

11 April 2016

Codes Review Panel
ASA Secretariat
PO Box 10675
Wellington

By email: asa@asa.co.nz

Review of the Code for Advertising to Children and the Children's Code for Advertising Food

Dear Sir/Madam

The New Zealand Medical Association (NZMA) wishes to provide feedback on the above consultation. The NZMA is New Zealand's largest medical organisation, with more than 5,500 members from all areas of medicine. The NZMA aims to provide leadership of the medical profession, and to promote professional unity and values, and the health of all New Zealanders. Our submission has been informed by feedback from our Advisory Councils and Board.

1. The NZMA welcomes the review by the Advertising Standards Authority (ASA) of the operation and content of the Code for Advertising to Children and the Children's Code for Advertising Food. We note that this review has been brought forward specifically to coincide with work being undertaken across a number of sectors as part of the Government's childhood obesity plan. We commend the ASA for committing to an "evidence-based approach to requests for change or amendment" as well as for agreeing to refer matters raised outside the scope of this review to the appropriate authorities.

2. In May 2014, the NZMA released a comprehensive policy briefing on tackling obesity that included 10 key recommendations (attached).¹ Recommendation #9 was the following: *"Greater protection from the marketing of unhealthy food should be afforded to children. This should entail a more stringent statutory regulatory regime that addresses all forms of marketing, including product packaging and sponsorships."* We continue to believe that the existing voluntary self-regulatory system, including the ASA codes that are under review, inadequately protect children from the marketing of unhealthy food. We ask the ASA to register this view during its review of the codes. We also direct the ASA to pages 15–19 of our policy briefing,

¹ Also available from <http://www.nzma.org.nz/publications/tackling-obesity>

which presents evidence in support of a statutory regulatory regime. We refer to additional evidence in the following paragraphs.

3. A recent publication in the New Zealand Medical Journal describes the marketing of unhealthy food products to children as “powerful, pervasive and predatory”.² New Zealand research, summarised in the above article, has found that food marketing targeted at children through television, the internet, magazines, sports, around schools, in schools and the front of food-product packaging is predominantly for unhealthy food products, high in salt, sugar and saturated fat. The existing ASA codes are clearly not working. Such marketing is a key modifiable influence on childhood dietary patterns and obesity.

4. There is strong international support for the restriction of unhealthy food marketing to children. The recent report of the WHO commission on ending childhood obesity,³ chaired by the Chief Science Advisor to the Prime Minister of New Zealand, noted the following:

- There is unequivocal evidence that the marketing of unhealthy foods and sugar-sweetened beverages is related to childhood obesity.
- Despite the increasing number of voluntary efforts by industry, exposure to the marketing of unhealthy foods remains a major issue demanding change that will protect all children equally.
- Any attempt to tackle childhood obesity should, therefore, include a reduction in exposure of children to, and the power of, marketing.

5. New Zealand research has identified a number of deficiencies with the existing ASA codes.⁴ These include the following: a) The codes continue to define children as under the age of 14 years and therefore give inadequate protection to youth aged 14–18 years; b) The codes do not contain restrictions on viewing times—so there is a misalignment between children’s programme times as defined by broadcasters and the actual viewing times of children; c) Decisions by the Advertising Standards Complaints Board reflect inconsistent application of the codes. The authors also identify the reactive nature of self-regulation as problematic: most advertisements aren’t scrutinised until there’s been a complaint, and many parents don’t know the codes exist, let alone how to make a complaint. Other factors the authors identify as weakening the effectiveness of the system include the lack of monitoring and insignificant penalties.

6. While we reiterate our call for statutory regulation of marketing of food to children, we offer the following suggestions to strengthen and improve the existing ASA codes. We recommend that, in the codes, the definition of children be amended to refer to all persons below the age of 18 years. This would bring the codes in line with the UN Convention on the Rights of the Child as well as the WHO commission on ending childhood obesity. With respect to the Children’s Code for Advertising Food, we urge the ASA to remove clause 2(d) which currently states: *Food advertisements containing obvious hyperbole, identifiable as such by the intended audience, are not considered misleading.* We consider that this clause is enabling advertisers to

² Vandevijvere S, Swinburn B. Getting serious about protecting New Zealand children against unhealthy food marketing. N Z Med J. 2015 Jul 3;128(1417):36–40

³ World Health Organization. Report of the Commission on Ending Childhood Obesity. Geneva, 2016. Available from <http://www.who.int/end-childhood-obesity/final-report/en/>

⁴ Bowers S, Signal L, Jenkin G. Does current industry self-regulation of food marketing in New Zealand protect children from exposure to unhealthy food advertising? Report prepared for the Cancer Society of New Zealand by the Health Promotion and Policy Research Unit, University of Otago, Wellington, 2012. Available from <http://www.otago.ac.nz/wellington/otago036971.pdf>

escape responsibility. There is empirical evidence of the potential for children to misinterpret hyperbole.⁵

7. We are concerned that both clause 2(a) and 2(d) refer to “intended audiences”. This focus ignores the collateral damage of advertising on unintended audiences, namely younger children highly susceptible to such sales pitches and without the skills or cognitive abilities to discern what is misleading or to understand hyperbole. Even if the intended audience is older, we contend that society needs to ensure adequate protections for young (and more vulnerable) audiences who are exposed to that advertising. Age-specific differences in how children interpret advertising are well described in the literature. For example, children younger than four years of age generally see advertisements as entertainment, those under eight years of age do not recognise the purpose of advertising, while children between eight and ten years may be aware of the persuasive intent of advertising but do not understand marketing tactics.⁶

8. Finally, it is our view that restricting marketing of unhealthy food to children is but one of a suite of measures that is necessary to tackle the obesity epidemic. The use of fiscal instruments to influence consumption is another important tool. The UK government recently announced it planned to implement a tax on sugar sweetened beverages, a measure which our association hopes the New Zealand government will follow.⁷

We hope that our feedback has been helpful and look forward to learning the outcome of this consultation.

Yours sincerely



Dr Stephen Child
NZMA Chair

Attachment

Tackling Obesity: Policy Briefing. New Zealand Medical Association. May 2014

⁵ Winner E, et al. Making sense of literal and nonliteral falsehood. Metaphor and Symbolic activity 1987;2(1):13–32

⁶ Carter OB, et al. Children’s understanding of the selling versus persuasive intent of junk food advertising: implications for regulation. Soc Sci Med. 2011 Mar;72(6):962–8

⁷ NZMA Praises UK sugar tax. Press release, 17 March 2016. Available from <http://www.nzma.org.nz/news-and-events/media-releases/nzma-praises-uk-sugar-tax>