

Submission on the Review of the Code for Advertising
to Children and the Code for Advertising of Food

From
FOE (Fight the Obesity Epidemic)

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Codes Review Panel
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Introduction

FOE (Fight the Obesity Epidemic) is a voluntary organisation dedicated to changing the New Zealand social, cultural, physical and regulatory environment so that it is easier for all New Zealanders, and especially children, to maintain a healthy body size.

FOE is convinced by the evidence that the advertising of less healthy food to children contributes to the obesity epidemic. We would be delighted if the food and advertising industries, through self-regulation, can take the lead in breaking this link. We therefore welcome this opportunity to contribute to the Review of the Code for Advertising to Children and the Code for Advertising of Food.

FOE's main concern in this submission is that the wording of Principle 3 of the Code for Advertising of Food and the accompanying guidelines creates barriers to achieving the high standard of social responsibility in advertising food to children that the principle calls for. In making the case as to what social responsibility implies in this context, this submission shows that:

- the evidence from the academic literature is unambiguously on the side of reducing the exposure of children, and purchasers of food for children, to advertisements for less healthy foods and drinks
- the New Zealand health sector and New Zealand public opinion share this view.

Turning to the Code for Advertising to Children, this submission makes the case for changes to the reference in the code's introduction to the United Nations Convention on the Rights of the Child.

The evidence linking food advertising to unhealthy eating and obesity

A major systematic review of international research on the effects of food promotion to children¹ considered the effects of food advertising on children's food knowledge, preferences and behaviour, finding that:

- food advertised to children was universally found to be unhealthy compared to food recommended for children
- the weight of evidence suggested that food promotion may have little influence on children's general perceptions of what constitutes a healthy diet, but there is some evidence that exposure to food promotion for 'low nutrition' foods is associated with poorer nutritional knowledge
- there is reasonably robust evidence that food promotion influences children's food preferences
- there is strong evidence that food promotion influences children's food purchase-related behaviour in the direction of increasing purchase requests for food high in fat, sugar or salt.

A second major systematic review by the Institute of Medicine in the United States concluded that "the commercial advertising and marketing of foods and beverages influences the diets and health of children and youth".² Focusing on television advertising, the Institute's findings include:

- there is strong evidence that television advertising influences the food and beverage preferences of children ages 2-11 years
- there is strong evidence that television advertising influences the food and beverage purchase requests of children ages 2-11 years
- there is strong evidence that television advertising influences the short-term [food] consumption of children ages 2-11 years
- there is moderate evidence that television advertising influences the usual dietary intake of younger children ages 2-5 years
- television advertising influences children to prefer and request high-calorie and low-nutrient foods and beverages
- statistically, there is strong evidence that exposure to television is associated with adiposity [fatness] in children aged 2-11 years and teens

¹ Hastings G, Stead M, McDermott L, et.al. *Review of research on the effects of food promotion to children: Final report prepared for the Food Standards Agency*. Glasgow: Centre for Social Marketing, University of Strathclyde, 2003.

² McGinnis JM, Gootman J, and Kraak VI (editors). *Food marketing to children: Threat or opportunity*. Institute of Medicine of the National Academies. Washington, DC: The National Academies Press, 2006.

ages 12-18 years, with this association remaining after taking alternative explanations into account.

A third major review,³ this time on preventive interventions for cancer, concludes:

A mass of evidence ... shows that targeting children with television advertisements and other promotion of sugary foods and drinks, 'fast food', and other convenience foods shapes the choices of children and their parents, and is probably a cause of overweight and obesity in childhood and then in adult life. For these and other reasons there is also compelling justification for policies and actions that restrict or prohibit such advertising and marketing" (p66).

These three authoritative reports, all coming to similar conclusions, represent the best that can be said from evidence in the academic literature.

At the other end of the scale in terms of authority is a report commissioned by the Foundation for Advertising Research (FAR).⁴ This report is of poor quality.⁵ It is brought to your attention because it may well be cited in submissions supporting weak controls on the advertising of less healthy food to children.

