

GUIDE FOR THE Responsible Advertising of Food and Beverage Products to Children

("Food and Beverage Advertising Code")



ABOUT THIS GUIDE

This Guide to the *Food and Beverage Advertising Code* (the “Guide”) is designed to be used by Advertising Standards Canada (“Ad Standards”) in its role as the body responsible for the administration and enforcement of the Food and Beverage Advertising Code, and the preclearance of food and beverage advertising under it. The Guide will also help advertisers understand the intended scope and application of the Food and Beverage Advertising Code, and assist industry in developing advertising that is consistent with the special considerations applicable to advertising of food and beverages to children.

The Guide and the *Food and Beverage Advertising Code* are now part of Canada’s very highly developed, and highly regarded advertising regime, a regime developed by Government and industry to regulate advertising in Canada, including advertising directed to children. Schedule A provides a comprehensive overview of the various laws, regulations and codes governing advertising of food and beverages, and advertising to children, in Canada, as well as Ad Standards’ roles and responsibilities under these regulatory and self-regulatory frameworks.

PART A: GENERAL QUESTIONS AND ANSWERS

I. When should advertisers submit advertising for preclearance?

The *Food and Beverage Advertising Code* applies to all advertising directed to residents of Canada, in any media, featuring a food or beverage product. Advertisers are encouraged to submit for preclearance under this *Food and Beverage Advertising Code* all such food and beverage advertising that might reasonably be seen as primarily directed to children, in any media, for review and preclearance by Ad Standards. Approval will be given to any final submission reviewed and deemed by Ad Standards to comply with the Food and Beverage Advertising Code.

II. Does the *Food and Beverage Advertising Code* replace other laws, regulations or guidelines?

No, the *Food and Beverage Advertising Code* complements and supports other relevant laws, regulations and guidance. Advertising must still comply with all applicable laws and codes including the *Food and Drugs Act*, the *Food and Drug Regulations*, the *Canadian Code of Advertising Standards* (in particular, Clause 12), *provincial consumer protection legislation* (in particular, in the Province of Quebec) and, in the case of broadcast advertising, *The Broadcast Code for Advertising to Children*.

III. How can people tell if an advertisement has been cleared by Ad Standards?

Clearance permits the advertiser to use a logo to publicly demonstrate that the advertising execution (content and context) has been reviewed by, and has been precleared by, Ad Standards Clearance Services. Ad Standards will authorize use of this logo on final creative that complies with the *Food and Beverage Advertising Code* and, where applicable, has also been precleared by Ad Standards under its Food and Beverage and Children's Clearance services, as applicable.

IV. Once an ad is cleared, is the approval/logo transferable to variations on that ad?

No. Ad Standards' approval is only valid for the final creative as received and precleared by Ad Standards. Any variation of content (e.g. new tag line, reducing 30 seconds to 15 seconds), or context (e.g. adapting broadcast for digital or other media) needs to be resubmitted for preclearance if the advertiser wants to rely upon Ad Standards' preclearance for the variant. If an advertiser chooses not to resubmit, it is the advertiser's responsibility to remove the logo from the altered creative. Note that unless the final form of creative has been precleared by Ad Standards, a modification of a previously precleared ad may be subject to the Enforcement provisions set out in Part VIII of the Food and Beverage Advertising Code.

V. Can Ad Standards preclear advertising for food and beverage products that meet the established nutrition criteria?

Yes. Even if the advertising meets the nutrition criteria, it must still satisfy Part V of the Food and Beverage Advertising Code. Ad Standards can authorize an advertiser to use the logo where the advertising is submitted along with an attestation from the advertiser, and such other information as may be required about intended placement. In addition, preclearance for food and beverage advertising and Children's advertising clearance may also still be required or requested.

VI. Who are "children" under the Food and Beverage Advertising Code?

Under the Food and Beverage Advertising Code, "children" refers to persons under 13 years of age.

