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## Fonterra Brands New Zealand Limited Submission on:

# ASA Consultation on the of the Code for Advertising to Children and the Children's Code for Advertising Food

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## Executive Summary

Fonterra Brands (New Zealand) Limited ("**FBNZ**") welcomes the opportunity to provide this submission to the Advertising Standards Authority's ("**ASA**") review of the Code for Advertising to Children and the Children's Code for Advertising Food (the "**Children's Codes**").

FBNZ considers the current Children's Codes to be fit for purpose, but considers that clarity would be improved by having one "Code for Advertising to Children" which includes a principle relating to "Advertising Food".

FBNZ considers that there should be a nutrient profiling system in place to determine if a food is suitable to be advertised to children.

FBNZ considers that the issues relating to guidelines for sponsorships are complex, and require further detailed and specific consultation.

## Introduction

1. FBNZ is part of Fonterra Co-operative Group Limited ("**Fonterra**") which is a leading global dairy nutrition business, owned by 10,500 New Zealand farmer shareholders. Fonterra is the world's leading exporter of dairy products and a preferred supplier of dairy ingredients to many of the world's leading food companies.
2. Fonterra is New Zealand's largest company involved in large-scale milk procurement, processing and management, with a supply chain spanning more than 140 countries. The company has NZ\$14.1 billion in total assets and revenues of NZ\$16 billion, employing more than 16,000 people worldwide.
3. FBNZ is a market leader in the consumer dairy segment with a portfolio of milk, cheese, butter and spreads, ice cream and yoghurt brands in New Zealand. Some of our consumer brands include Anchor, Fresh n' Fruity, Kapiti, Mainland, Perfect Italiano, Primo, Tip Top and Symbio.
4. FBNZ takes its obligations under the ASA Codes seriously and provides responses to the specific questions raised by the ASA Review Panel below.

## General Comments

1. Fonterra is committed to making dairy nutrition and information more accessible and delivering superior products that improve health at key life stages. We are also committed to supporting the communities where we live, work and farm, including through responsible marketing practices.
2. Fonterra works within the community to engage and educate on nutrition, including through nutrition programmes such as Fonterra Milk for Schools and Kickstart Breakfast (co-sponsored with Sanitarium). FBNZ also participates in the NZ Heart Foundation's Fuelled4Life program.
3. Fonterra has nutrition guidelines to guide the nutrition composition of our products. These are based on sound nutrition science and public health priorities (e.g. fat and sugar). These enable us to develop products that are nutritious as well as tasting good to encourage the consumption of nutritious dairy products. FBNZ is actively working to reformulate existing products helping to improve the nutrition of New Zealanders. For example, we have recently reduced the sugar in our Anchor Uno Kid's Fruit Yoghurt range by at least 40%. As a business FBNZ provides clear, fact based nutrition information to all consumers and aims to raise awareness of the importance of balanced diets and increasing physical exercise.
4. Brands can create opportunities to help educate the community on nutrition and healthy lifestyles. We know that food promotion has little influence on children's perception of a healthy diet, but we do also know that food promotion can have an effect on specific types of children's nutritional knowledge<sup>1,2</sup>. Examples of the types of activities Fonterra (FBNZ & Fonterra Co-operative) partake in are below:
  - Fonterra Milk for Schools<sup>1</sup>
    - Programme operates in 70% of primary schools
    - Approximately 170,000 children drink milk per day
    - Provides kids with 30% of their daily calcium
    - Educates kids on the environment and importance of recycling
  - KickStart Breakfast<sup>2</sup> (Collaboration with Sanitarium and supported by the NZ Government)
    - Sanitarium provides Weetbix, Fonterra provides Milk, School delivers the programme
    - Programme currently operates in more than 800 schools

<sup>1</sup> Fonterra Milk for Schools <https://www.fonterramilkforschools.com/>

<sup>2</sup> KickStart Breakfast <https://kickstartbreakfast.co.nz/>



- Environment encourages students to develop social skills, take on extra responsibility and grow academically through the wider benefits of breakfast
  - Weetbix Kids Tryathon 2015, Anchor Protein+ Milk stand; kids were encouraged to complete a fun 'strongman' activity while also being taught about the goodness of milk and dairy as a source of protein. Protein+ milk was selected by the business on the basis that it was 1) a 250mL glass of milk is 1 serve of dairy for the day, 2) Protein+ is a reduced fat milk, to comply with dietary guidelines for young children and 3) it is high protein milk.
5. All FBNZ brand marketing activities that may involve children go through an internal review. This includes both a regulatory and legal review to ensure content complies with all relevant regulations.
  6. FBNZ recognises that evidence<sup>3,4</sup> shows food promotion impacts children's food choices, food preferences and consumption patterns. FBNZ also recognises that the impact on children can often occur at both a brand and product specific or category level.
  7. FBNZ does not actively target children in their advertising, instead targeting the primary purchase decision maker (usually mum or dad). Internally FBNZ operates a policy on responsible marketing to children. This ensures that FBNZ operates in a responsible manner and ensures that any marketing communications only encourage healthy food promotion in line with NZ Ministry of Health nutrition guidelines and encourage healthy lifestyles.

<sup>3</sup> Cairns, G., Angus, K. & Hastings, G. (2008). The extent, nature and effects of food promotion to children: a review of the evidence to December 2008. World Health Organisation.

<sup>4</sup> Hastings, G., Stead, M., McDermott, L., Forsyth, A., MacKintosh, A.M., et al. (2003). Review of research on the effects of food promotion to children. UK Food Standards Agency.

