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Codes Review Panel
ASA Secretariat
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REPRESENTATION TO THE ADVERTISING STANDARDS AUTHORITY BY HEALTHY FAMILIES EAST CAPE FOR THE REVIEW OF THE CODE FOR ADVERTISING TO CHILDREN AND THE CHILDREN'S CODE FOR ADVERTISING FOOD

1. Introduction

(i) Healthy Families East Cape appreciates the opportunity to provide this representation on the Review of the Code for Advertising to Children and the Children's Code for Advertising Food (the Codes).

(ii) Healthy Families East Cape requests the opportunity to present an oral representation to the Review Panel.

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(iii) Healthy Families East Cape permits the publication of this submission by the Review Panel.

(iv) Healthy Families East Cape engages Iwi and community leadership to improve health where people live, learn, work and play in order to prevent chronic disease. This representation is presented based on the collective expertise and interest of Healthy Families East Cape stakeholders in preventing obesity and type 2 diabetes in New Zealand children utilising a systems based approach to prevention.

(v) Healthy Families East Cape supports the World Health Organization's *Report of the Commission on Ending Childhood Obesity* (1), which includes the recommendation that governments implement WHO's Set of recommendations on the marketing food and non-alcoholic beverages to children (2).

2. Background

(i) Tairawhiti experience the highest rate of childhood obesity in New Zealand. According to the Annual Update of Key results 2014/2015 of the New Zealand Health Survey, 25.1% of Tairawhiti children are obese, compared to 10.8% nationally.

(ii) Child overweight and obesity is a worldwide issue (3), with New Zealand children being particularly impacted. New Zealand children are the third most overweight or obese children in the OECD (4). In 2014/15, just over one in five New Zealand children aged 2-14y were overweight (21.7%) and one in ten obese (10.8%), and of those aged 15- 17y, two in five (36.7%) were either overweight (20.3%) or obese (16.4%) (5). Māori and Pacific children, and children from areas of high deprivation are disproportionately impacted (5). Unlike several other Western countries where the prevalence of child obesity has at least stabilised (6), child obesity in New Zealand appears to be continuing to increase (5).

(iii) Child obesity is a key risk factor in the development of type 2 diabetes (7,8). Paralleling the increasing prevalence of child obesity in New Zealand is the increasing incidence of type 2 diabetes in New Zealand children (9,10). Traditionally a disease diagnosed in older adulthood, children as young as 7 years are presenting with the disease (9,10).

(iv) The immediate and long-term consequences of overweight and obesity, and type 2 diabetes are considerable. Children's quality-of-life is substantially reduced, and they face a greater risk of developing other chronic conditions such as cardiovascular disease, musculoskeletal disorders, and mental health problems (11,12). If developed in childhood, many chronic conditions continue through into adulthood. Such conditions also place substantial financial burdens on individuals and society (13,14).

(v) Consequently, child overweight and obesity, and its related conditions, have been identified as a key issue facing children and society that require urgent action (15,16).

Unhealthy food marketing has been identified as a key driver of children's dietary preferences, food choices and consumption (17–19). To improve children's diet related health outcomes, WHO (1,2,20) and other child health experts (15,21) recommend reducing children's exposure to unhealthy food and beverage marketing. The recent Report of the Commission on Ending Childhood Obesity (1) states:

'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' (1).

(vi) Strengthening the Codes will protect New Zealand children from harm, positively contribute to their healthy development, and in turn improve their health and well-being.

RESPONSE TO QUESTIONS IN THE REVIEW DOCUMENT

1. What are the strengths and weaknesses of the two current Children's Codes?

(i) The voluntary, self-regulatory nature of the Codes is a key weakness. The Codes have been developed, and are monitored and enforced by the food and advertising industries. This presents a conflict of interest between the industries, whose primary concerns are shareholders and profit-generation. Research demonstrates that self-regulation is ineffective in reducing the amount of unhealthy food and beverage marketing children are exposed to, and inconsistent with health objectives (22,23).

(ii) Advertisers are advised that they "should" enact the guidelines within the Code. To strengthen the guidelines, Healthy Families East Cape recommends that the wording be more direct, replacing "should" with "shall". This places greater onus on the industries to comply with the guidelines.

(iii) We note that the current Codes are underpinned by provisions within the United Nations Convention on the Right of the Child (UNCRC). This could be viewed as a strength. However, the Convention is meant to be applied in its entirety. Evidence suggests that the ASA is selective in its use of the provisions within UNCRC to meet its own interests (22). We also note that in the current Codes, a child is defined as anyone under the age of 14. This is inconsistent with the Convention, which considers as child to be any person aged less than 18.

