence of, and be witnessed by, a licensed dealer in firearms, an authorised officer of a recognised firearms club or a member of the police force in accordance with Section 15B(9) *Firearms Act 1977*.
- In **Western Australia** a non-dealer or non-manufacturer must ensure the advertisement includes the details of the type, make, serial number and calibre of the firearm. Holders of Dealer or Manufacturer licences must ensure that the licence number is included along with details sufficient to identify the holder of the licence. *Firearms Act 1973*.

Fireworks

Fireworks can only be sold under permit for sale to authorised persons, except in the ACT where sales to adult ACT residents are permitted. Advertising fireworks may be interpreted to include 'selling' fireworks under various State dangerous goods legislation so legal advice should be sought in those circumstances.

Special care needs to be taken when using the image of fireworks or the lighting of fireworks in an advertisement. Depictions of fireworks should be responsible and should not depict the actual lighting of the firework or any other behaviour which could incite the illegal use of fireworks.

Food

The advertising of food is governed by the *Australia New Zealand Food Standards Code*, the *State Food Acts* and more generally under the *Federal Trade Practices Act* and *State Fair Trading Acts*.

Descriptions of food in advertising should not be misleading or deceptive, or likely to mislead or deceive. Any representation, whether stated or implied in an advertisement, should be able to be substantiated, if required.

Advertisers need to be particularly careful about 'quality descriptors' such as 'fresh'; 'home-made'; 'natural'; 'pure'; '100%'; 'all'; 'true'; 'real'; 'free' of an ingredient or quality; and 'genuine', among others.

State Food Acts set out the penalties for false and misleading descriptions of foods in advertising. The details of the Food Acts for each State should be examined when considering producing an advertisement for food.

See: *Children*

Foreign Content

Commercials consisting wholly of foreign sound and vision may be broadcast in Australia. However broadcasters are required to ensure at least 80% of advertising time is 'Australian'.

Refer: ACMA (previously the ABA) Television Program Standard 23

The Australian/Foreign Content declaration on the reverse of the CAD Application for Classification of Television Commercials form must be completed for all commercials or community service announcements submitted to CAD for a CAD Number.

Foreign Language

CAD will require a certified English translation of any foreign language included in an advertisement submitted for a CAD number.

Organisations such as the following can assist advertisers with translation services:

Precision Languages International
Tel: 1300 304 103
Web: www.precisionlanguages.com

SBS Language Services
Tel: 1300 305 727
Web: www.sbslanguageservices.com.au

Free Goods and Services

Particular care must be exercised when describing goods and services as "free". It is considered misleading or deceptive conduct under the *Trade Practices Act 1974 (Cth)* to falsely advertise goods or services as "free" if the cost of those goods or services is recouped from the buyer in another way.

Where goods or services are available at no cost but subject to conditions, it is insufficient for the advertiser to advise merely that conditions apply. The relevant conditions must be made clear to the viewer, for example, where a second good or service is made available free or as a gift only if a first good or service is purchased for a price, this must be stated. Price rises elsewhere or other conditions not clearly outlined (such as offering a mobile telephone for 'free' or \$0 but placing the customer under a contractual obligation of minimum payments for a set term) will be misleading or deceptive conduct.

Refer: ACCC publication, *Advertising and Selling* – www.accc.gov.au

Freecall Services

See: *Telephone Services*

Gambling/Gaming

Commercials must comply with the *Code of Practice*, Clauses 6.14–6.14.2 and State or Territory legislation which relates to gaming.

Gambling, betting and gaming are regulated at the State level by a combination of Codes of Practice (Codes) and legislation. Federal and State legislation also prohibit any false or misleading advertising in relation to gambling (*Trade Practices Act (Cth)*, Fair Trading Acts of each State). In South Australia, the Northern Territory, the ACT and Queensland Codes regulate advertising and prohibit advertising to minors and problem gamblers. In Queensland, the *Code of Practice* is voluntary. Advertisers should consult the relevant code for specific details.

In NSW and Victoria the advertising of gaming machines is prohibited. In Tasmania advertising is restricted to those with a gaming licence. Further, in Victoria, advertising of betting on sporting events is prohibited except in specific situations.

States with Casinos and Lotteries have specific legislation and regulations in relation to those facilities. Advertisers should check the relevant legislation for further details.

Advertisements must also comply with the *Interactive Gambling Act 2001*, which makes it an offence to advertise an interactive gambling service. This applies to any material that promotes or gives publicity to an interactive gambling service, interactive gambling services in general, the whole or part of a trademark in respect of an interactive gambling service, or any words closely associated with an interactive gambling service.

See: *Classification (Betting/Gambling and Liquor)*

Goods & Services Tax (GST)

Advertisers should take care in making price claims in advertising without including any GST payable. The ACCC has issued a fact sheet titled, *All-inclusive Pricing and the GST* which provides some helpful guidance. The fact sheet is available from the ACCC's website – www.accc.gov.au.