VII. What forms of advertising and media are covered?

Except as otherwise provided, the *Food and Beverage Advertising Code* applies to all advertising directed to residents of Canada, in any media, featuring a food or beverage. For greater certainty, "advertising directed to residents of Canada" shall include foreign produced content requested and purchased by an advertiser doing business in Canada to reach residents of Canada. Displays, in-store flyers, posters, menus, menu boards, point of sale material and other on-premises communications and material about a food or beverage product are exempt from the restriction contained in Section II of the *Food and Beverage Advertising Code* (the "Restriction"). Such exempt communications and material must still comply with Part V of the Food and Beverage Advertising Code.

The expression “on-premises” includes both the physical space of an establishment as well as its parking lot, and in the case of a restaurant, its drive-thru, outdoor dining area or other outdoor areas.

For greater certainty, packaging, labels, wrappers, containers and product shape are not considered advertising for purposes of the Food and Beverage Advertising Code. Ad Standards does not accept these materials for preclearance review.

Sampling of food and beverage products and premiums included as part of the product do not constitute advertising and hence are not covered by the Food and Beverage Advertising Code. However, advertising associated with such promotional activities and premiums are subject to review under the Food and Beverage Advertising Code.

For the application of the Food and Beverage Advertising Code, the expression “feature a food or beverage product” or other expressions referring to a food or beverage product being “featured” means that the food or beverage must actually appear in the ad. The mere mention or use of a brand name or logo for the product or a manufacturer or retailer associated with it does not constitute food or beverage advertising provided the logo does not incorporate the food or beverage product. For example, a youth sport program supported by a restaurant can identify the sponsor by its corporate name or a brand associated with it, including a sponsored jersey for participants. A sign or jersey featuring a food or beverage product associated with sponsorship advertising would be subject to the provisions of the Food and Beverage Advertising Code. If a food or beverage product appears in advertising in an incidental manner and not for the purposes of advertising the product per se, it will not be considered as being “featured” in the ad. For example, a restaurant making a recruitment ad and showing employees handling food or beverage products would not be considered as an ad “featuring” a food or beverage.

VIII. What about advertising for educational and charitable initiatives and causes that feature a food or beverage product?

Advertising that features a food or beverage product that does not satisfy the nutrition criteria and promotes an educational or charitable initiative or cause, is not subject to the Restriction unless such advertising puts greater emphasis on the product than on such initiative or cause. For example, advertising a donation of a portion of the proceeds associated with the sale of such a food or beverage product to support a charitable initiative or cause would not be subject to the *Food and Beverage Advertising Code* unless, either visually and/or verbally, more emphasis is placed on that product than on the initiative or cause for which the proceeds of the sale, or a portion of the proceeds of the sale, are to be donated. In general, advertising will be deemed as putting equal or greater emphasis on the educational or charitable initiative or cause rather than on the food or beverage product if all of the following conditions are met:

- a) the space/time allotted to the initiative or cause is equal or more important than the space/time allotted to the food or beverage product featured;
- b) the characters used in the text relating to the initiative or cause are equal or larger than those used in regards the food or beverage product; and
- c) the other characteristics of the advertising do not have the effect of giving greater prominence to the food or beverage product rather than the initiative or cause.

For greater clarity, educational initiatives are those which seek to bring about changes in attitude or behaviour in the interest of the person for whom the initiative is intended or for the benefit of society. Such initiatives must be intended to ensure the child's training and development, especially by promoting a healthy lifestyle and/or responsible behaviour, for example by encouraging the child to exercise caution or getting him to react in a way that will ensure his safety in case of danger.

IX. Can Ad Standards preclear advertising for an educational or charitable initiative or cause that feature a food and/or beverage product that does not meet the nutrition criteria?