(iv) Healthy Families East Cape notes that the current Codes encompass a variety of broadcast and non-broadcast media platforms. Other media types and marketing communications used by the food and advertising industries are not specified in the Codes. Furthermore, the Codes refer to 'advertising', which is only one type of marketing communication. The current Codes also do not specify the range of settings and locations where unhealthy food marketing should not be allowed.

(v) The current Codes are open to interpretation and is a weakness. They lack specific criteria about the types and frequency of advertising exposures, the nutrient profile of foods and beverages, and the content and emotive appeals used in the advertising. Healthy Families East Cape recommends that criteria and definitions within the Code are strengthened and clearly stated.

2. What are the strengths and weaknesses of the current complaints process?

(i) The current complaints process is based on members of the public laying complaints about advertisements they feel have breached the Codes. The process is a complicated, time-

consuming process, requiring considerable skills and resources of the complainants. Complainants in other countries with similar processes to New Zealand's report difficulty in using the process and have lost faith in its effectiveness (24–26). In New Zealand, even knowledgeable nutrition experts experience difficulties in lodging complaints (27).

(ii) The current complaints process is not timely or sufficiently reactive. There is often a considerable delay between the time that the complaint is lodged, reviewed and sanctions (if any) imposed. This renders the process ineffective, as by the time an advertisement is reviewed, harm has occurred.

(iii) The complaints process is self-regulated, which introduces conflicts of interests between the food industry and children's health and well-being.

(iv) Children have the right to be heard in all matters that concern them (28). The current complaints process system does not accommodate children's views regarding the advertisements they consider harmful or inappropriate.

(v) Healthy Families East Cape recommends that an easy-to-use complaints process, that incorporates a mechanism for children to use, be implemented.

(vi) Healthy Families East Cape recommends that the complaints process is regularly promoted to the public, similar to the publicity about how to complain about breaches of the Broadcasting Standards.

3. What changes, if any, are necessary to protect the rights of children and their health / well-being?

(i) Children's best interests must be the primary consideration in all decision making (28). The food and marketing industries are obligated to ensure that children's rights are not violated and to remedy any such violations (29).

(ii) To ensure that children's right to health and well-being are realised, Healthy Families East Cape recommends that only healthy food be advertised.

(iii) To ensure that children's rights are realised and that the Convention is applied appropriately, Healthy Families East Cape recommends that all food and beverage marketing is evaluated and monitored by an independent panel consisting predominantly of health and child rights experts, and children's representatives. Similarly, the complaints process should also be administered by a panel of independent health and child rights experts, and children's representatives. Criteria for determining the nutrient status of foods and beverages being marketed would be in line with Healthy Families East Cape's recommendations in point 3.8, below.

(iv) As the recommendations made in this submission are underpinned by children's rights, their implementation would protect children's rights.

4. Please comment on any concerns you have with different media formats in relation to advertising to children (for example, magazines, television, social media, websites).

(i) Food and beverages are marketed using a wide range of media formats. WHO defines food and beverage marketing as any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal and/or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product or service (30).

(ii) Marketing techniques include: Advertising, sponsorship, product placement, sales promotions, cross-promotions using celebrities, brand mascots or characters popular with children, web sites, packaging, food labelling and point of-purchase displays, e-mails and text messages, philanthropic activities tied to branding opportunities, and communication through “viral marketing”, and by word-of-mouth (2). Healthy Families East Cape recommends that the Codes include the examples of marketing provided in WHO’s A Framework for the Implementation of the Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children (p. 10) (30).

(iii) Television remains a key media format used by children and a vehicle for children’s exposure to food marketing (31). The time limits for when food advertisements can be broadcast on free-to-air television (5pm or 5.30pm) are inconsistent with the times when most children watch television. Furthermore, a substantial proportion (one-fifth) of children watch television after 8.30pm (31). Healthy Families East Cape recommends that the time restrictions for unhealthy food and beverage marketing be extended to 11pm. Based on regulatory practises in other countries, Healthy Families East Cape recommends that restrictions on unhealthy food advertising include programmes where it is expected that children will make up 20% or more of the audience (32).

(iv) Children are increasingly engaging with electronic media (31), in the form of social media sites such as Facebook, internet usage, email, YouTube and games. Such media is being increasingly used by the food and advertising industries, but is unregulated. Children are increasingly exposed, and unprotected against, such marketing.

(v) Product packaging is another important marketing tool used to attract children to products, through the use of pictures of sports celebrities, cartoon and film characters, premiums and promotions, and health and nutrition claims (17,19,33,34). Product packaging is not currently included in the Codes.

