



RESPONSIBLE ADVERTISING OF FOOD AND BEVERAGE PRODUCTS TO CHILDREN

Inaugural Annual Report (2024)

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Introduction

Ad Standards is pleased to present this first report of its work in administering the **Code for Responsible Advertising of Food and Beverage Products to Children** (the Industry Code), which sets a new benchmark for responsible advertising of food and beverage products in Canada. The food and beverage industry in Canada recognizes the need to respond to concerns about the health of children in a meaningful way. This new Industry Code restricts the advertising of certain food and beverage products to children in a more robust manner than the previous voluntary initiative, the Canadian Children's Food and Beverage Advertising Initiative (the CCFBAI). The CCFBAI ran from 2007 to 2019. Under this prior initiative, also administered by Ad Standards, many manufacturers pledged not to advertise directly to children and even reformulated products to improve nutrition. This initiative was wound up in 2020; industry leaders wanted to go further to ensure that restrictions would apply to the whole of industry.

Extensive consultation across the advertising industry resulted in the development of a new program designed to ensure that advertising of food and beverage products to children is limited. The program requirements set out in the Industry Code and its companion **Guide for the Responsible Advertising of Food and Beverage Products to Children** (the Guide), are designed to achieve the shared objective of a comprehensive and workable regime that applies to all advertising, in all media. At its core, the initiative represents a move from the voluntary pledge program to an Industry Code of mandatory and universal application. This is a made-in-Canada approach and a significant move for Canadian advertisers.

The Industry Code relies on a combination of preclearance and complaints to both proactively establish the standards, as well as to drive compliance through complaints, both administered by Ad Standards, the national self-regulatory body for advertising in Canada. Ad Standards is an independent body responsible for ensuring that advertising on all media is responsible, truthful, fair and accurate. Sitting at the intersection between the public, government agencies and regulation, and the advertising industry, Ad Standards brings a unique and specialized perspective to its skills of advertising analysis and employs multiple checks and balances to ensure the system is transparent and accountable.

The Industry Code came into full effect on June 28, 2023 and it is part of Ad Standards' mandate to report annually on the complaints received under the Industry Code, commencing after the first full year of implementation. We are very pleased to share this first annual report to provide transparency to all stakeholders.



Catherine Bate
President & CEO



Shelley Samel
Chief Legal Officer

A Brief Overview of the Industry Code

The Industry Code starts with a prohibition: unless the food or beverage product in question meets specific nutrition criteria, the advertising may not be primarily directed to children. The Guide helps advertisers understand the Industry Code's intended scope and application, and informs Ad Standards in its interpretation of the Industry Code.

The Industry Code recognizes that children are a special audience, and that advertisers must be sensitive to messaging about food, food choices and consumption. Under this national standard, only food that meet specified nutrition criteria may be advertised in a manner that is primarily directed to children under the age of 13.

This restriction applies to advertising in all media with few exceptions. In addition to broadcast and digital media, the Industry Code applies to advertising in schools, cinemas, games, print, out-of-home, charitable initiatives, sponsorships, product placements and product integrations.

In determining whether an advertisement is primarily directed to children, Ad Standards will consider three criteria:

- (a) the nature and intended purpose of the food or beverage product advertised (the What);
- (b) the manner of presenting the advertisement (the How); and
- (c) the time and place it is shown (the Where/When).

No one factor is determinative.

While the Guide contains presumptions for various media to help assess whether an ad should be considered to be primarily directed to children or not based on the Where/When criteria, these presumptions are entirely rebuttable.

Those familiar with the restrictions against advertising to children established under consumer protection legislation in Quebec will see the parallels to that legislation. The Industry Code and Guide, however, are tailored to apply specifically to the food and beverage industry, and to have national application. It is therefore important to note that the Industry Code and Guide do not replace existing legislation.



DID YOU KNOW?

THE NAME IS A MISNOMER

The Industry Code is called the Responsible Code for Advertising of Food and Beverage Products to Children. The name makes it sound like it is a 'how to' guide to advertise food and beverage to children. It is not. In reality, the Industry Code is a general prohibition *against* advertising of most food and beverage products to children.

Perhaps it needs a new name... This will be explored, along with other areas of clarification, in future updates to the Industry Code.