Graffiti

Where it is proposed that graffiti be depicted in a commercial, care should be taken that the depiction of the graffiti or the depiction of the act of painting or spraying the graffiti is not prohibited by the legislation of a State or Territory in which it will be shown. Generally there is nothing to prohibit the controlled depiction of graffiti, provided the act of graffiti in context was not a criminal offence. It is prohibited in Victoria and Western Australia to aid, abet or procure the commission of graffiti and the same prohibition is likely to be implied into all State criminal codes.

Advertisements containing graffiti may breach the Australian Association of National Advertisers Code of Ethics which prohibits the depiction of violence, vilifying material or unsafe behaviour which is unjustified in the context.

See: *Defacement of Property*

Hair Treatments

Some hair treatments, including anti-dandruff preparations, may be therapeutic goods and require clearance under the *Therapeutic Goods Advertising Code*.

See: *Therapeutic Goods and Devices*

Health Services

All claims made by health professionals must be correct and current. Each claim and statement made in advertising must be true, and any implied meanings must also be true. All statements made in health services advertising should be able to be substantiated. Remaining silent about an aspect of a product or service, or using fine print in an advertisement, is unlikely to avoid the requirement that the overall impression created by the advertisement must not be misleading or deceptive. Overstating results or effects, or understating risks or pain levels will generally be found to be misleading or deceptive and in breach of Federal Trade Practices legislation or State Fair Trading legislation.

In particular, advertisements for medical practitioners should not contain references to testimonials from previous patients, claims that one medical practitioner is better than another, or self promotion of a vulgar or excessive manner. Each State and Territory has specific regulations for advertising in their region. Medical services may not be advertised via electronic media in the ACT.

Refer: Medical Practitioners Acts and Regulations

For advice, contact:

The Medical Practitioners Board in your region; or
Australian Medical Association
PO Box E115
KINGSTON ACT 2604
Tel: (02) 6270 5400
Fax: (02) 6270 5499
Email: ama@ama.com.au

Also note the ACCC's publication: *Fair Treatment: guide to the Trade Practices Act for the purposes of advertising or promotion of medical and health services*.

ID Board

The ID Board is required at the head of each commercial in the format recommended by Free TV Australia's Operational Practices 24, 29 and 36.

The OP's state that in a typical case, the ID Board should detail the following information:

- Client
- Product
- Title
- Key Number
- Duration

- CAD Number
- Classification
- Audio Levels and Loudness
- Audio format
- Aspect ratio
- Closed Captions
- Agency
- Production Company
- Date

See: *Operational Practices*

Impersonation of Real People

Caution should be exercised in a commercial in which a real person or persons are portrayed by means of impersonation, caricature or look-a-like characters.

Relevant laws include:

Trade Practices

It is an offence to make representations that goods, services or companies have sponsorship, approval or affiliation that they do not have. For example, a commercial in which the Prime Minister's voice or what appears to be his voice, leads listeners to believe that the Prime Minister approves of or is somehow connected with a particular product or company could amount to a breach of the *Trade Practices Act*.

Defamation

If the reputation of the person whose voice or appearance is simulated would be affected by their association with the commercial or product, or if the imitation itself could be considered to be insulting to the person being imitated in a way that is defamatory, the broadcast could lead to a defamation action.

Some helpful guidelines

- In deciding whether a problem exists, the commercials should be considered as a whole. An advertiser needs to consider whether the impersonation or voiceover is believable based on how good and convincing the voice or imitation is, how characteristic the product or service is in terms of the imitated person's usual arena or area of sponsorship, and the setting and script of the commercial. A useful test is – 'would viewers be misled into believing the person who is impersonated has endorsed or sponsored the product advertised?'
- Impersonations or voices that are obviously caricature or commercials that include a denial (eg "this is not Bob Hawke telling you..." or "this is someone who sounds just like...") are unlikely to be a concern.

Individual stations may be concerned about accepting a commercial for broadcast which portrays a famous deceased person and subjects that person to derision or ridicule, is

offensive to that person's descendants or would be offensive or objectionable to a substantial section of the community.

See: *Defamation*

Insecticides

Advertisements for insecticides must not mislead or deceive the consumer as to the effectiveness of the product, hazards of the product, or in any other way.

Agricultural or veterinary chemicals must be registered by the Australian Pesticides and Veterinary Medical Authority before appearing in advertisements.

In commercials for agricultural insecticide it is advisable to show talent wearing the appropriate protective clothing.

See: *Children (Children and Dangerous Substances)*

Internet Service Providers (ISPs)

The ACCC publications *The Fair Call Advertising Guide* and *Fair.com* provide ISPs with useful guidance when considering advertising of internet access plans, the "danger" words to be careful using and guidance regarding pricing and use of fine print.