New Zealand research suggests that the findings of major international reviews almost certainly apply in this country. A study of advertisements during children's viewing times showed that in 2005 both TV3 (80%) and TV2 (69%) had a higher proportion of advertisements for foods classified as being "high in fat and/or sugar" than did Australian channels (54%).⁶ This is not a recent development: an earlier study found that in 1995 and 1996 New Zealand had a high rate of advertising food to children on television by international standards, with the foods advertised being of poor nutritional quality.⁷ The position appears to have been deteriorating, as the average

³ World Cancer Research Fund / American Institute for Cancer Research. Policy and action for cancer prevention. Food, nutrition, and physical activity: A global perspective. Washington DC: AICR, 2009.

⁴ *Advertising's role in diet and exercise in New Zealand and Australia: Developing a research agenda*. Prepared for the Foundation of Advertising Research by Debra and Michael Harker, University of the Sunshine Coast, Australia.

⁵ For reviews of the FAR report see papers by Professor Janet Hoek and Associate Professor Robert Scragg, both available from the publications page at www.foe.org.nz. An example of the poor standard of analysis in the FAR report is included in *The Health Select Committee Inquiry into Obesity and Type Two Diabetes: An initial analysis of submissions*, pp 46-48 (also available from the FOE publications page).

⁶ Wilson N, Signal L, Nicholls S, Thompson G. Marketing fat and sugar to children on New Zealand television. *Preventive Medicine*, 2006, 42(2), 96-101.

⁷ Hammond KM, Wyllie A, Casswell S. The extent and nature of televised food advertising to New Zealand children and adolescents. *Aust NZ J Public Health*, 1999, 23(1), 49-55.

number of food advertisements on TV2 in the afternoon timeslot in 2005 (12.8) was higher than in 1997 (8.0).⁸

Finally, restricting food advertising to children may well be the most cost effective single intervention currently available to reduce childhood obesity. The ACE-obesity project, conducted for the Victorian state government, looked at the cost-effectiveness of 13 interventions. The study found that the intervention with the biggest population impact would be 'Reduction of TV advertising of high fat and/or high sugar foods and drinks to children'. While the impact of this intervention on individual children is relatively small, the number of children affected is large, resulting in substantial health benefits across the population.⁹ Given this finding, it is hard to reconcile the socially responsible advertising called for in the codes under review with continuation of the status quo.

The views of the New Zealand health sector

Concern about the advertising of less healthy food was one of the main features of submissions to the 2006/07 Health Select Committee Inquiry into Obesity and Type 2 Diabetes.¹⁰ Of the 141 submissions from the health sector, 76 (54%) sought some form of regulation of the advertising of less healthy food. Most of these submissions were particularly concerned about advertising to children.

The 54% of health sector submissions calling for some form of regulation of food advertising is a massive proportion given the context – almost all of the remaining 46% simply did not address the advertising issue in their submissions, presumably for many because this was well removed from their expertise or direct concern. No submission from the health sector stated opposition to restrictions on advertising.

Concern about the advertising of less healthy food was very much the mainstream view right across the health sector. Nine of the 12 submissions received from District Health Boards, for example, proposed some form of regulation by Government of the advertising of less healthy food.

While by 'regulation' these health sector submissions almost always meant 'regulation by government', most of the submitters would probably, like FOE,

⁸ Wilson N, Signal L, Nicholls S, Thompson G. Marketing fat and sugar to children on New Zealand television. *Preventive Medicine*, 2006, 42(2), 96-101.

⁹ Haby MM, Vos T, Carter R, et al. A new approach to assessing the health benefit from obesity interventions in children and adolescents: The assessing cost-effectiveness in obesity project. *International Journal of Obesity*, 2006, 30(10), 1463-1475.

¹⁰ White J, *The Health Select Committee Inquiry into Obesity and Type Two Diabetes in New Zealand: An initial analysis of submissions*. 2007. Available from: <http://foe.org.nz/foe-publications/>.

be more than happy if the outcome they seek can be achieved through self-regulation by the food and advertising industries.

The views of the New Zealand public

Two recent surveys have shown very strong support from New Zealanders for measures to curtail the advertising of unhealthy food to children.