Yes, if requested, Ad Standards will review the advertising to determine if greater emphasis is on the products featured or if equal or greater emphasis is on the educational or charitable initiative or cause. If Ad Standards concludes that the latter situation applies, then it will indicate that the advertising is not subject to the Food and Beverage Advertising Code. If on the contrary, Ad Standards is of the opinion that the advertising puts greater emphasis on the food and/or beverage featured, then it will review the advertising under all three criteria set forth in Clause III of the *Food and Beverage Advertising Code* to determine if the advertising is primarily directed to children.

X. What does “use of words that directly urge” mean?

Advertising cannot use words that directly address children, namely in the form of a greeting or salutation (“hey kids” etc.). For instance, in the case of French language materials, use of a call to action to purchase made in the second person singular will likely be considered as the use of words that directly urge a child to make a purchase. So basically, use of imperative language (words) that expressly directs children to buy the product, or that expressly directs the child to ask a person to buy the product for them or make enquiries about it are not permitted where Clause V or Clause VI (3) of the *Food and Beverage Advertising Code* applies.

Imperative Language (words) that Directly Urges

Hey kids, buy me!
/ Hey kids, get
[product x]

Ask your parents to
[buy product x]

Ask your parents
about [product x]

This restriction applies only to the use of imperative language related to purchase of the product itself. It is permitted under the *Food and Beverage Advertising Code* to use imperative language in other contexts. For example, the following would be acceptable under the Food and Beverage Advertising Code:

- Find [a coupon] inside!
- Ask mom and dad before you go online.

(Note, however, that use of imperative language may be restricted under other laws or codes, including the Broadcast Code for Advertising to Children)

PART B: WHEN IS AN ADVERTISEMENT PRIMARILY DIRECTED TO CHILDREN?

The *Food and Beverage Advertising Code* states:

Advertising for a food or beverage product may not be primarily directed to persons under thirteen years of age unless the product satisfies the child advertising nutrition criteria set forth in Appendix A. (the "Restriction")

When a food or beverage product does not satisfy the nutrition criteria set forth in Appendix A, the following will be used to determine whether or not an advertisement is primarily directed at persons under thirteen years of age.

Account must be taken of the context of its presentation, and in particular of:

- (a) The nature and intended purpose of the food or beverage product advertised;*
- (b) The manner of presenting such advertisement;*
- (c) The time and place it is shown.*

An overall analysis of advertisements that takes the relationship among all three of these criteria into account is essential as each of the criteria, when considered separately, is not necessarily determinative in and of itself. Therefore, an advertisement that is placed for broadcast outside of children's programming could still be considered advertising primarily directed to children if the ad promotes a product that is of high child appeal and the creative and messaging of the ad are clearly directed to children. Similarly, an advertisement for a food that greatly appeals to children may be deemed to be primarily directed to parents or adults, when it appears in adult programming. For this reason, all three criteria will be evaluated by Ad Standards in each instance.

a. The nature and intended purpose of the food or beverage product advertised.

For whom are the advertised food or beverage products intended? Do they especially appeal to children?

The products may be:

- essentially intended for children and therefore inherently appeal to them;
- appealing to children without being exclusively intended for them (i.e. appealing to both children and non-children); or
- not particularly appealing to children.

For example:

Product	Initial Assessment*
Baby food	This product is intended for infants, and the advertising is highly likely to be primarily directed to parents and caregivers, not children.
Juice boxes	These are more likely to appeal to children, but may also appeal to adults. Ad Standards will consider the other two criteria before making any determination.
Snack Crackers	These may appeal to adults and children equally. Ad Standards will consider the other two criteria before making any determination.
Candy or confectionery products	These may appeal to adults and children equally. Ad Standards will consider the other two criteria before making any determination.
High fibre cereals	These are more likely to appeal to adults, but may also appeal to children. Ad Standards will consider the other two criteria before making any determination.
High-priced menu items (e.g. steak, lobster)	These products are intended for adults, and the advertising is highly likely to be primarily directed to adults, not children.

*Note that regardless of the results of this initial assessment, Ad Standards will consider the other two criteria as well.

b. The manner of presenting such advertisement.