Refer: ACCC website – www.accc.gov.au

Introduction Agencies

The laws of some States/Territories prohibit the advertising of escort or prostitution services, and for commercials concerning introduction agencies (or dating services), CAD may require a Statutory Declaration witnessed by a Justice of the Peace from the advertiser with the final commercial before a CAD Number is issued.

The form of the Statutory Declaration must be as follows:

I am the (title) of (full business name) of(physical address).

The service offered by (full business name) to members of the public is a bona fide introduction service offered to people seeking long term relationships.

The television commercial key number: seeks clients wishing to use the abovementioned service.

The services offered by (full business name) and the abovementioned commercial are not for the purpose of prostitution.

See: *Brothels/Escort Agencies*

Legal Services

A lawyer may advertise a legal practice provided the content is not false, misleading or deceptive. A lawyer may not advertise as a specialist in a particular area of practice unless they hold the appropriate qualifications.

See: *Personal Injury, Workers Compensation Services*

Legislation

There is much Commonwealth and State/Territory legislation which relates to advertising. The BSA requires that all commercials comply with the laws of the Commonwealth and the States/Territories pertaining to advertising. The responsibility for legal compliance is the advertiser's and/or their advertising agency.

CAD provides an information service at both pre-production and finished commercial stages, which directs the attention of advertisers, agencies and production houses to legislative and regulatory requirements relevant to commercials. However, CAD does not provide legal advice.

Look-a-Likes

See: *Impersonation of Real People*

Lotteries

See: *Competitions, Gambling/Gaming, Classification (Betting/Gambling and Liquor), Trade Promotion Lotteries*

Loudness of Commercials

See: *Audio Levels and Loudness*

Medical Practices/Medical Practitioners

See: *Health Services*

Medicines

Only non-prescription medicines may be advertised and scripts must be submitted to the Advertising Self-Medication Industry for pre-clearance prior to the final commercial being submitted to CAD for classification.

Refer: BSA Schedule 2, Section 6 and the *Therapeutic Goods Advertising Code* – www.tgacc.com.au

See: *Therapeutic Goods and Devices*

Metric Weights & Measures

The Metric system is the accepted system of measurement of physical quantities in Australia. This system should be used when advertising anything sold by weight or measure. Advertising goods in Imperial measure could constitute false and misleading conduct.

The ACCC, National Measurement Institute, and individual State and Territory Measurement Authorities can provide guidance on Metric Advertising.

Refer: *National Measurement Act 1960 (Cth)*

Military Uniforms

See: *Uniforms*

Money

See: *Currency*

Motor Vehicle Accessories

Care must be taken not to promote the sale of motor vehicle accessories or parts for which there are prohibitions relating to their use. For example radar detectors are prohibited by the Australian Road Rules, and items such as tinted headlight covers are prohibited by some State Roads and Traffic Authorities.

Motor Vehicles

When new and used cars are promoted for sale, commercials must comply with legislation relating to the sale and advertising of these classes of motor vehicles, including, where required, the licence number of the motor dealer. Such information is available from State Motor Traders' Associations. Advertisers should also consider the ACCC's *Guidelines for Pricing in the Motor Vehicle Industry*, and the *Federal Chamber of Automotive Industries' Voluntary Code of Practice for Motor Vehicle Advertising*.

Refer: Motor Dealers Acts and Regulations

ACCC – www.accc.gov.au

FCAI – www.fcai.com.au/advertising

See: *Road Safety*

Movies

See: *Cinema, Video Movies*

National Anthems

Australia – “Advance Australia Fair”

Commercials may include the respectful use of the anthem as an instrumental version or with its correct words. Advertisers wishing to include the anthem in an advertisement should seek advice from:

The Assistant Secretary
Awards and National Symbols
Department of the Prime Minister and Cabinet
3-5 National Circuit
BARTON ACT 2600
Tel: (02) 6271 5601
Fax: (02) 6271 5662
Email: webmaster@pmc.gov.au

Foreign

The use of foreign national anthems in commercials has been the cause of some concern and has even led to official complaints being lodged with the Australian Government by representatives of foreign Governments. It is recommended that foreign national anthems not be used in commercials without the permission of the appropriate foreign Consulate.

National Flags

Aboriginal flag

The Aboriginal flag must not be used without express permission of the copyright owner, Mr Harold Thomas, a resident of NT.

National flag

The National flag may be used for advertising purposes without the need for formal permission, subject to the following guidelines:

- The flag should be used in a dignified manner and be reproduced completely and accurately.
- The flag should not be defaced by overprinting with words or illustration.
- The flag should not be covered by other objects in displays
- All symbolic parts of the flag should be identifiable.