(vi) Sponsorship is not included in the current Codes. Healthy Families East Cape views and recommendations on sponsorship are outlined in point 3.9.

(vii) Healthy Families East Cape recommends that provision is made for food packaging and sponsorship in the new Code, and that allowance is made for new and evolving media formats.

5. If the content of advertisements is a concern, can you please give examples and / or supporting evidence?

(i) A product name and description would be useful in sourcing advertisements.

(ii) Marketing content impacts children's food and beverage preferences (17,19,35). The techniques used are particularly concerning, as children, regardless of age, are either not able to discern their persuasive intent or are often unable to act on their knowledge (35). Such techniques include, but are not limited to, premium offers, promotional characters, nutrition and health-related claims, the theme of taste, and the emotional appeal of fun (35). Sports sponsorship, and associations with sport, including product endorsement by sports personalities, has a similar impact (36,37).

(iii) The content of advertisements is particularly salient in the context of new media. Increasingly, the lines between advertising and programming are becoming increasingly blurred. Research suggests that children do not recognise the persuasive intent of advertisements in electronic and other new media, for example, product placement in games, until a much later age (38).

(iv) The information provided in the marketing content is often misleading and undermines the national food and nutrition guidelines (39). This is especially pertinent when well-known athletes are either seen to be endorsing or associated with food and beverage products. Children perceive celebrity athletes as heroes and they have considerable influence on children's food preferences and behaviours when used in food and beverage marketing communications (40–43).

6. If the placement of advertisements is a concern, can you please give examples and /or supporting evidence?

(i) For broadcast media it would be helpful to have the time/date/channel or programme, for other media, a link, publication title, or outdoor location would be appreciated

(ii) The place where marketing activities are located is a key feature of the marketing mix (44).

(iii) A key location that is especially concerning for children is the placement of food and beverages marketing around schools (45), such as on bus shelters and the backs of buses used to transport school children.

7. The Children's Codes currently define a child as under the age of 14. Do you support or oppose this definition? Why?

(i) Healthy Families East Cape opposes the definition of a child as under the age of 14. Healthy Families East Cape recommends the Codes encompass any person aged less than 18years, as defined in the Convention.

(ii) Extending the age of the Codes would not only align the Code with the Convention, but also key documents that underpin children's diet-related health and well-being including the Report of the Commission on Ending Childhood Obesity (1), the recently launched national obesity plan (46); and New Zealand's Food and Nutrition Guidelines for Healthy Children and Young People (Aged 2-18 Years) (39).

(iii) Research shows that children over the age of 8 years are able to discern the persuasive intent of marketing. However, they do not necessarily act on this knowledge (19,47). Food

and beverage marketing aimed at older children and young adults is also seen by younger children, exposing them to harm (2).

8. Is there a role for a nutrient profiling system such as the health star rating system in the Children's Code? If yes, in what way and which system would you suggest?

(i) Healthy Families East Cape recommends the use of a nutrient profiling system in the Code.

(ii) The current Code lacks specific criteria on the nutrient quality of the food product being marketed.

(iii) Healthy Families East Cape does not recommend the use of the Health Star Rating system as a nutrient profiling system in a new Code. The Health Star Rating system is an interpretive front of pack labelling system developed to support consumers to make healthier food choices when selecting packaged food items, rather than to support the restriction of food marketing to children. The Health Star Rating system has been criticised for awarding similar ratings to healthy and unhealthy foods (48). For example many fruits and nuts receive a three star rating while widely accepted 'junk' foods receive 2.5 stars (48). Research shows that fresh fruit and vegetables, which are recommended foods, frequently do not receive a five star rating (48).

(iv) Healthy Families East Cape recommends the use of a Nutrient Profiling Model that has been specifically designed to guide the regulation of food marketing to children. The WHO Regional Office for Europe Nutrient Profile Model (49) is one such system and could be readily adapted to the New Zealand context. This system would be used to evaluate food marketing before being aired or made public.

(v) The Health Star Rating system was developed in conjunction with the food industry for use on package foods and beverages, not to support marketing regulation to children. Healthy Families East Cape does not support the use of the Health Star Rating System as the nutrient profiling method for new Codes.

(vi) The WHO Regional Office for Europe Nutrient Profile Model (49) has been specifically designed to assess food and beverages for the regulation of food and beverage marketing to children. Healthy Families East Cape recommends the use of this system to evaluate all food and beverage marketing before it is aired or made public.

9. Do you support or oppose a specific guideline on sponsorship? Why?

(i) Healthy Families East Cape supports a specific guideline on sponsorship. The guideline should be developed in consultation with health and child rights experts, and children's representatives.

