



MIDCENTRAL DISTRICT HEALTH BOARD
Te Pae Hauora o Ruahine o Tararua

2016 41

13 April 2016

**Codes Review Panel,
ASA Secretariat
P O Box 10675,
WELLINGTON**

asa@asa.co.nz

Dear sir/madam,

**Re: CONSULTATION ON THE REVIEW OF THE CODE FOR
ADVERTISING TO CHILDREN AND THE CHILDREN'S CODE FOR
ADVERTISING FOOD**

Please find attached a submission on the above consultation document lodged on behalf of MidCentral Health's Public Health Service.

Please feel free to contact me should you require further information.

Yours faithfully

Dr Robert Holdaway
Manager Public Health Services

**Codes Review Panel,
ASA Secretariat
P O Box 10675,
WELLINGTON**

CONSULTATION ON THE REVIEW OF THE CODE FOR ADVERTISING TO CHILDREN AND THE CHILDREN'S CODE FOR ADVERTISING FOOD

Summary

Thank you for the opportunity to comment on the Review of *Code for Advertising to Children and the Children's Code for Advertising Food*.

We have set out our submission in line with the questions asked in your review, *Children's Code for Advertising Food*. We recommend the following:

1. That there is acknowledgement that marketing of foods that are high in fat and/or sugar are associated with childhood obesity and therefore such marketing must be reduced;
2. That New Zealand adopts the World Health Organisation *Set of Recommendations on the marketing of foods and non-alcoholic beverages to children*.
3. Improve clarity of definitions used in reaching decisions - especially terms relating to whether the complaint is covered by *Children's Code for Advertising Food*; greater rigour with the term "healthy food"; and how the authority determines whether or not an advertisement (or advertising more generally) is or is not undermining the food and nutrition policies of Government, the Ministry of Health Food and Nutrition Guidelines or the health and wellbeing of children.
4. Amend the definition of "child" to include those aged under 18 years, in line with the United Nations Declaration.
5. Increase the television-viewing hours that are governed by the Children's Code to 8.30pm.
6. Not use the Health Star Rating System for classifying "snack" or foods that are high in calorie-content
7. Use the Food and Beverage Classification System (owned by the Ministry of Health and contracted to the Heart Foundation of New Zealand) to determine healthy or unhealthy foods
8. Introduce a specific guideline on sponsorship particularly when that sponsorship involves entities that are highly esteemed by children and involves foods that are likely to increase obesity.
9. Recommend that the Ministry of Health monitor and evaluate the *Children's Code for Advertising Food*.
10. Adopt the World Health Organisation recommendation - Settings where children gather should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salts.
11. The two codes should **not** be combined.

Question 1: What are the strengths and weaknesses of the two current children's codes?

A major weakness of the two current codes is their lack of action on the marketing of unhealthy foods that has contributed to increased obesity in children.

There is unequivocal evidence that the marketing of unhealthy foods and sugar-sweetened beverages is related to childhood obesity (30, 31). 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. ⁱ

The WHO Commission report on *Ending Childhood Obesity* which was chaired by Sir Peter Gluckman (Chief Science Advisor to the Prime Minister) uses the word “unequivocal”. It is not our intention to unpack the reasons for the strength of this statement, other than to note that evidence of this link continues to accumulate as demonstrated by the following conclusion from a systematic review and meta-analysis of the effects of acute exposure to unhealthy food and nonalcoholic beverage advertising.

Evidence to date shows that acute exposure to food advertising increases food intake in children but not in adults. These data support public health policy action that seeks to reduce children's exposure to unhealthy food advertising.ⁱⁱ

Similarly a 2015 study found marketing of high-energy foods led to increased consumption by children – and ended with a plea:

Despite methodological differences and the varying population samples studied, the outcomes are broadly consistent – food advertising is prevalent, it promotes largely energy dense, nutrient poor foods, and even short-term exposure results in children increasing their food consumption. Policymakers are implored to drive forward meaningful changes in the food environment to support healthier choices and reduce the incidence of obesity and related diseases.ⁱⁱⁱ

Given the strength of the evidence it is disappointing not to see any mention of the WHO recommendations on marketing to children or any reference to research findings when the Codes were released for consultation. The information is not hard to access and given that the review of the Codes were identified in the Ministry of Health's Childhood Obesity Plan^{iv} it would seem that failure to include this information would reduce people's ability to make fully-informed submissions.