Should producers be in any doubt about the appropriateness of a suggested representation of the Australian flag, advice may be sought from:

Commonwealth Flag Officer
Awards and National Symbols
Department of the Prime Minister and Cabinet
3-5 National Circuit
BARTON ACT 2600
Tel: (02) 6271 5601
Fax: (02) 6271 5662
Email: webmaster@itsanhonour.gov.au

National Symbols

The Commonwealth Coat of Arms is not in the public domain. It is a symbol of the Commonwealth of Australia and is for Commonwealth use only. For information regarding the use of the Coat of Arms or any other National or State/Territory symbols or emblems please contact:

Awards and National Symbols
Department of the Prime Minister and Cabinet
3-5 National Circuit
BARTON ACT 2600
Tel: (02) 6271 5601
Fax: (02) 6271 5662
Web: www.itsanhonour.gov.au

New Zealand Approval

Commercials on-air in New Zealand require separate pre-broadcast classification from the Television Commercials Approvals Bureau (TVCAB). A classification number issued in one country does not ensure broadcast in the other.

TVCAB's contact details are:

Unit A7, Level 2, 1 Beresford Square
Auckland City
NEW ZEALAND

Postal:
PO Box 8733
Auckland
NEW ZEALAND
Tel: +64 9 373 2907
Fax: +64 9 373 2912
Email: advice@tvcab.co.nz
Web: www.tvcab.co.nz

News Simulation

Commercials should not simulate news or events in such a way as to mislead viewers, and should be readily distinguishable by viewers. Even if CAD issues a CAD number, individual stations may not wish to broadcast a commercial in or adjacent to news if it too closely resembles a news story, current affairs segment or other program.

The following are examples of production concepts which may be problematic:

- Commercials in the form of a news story.
- Audio copy such as "Good evening, here is the news", etc.
- Supers stating "News", "National News", "News flash", etc.
- Use of a real or simulated news set.
- Use of sound effects which could give an impression of a news room/news broadcast.

Offensive Language

The language used is relevant to the classification given to a commercial. Very coarse language will be judged unsuitable for television.

The *AANA Advertiser Code of Ethics*, Clause 2.5, recommends that commercials only use language which is appropriate in the circumstances and strong or obscene language should be avoided.

Refer: Sections 2 and 3 of the *Code of Practice*

Olympic Insignia

The *Olympic Insignia Protection Act 1987* regulates the commercial use of certain Olympic expressions. Commercials for products or services of advertisers who are not licensed users should avoid the use of words such as "Olympic" and "Olympic Games". Care should also be taken when referring to athletes as "Olympians" in connection with non-licensed users that may imply a sponsorship or association that is false.

The Olympic Symbol should not be used in advertisements without the permission of the Australian Olympic Committee, its copyright owner.

Refer: *Olympic Insignia Protection Act 1987 (Cth)*

Operational Practices

Free TV Australia's Operational Practices 24, 29 and 36 were developed as recommendations for the basic requirements for the delivery of television commercials to Australian television broadcasters.

Operational Practice 48 was developed to assist in addressing the issues surrounding the problem of advertisements sounding louder than adjacent programs.

Copies of the Operational Practices are available from CAD or to download from www.freetvaust.com.au.

See: *Audio Levels and Loudness, ID Board, Timing of Commercials*

Optometrists

Optometrists must not advertise in a way that suggests their qualifications, equipment or techniques are superior to those of other optometrists. Advertisements for optometry services must not be false, misleading or deceptive, or of an otherwise unprofessional nature.

Refer: Individual State Optometrists Acts and Regulations

Optometrists Association of Australia Code of Ethics – www.optometrists.asn.au

Osteopaths

Osteopathic practices and services must not be advertised in a manner that is false or misleading. In some States advertisements which unfavourably compare other osteopathic services, or refer to testimonials, are prohibited.

Refer: Individual State Osteopath Registration Acts and Regulations

Personal Injury

The advertising of legal services relating to personal injury is prohibited on television in NSW, QLD, WA and NT. For example, in NSW the Legal Profession Regulations (LPR) 2002, forbid advertising generally by solicitors and barristers with only a few exceptions in relation to signage, internet advertising or advertising in specialist directory.

Refer: Individual State Legal Practitioners Acts, Regulations and Professional and Conduct Guidelines

Personal Products

Products for personal hygiene may give offence to some members of the public and therefore require sensitive treatment. When classifying commercials for sanitary napkins, tampons, napkins for incontinence and condoms, CAD will apply the normal classification criteria.

Refer: Section 2 of the *Code of Practice*

Physiotherapists

Advertisements for physiotherapists should not include any false or misleading statements including creating an unjustified expectation of beneficial treatment, references to testimonials from previous patients or claims that one physiotherapist or physiotherapy practice is better than another.

Refer: State Physiotherapists Registration Boards

Police Uniforms

See: *Uniforms*

Political Matter

The BSA defines “political matter” very broadly as “any political matter”. A commercial dealing with an issue that falls within this broad definition of political matter must comply with the provisions of the BSA. Even when commercials are broadcast outside an election period or are not on behalf of a political party, they may still be political matter. Broadly, to be political matter, the matter must, when viewed objectively, be able to be characterised as

participation in the political process or as an attempt to influence or comment upon that process.

