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Submission to the ASA Codes review Panel

SUBMISSION

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Introduction

The health consequences of obesity and overweight are now well documented and “maintenance of a healthy weight throughout life may be one of the most important ways to protect against cancer and a number of other chronic diseases” (WCRF & AICR, 2007). Food advertising to children, is most commonly for food that undermines health.

We know that:

- a child’s early diet affects their health in later life;
- obesity in childhood is strongly associated with obesity in adulthood.

We also know that food marketing has an effect, particularly on children’s:

- food preferences;
- food purchase behaviour;
- food consumption.

Of utmost importance is the fact that young children do not have the cognitive ability to understand the intent of marketing. On these grounds we consider it is unethical to

expose children, especially very young children, to something, in this instance the advertising of unhealthy food, that is potentially harmful to them.

Consumer Opinion

While parents and caregivers have responsibility for the food their children eat the food preferences of their children are also shaped by external influences.

A telephone survey undertaken on behalf of the PEAK group (Cancer Society of New Zealand, Heart Foundation of New Zealand, Diabetes Foundation, Stroke Foundation and Te Hotu Manawa Maori) in 2007 found that:

- Almost all surveyed parents and grandparents of children up to the age of 13 years considered that the number of children in New Zealand that are overweight or obese is a serious to moderate problem.
- Most parents and grandparents did not think it is morally and ethically acceptable for food companies to try to influence the food preferences of children under 7 years of age.
- Most parents and grandparents thought that the advertising of food and drink products to children influences their children's liking for particular products and approximately half said it influences their children's requests for particular food and drink products.
- Large majorities were concerned about the advertising of food and drink products to children on television.
- Well over half of all parents and grandparents would like to see the advertising of food and drink products to children on television reduced or stopped, with only a quarter favouring the status quo.
- The majority of parents and grandparents also think the advertising of food and drink products to children in a range of media other than television, and using a range of other types of promotions (radio, newspapers, magazines, cinema and outdoor posters, texts, email, cartoons, competitions, sponsoring children's sporting activities), should be stopped or reduced.
- The large majority of parents and grandparents (60% to 85% depending on the media) want advertising of food and drink products to children through all these media and promotions stopped or restricted.

We see this review as an opportunity for the food and advertising industries, and the media, to demonstrate their commitment the Healthy Eating Healthy Action Strategy (HEHA) and to make a genuine contribution to assist with the prevention of overweight and obesity, especially in children, through responsible advertising of food.

We consider that advertising should be used positively to encourage parents and children to choose healthy foods. However, in order for this advertising to be effective it is necessary to reduce the imbalance of advertising of unhealthy food. Restricting the way foods in which are high in sugar, fat and/or salt but low in

nutrients are portrayed would assist the promotion of healthy foods and reduce the risk of children developing poor food choice habits.

Recommendations:

The Cancer Society's considers it is essential that food advertising and especially food advertising to children be regulated. We consider that the current self-regulation of advertising is not effective and does not offer adequate protection to consumers, especially children. Current implementation of the codes includes partial, unjustified and inconsistent decision making by the complaints board and failure to prevent unhealthy food advertisements being developed and aired. The current ASA system appears to be reactive, has limited sanctions, provides little incentive for restraint by advertisers and lacks independent monitoring.

We further consider that the present "social responsibility" clauses in the codes are interpreted too liberally. Given the alarming rate of overweight and obesity among children in New Zealand it is not socially responsible to encourage consumption of foods that are high in energy and low in other nutrients, yet these foods continue to be advertised in a way which is very appealing to children. The present liberal interpretation of "social responsibility" suggests the term should be defined. The definition could be based around the United Nations Convention of the Rights of Children. Its 54 articles cover actions required to respect children and protect them from harm (International Obesity Taskforce).

The terms of reference for the review panel include "*To examine the operation and content of the existing codes.*" We assume the examination of the *operation* of the codes will include an assessment of the effectiveness of the whole complaints process. We consider that the process is in need of substantial review to ensure it can adequately protect consumers, and especially children, from advertising of unhealthy food/lifestyles. Process issues which need to be considered include:

- The introduction of an equivalent of an interim injunction measure to codes where a "high standard of social responsibility" is called for. Currently there is no precedent with ASA codes, but in urgent legal cases (such as where misleading and deceptive behaviour causing immediate harm has been alleged) an injunction may be sought and the case heard under urgency and an interim decision issued. The interim decision can stop the allegedly deceptive behaviour immediately. The parties can then decide whether to seek a full hearing or not. This process would allow for urgency and rapid decision making.
- An alternative to the interim decision process could be where a *prima facie* case has been established, the advertising must cease pending the complaints board's decision. This would ensure consumers are always protected and ensure advertisements which do not meet the codes are only seen by consumers for a very limited time. This would also be an

incentive for advertisers to be more responsible. This should apply to all codes calling for the “high standard of social responsibility”.