The Chronic Disease Prevention Peak Group commissioned a survey conducted in 2007 that showed a large majority of New Zealand parents and grandparents would like the banning of television advertising to children of unhealthy food and drink products. Eighty-two percent of the survey respondents agreed or strongly agreed that advertising unhealthy products “using ads appealing to children” should be stopped.¹¹

A 2005 survey by BRC Marketing and Social Research produced similar results. Almost three-quarters (71%) of New Zealand adults surveyed agreed or strongly agreed that “advertisements for unhealthy food and drink products should be banned during children’s television programmes”.¹²

In the Advertising Standards Authority’s description of what is meant by “social responsibility” in the two codes under review, it notes that one of the benefits of a principle and rule approach in the codes is that “the interpretation of the codes can move in response to what the community may find more or less acceptable”.¹³ Given that there is no doubt that a large majority of New Zealanders want to see an end to the advertising of less healthy food to children, the current review provides the opportunity to bring the codes into line with public opinion.

Trends in complaint outcomes

Accompanying this submission is a report¹⁴ that includes an analysis of trends in outcomes of complaints to the Complaints Board. Section 3 of the report shows that successful complaints (upheld or settled) have generally been falling: from 37% of all complaints in 2000 and 29% in 2001 to 23% in 2008. This trend, and the fact that less than a quarter of complaints were successful in the last full year for which data are available, suggests a wide and probably widening gap between what the New Zealand public considers acceptable in

¹¹ Available from: <http://www.nhf.org.nz/index.asp?PageID=2145859551>.

¹² Available from: <http://foe.org.nz/foe-publications/>.

¹³ ASA. Social responsibility in advertising food and advertising to children. Available from: www.asa.co.nz/social_responsibility.php.

¹⁴ White, J. Outcomes of complaints to the Advertising Standards Complaints Board: Implications from complaints about food advertising to children. May 2009. Available from: <http://foe.org.nz/foe-publications/>.

terms of advertising and the decisions of the Complaints Board and the Board's Chair.

The proportion of complaints ruled by the Board's Chair as having no grounds to proceed has been growing substantially over the last decade: from 26% in 2000 to 46% in 2008.

Recommended changes to the Code for Advertising of Food

The accompanying report looks in some detail at the outcomes of complaints to date which were assessed by the Complaints Board or its Chair under the provisions of the two codes under review. Section 1 of this report considers problems that have arisen with the application of Principle 3 of the Code for Advertising of Food and its guidelines. In summary, the report concludes that the call for a high level of social responsibility in food advertisements directed at children has been drastically weakened by the wording of the principle and some of its guidelines.

The main problems with Principle 3 were found to be:

- it directs attention to the intentions of advertisers (the claims of advertisers about the target audience for the advertisement) rather than the effects on children (whether children are exposed to the advertisement)
- it excludes advertisements of food intended for children but directed at food purchasers.

To address these problems, FOE recommends that Principle 3 be expanded as follows:

Advertisements directed at children, or for foods intended for or likely to be purchased by or for children, or to which substantial numbers of children are likely to be exposed, should observe a high standard of social responsibility.

The analysis in section 1 of the accompanying report demonstrates how the current guidelines reduce the likelihood of Principle 3 being used to protect children from harmful advertising. In particular, the guidelines specifically assume that less healthy foods will continue to be advertised to children, with restrictions only at the margin. The wording of these guidelines allows them to be readily circumvented by advertisers.

FOE recommends that the following two new guidelines be included under Principle 3:

Advertisements for foods that fail to meet food and nutrition guidelines should not be directed at children or at those purchasing food for children.

Advertisements for foods that fail to meet food and nutrition guidelines should not be presented at times when, or in places where, substantial

numbers of children are likely to be exposed to them, including before 9pm on television or radio.

These guidelines would remove the need altogether for current guidelines 3(a), 3(b) and 3(d). All three were identified as problematic in section 1 of the accompanying report.

A guideline setting a watershed for radio and television advertisements such as 9pm is required to make it clear that it is whether substantial numbers of children are likely to see or hear an advertisement that counts, not whether the advertisement is shown during “children’s viewing hours”.