ACMA has issued *Guidelines for the Broadcasting of Political Matter*. Copies are available from the ACMA website (www.acma.gov.au) or from CAD.

See: *Advocacy, Election Advertising*

Price

Care needs to be taken that representations as to “price” are not misleading and deceptive or otherwise in breach of the law. The following guidance identifies areas that have proved to be contentious.

“Two-price” Advertising

It is common for retailers to compare a “sale” price with “normal” or recommended prices to suggest that they are offering bargains or big savings. This is permissible as long as the normal or regular prices quoted for a particular store are not fictitious. This means they must be the prices at which that store has genuinely offered those goods for a reasonable period beforehand.

For example, a commercial stating “*Was \$15 – reduced to \$10*” would be misleading if most previous sales of the item had been made at \$10. It would also be misleading to say:

“*Was \$15 - reduced to \$10*” if the normal selling price was \$12.50.

Obviously if a product is new to the market there is no “normal” selling price to which you can refer. Such new products should not be advertised as a “sale” price as there is no basis for such claims.

What is meant by “reasonable period” will vary from case to case. Some factors that may need to be considered are:

- The type of product;
- How often prices usually change; and
- The market or markets in which the advertising takes place.

There is a limit to how long a price cut can be advertised or promoted without qualification or explanation. If you offer “discounted prices” continually, or for much of the year, then they are in fact your regular selling prices.

Recommended retail prices

Many commercials or promotions compare current prices with a higher “*recommended retail price*”, suggesting a saving. Often, however, “*recommended*” prices have little or no relevance to the market – because no one in fact charges them.

Unless you have in fact regularly been charging recommended retail prices it may be illegal to use them as the basis for price comparisons that suggest savings for consumers.

A commercial offering a product for \$180 which labels this price a “*\$60 saving on the recommended retail price of \$240*” would be misleading if the product regularly sold for \$180.

Comparison with competitors' prices

It is risky to compare your prices with those of your competitors unless you are absolutely sure that the comparison is accurate, the products being compared are reasonably similar, and that the comparison will be valid for the life of the promotion. You could not safely or accurately claim *"Our price \$250-\$40 below anywhere else"* because any of your competitors might vary their minimum price without you knowing. However, you could claim *"We will beat any genuinely advertised price by \$40"* as long as you are prepared always to live up to that promise.

Consumers will usually be able to judge for themselves whether general claims – like *"discount prices"* or *"lower prices"* are accurate. Care needs to be taken with claims about discounts on particular goods. These should be genuine reductions from prices you or your competitors normally charge.

Availability of price reductions

You must not make unqualified claims about savings or other benefits if these are not available to all potential customers e.g. if you don't offer them to people buying on credit or where the goods are replacement items under an insurance claim.

Also, in commercials for a range of items be careful not to imply that discounts are available on all of them if in fact the savings apply only to one or a few.

Refer: ACCC publication, *Advertising and Selling*.

Real Estate

Commercials for real estate may be subject to State legislation, in addition to relevant Commonwealth laws, such as Section 53A of the *Trade Practices Act*. Commercials must comply with any such provisions.

When you advertise deposits or terms for purchasing land, you must also specify the full cash price. Full cash price means the price including all the individual agent's own charges. If you are providing finance on terms, you must also state the amount of the deposit, repayments and time period over which repayments can be made. If finance is offered for a limited time, for example "vendor finance over twelve months", this must be clearly stated.

Commercials that are not clear and unequivocal about price such as:

"\$200 deposit secures your home site"

or

"Buy your home site for \$40 a month"

will breach the *Trade Practices Act*.

It is preferable to say something like:

"\$15,000 deposit secures this house and land package – total price \$95,000".

In general, where a *"from"* price is used, the commercial must also show a top or average price if more than one block of land or unit is for sale.

For example:

LAND from \$20,000
Average Price \$27,000

or

UNITS from \$20,000 to \$35,000

Viewers could also be misled about the average price of the units or blocks. For example, most viewers would assume from the statement "45 blocks from \$10,000" that there was a range of prices for the blocks and that some would be at or around \$10,000. But if there were only one at that price and the next considerably more expensive, a statement like this would be misleading. It may also be misleading if you do not update your advertising as sales occur. It would obviously be misleading to continue the original commercial once the cheaper blocks were sold.

To avoid misleading or deceptive conduct, GST should be included in the advertised price of all goods and services.