Is the message designed to primarily attract the attention of children?

In determining whether the nature of the ad primarily appeals to children, Ad Standards will consider the following as factors that may suggest that an ad is primarily directed to children:

- ✓ a level of language commonly used by children;
- ✓ depictions of fantasy, magic, mystery, suspense, adventure or virtual worlds;
- ✓ music, songs or jingles that are especially appealing to children;
- ✓ animation or other special effects that are especially appealing to children.

The fact that the nature of the ad appeals to children does not mean that the advertisement is primarily directed to children for the purposes of the Food and Beverage Advertising Code. For example, the fact that the ad features an animated advertiser-owned character or a licensed character from a third party does not mean that the ad is necessarily directed to children. Similarly, the presence of a child, or the use of situations that play upon the relationship between a child and any adult in authority in the ad, or the use of heroes, animals, celebrities, athletes or other well-known persons in an ad or the use of a non-child influencer does not mean that the ad is necessarily directed to children. An ad may depict such content or other elements that appeal to children, and yet be directed to parents or other adults. It should be remembered that the purpose and intent of the Code is to restrict advertising primarily directed to children not advertising to other audiences.

Product	Initial Assessment (prior to considering manner of presentation)*	Manner of presentation	Interim Assessment (prior to considering time and place)**
Baby food	This product is intended for infants, and the advertising is highly likely to be primarily directed to parents and caregivers, not children.	E.g. Mother or father shown caring for infant. Other children or children's toys may be seen in household.	Ad is highly unlikely to be primarily directed to children.
		E.g. Baby shown surrounded by cartoon unicorns singing nursery rhymes. Product health benefits/nutrient content, etc., not discussed.	Ad is unlikely to be primarily directed to children, but Ad Standards will need to consider the time and place of the ad.
Juice boxes	These are more likely to appeal to children, but may also appeal to adults. Ad Standards will consider the other two criteria before making any determination.	E.g. Adult preparing child's lunch to take to school. Child may be helping or shown getting ready for school. Voiceover is an adult voice, and no cartoons or fantasy used.	Ad is highly unlikely to be primarily directed to children.
		E.g. Child is shown at school cafeteria, eating lunch with other children. While they eat, their teacher (as a cartoon elephant) walks by. Music is performed by children's entertainer.	Ad is more likely to be primarily directed to children, but Ad Standards will need to consider the time and place of the ad.
Snack Crackers	These may appeal to adults and children equally. Ad Standards will consider the other two criteria before making any determination.	E.g. Blind date situation. A bag of snack crackers are presented instead of a bouquet of flowers, as a couple meet for the first time.	Ad is highly unlikely to be primarily directed to children.
		E.g. Children's birthday party. Cracker bags used as a piñata, while music by a children's entertainer is playing.	Ad is more likely to be primarily directed to children, but Ad Standards will need to consider the time and place of the ad.

Product	Initial Assessment (prior to considering manner of presentation)*	Manner of presentation	Interim Assessment (prior to considering time and place)**
Candy and confectionery products	These may appeal to adults and children equally. Ad Standards will consider the other two criteria before making any determination.	E.g. Adult party situation. Tray of chocolates is being passed between the guests. Music is not by an artist of particular appeal to children.	Ad is highly unlikely to be primarily directed to children.
		E.g. Children's birthday party. Candy falls from piñata, while music by a children's entertainer is playing.	Ad is more likely to be primarily directed to children, but Ad Standards will need to consider the time and place of the ad.
High fibre cereals	These are more likely to appeal to adults, but may also appeal to children. Ad Standards will consider the other two criteria before making any determination.	E.g. Adult sneaks behind partner/spouse, being silly and trying to get caught, to steal their cereal and is caught in the act. Generic music is played.	Ad is highly unlikely to be primarily directed to children.
		E.g. Child sneaks behind parent, being silly and trying to get caught. "Pop goes the weasel" plays under the drama. Logo on the box comes to life, making faces at the child in the final beauty shot.	Ad is more likely to be primarily directed to children, but Ad Standards will need to consider the time and place of the ad.
High-priced menu items (e.g. steak, lobster)	These products are intended for adults, and the advertising is highly likely to be primarily directed to adults, not children.	E.g. Adult dining is shown. Children may be at the table, but focus is on adults, or family meal time.	Ad is highly unlikely to be primarily directed to children.
		E.g. Child's birthday party is shown. Adults at the table eat steak, while children get food from a children's menu. Focus is on the fun that the children are having, as they feel sorry for the adults having to eat steak.	Ad is unlikely to be primarily directed to children, but Ad Standards will need to consider the time and place of the ad.

