

13 April 2016

Codes Review Panel
ASA Secretariat
PO Box 10675
Wellington

By email: asa@asa.co.nz

SUBMISSION on
"Review of the code for advertising to children and the children's code for
advertising food" consultation paper

1. Introduction

Thank you for the opportunity to make a submission on the review of the children's advertising codes. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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2. Oral submission

We would like to present an oral submission if the panel holds hearings.

3. Background

Research shows food marketing influences children's eating habits. These influences occur at a time when food preferences are being formed.

Food marketing is considered a significant contributor to childhood obesity. In 2014/15, 21 percent of New Zealand children aged 2 to 14 were overweight and a further 10 percent (about 91,000 children) were obese.¹

Research also shows half of all New Zealand children have experienced tooth decay by age 12. Treatment for dental cavities is the leading cause of avoidable hospital admissions for New Zealand children aged 0 to 14 years.²

The marketing of food to children is a global concern. In 2010, the World Health Organization (WHO) published recommendations calling for government-led policy on a global scale to reduce the impact on children of marketing foods high in saturated fat, trans fats, free sugars and salt.³ Consumer NZ supports the WHO recommendations.

¹ Ministry of Health, *New Zealand Health Survey: Annual Update of Key Findings 2014/5*, Wellington, Ministry of Health, 2015.

² Craig E, Adams J, Oben G, Reddington A, Wicken A, Simpson J., *The Health Status of Children and Young People in New Zealand*. Wellington: Ministry of Health; 2013.

http://dnmeds.otago.ac.nz/departments/womens/paediatrics/research/nzcyes/pdf/Rpt2011_NZReport.pdf

³ WHO, *Set of recommendations on the Marketing of foods and non-alcoholic beverages to children*, Geneva, WHO, 2010.

4. Answers to selected questions

We have answered selected questions from the consultation paper.

Question 1 – What are the strengths and weaknesses of the two current Children’s codes?

We believe a major weakness of the codes is the lack of guidelines relating to packaging. Marketing targeted at children is widespread on food packaging and is often found on products high in fat, sugar and salt (HFSS foods).

In 2013, we found the packaging of many HFSS foods were covered in games and puzzles to attract children. For example:

- Kellogg’s Coco Pops packaging invited children to discover Coco the monkey’s activities;
- Kellogg’s Froot Loops enticed children with a word game;
- Pam’s Coco Snaps, Fruity Hoops, Honey Snaps and Rice Snaps had a maze puzzle; and
- Nestle Nesquik had milk jugs waiting to be found in a farm scene.⁴

Other issues with the codes are discussed under the relevant questions below.

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

As stated in previous submissions, we think the current complaints process has a number of weaknesses:

- the process is reactive, relying on people to lodge a complaint, and there is no proactive investigation by the Complaints Board;
- public awareness of the codes and complaints process is low;
- complaints aren’t dealt with quickly enough;
- advertisements that are the subject of a complaint are not immediately withdrawn;
- decisions have been reported to be inconsistent⁵; and
- penalties are inadequate.

Question 3 - What changes, if any, are necessary to protect the rights of children and their wellbeing?

We recognise the review of the codes does not extend to changing the system of self-regulation. However, we share the view that the current system of self-regulation does not adequately protect children from unhealthy food marketing.⁶

We think a regulatory system with greater restrictions on advertising to children would be far more likely to protect the rights of children and their wellbeing.

Both Quebec and the UK have adopted regulatory systems. In the UK, it’s estimated the ban on unhealthy food advertising on children’s television channels has resulted in a 10 percent increase in healthy food advertising and children seeing 37 percent fewer advertisements for unhealthy foods.⁷

⁴ *Consumer*, ‘Cashing in on kids’, October 2013, pages 11 -13

⁵ Bowers S, Signal L and Jenkin G, *Does current industry self-regulation on food marketing in New Zealand protect children from exposure to unhealthy food advertising?* Wellington, 2012

⁶ Bowers S, Signal L and Jenkin G, *Does current industry self-regulation on food marketing in New Zealand protect children from exposure to unhealthy food advertising?* Wellington, 2012

⁷ Ofcom, HFSS advertising restrictions: final review, London, July 2010

In the absence of regulation here, we support changes to strengthen the codes and promote the health and wellbeing of children. In particular, we support the following changes (suggested by the Heart Foundation in 2011⁸):

- a stronger system of pre-vetting advertisements;
- better evaluation and monitoring of compliance with the codes;
- the codes applying to all forms of advertising (including websites and food packaging);
- the restrictions in the ThinkTV code being expanded to cover children's peak viewing times (rather than just children's programming times);⁹
- a review of the codes to ensure consistency with the WHO recommendations on advertising of unhealthy food to children;
- the immediate withdrawal of advertisements the subject of a genuine complaint; and
- stronger sanctions and incentives for compliance.