See: *Price*

Refer: *Fair & Square: A Guide to the Trade Practices Act for the Real Estate Industry* available from the ACCC

CAD requires a letter of substantiation on advertiser's letterhead with each commercial advertising the sale of land, in the form set out below:

The Manager
Commercials Advice Pty. Limited
44 Avenue Road
MOSMAN NSW 2088

Dear Madam

"Sparkling Waters Estate" – Timbucktoo

In respect to real estate advertised by us in television commercial/s key no/s we declare the following to be true and correct:

- (a) (Nature of the title)? e.g. Torrens, Strata, Freehold etc.
- (b) (Any restrictions on the use of the land in respect to zoning, local government requirements or physical characteristics)?
- (c) (Any normal community services which will not be immediately available, eg sewerage, electricity and town water supply)?
- (d) The representations made in the commercial do not contravene the provisions of Part V of the *Trade Practices Act 1974*.

All persons entering into contracts to purchase (here insert: land, units, house, etc) as advertised by us in the above commercial/s will have the appropriate title, free of financial encumbrances, transferred to them on completion of their purchase.

There are no regulations or restrictive covenants which will preclude a purchaser from using the property for the purpose as indicated in the commercial.

Signed

Title.....

Red Cross

The Red Cross emblem is a protected symbol under the Geneva Convention. Use of the Red Cross emblem is governed by the *Geneva Conventions Act 1957 (Cth)*, and is prohibited without the consent in writing of the Commonwealth Attorney-General.

Advertisers can obtain further information regarding the Red Cross emblem from:

Australian Red Cross
155 Pelham Street
CARLTON VIC 3053
Tel: (03) 9345 1800
Fax: (03) 9348 2513
Web: www.redcross.org.au

Registered Clubs

In NSW, the *Registered Clubs Act 1976* requires that all promotional and advertising matter relating to the facilities of a club registered in NSW must contain an aural and visual statement to the effect that the matter is "*For the Information of Members and Their Guests*".

Other States and Territories around Australia do not have similar legislation.

Renewal of CAD Number

Most CAD numbers have a two year validity date. The two year period commences from the date the number is issued. For example, a CAD number issued on 31 July 2005 will expire on 31 July 2007. When resubmitting a commercial after 2 years you will need to provide all application paperwork and a copy of the commercial as if it were a new submission. However, there is only a minor fee for processing, which is detailed on the Fees List available from CAD.

CAD numbers for commercials for Government Departments or Statutory Authorities have a validity date of 3 months from the date the CAD number is issued. The CAD number can be renewed for a further 3 month period where no change has been made to the commercial, either by faxing or emailing the key number of the commercial that you wish to re-air. In most cases, neither a copy of the commercial nor application paperwork will be needed to renew the CAD number.

Road Safety

The following guidelines are based on concerns expressed by road traffic authorities and the community with respect to road safety. They are intended to assist advertisers, advertising

agencies and producers in the production of commercials in which vehicles and/or roadways are depicted.

The reasonable person test

In considering the application of these guidelines to the inclusion of material in a television commercial, the test which may be applied is how would the 'reasonable person' perceive the situation depicted.

Alcoholic Beverages, Drugs and Medications

With the exception of commercials which have an educational purpose, people should not be shown explicitly or by implication, drinking alcoholic beverages or taking medication shortly before or whilst operating a motor vehicle or riding a bicycle.

Road Safety and Children

See: *Children*

Refer: CTS 10 – www.acma.gov.au

Road Rules

It is recommended that road users and vehicle operators including motorcyclists and pedal cyclists depicted in commercials be seen to observe the rules of the road, with the exception of those commercials which have a road safety educational purpose.

It is recommended that particular regard be paid to the following:

- vehicles should not appear to be travelling at obviously excessive speeds on public roads;
- seat belts or other forms of occupant restraint should be worn by all persons in motor vehicles;
- riding in the back of trucks or on construction and farm machinery should not be shown;
- helmets approved by the Standards Association of Australia should be worn by all motorcyclists and pedal cyclists. In addition it is desirable that motor and pedal cyclists be shown to use sturdy footwear and make themselves conspicuous through the use of bright protective clothing;
- it is desirable that stereo headsets should not be shown in association with motor vehicles (including motorcycles and bicycles) and should not be associated with pedestrian activities.
- The portrayal of vehicles on race circuits, testing tracks, and in rally conditions should be easily recognisable by television viewers.

See: *Motor Vehicles*

Royalty

No commercial may state or imply Royal custom or Royal favour unless a Royal Warrant applies. Legislation in Queensland expressly prohibits false representations of a Royal Warrant.

Security Devices

It is desirable that care be taken to avoid alarmist or frightening presentation, either aural or visual. In particular, care should be taken that scenes are not likely to upset the very young or the elderly.

Refer: CTS 10 – www.acma.gov.au

AANA Code of Ethics – www.aana.com.au

Sex and Sex-Related Products and Services

A commercial for a sex-line or similar product or service must be classified and comply with the MA classification criteria, Appendix 4 of the *Code of Practice*.