(ii) Sponsorship is a key marketing strategy used by companies to increase awareness and generate brand loyalty and product sales (50). Unhealthy food and beverage sponsorship occurs at all levels of sport in New Zealand (51,52) and sport is currently an unregulated setting for food and beverage marketing.

(iii) Sport plays a significant role in the lives of New Zealand children. A substantial proportion (50-90%) of children engage in sport, either as players, leadership or support roles, or as spectators of live or televised sport (53). As such, New Zealand children are likely to be exposed to substantial levels of food-related sponsorship of sport. Research demonstrates that sports sponsorship strongly influences children's food preferences, choices, purchasing and consumption (18,36,54–56).

(iv) There is a conflict of interest between the healthy nature of sport and the generation of income for sporting organisations and food companies (51). There is a perception that local community sports clubs are (in part) reliant on financial support from food and beverage companies. However, research shows that this may not be the case (57). This situation means that small clubs, which typically have a high proportion of child members, are particularly vulnerable to unhealthy food and beverage marketing.

10. Do you support or oppose the introduction of independent monitoring and evaluation of the code? How would this work?

(i) Healthy Families East Cape recommends the introduction of independent monitoring and evaluation of the Codes.

(ii) Transparency and accountability measures to protect children and improve health outcomes are recommended by WHO (1).

(iii) Such action would be undertaken by a panel consisting predominantly of members of the health sector, children's representatives and child rights advocates.

11. What is your view of the sanctions imposed by the ASA when a complaint is upheld?

(i) Healthy Families East Cape view on the sanctions imposed by the ASA when a complaint is upheld as weak.

(ii) The punitive measures do not provide a significant deterrent for the food industry nor signal the importance of the issue.

(iii) Healthy Families East Cape recommends implementing sanctions that include significant monetary losses for, and transparency in identifying, those companies and organisations that have breached the Codes. Such companies should be made to compensate for the harm inflicted and financially contribute to health promotion activities.

12. Are there environments where you consider it to be inappropriate to advertise to children?

(i) According to the Report of the Commission on Ending Childhood Obesity "*settings where children and adolescents gather (such as schools and sports 9 facilities or events) and the screen-based offerings they watch or participate in, should be free of marketing of unhealthy foods and sugar-sweetened beverages*" (1).

(ii) Inappropriate settings for the marketing of unhealthy food and beverages to children include, but are not limited to, all educational facilities such as early childhood centres,

schools, after-school and holiday facilities; sporting facilities such as sports clubs and events; health organisations; public facilities such as libraries, recreation centres and areas; parks and halls, churches, bus stops and other transportation facilities.

(iii) Healthy Families East Cape recommends that the new Codes make provision for a wide variety of settings where children and adolescents gather.

13. Do you support or oppose combining the two codes? Why?

(i) Healthy Families East Cape opposes combining the two Codes.

(ii) The prevalence of overweight and obesity, and type 2 diabetes in New Zealand children is alarming and continuing to increase. To ensure that children's diet-related health receives the attention it requires, it is crucial that the Code for Advertising Food remains a separate document.

SUMMARY OF RECOMMENDATIONS: HEALTHY FAMILIES EAST CAPE

1. Healthy Families East Cape recommends that the review panel refer to the WHO Set of recommendations on the marketing food and non-alcoholic beverages to children to guide the development of the new Codes (2).

Healthy Families East Cape specifically recommends:

1. that the Codes define children as all persons under the age of 18.
2. that the Children's Code for Advertising Food remain separate.
3. that only healthy food be advertised.
4. that a fit-for-purpose nutrient profiling system be used to evaluate all food and beverage marketing before it is aired or made public.
5. the introduction of independent monitoring and evaluation of the Codes and the complaints process.
6. that criteria and definitions within the Code are strengthened and clearly stated.
7. that the Codes include the examples of marketing provided in WHO's A Framework for the Implementation of the Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children (p. 10) (30).
8. that the time restrictions for unhealthy food and beverage marketing on television be extended to 11pm and that restrictions on unhealthy food advertising include programmes where it is expected that children will make up 20% or more of the audience (32).
9. that provision is made for food packaging and sponsorship in the new Code, and that allowance is made for new and evolving media formats.
10. that the new Codes make provision for a wide variety of settings where children and adolescents gather.
11. that an easy-to-use complaints process, which incorporates a mechanism for children to use, be implemented.
12. that the complaints process is regularly promoted to the public, similar to the publicity about how to complain about breaches of the Broadcasting Standards.

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