If the Review Panel does not accept the above scientifically-established evidence on marketing and childhood obesity, we would like to understand the reasons for that decision.

We note the expressed concerns about the ability of the Authority to further limit Advertisers due to the Bill of Rights^v (where freedom of expression can only be limited by “law as can be demonstrably justified in a free and democratic society”). This, however, must be balanced against the duty not to harm children and the

necessity of the advertising industry to move with society's concerns and to be seen to do so.

Another weakness of the Code is lack of clarity which has been commented on publicly more than once. Hoffman^v raises the issue of whether a poster sent to school canteen managers should be regarded as falling within the ambit of the codes (on the basis that the poster was not aimed at children). We note that the World Health Organisation on the marketing of foods and non-alcoholic beverages to children (Recommendation 5) states that

“Settings where children gather should be free from all forms of marketing of foods high saturated fats, trans-fatty acids, free sugars or salts.”^{vi}

This recommendation was endorsed by WHO member states on May 2010 while the ASA deliberations were dated 11 March 2011. The WHO recommendations were not mentioned by ASA and the ruling was:

Therefore, given that the advertisements were not aimed at children, the Chairman ruled that, in this instance, the Children's Code for Advertising Food did not apply.

But the Children's Code for Advertising food is not about intention but influence of advertising “whether contained in children's media or otherwise” – hence it is not clear why this decision was made. In other contexts (e.g. alcohol) it is not the intent but the exposure that determines the appropriateness of the marketing – so surely the precedent has been set and should be followed.

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

As noted above, the lack of clarity for definitions and the resulting reasons for decisions in complaints undermines the authority's credibility through opening it to charges of “partial, unjustified and inconsistent decision making”^{vii}.

We believe that such decisions are likely to reduce the willingness of members of the public to complain to the authority, and their chances of success may be underestimated due to a lack of clarity on what is being meant. WHO recommendation (NO 4) on marketing of foods and non-alcoholic beverages to children also notes the importance of clarity

“Governments should set clear definitions for the key components of the policy thereby allowing for a standard implementation process.

As well as lack of clarity on the ambit of the Codes, there is also an apparent disagreement on the healthiness of foods. As an example the ASA addressed each food product on the “canteen” poster (mentioned above) in turn and stated

The Complaints Board noted the concerns of the Complainant about the appropriateness of including the advertisement for this product on a food safety and nutritional guide. Turning to the Advertiser's response, the

Complaints Board noted where Heinz Wattie's Ltd statement which said that tomato sauce "is a concentrated form of tomatoes and therefore provides nutrients intrinsic to tomatoes such as the antioxidant lycopene." The Complaints Board stated that the sauce was a well-known condiment which was likely to be found in most homes and, given the antioxidant properties, did not consider the sauce as being unhealthy.

Given that tomato sauce contains a large amount of sugar (as a preservative) such a comment seems ill-considered. Similarly their comments re popsicles

"The Complaints Board was of the view that the Streets range, while not nutritionally important, offered a low fat option treat for children.

While factually correct, in making this Statement the Authority ignored the problem that many foods achieved low fats by being high in salt or sugar. Such a statement could be seen to undermine healthy nutrition by distracting attention from total energy value of the product. The statements would have been helped by direct quoting of the most relevant Food Classification entry they were relying upon; but to be reliable and clear the authority should have quoted Fuelled4life which is the brand name for the Food and Beverage Classification System (FBCS) and is managed by the Heart Foundation. Under this classification popsicles are classified as a "sometimes"^{viii} food and so cannot be called healthy without undermining the Ministry of Health guidelines.

It seems there is a growing gulf of distrust and disagreement between marketers and health experts such as the World Health Organisation. In part this is due to different perspectives as demonstrated by the lack of reference to WHO recommendations or childhood obesity by ASA. However, it also represents a societal shift in attitude as poor diet and physical activity levels increasingly impact on health and society at large; and the public become more aware of this growing problem. There are increasing calls for greater regulation:

Statutory comprehensive regulations providing full protections for children against unhealthy food marketing are recommended, but strengthening voluntary codes into a more quasi-regulatory system would allow food companies to clearly demonstrate their commitments to becoming part of the solution for New Zealand's unacceptably high rate of childhood obesity.