See: *Classification "S", Telephone Services*

Slimming

There is a voluntary code covering commercials for slimming, adopted by the weight management industry for their members. Contact the Weight Management Code Administration Council of Australia on (03) 9251 4333 or check www.weightcouncil.org.au for further information.

See: *Testimonials*

Sound Levels

See: *Audio Levels and Loudness*

Submitting Commercials for CAD Processing

Producers should allow for commercials to arrive at CAD between 3 and 7 working days before the scheduled broadcast date. CAD processing may take up to two working days and commercials should arrive before 3.00pm to be considered for processing the same day.

Submissions for a CAD Number on a finished commercial need to include:

- A copy of the commercial, including ID Board, on VHS cassette or by electronic delivery via [Adstream](#), [Dubsat](#), [DVD-CAD](#) or [Rastis](#).
- A completed [Application for Classification](#) form along with any additional material required for substantiation etc; as outlined on the form.

- Full audio/visual scripts or a storyboard; **including** all graphics and disclaimers and words to any jingle.
- A completed [CAD Order form](#).
- Full payment for the processing of the Application (Cash, Cheque or Credit Card), unless an existing account holder.

Application and Order forms and current CAD processing fees can be downloaded from www.freetvaust.com.au.

See: *Audio Levels and Loudness, ID Board, Timing of Commercials*

Supers

See: *Disclaimers & Other On-Screen Text*

Technical Guidelines

See: *Operational Practices*

Telephone Services

190 Services

The TISSC requires their members, being Premium Rate Service Providers, to comply with the TISSC Code of Practice. This self-regulatory code includes strict requirements for the advertising and promotion of premium rate services i.e. commercials for services that have telephone numbers commencing with '190' and that are charged at a premium rate. Advertising for these services must also comply with the *AANA Advertiser Code of Ethics*, broadcasting laws, standards and codes, and the *Code of Practice*.

The TISSC Code provides for the following requirements for television advertising of premium rate services:

- advertisements must not contain false, misleading or deceptive statements;
- not contain information that is out of date (having regard to general information);
- must contain call cost information that is clear, legible and prominent. The advertisement must state either the fixed costs or the cost per minute of the call;
- the advertisement must include a statement (if applicable) that call costs may be higher from mobiles or payphones; and
- the premium rate service number and call cost information must be displayed for a minimum of 10 seconds, or if longer both the phone number and call cost should be displayed for the same length of time.

The TISSC Code also outlines particular content requirements for premium rate services, such as conference services, advice services, recorded services, and children's services. Advertisers should consult the TISSC Code for further details. Copies of the TISSC Code are available from the TISSC website www.tissc.com.au.

Mobile Premium Services

The *Telecommunications Service Provider (Mobile Premium Services) Determination 2005 (No 1)* regulates SMS and MMS services accessed through telephone numbers commencing with '191, 193, 194, 195, 196, 197 or 199' and proprietary network services (such as premium services available through mobile carrier portals).

The Determination provides that industry self-regulatory schemes must set out requirements in relation to promotional material advertising age-restricted services, or services for children supplied by way of a mobile premium service. There are currently no approved self-regulatory schemes.

Advertising for these services must comply with the *AANA Advertiser Code of Ethics*, broadcasting laws, standards and codes, and the *Code of Practice* (which requires clear provision about the cost of a call when viewers are invited to use a premium charge telephone service to obtain information, register for a competition etc).

Children

Commercials directed to children involving the use of premium charge telephone services must comply with the CTS and Clause 6.25 of the *Code of Practice*, in addition to the advertising provisions required by TISSC of their members.

In addition, commercials directed to children must comply with the *AANA Code of Advertising to Children*. It should also be noted that the *Code of Practice* places restrictions on the content of advertisements aimed at children under 14 years and broadcast during C or P periods.

Prior to production of commercials directed to children, advertisers and agencies are encouraged to seek pre-production comments on scripts from CAD.

See: *Pre-Production Pre-check Service*

Testimonials

Commercials featuring testimonials will need to be supported by the following documentation:

- a signed release by the individual making the testimonial, granting permission for publication; and
- such a release should be current and contain a statement asserting the accuracy or truth of the testimonial. The currency of a testimonial will be assessed in the context of the claims made and product or service advertised.

Therapeutic Goods and Devices

Therapeutic Goods

Commercials for prescription only medicines are not permitted under the *Therapeutic Goods Act*.

Commercials for therapeutic goods (non-prescription medicines) must comply with the *Therapeutic Goods Advertising Code*, the *Therapeutic Goods Act* and the *Therapeutic Goods Regulations*. In addition, the script must be approved by the ASMI prior to being submitted to CAD or stations. The ASMI script pre-clearance process incurs a fee for service. Details of ASMI fees are available from the address below.