Overview of the Self-Regulation of Children’s Food and Beverage Advertising in Canada

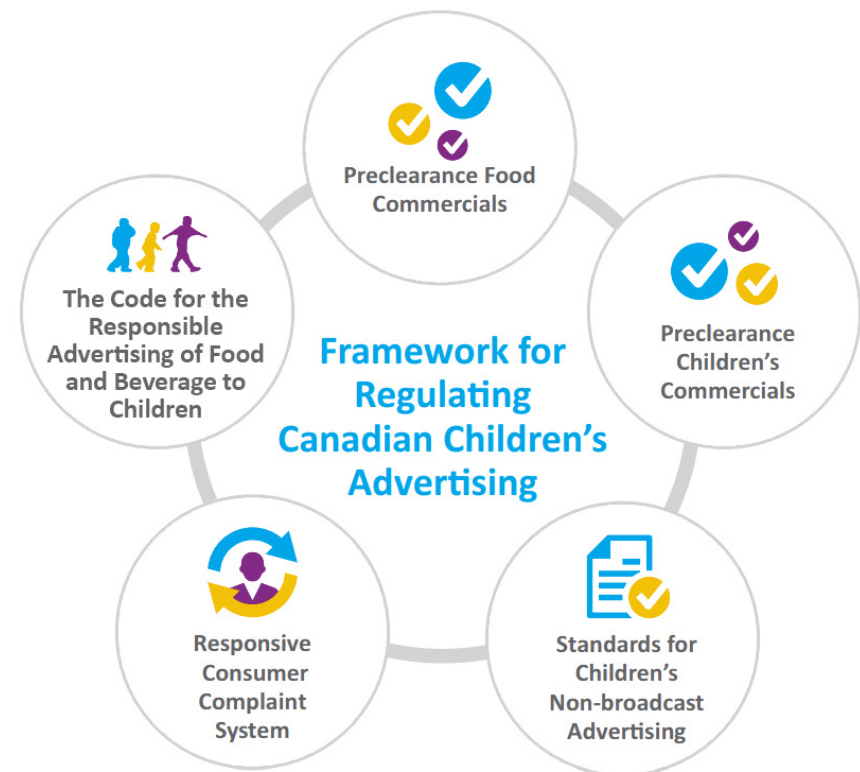
Canada has one of the strongest frameworks in the world for regulating food and beverage advertising primarily directed to children under 13 years of age.

Canada’s system starts with preclearance of food and beverage advertisements under the Industry Code and Guide. Under this national standard, only food and beverages that meet specified nutrition criteria may be advertised in a manner that is primarily directed to children under the age of 13.

Next, the system includes the preclearance of food and beverages under the provisions of the *Food and Drugs Act* and the Canadian Food Inspection Agency’s *Food Labelling for Industry* (CFIA Industry Labelling Tool).

Additionally, children’s food and beverage commercials directed to children under 12 that are carried in or immediately adjacent to a children’s program, or that are determined by the broadcaster as child-directed regardless of the program, are subject to the requirements of **The Broadcast Code for Advertising to Children**. Adherence to this broadcast code, including preclearance of each children’s commercial by a committee that includes industry and parent representatives, is a condition of broadcast license by the Canadian Radio-television and Telecommunications Commission. For advertising in any other media, the advertisement is subject to Interpretation Guideline #2 (Advertising to Children) under Clause 12 of the **Canadian Code of Advertising Standards** (the *Code*).

Canada’s self-regulatory system also includes a rigorous system for responding to consumer complaints about advertisements under the provisions of the *Code* as well as under the Industry Code, which covers all media. The *Code* and its **Interpretation Guidelines** include special provisions regarding advertising to children.



The Role of Ad Standards in Implementing the Industry Code

Ad Standards is committed to fostering confidence in Canadian advertising and to ensuring the integrity and viability of advertising through effective industry self-regulation. As an independent, not-for-profit body, Ad Standards administers the *Canadian Code of Advertising Standards*, the principal instrument of advertising self-regulation in Canada, and a national mechanism for accepting and responding to consumer complaints about ads. Ad Standards Clearance Services reviews creative and offers consultative services in six categories, to help ensure advertising complies with relevant regulations and industry codes.