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Or this comment from a draft Treasury paper that was released under the Official Information Act:

Currently New Zealand has an almost entirely self-regulatory system for television marketing, with the Advertising Standards Authority (ASA) acting as a voluntary industry body (Shaw, 2009). The current ASA response to regulating unhealthy advertising is seen as flawed (Shaw, 2009^x). From the current evidence it is clear that the self-regulatory system in place has failed to decrease children's exposure to advertising of unhealthy foods (Shaw, 2009). Internationally self-regulatory systems are failing to protect children, suggesting a statutory mechanism is required. The current situation could be defined as a

market failure and strengthens the argument for intervention; children are viewed as powerless to their exposure.^{xi}

Certainly it would appear that a useful first step would be adopting the WHO recommendations on Marketing to Children.

At the very least, the Authority needs to address the concern repeatedly raised by public health experts that they are taking little or no action to prevent advertising from undermining the Ministry of Health guidelines despite the Code explicitly ruling out undermining of the guidelines. This issue has been raised more than once, but the Authority has not defined what is meant by “undermine” nor does it refer to this principle when making judgements. This criticism was made publicly in 2010 in an academic paper – we quote from the associated press release:

The code for advertising of food states that advertising should not undermine the Ministry of Health’s Food and Nutrition Guidelines, but pervasive advertising to children encourages consumption of unhealthy foods. The ASA review did not recognise this discrepancy, and provided no criteria for assessing what type of advertising would undermine the guidelines.^{xii}

We note that Hoffman (op.cit) states in 2014: “It is unclear what ‘undermine’ means exactly in this context.” Accordingly we request that the Authority does address this issue directly in its review.

We also share the concern of other researchers that the amount of advertising for less healthy food (amber or red) is so much greater than that for healthy food that the overall impact is to undermine the Ministry of Health guidelines. An American study found “In 2013, 80.5% of all foods advertised to children on TV were for products in the poorest nutritional category, and thus pose high risk for contributing to obesity.”^{xiii}

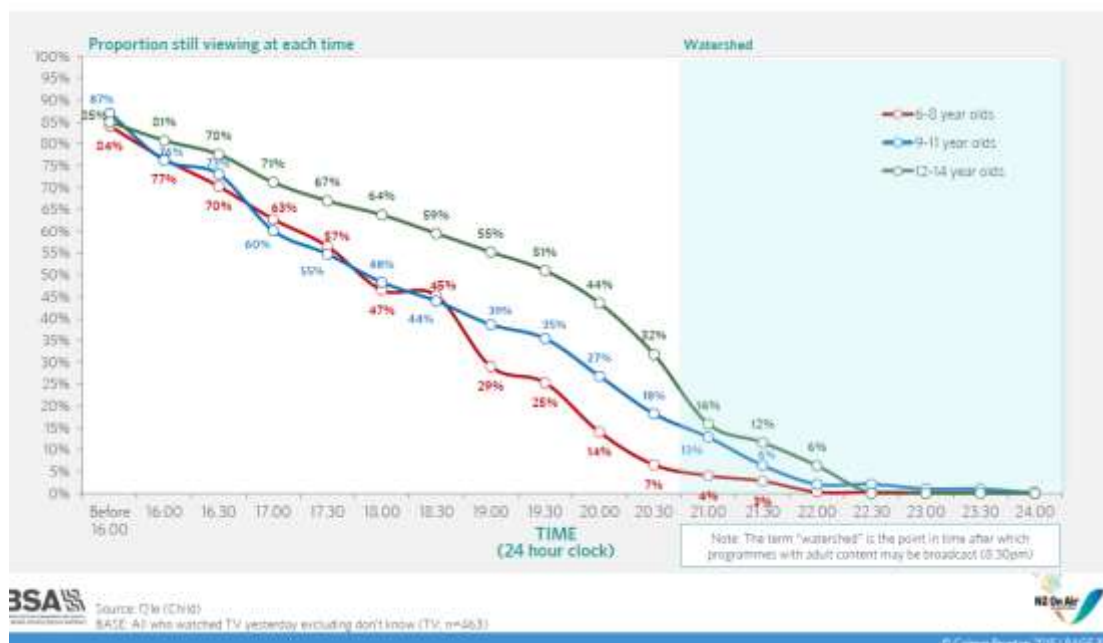
Similarly; a New Zealand study states:

Previous studies in New Zealand found that food marketing targeted at children through television, internet (paper under review), magazines, sports, around schools, in schools and on front-of-pack of food products is predominantly for unhealthy food products high in salt, sugar and saturated fat”^{viii}

Finally we note that the hours that children watch TV include a lot of “adult television”. Hoffman notes that the children’s school age programme times and the times where children are actually watching “do not match” based on a 2008 survey and the following graph^{xiv} shows similar numbers to that reported by Hoffman (although it does not differentiate by weekends). To be effective for younger children, the Codes must run till at least 8.30pm.

At what time do different aged children stop watching TV?

As might be expected, 12-14 year olds continue watching TV longer than younger children. Many 6-8 year olds stop watching at 7pm, and by 9pm very few (4%) are still watching.



3. What changes if any are necessary to protect the rights of children and their health/wellbeing?

The United Nations Convention on the Rights of the Child includes the right to have “freedom to seek, receive and impart information and ideas of all kinds” as noted in the introduction for the Codes. The Codes however would be improved by including reference to article 13.2b which states:

13. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a. For respect of the rights or reputations of others; or
 - b. For the protection of national security or of public order (ordre public), or of public health or morals.^{xv}

The current code would be improved by including reference to public health and other harms to help people assess the relevance of the code to their concerns. It is particularly pertinent at the moment given the WHO report on Ending Childhood Obesity and its call for action to improve the health of children by adopting the *Set of Recommendations on the marketing of foods and non-alcoholic beverages*.

We recommend that the ASA adopt the *Set of Recommendations on the marketing of foods and non-alcoholic beverages* in its entirety.

We note that a recent submission by the Children’s Commissioner (on the Health Strategy) noted a similar concern:

Similarly, the initiatives in the Obesity Plan are likely to have limited impact until consumption of calorie-dense, low nutritional value food and drinks is significantly reduced by addressing access, pricing and direct marketing of these products to children.^{xvi}

Questions 4, 5, and 6.

No comment

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

We believe that the Code should cover people aged up to (but not including) 18 as at 18 years-of-age people can vote. Given that they cannot vote until that age, society has an extra duty of care for them. Such a change would also meet New Zealand's obligations under the United Nations Convention on the Rights of the Child^{xvii}.

Question 8: Is there a role for a nutrient profiling system such as the health star rating system.

We believe that there needs to be some independent food classification that ASA can refer to when making judgements as this helps improve clarity in its decisions and avoid issues such as those highlighted above. We recommend the Fuelled4Life Food and Beverage Classification System that is owned by the Ministry of Health and currently contracted to the Heart Foundation of New Zealand^{xviii}.

We think that the HSR is **not** sufficient for the Codes to be based upon, as it is ineffective in encouraging children, and a sizeable proportion of the community, to avoid high calorie foods. A systematic review on nutrition labels noted that children used labels less often:

However, label use is notably lower among children, adolescents and older adults. More research targeting these populations is needed, given their increased prevalence of obesity (1,148), nutrient deficiencies (149) and chronic disease (149–153). Individuals with lower socio-economic status are also less likely to use nutrition labels, which is particularly problematic given that low socio-economic status is associated with an increased risk of being overweight and obese^{xix}

The study published by Ministry of Business, Innovation and Enterprise notes that there was some confusion amongst participants on snack foods where there were small differences in star-ratings and the snacks contained apparently healthy foods:

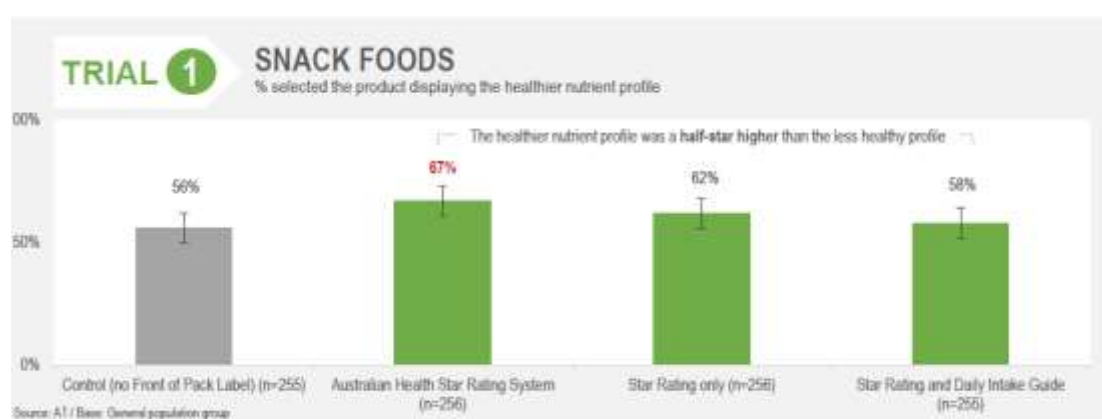
In the snack foods trial (Trial 1), although the nutrient information was still of primary importance, the products' ingredients, shown on the front of the package and listed on the rear, played a more significant role in participants' choices. The detailed tables in Appendix F show that, in particular, participants tended to consider the presence of grains, wheat, oats, chocolate, and fruit. When it came to the nutrient information for the snack food products, participants tended to focus mainly on the fat and sugar content. The differences in total fat and sugar content between the two nutrient profiles

were fairly small relative to the products shown in Trial 2 (at 3.4g and 0.6g respectively), so it may have been more difficult for participants to differentiate the products based on their nutrient information.^{xx}

There are other studies that have suggested that ingredients can create a “halo” effect for judgements on the healthiness of a product:

Although a nutrient-specific or food group information symbol may only state that a product is ‘low in fat’ or a ‘source of whole grains’, because of the ‘halo’ effect, consumers may infer that a product is also lower in calories, saturated fat, sodium, and sugar based on this information when it is not actually the case.^{xxi}

The study also found that while labelling did have a statistically significant effect, there were still somewhere between 30 -40 percent of people who could not correctly identify the healthiest snack food.^{xv}



It seems likely that children would be less able than the general population to correctly identify the healthiest snack food and coupled with the overseas research that children are less concerned with food labels (especially low income children who are at greater risk); there is a strong suspicion that the Health Star Rating system may not be sufficient protection for children.

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

We believe a specific guideline on sponsorship is essential.

While there is limited food and beverage sponsorship of New Zealand sport, unhealthy food and beverage brands and companies do sponsor sport. The few that use additional marketing activities create repeat exposure for their brands, many of which target children. The findings suggest policies that restrict sponsorship of sports by unhealthy food and beverage manufacturers may help limit children’s exposure to unhealthy food marketing within New Zealand sports settings.^{xxii}

We note that Recommendation 5 of the World Health Organisation on marketing of foods and non-alcoholic beverages to children states:

Settings where children gather should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salts.

Accordingly we would like all sponsorship of sport that promotes consumption of food that the Ministry of Health does not classify as “everyday” food to cease.

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

We support the independent monitoring and evaluation of the codes which is in line with Recommendation 10 from the World Health Organisation *Set of Recommendations on marketing of foods and non-alcoholic beverages to children*:

All policy frameworks should include a monitoring system to ensure compliance with the objectives set out in the national policy, using clearly defined indicators

This would best be done by the Ministry of Health (as an independent body).

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

As a voluntary association it is difficult to see how the ASA could impose stringent sanctions. It also seems unfair that an advertiser can break the code and suffer no consequences other than having to remove the advertisement and run the risk of some bad publicity - which they may regard as free publicity.

We would support tougher sanctions but wonder how these could be enforced under the current regime.

Question 12: Are there environments where you consider it inappropriate to advertise to children.

Yes, as stated above, Recommendation 5 of the World Health Organisation on marketing of foods and non-alcoholic beverages to children states:

Settings where children gather should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salts.