Pre-clearance is carried out by the ASMI's Advertising Services Manager. All correspondence should be sent to the following address:

Australian Self-Medication Industry
Private Bag 938
NORTH SYDNEY NSW 2059
Tel: (02) 9955 7205
Fax: (02) 9957 6204
Email: adservices@asmi.com.au

Therapeutic Devices

Commercials for therapeutic or medical devices must comply with the *Therapeutic Goods Advertising Code*, the *Therapeutic Goods Act* and the *Therapeutic Goods Regulations*. The script does not need to be approved prior to the commercial being submitted to CAD or stations.

Organisations applying to CAD for classification of a commercial for a therapeutic good or device must complete questions 8–11 on the Application for Classification of TV Commercials Form. Applicants must certify that the commercial complies with the *Therapeutic Goods Act* and *Therapeutic Goods Advertising Code*. If the commercial is for a therapeutic good, applicants must state whether it has been approved by the ASMI and attach a copy of the approved script and the ASMI Approval Number. If the commercial is for a device, the applicant must attach a copy of the Therapeutic Goods Administration's listing certificate, approved intended purpose for the device and evidence of compliance with the *Therapeutic Goods Advertising Code*, Act and Regulations.

Timing of Commercials

Sound should commence 0.5 seconds after the commencement of program video. The end of program sound including any sound tag shall occur 0.5 seconds before the end of program video.

Refer: Free TV Australia's Operational Practices 24, 29 and 36 – *Commercial Timing*

Tobacco

A tobacco advertisement must not be broadcast in Australia and tobacco products cannot be advertised. Retailers of tobacco products wishing to promote the sale of non-tobacco products should seek legal advice before submitting a commercial to CAD.

Refer: *Tobacco Advertising Prohibition Act 1992*

Trade Promotion Lotteries

It is necessary to comply with State/Territory legislation when promoting a competition in a commercial. In particular, attention is drawn to legislation relating to trade promotion lotteries. Currently it is necessary to obtain a permit to conduct a trade promotion lottery in NSW, VIC, SA, the NT and the ACT. Any advertising for a trade promotion must include the permit number. CAD will require a copy of the terms and conditions of entry when a trade promotion lottery is advertised.

Producers should also refer to any specific requirements of each state/territory regulations or seek legal advice.

Uniforms

Before producing a commercial depicting talent wearing military or police uniforms, producers are advised to check with appropriate authorities.

Value

Section 53(a) of the *Trade Practices Act* prohibits false representations about the value of goods or services. Retailers need to be very careful in this area both when selling goods and also when giving valuations.

Advertising claims such as “*worth \$100 – now only \$50*” gives consumers the impression that the true value of the goods is the higher price, not just that you may have previously sold the goods at that price.

Even where the goods have been sold at the higher price, if their true value is less, such claims may amount to false representations. If you provide valuation certificates in connection with the sale of goods take care not to falsely represent their value.

Obviously there may be differences of opinion about the value of a particular item. However, any valuation you give must be able to be supported by objective evidence and not be used as a means to reinforce in the consumer’s mind a false value.

Where products are advertised at a price, but a claim is made regarding their true value, CAD will require substantiation.

For example “*The Mega Showbag, \$25 value, now \$10*”

Full substantiation of the \$25 value will be required.

If claims regarding the value of purchase incentives or premium offers are made, substantiation will be required.

For example “*When you buy \$60 worth of True Beauty products, you get this gift worth \$100*”.

Full substantiation regarding the value of the gift will be required.

Refer: *ACCC Advertising and Selling Guidelines*

Video Break-Up Effects

The use of effects such as zapping, snow, video noise and other depictions of technical malfunction has become popular in commercials.

Although the use of these techniques is not relevant to the issuing of a CAD number, individual stations may refuse to broadcast commercials that may suggest to viewers that broadcast quality is defective by depicting technical malfunctions.

Video Movies

A CAD number will not be issued for commercials promoting video movies or DVD's classified "X" by the OFLC.

Refer: Clause 6.19 of the *Code of Practice*.

All commercials promoting the sale or hire of video movies or DVD's must show in a prominent and appropriate place the OFLC's classification for each movie advertised, and should comply with the provisions of Clauses 6.17 and 6.18 of the *Code of Practice*.

When commercials for video movies or DVD's are submitted, CAD requires a copy of the OFLC's classification certificate for each movie title.

See: *Cinema, Classification*

Volume Compression Levels

See: *Audio Levels and Loudness*

Water Safety and Water Sports

In deference to general community concerns about water safety, producers should exercise care when depicting people engaged in activities in or near the water, particularly if they are consuming alcohol. Commercials which are likely to be viewed by children should never depict dangerous situations which may encourage unsafe behaviour.

Care should be taken to avoid depicting people diving or jumping from heights into shallow water or into water which might conceal obstacles. In some States diving or jumping from jetties or other like structures is contrary to law.

Workers Compensation Services

The advertising of legal services relating to workers compensation services is prohibited on television in NSW, QLD and WA.

Refer: Individual State Workers Compensation Acts and Regulations