**Note that Ad Standards must always consider all three criteria before reaching a definitive assessment of whether an ad is primarily directed to children. Even if an ad appears likely to be primarily directed to children based on the two criteria covered in this table, the time and place of the ad must be considered, and the ad will not be deemed to be primarily directed to children if, for example, it runs during programming for which children represent a minimal share of the audience.

c. The time and place it is shown.

Are children the primary audience for the advertisement? The proportion of children that make up the audience, or that might be reached by an advertisement is important and needs to be assessed since it can create presumptions to be taken into account as part of the overall analysis.

An advertisement that is broadcast or that appears in a place where both adults and children are present can still be considered as being primarily directed at children if an analysis of the two other criteria leads to the conclusion that the advertisement is primarily directed to children.

Given that it is quite rare that any advertiser would attempt to reach a primarily-child audience by placing an ad in media where children constitute only a minimal share of the audience, Ad Standards will presume that the advertising is not primarily directed to children in such circumstances.

For example, the following locations, platforms or content will create a presumption that the advertisement is not primarily directed to children:

- Advertising in bars, nightclubs, or other locations that are restricted to adult-only access.
- Social media platforms where the platform rules prohibit use of the platform by children.
- Advertising on age-gated websites (e.g. pages hosted by alcoholic beverage manufactures).
- Measurable media where the audience composition of children is less than 15%.
- Programmatic ad placement is used to target users 13 and over.
- Age-gated downloadable content.

- Promotional offers not redeemable by children under 13.
- Advertising and related promotional activities in and around venues where sporting events involving adult athletes are held.
- Press releases or other public statements issued by an advertiser intended to share newsworthy information, including information about a food or beverage product.
- On-line menus and menus on apps that are posted for the primary purpose of identifying the products available or facilitating the on-line ordering of such products.

That said, there will be a presumption that any paid commercial message featuring a food or beverage product that does not satisfy the nutrition criteria that is carried in or immediately adjacent to a children’s program is advertising primarily directed to children. If a child is engaged by a brand as an influencer, there will be a presumption that any advertising for that brand on that child’s social media is primarily directed to children.

For the purpose of the Food and Beverage Advertising Code, the term “influencer” refers to an independent third-party endorser who shapes audience attitudes through blogs, posts, tweets, and the use of other social media, including gaming streaming platforms.

Note that all presumptions under this Guide are rebuttable if the analysis of the other criteria make it obvious that the conclusion should be otherwise.

Some more specific examples by type of media are discussed below.

I. Television, Radio, Print

Television, radio and print ads will be presumed to be primarily directed to children if, based on the anticipated audience composition data available at the time of media planning, determined in accordance with industry standards, the audience composition of children under the age of 13 exceeds 15% of the expected audience or readership. Conversely, if the audience composition of children falls below that percentage threshold, the ad will be presumed not to be primarily directed to children.

In the case of print media, retail flyers and other such advertising limited to product and price listings will be presumed not to be primarily directed to children. This presumption may be reconsidered by Ad Standards if the advertisement also includes child-directed content (e.g. colouring contest, puzzles, etc.).