The food and beverage industry, and specifically the four industry associations leading the program from the industry – Association of Canadian Advertisers (ACA), Food, Health and Consumer Products Canada (FHCP), Canadian Beverage Association (CBA), and Restaurants Canada – appointed Ad Standards to administer the Industry Code. Ad Standards' role in administration of the Industry Code mirrors our work in other sectors and, specifically, is achieved through industry education, preclearance and complaints-based enforcement.

An overview of Ad Standards work in administering the Industry Code is outlined below.



DID YOU KNOW?

THE INDUSTRY CODE APPLIES TO ALL MEDIA

The Industry Code applies to all media, with very limited exceptions. In addition to broadcast and digital, the Industry Code considers an extensive range of advertising formats to which children may have exposure, including schools, games, out-of-home advertising, sponsorships and more.

Training of Ad Standards Analysts

The Chief Legal Officer at Ad Standards spent many hours training in-house analysts to determine advertising compliance with the Industry Code before it took effect. This was a collaborative process designed to ensure that the Industry Code and Guide be interpreted in a manner that is consistent with the objective of the Industry Code. As new analysts join the team, they are also trained extensively.



DID YOU KNOW?

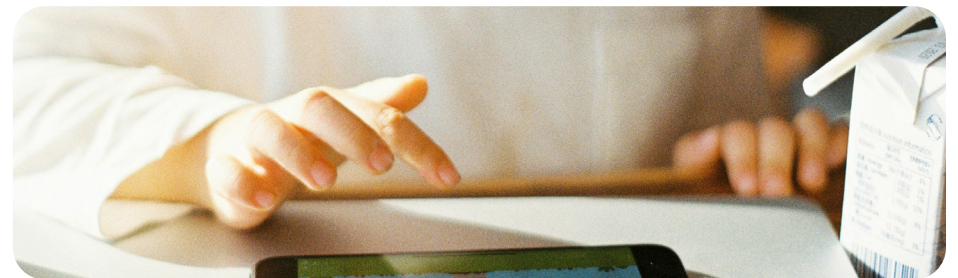
HELPFUL TIPS TO SPEED UP YOUR REVIEW BY AD STANDARDS PRECLEARANCE

- Include nutrition information for your advertised product with your submission.
- Provide detailed scripts including all audio copy, background sounds/music and supers, along with a detailed description of visuals.
- For social media ads, ensure you submit all elements of the post.
- Ensure attestations that you provide in response to a request from Ad Standards address the comment raised.

Industry Training

Prior to launch of the Industry Code on June 28, 2023, Ad Standards conducted webinars for the industry (advertisers, agencies, and media) and presented numerous times to conferences of lawyers practising in the fields of advertising and/or food regulatory law. This outreach was designed to educate industry, lawyers, and food regulatory specialists about the Industry Code, alert participants to the mandatory nature of the Industry Code, explain how Ad Standards would apply the Industry Code and its accompanying Guide, and outline the benefits of preclearance.

Since the Industry Code launched, Ad Standards continues to offer presentations and webinars related to the Industry Code. From inception and throughout 2024, awareness and education activities included webinars, presentations to industry, social media posts, and other outreach has reached over 17,000 stakeholders. We also specifically highlight the Industry Code as a category for consumer complaints on our complaints portal, beginning with the launch of a new platform in January 2024.



Preclearance

Preclearance by Ad Standards as an independent third party provides advertisers with assurance that an ad complies with the Industry Code in that the ad is not child-directed or, where it meets specific nutrient criteria, that it is advertised responsibly. **While preclearance is voluntary, compliance with the Industry Code is mandatory for all advertisers** (see Compliance & Enforcement on page 7).

Ad Standards has developed a robust preclearance mechanism to ensure compliance with the Industry Code. As with all areas of preclearance by Ad Standards, two analysts who have undergone training specific to this category review each piece of creative for thoroughness and consistency. Our analysts review submitted advertisements in all media to determine whether or not an ad is primarily directed to children according to the criteria established in the Industry Code and Guide. The analysts consider a variety of factors in determining whether the advertising complies with the Industry Code: the nature and intended purpose of the product being advertising (the What), the manner of presenting such advertisement (the How), and the time and place it is shown (the Where/When). **No one factor is determinative.**

In each instance of non-approval, our analysts work with the submitters by providing directional suggestions and reviewing revisions to assist the submitter in reaching compliance, where compliance is achievable.