- A pre-approval system for all food advertising and all advertising directed at children, such as TAPS and LAPS, would be a safer system to ensure inappropriate advertising, especially to children, does not reach the public. Currently the complaints process means advertisements which fail to meet the codes can be aired. Even if a complaint is made promptly, an inappropriate advertisement can reach the target audience for the intended schedule before it can be stopped.
- More publicity to increase public awareness of the right to complain and more support given to facilitate the complaints process for consumers.
- Penalties that are sufficiently onerous to be a deterrent to advertisers. In many instances even a short advertising period is clearly worth the risk for some advertisers. Currently consumers who see an advertisement but do not know it has been withdrawn continue to be misled. Corrective advertising should be required in these instances. The current lack of penalties for breaches of the codes means there is little disincentive for advertisers to comply with the codes. With a handling time of 25 days for a complaint an advertiser can get a good deal of air time before the advertisement is withdrawn.
- Complainant’s views, especially those with specialist/expert knowledge, should be given sufficient consideration by the Complaints Board. The Complaints Board process seeks comment from the advertisers on a complaint but, from our reading of decisions, it does not seek the opinion of experts (e.g. nutrition, medical, marketing) on the validity of the advertiser’s or the complainant’s opinion/rationale.

Specific Recommended Changes to the Advertising to Children Code

Principle 2

Add a definition of social responsibility

Guidelines

Replace 2(l) with:

- Advertisements for foods high in sugar, fat and/or salt should not include endorsements by sports, music or other celebrities, or children’s role models.

Add

- Advertisements for foods high in sugar, fat and/or salt should not contain cartoon or other characters popular with children.
- Advertisements for foods high in sugar, fat and/or salt should not be associated with characters or stories from television programmes, movies or children's literature.
- Companies should not conduct general brand marketing aimed at children for brands under which more than half of the products available are high in sugar, fat and/or salt.

Principle 3

Guidelines

Add:

- Replace 3a with:
Advertisements must be clearly recognizable as such by children and separated from editorials or programmes. If there is any likelihood of advertisements being confused with editorial or programme content, ***they should not be shown or published.***
- Replace 3b with:
Since primary school children often cannot distinguish between advertisements and programmes or magazine/newspaper stories or articles, advertisements for foods high in sugar, fat or salt should not appear in any media directed to children less than 13 years of age.
- Add to 3g:
Competitions and contests should not be used for foods high in sugar, fat and /or salt.
- Add to 3h:
should not be used in any advertising for food foods high in sugar, fat and/or salt.

Principle 4

Guidelines

Add:

- Advertisements for foods high in sugar, fat and/or salt should not include free giveaways and should not promote collections of toys or other gifts that promote frequent repeat purchases.

Recommended Changes to Code for Advertising of Food

Principle 2

Social responsibility needs to be defined

Guidelines

Replace (a) with:

- Foods high in sugar, fat and/or salt are not suitable for everyday consumption and should not be portrayed being consumed in everyday situations e.g. at school, sporting activities etc. These foods should only ever be portrayed being consumed at “special or treat” occasions. Advertisements should not encourage frequent consumption of these foods.
- Advertisements ***should be consistent with*** the Food and Nutrition Guidelines published by the Ministry of Health.
NB This is a stronger statement that the present “... should not inconsistent with...”

Add:

- Advertisements should comply with the Healthy Eating Healthy Action Strategy key message to reduce consumption of sugary, fatty and salty foods
- Advertisements should not promote inactive lifestyles in any way.
- Advertisements should not promote unhealthy eating patterns or lifestyles in any way
- “Combo” and bundled discount deals including foods high in sugar, fat and salt should not be advertised.
- Advertisements should not encourage frequent repeat purchases of foods high in sugar, fat and/or salt. Loyalty programmes, giveaways and merchandise-linked schemes should not be used to advertise and promote foods high in sugar, fat and salt.
- Advertisements should not offer premiums, rewards or discounts for frequent purchases of foods high in sugar, fat or salt.

Principle 3

Define “ a high standard of social responsibility”

Guidelines

Amend 3(f) to:

- Persons, characters or groups who have achieved particular celebrity status should not be used in advertisements for foods high in sugar, fat and/or salt.

Add:

- Advertisements for foods high sugar, fat and /or salt which are directed to children should not contain exaggerated or humorous depictions.
- Advertisements for foods high in sugar, fat and/or salt should not contain cartoon or other characters or stories from television programmes, movies or literature popular with children.
- Companies should not conduct general brand marketing aimed at children for brands under which more than half of the products available are high in sugar, fat and/or salt.

Principle 4

Guidelines

Add:

- Advertisements for foods high in sugar or fat and high in energy should not contain claims, or indicate in any way, that the food is “free” or “low” in the other nutrient. E.g.: Foods high in sugar should not claim to be “low fat” or “fat -free” or make any similar claims. Foods high in fat should not claim to be “low in sugar” or “sugar-free” or make any similar claims.
- Advertisements for foods high in sugar, fat and/or salt should not highlight other nutrients which could mislead consumers to believe the food is low in energy or beneficial to health in any way.
- Advertisements for foods high in sugar, fat, energy and/or salt should not make health claims of any sort in any advertisement or promotion.

References:

International Obesity Taskforce. The Sydney Principles

Nuffield Council on Bioethics. Public Health: ethical Issues. London. 2007

Shaw, C (Non) regulation of Marketing of unhealthy food to children in New Zealand. NZMJ (vol 122.no1288) 2009

WCRF/AICR. Food, Nutrition, Physical Activity and the Prevention of Cancer: a Global Perspective. Washington, DC: AICR, 2007