II. Out-of-Home (Billboards etc.)

Outdoor advertising (other than on-premises communications as previously defined herein) placed within a 100-meter radius of public elementary or middle schools (through grade 8) will be deemed to be primarily directed to children. No food or beverage advertising will be placed on school buses.

III. Digital

In the case of digital ads on third-party media (including websites, mobile sites, apps, and social media platforms) will be deemed primarily directed to children if, based on average or anticipated audience composition data available at the time the ad placement is purchased, the advertiser expected (or should have expected) that more than 15% of the audience for the site, app, platform or page into which the ad is placed would be children under the age of 13.

However, if no such reliable audience composition data for the site, app, platform or page is available, or if age-targeting is being affirmatively used to avoid displaying the ad to children, the following presumptions will apply:

1. If the content of the site, app, platform or page is clearly not primarily directed to children, then an ad running on such site, app, platform or page will be presumed not to be directed to children.
2. If the ad is age-targeted to be served only to non-children or an age gating mechanism is used, then the ad will be presumed not to be directed to children.

For purposes of the analysis points described above, services like YouTube will not be considered as unitary “sites”. Instead, they will be considered as collections of different sites or channels, some of which may be primarily directed to children and some of which are not. Therefore, as an example, each YouTube channel will be assessed according to its viewership versus the overall YouTube site viewership.

IV. Movies and Games

In the case of ads on or within disk-based (e.g., DVD, Blu-Ray, CD) or downloadable movies or video or computer games, such ads will be presumed to be primarily directed to children under 13 if the movie at issue is rated "G" or if the game at issue is rated or described as being primarily for children.

V. Cinema

In the case of on-screen ads in cinemas, such ads will be presumed to be primarily directed to children under 13 if the movie is rated "G".

VI. Product Placement/Product Integrations

In the case of food or beverage products featured within third-party games, videos, or other content, these product placements will be prohibited if the game, video, or other content at issue is itself primarily directed to children under 13. As for product integrations, it will only be possible in cases where the food and beverage products satisfies the nutrition criteria. For greater certainty, the term "product placement" refers to the insertion of a product into entertainment/editorial programming in an incidental, prop-like manner. Although the product is visible, it is not incorporated into the script, story line, dialogue, or action of the scene in an integral way, contrary to "product integration" where it is so incorporated. The incidental nature of the product's incorporation in the entertainment content distinguishes "product placement" from "product integration."

VII. Streaming Services

In the case of advertising during or surrounding streaming content, such ads will be presumed to be directed to children under 13 if the streaming content itself is primarily directed to children under 13, unless age-targeting measures are in place to reasonably ensure that less than 15% of the audience is composed of children under 13.

VIII. Advertiser-Owned Websites, Apps, Games

In the case of advertising within advertiser-owned websites or apps (including advertiser-owned interactive games), the question of whether these ads will be presumed to be "ads" directed to children will be based on the following analysis:

1. If the site or app uses age-screening mechanisms to screen out children under 13, then communications on the site or app will be deemed not to be directed to children.
2. If no age-screening mechanism is being used, then all three factors set forth in Clause III of the *Food and Beverage Advertising Code* will be analyzed to determine whether the communication is directed to children.

Prohibition against urging a child to purchase

Advertisements in which no food or beverage product is featured (i.e. sponsorships and brand advertising) are not subject to preclearance or the complaint procedure unless they use words that directly urge a child to buy the food or beverage mentioned or words that directly urge a child to ask another person to enquire about or purchase such products. Similarly, packaging, wrappers and labels even though they are not considered advertising under the Food and Beverage Advertising Code, must not contain express words that directly urge a child to buy the product on which such language appears or express words that urge the child to ask another person to enquire about or buy it. Displays, in-store flyers, posters, menus, menu boards, point of sale material and other on-premises communications and material (those appearing in and around stores and restaurants) are exempt from the *Food and Beverage Advertising Code* but remain subject to review and enforcement if they contain express language that directly urges a child to buy the food or beverage mentioned or express words that directly urge a child to ask another person to enquire about or buy them.