In addition, we would like to see:

- children's interests being put ahead of the interests of the food and advertising industries;
- faster resolution of complaints; and
- more transparent and consistent decision-making by the Complaints Board, including independent monitoring of the complaints process.

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

Children are a vulnerable audience. Generally, children younger than four see advertisements as entertainment, children under eight can't recognise the purpose of advertising, and between 10 and 12 years, they can understand the persuasive intent but not sales tactics.

To strengthen the codes, we would like to see greater consideration given to guidelines for advertising to children between the ages of 14 and 17 years. Although children in this age group can understand the persuasive intent of advertising they are still likely to be influenced by it.

We would like the definition of child extended to any person under the age of 18 years. This would bring the codes into line with the United Nations Convention on the Rights of the Child,¹⁰ the WHO Report of the Commission on Ending Childhood Obesity¹¹ and New Zealand Food and Nutrition Guidelines for Healthy Children and Young People.¹²

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

We think there is a role for a nutrient profiling system in the children's codes. A nutrient profiling system would help determine which foods are "unhealthy" and thereby ensure advertising of these foods is restricted.

We don't recommend use of the health star rating system to determine whether a food or beverage is suitable to be marketed to children. Under this rating system, a product

⁸ Delvinia Gorton, Advertising Food to Children Background Paper, April 2011.

⁹ According to research, there is a "misalignment between children's programme times as defined by broadcasters and actual viewing times of children". See Bowers S, Signal L and Jenkin G, *Does current industry self-regulation on food marketing in New Zealand protect children from exposure to unhealthy food advertising?* Wellington, 2012.

¹⁰ OHCHR, *Convention on the Rights of the Child*, 1989.

¹¹ WHO, *Report of the Commission on Ending Childhood Obesity*, Geneva, WHO, 2016.

¹² Ministry of Health, *Food and Nutrition Guidelines for Healthy Children and Young People (Age 2 – 18 Years). A Background Paper*, Wellington, Ministry of Health; 2012.

may be high in a “negative” nutrient (such as sugar) but still have a relatively high star rating. For example, Nutrigrain has a 4 star health rating but is high in sugar.

Any rating system should be aligned with the healthy eating guidelines. A system such as the WHO Regional Office for Europe Nutrient Profile Model or the UK Nutrient Profile model may be appropriate.

Another option is to use the Food and Beverage Classification System to determine whether a food can be advertised or not. This system identifies food as “everyday” or “sometimes” for the school and ECE environment. As a category system it can also be used to identify product categories that don’t fit with healthy eating guidelines.

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

We support a specific guideline on sponsorship. Sponsorship by food companies is common in New Zealand and is likely to influence children’s food and beverage choices.

Sponsorship of sports teams and high-profile sportspeople is a particular concern. Sportspeople are often held up as role models for children and are likely to influence food preferences. Where a sportsperson is associated with foods high in fat or sugar, the take-home message for children is that these foods are “good choices”.

We are also concerned about the practice of “player of the day” certificates that contain vouchers and advertising from places such as McDonalds and Hells Pizza.

In our view, sports teams and individual players should not be sponsored by unhealthy products.

Question 10 – Do you support or oppose the introduction of independent monitoring and evaluation of the codes? How would this work?

We support independent monitoring and evaluation of the codes. This should include all forms of advertising, volume of advertising, timing and repetitiveness of advertising, as well as monitoring the decisions made by the ASA Complaints Board.

A study published by the University of Otago in 2012 concluded New Zealand’s system fails to adequately protect children’s rights to health.¹³ Concerns included partial, unjustified and inconsistent decision-making by the ASA Complaints Board.

Independent monitoring and evaluation is recommended by WHO to protect children and improve health outcomes.

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

The WHO Report on childhood obesity states “settings where children and adolescents gather (such as schools and sports 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.”¹⁴ We support this view.

We also think it’s inappropriate to advertise to children at public facilities such as public libraries, playgrounds and parks, community halls, and transport facilities such as bus stops and train stations.

¹³ Bowers S, Signal L and Jenkin G, *Does current industry self-regulation on food marketing in New Zealand protect children from exposure to unhealthy food advertising?* Wellington, 2012.

¹⁴ WHO, *Report of the Commission on Ending Childhood Obesity*, Geneva, WHO, 2016 at page 18

Thank you for the opportunity to make a submission on the Issues Paper. If you require any further information, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Aneleise', with a stylized, flowing script.

Aneleise Gawn
Consumer Advocate