Ads that are precleared and deemed to be compliant with the Industry Code are not subject to a consumer or advertiser complaint.



DID YOU KNOW?

COMPLIANCE WITH THE INDUSTRY CODE IS MANDATORY, SO CHECK YOUR HOMEWORK

Compliance with the Industry Code is mandatory for all advertisers in Canada.

Most Canadian advertisers of food and beverage products do not intentionally advertise in a way that is primarily directed to children. In fact, many of these advertisers have corporate directives and policies to not target children. But the Industry Code applies even when the advertiser doesn't intend to advertise to children.

Sometimes what an advertiser views as not targeting children, may still be deemed to be offside the Industry Code. This is evidenced by the 16% of ads submitted for preclearance under the Industry Code that are determined to be non-compliant. We know from working with these advertisers that they did not intentionally create ads to be primarily directed to children.

Ad Standards, an independent third party, provides preclearance to support the industry in its efforts to comply; to provide the advertiser with assurance that an ad is not primarily child-directed under the Industry Code. It essentially checks an advertiser's homework, even for those advertisers who believe that they do not advertise to children.

Compliance & Enforcement

Ad Standards promotes compliance with the Industry Code through a complaints-based enforcement mechanism. Like Ad Standards' *Canadian Code of Advertising Standards*, reporting and compliance for the Industry Code apply to all advertisers in all media, regardless of whether the advertiser signs on to the code and regardless of membership in Ad Standards or any particular industry association.

For complaints related to an advertisement that has been precleared by Ad Standards Clearance Services, as described above, and determined not to be primarily directed to children under the age of 13, the complainant will be advised that the ad is compliant and no further action will be taken.



For complaints related to advertisements that were not previously approved by Ad Standards Clearance Services under the Industry Code, these complaints are reviewed and adjudicated by the Director, Clearance Services, an analyst with experience in the preclearance of food advertising, children's advertising, and/or advertising under the Industry Code, and the Chief Legal Officer.

If an advertiser fails to comply with a decision requiring the advertiser to withdraw or amend their advertisement, Ad Standards will notify carrying media that the advertisement violates the Industry Code and seek their assistance to remove the ad from circulation/display/publication. Ad Standards will also name the advertiser in its annual compliance report and may post a notice of noncompliance on its website.

Adding New Nutrient Criteria for Specific Eligible Foods

Under the Industry Code, advertising for a food or beverage product may not be primarily directed to persons under 13 years of age unless the product satisfies the child advertising nutrition criteria set forth in Appendix A of the Industry Code (the Restriction). The nutrition criteria in Appendix A sets out general criteria that apply to most prepackaged foods and beverages. Section 4 of Appendix A of the Industry Code also allows for additional select food and/or beverages to develop unique

nutrition criteria where the rationale for such distinct criteria is science and evidence-based. The rationale can include the following:

- (a) the food/beverage is a staple food in the diets of Canadian children;
- (b) the food/beverage is recognized by Health Canada as an important food vehicle in delivering essential vitamins and minerals in children's diets; and
- (c) the food/beverage is required by Canada's *Food and Drug Regulations* to be enriched/fortified with prescribed levels of vitamin and minerals.

Ad Standards' role in this regard includes determining whether a new category of nutrition criteria can be added to the Industry Code. As a result, Ad Standards, in consultation with the four primary industry associations responsible for the Industry Code, will consider submissions from manufacturers of specific food/beverage products or categories that qualify under these criteria. It is anticipated that very few submissions will be considered or accepted. Protocols are in place to assess these requests, the details of which are set out on Ad Standards' website.

Since launch of the Industry Code, there have been no submissions to Ad Standards for consideration of a new food/beverage for eligibility for unique nutrient criteria.



DID YOU KNOW?

YOUR AGENCIES MAY NOT BE SUBMITTING YOUR ADS FOR PRECLEARANCE

Some advertisers who are committed to compliance with the Industry Code are surprised to learn that their ads are not being submitted by their agencies to Ad Standards for preclearance under the Industry Code.