WHO gives further clarification of what environments it recommends should be free of marketing of unhealthy foods in its publication, *A Framework For Implementing The Set Of Recommendations on the marketing of foods and non-alcoholic beverages to children*^{xxiii}, (which we believe the panel should adopt):

“settings where children gather” include, but are not limited to, nurseries, schools, school grounds and pre-school centres, playgrounds, family and child clinics and paediatric services (including immunization programmes), and during any sporting

and cultural activities that are held on these premises. There are many additional settings where children commonly gather, such as public playgrounds, swimming pools, summer schools and programmes, after-school programmes, and sporting events. “Settings where children gather” could also include temporary displays or gathering points for children, such as activity areas created for children in airports, community centres, places of worship and shopping malls.

Question 13: The two codes should not be combined.

The code relating to food should not be combined with other codes because of the harm associated with marketing of unhealthy foods is a different problem to that addressed by the Code for Advertising to children. As the Report on Ending Childhood Obesity states:

. Any attempt to tackle childhood obesity should, therefore, include a reduction in exposure of children to, and the power of, marketing

Failure to do so can only lead to increased harm in future years.

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- ⁱ <http://www.who.int/end-childhood-obesity/final-report/en/>, accessed February 2016-03-04
- ⁱⁱ <http://ajcn.nutrition.org/content/early/2016/01/20/ajcn.115.120022.abstract>, accessed February 2016
- ⁱⁱⁱ <http://onlinelibrary.wiley.com/doi/10.1111/pedi.12278/abstract;jsessionid=7F29FBC2F6257507265AC90CA40BBF8A.f03t04?userIsAuthenticated=false&deniedAccessCustomisedMessage=>, accessed February 2016
- ^{iv} <http://www.health.govt.nz/our-work/diseases-and-conditions/obesity/childhood-obesity-plan>, accessed February 2016
- ^v <http://www.otago.ac.nz/law/research/journals/otago085105.pdf>, accessed February 2016
- ^{vi} <http://www.who.int/dietphysicalactivity/marketing-food-to-children/en/>, accessed February 2016
- ^{vii} <http://www.otago.ac.nz/wellington/otago036971.pdf>, accessed March 2016
- ^{viii} <http://www.fuelled4life.org.nz/products/by-category/snack-items/for-schools>, accessed April 2016
- ^{ix} Getting serious about protecting New Zealand children against unhealthy food marketing
Stefanie Vandevijvere, Boyd Swinburn NZMJ 3 July 2015, Vol 128 No 1417
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- ^x Shaw, C. (2009). (Non)regulation of marketing of unhealthy food to children in New Zealand. *New Zealand Medical Journal*, 122(1288), 76-86.
<http://search.proquest.com/openview/89675948fdad40d0407f7f3822df88f/1?pq-origsite=gscholar>, accessed March 2016
- ^{xi} <http://www.treasury.govt.nz/downloads/pdfs/oia/oia-20150441.pdf>, accessed March 2016
- ^{xii} <http://www.otago.ac.nz/news/news/otago008187.html>, accessed March 2016
- ^{xiii} <http://www.sciencedirect.com/science/article/pii/S0749379715000951>, accessed March 2016
- ^{xiv} <http://www.nzonair.govt.nz/document-library/childrens-media-use-study-2015/>, accessed March 2016
- ^{xv} <http://www.un-documents.net/crc.htm>, accessed March 2016
- ^{xvi} <http://www.occ.org.nz/assets/Uploads/submissions/Russell-Wills-Submission-to-Update-of-NZ-Health-Strategy.pdf>, accessed March 2016
- ^{xvii} http://www.unicef.org/crc/files/Guiding_Principles.pdf, accessed March 2016
- ^{xviii} <http://www.health.govt.nz/our-work/preventative-health-wellness/nutrition/food-and-beverage-classification-system>, accessed April 2016
- ^{xix} <http://davidhammond.ca/wp-content/uploads/2014/12/2011-Nutrition-Labels-Review-Hammond-JPHN1.pdf>, accessed March 2016
- ^{xx} <http://www.foodsafety.govt.nz/industry/general/labelling-composition/health-star-rating/research-report-health-star-10-12-13.pdf>, accessed March 2016
- ^{xxi} http://www.chilecrecesano.com/medios/2014/Noviembre/Front_of_pack_symbols_study.pdf

^{xxii} <http://bmcpublichealth.biomedcentral.com/articles/10.1186/1471-2458-13-126>, accessed March 2016

^{xxiii} <http://www.who.int/dietphysicalactivity/MarketingFramework2012.pdf?ua=1>, accessed April 2016