The meaning of “substantial numbers” would need to be further elucidated, particularly for print media, for example by stating that this includes cases where children are likely to comprise 10% or more of persons likely to be exposed to the advertisement.

The food and nutrition guidelines would need to be defined, and would need to be agreed as suitable for the purpose by appropriate representatives of the health sector including the Ministry of Health. One possibility would be basing the guidelines on the Food and Beverage Classification System for schools and early childhood services.¹⁵

These changes would result in a clear, easily interpreted set of guidelines that support the requirement in Principle 3 for advertisers to observe a high standard of social responsibility.

The Code for Advertising to Children

FOE believes that the reference to the United Nations Convention on the Rights of the Child (UNCROC)¹⁶ in the introduction to the Code for Advertising to Children is misleading.

UNCROC recognises “the right of the child to the highest attainable standard of health” (Article 24). States that are party UNCROC have undertaken “to ensure the child such protection and care as is necessary for his or her well-being, ... and, to this end, shall take all appropriate legislative and administrative measures” (Article 3).

Parties must also “encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being (Article 17(e)), and must provide protection “against all ... forms of exploitation prejudicial to any aspects of the child’s welfare” (Article 36).

¹⁵ See at <http://www.moh.govt.nz/moh.nsf/indexmh/heha-foodclassification#resources>.

¹⁶ United Nations Convention on the Rights of the Child. Available from: <http://www.unhcr.ch/html/menu3/b/k2crc.htm>.

Article 13 gives children the right to freedom of expression, which includes “freedom to seek, receive and impart information and ideas of all kinds”. This is interpreted in the introduction to the Code for Advertising to Children as “the right to receive advertisements along with other information”. This interpretation is difficult to sustain.

As shown earlier in this submission, the evidence is now beyond question that advertising of unhealthy food to children may detrimentally affect their attainment of optimal health and is potentially injurious.

The advertisers’ case rests on the assumption that advertising to children is information of the sort that the framers of UNCROC had in mind in with Article 13. But advertising to children contains little information. It’s intention is to persuade rather than inform. Given the strong and consistent emphasis throughout UNCROC on protection of children, it is difficult to read freedom of information for children as including the right of the child to be subject to the persuasive techniques of advertisers of potentially harmful products. Articles 17(e) and 36 are among the UNCROC provisions that rule out this interpretation.

In a recent paper in the *Journal of Law and Medicine* the authors argue that an approach “which is grounded on the basis of children’s rights would require that there be restrictions on advertising food to children”.¹⁷ When read as a whole, UNCROC gives give no comfort to those who wish to advertise less healthy food to children.

The reference to UNCROC in the introduction to the Code for Advertising to Children, with its implication that UNCROC provides support for the right of children to receiving advertising, is misleading in the context. This should be remedied by removal of the reference to Article 13 in the introduction to the code. FOE suggests the following replacement wording:

Children are entitled to certain rights and protection under the United Nations Convention on the Rights of the Child. Of particular relevance for advertisers is the call in Article 17(e) to protect children from information and material injurious to their well-being.

This would make the introduction to the Code for Advertising to Children consistent with the Code’s Principle 2: that advertisements to children should observe “a high standard of social responsibility”.

Conclusion

In the Advertising Standards Authority’s description of what is meant by “social responsibility” in the two codes under review, it notes that one of the benefits of a principle and rule approach in the codes is that “the interpretation

¹⁷ Ingleby R, Prosser L, Waters E. UNCROC and the prevention of childhood obesity: The right not to have food advertisements on television. *Journal of Law and Medicine*, 16(1), 49-56.

of the codes can move in response to what the community may find more or less acceptable".¹⁸ Given that medical opinion, New Zealand health organisations and large majority of New Zealanders want to see an end to the advertising of less healthy food to children, the current review of the ASA codes provides the opportunity to bring the codes into line with public opinion.

¹⁸ ASA. Social responsibility in advertising food and advertising to children. Available from: www.asa.co.nz/social_responsibility.php.