If working with an agency to develop creative, double-check to make sure that they are submitting your ads for preclearance under the Industry Code (in addition to food clearance, if this is required) to ensure compliance with the Industry Code.



Report on the First Full Year of the Industry Code (2024)

Preclearance

Preclearance under the Industry Code by Ad Standards began with its full implementation in June 2023. Since that time, our preclearance analysts have reviewed thousands of submissions across six categories: food, children’s broadcast advertising, cosmetics, health products, alcohol and, now also, under the Industry Code.

Ad Standards Clearance Services supports advertisers in finding ways to achieve compliant advertising under the Industry Code. This may mean providing suggestions to advertisers on how to amend or adjust the advertising, or to request further information (such as through an attestation), to bring the proposed creative into compliance with the Industry Code if that is possible. In a vast majority of cases, this was achieved, with many requiring very few adjustments to make the submission compliant. In our analysts’ assessment under the Industry Code’s rigorous standards, a material number (approximately 16%) of submissions were not ultimately approved.



In Ad Standards’ view, the preclearance process has been working as an effective mechanism to pivot the advertising industry to the new prohibitions and restrictions imposed by the Industry Code. This is achieved both by working through the preclearance process to adjust creative when needed in order to comply, or rejecting creative that does not, demonstrating that this is moving the needle on what is acceptable and what is ultimately approved to be seen by Canadians.



DID YOU KNOW?

NO ONE FACTOR IS DETERMINATIVE IN ASSESSING WHETHER AN AD IS PRIMARILY CHILD DIRECTED

Under the Industry Code, the assessment of whether an ad is primarily child-directed is based on an analysis of all three criteria taken together: the What, the How and the Where/When. **No one criteria or factor is determinative** (unless the media is effectively a prohibition under the Guide).

For example, as Ad Standards’ analysts have assessed in numerous reviews, an ad with a media buy that has fewer than 15% child-audience may still be considered child-directed if the advertisement otherwise is designed to primarily attract the attention of children.

Enforcement

Ad Standards developed a comprehensive **complaints procedure** that is posted on the Ad Standards website. The complaints procedure has been in effect since October 1, 2023 and provides details on how to submit complaints, how complaints are assessed, the appeal process, how cases are reported, what happens in the event of advertiser non-compliance and more.

Consumers can submit their complaints through the **online complaints portal** or by mail. Advertisers (including advocacy groups) can also complain and are subject to a small cost-recovery fee for doing so.

Each year, Ad Standards receives thousands of complaints from the public about advertising.

Since the inception of the complaints mechanism under the Industry Code, we have yet to receive any complaints that would fall under this code. This is likely attributable to at least two reasons: first,



the effectiveness of preclearance as a mechanism to impact the advertising that reaches the market; and second, the newness of the Industry Code itself. Ad Standards will continue to highlight the availability of this complaint mechanism to consumers and stakeholders, to help support effective enforcement through complaints of the Industry Code's requirements.



DID YOU KNOW?

PRESUMPTIONS ARE REBUTTABLE

The Guide contains presumptions as to when an ad could be considered to not be primarily directed to children based on the Where/When criteria of analysis. However, unless there is an express prohibition, **these presumptions are entirely rebuttable.**

It is important to note that there have been multiple advertisements reviewed by Ad Standards preclearance analysts for compliance under the Industry Code that are determined to be primarily directed to children *regardless* of the media. In these cases, the advertiser cannot run the ad in question in any media and be compliant with the Industry Code – even in media that has a presumption of not being child-directed.

Ad Standards analysts do take the position that placement within or immediately adjacent to children's television broadcast or media is virtually a non-rebuttable presumption and the ad would be deemed to be primarily directed to children.

About Ad Standards

Ad Standards is the self-regulatory body for Canada's advertising industry.

Through member support and cooperative industry initiatives, we build public confidence in advertising by helping ensure ads, in all media, are truthful, fair and accurate. We administer the *Canadian Code of Advertising Standards*, which sets criteria for acceptable advertising, and provides a mechanism for adjudicating and resolving consumer complaints and competitive disputes. We also review advertising creative and offer consultative services to help ensure compliance with relevant laws, regulatory guidelines and industry codes.

Our collaborative relationships with Canadian regulators and global self-regulatory organizations provide a diversity of valuable insights, which inform our initiatives and goals.



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