## Response to Specific Questions:

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

- 1.1 FBNZ considers the current Children's Codes to be fit for purpose. We are aware that there are relatively few complaints under the Children's Codes (comparative to other ASA Codes). In our view, this indicates that these serve their intended purpose – that advertisements are generally prepared with a high degree of social responsibility and in compliance with the Children's Codes. We note that although there are fewer complaints under the Children's Codes than other ASA Codes, the ASA has demonstrated a willingness to act on these complaints when they occur.
- 1.2 We find the guidelines provided with the Children's Codes are sensible and prescriptive and assist advertisers in the interpretation and compliance with the Children's Codes.
- 1.3 In general, we think that advertisers, agencies and the public understand the requirements of the ASA Codes and the Children's Codes are no exception to this.
- 1.4 A weakness noted by FBNZ is the overlap between the Children's Codes (such as the guidelines around children asking their parents to buy particular products and advertisements being recognised as such by children). As an advertiser, the simpler the ASA Codes are, the easier it is to encourage compliance. If simplifications can be made to avoid double ups within Codes, FBNZ would encourage this.
- 1.5 FBNZ considers the current Children's Codes to be relevant and fit for purpose. The Children's Codes strike an appropriate balance in allowing advertisers to responsibly market products and services (adhering to appropriate levels of social responsibility) while protecting the rights of children.

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

- 2.1 FBNZ considers the current ASA complaints process to be fair, simple and easy to understand for advertisers, agencies and the public. The ASA Codes and the complaints process provide a simple process for stakeholders (such as consumers or industry competitors) to follow if they do have concerns with an advertisement. The ASA complaints process is rigorous, efficient and low cost with openness and transparency in the outcome.
- 2.2 As an advertiser, we appreciate the opportunity to respond to complaints through an independent "middle man" to the process. When going through the complaints process the ASA is an unbiased decision maker that both sides (complainant and advertiser) can trust.

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

- 3.1 FBNZ takes social responsibility for children very seriously.
- 3.2 FBNZ always briefs the target audience to our media agencies as the primary purchase decision maker.
- 3.3 FBNZ targets the primary purchase decision maker through marketing focussed on the health benefits a product will deliver to the child.
- 3.4 FBNZ currently uses the Food and Beverage Classification System for products registered with Fuelled4Life, run by the NZ Heart Foundation.
- 3.5 Fonterra use internal nutrition guidelines to develop dairy products which are suitable for children.
- 3.6 Advertisements involving children must promote good eating habits and physical activity, and encourage the importance of a healthy lifestyle.
- 3.7 There must be sufficient scientific evidence to support messages about nutrition and health.
- 3.8 Advertisements must not undermine the parents authority if they are not present.
- 3.9 FBNZ has a documented sign off and approval process for any marketing to children as part of its internal policy on Responsible Marketing to Children.



**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).**

- 4.1 FBNZ considers media formats are well covered by the current Children's Codes.
- 4.2 FBNZ does find it challenging to understand how far the reach of the Children's Codes extends in relation to digital content?
- Marketing via social media (Facebook, Instagram, Snapchat, Pinterest etc.) is a complex medium that is generally blocked from children due to the age restrictions you need to meet in order to create an account. However as an advertiser we have no control over 1) the users registration process or 2) sharing of devices. With respect to the age of registrants, a 2013 study<sup>5</sup> by the UK Advertising Standards Authority found that 83% of kids (11-15 year olds) lied about their age during registration, including 43% who told the sites they were over 18, exposing them to content not appropriate for their age including gambling and alcohol.
  - Digital media advertising is targeted to adults based on certain demographics and past search history of the device. FBNZ also recognise that it is common for children to use their parents digital devices. Because parent often don't change the login, children are effectively 'logged in' as an adult, as such they may be exposed to content intended for the parent.
  - Social media is also designed with content sharing at its core. While we as advertisers do our best to post media related to older age groups. There is no way we can control what gets shared with or shared by children.
- 4.3 FBNZ is unsure how to solve these challenges as advertisers are carefully selecting audiences based on target audience demographics where the advertisement turns up.

**5. If the content of advertisements is a concern, can you please give examples and/or supporting evidence? A product name and ad description would be helpful so we can source the advertisements.**

- 5.1 No advertisements currently in circulation are a concern.

**6. If the placement of advertisements is a concern, can you please give examples and/or supporting evidence? For broadcast media it would be helpful to have the time/date/channel or programme, for other media, a link/publication title/outdoor location would be appreciated.**

- 6.1 On the whole FBNZ believes that media placement is already adequately covered and managed by the existing codes and guidelines.
- 6.2 It would be useful to have further clarification around a specific type of mobile digital media, for example advertising placement on mobile devices, especially advertisements shown in breaks in game applications, which may predominantly be used by children, even if designed for adults.

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

- 7.1 Globally there are differences in the definition of 'child' in relation to advertising; the standard appears to be 12 which is the age for Europe, United States and Canada.
- 7.2 Literature tells us that from age 12, children are able to understand the intent of advertising<sup>6</sup>. FBNZ therefore considers it most appropriate for the purposes of marketing to define a child as up to 12 years old. However, we recognise that adopting a definition of child of 12 years and under for the Children's Codes would be inconsistent with other definitions of "child" throughout NZ legislation.
- 7.3 FBNZ is therefore willing to support the current definition of a child as under the age of 14 on the basis that this aligns with other definitions of 'child' throughout NZ legislation.

<sup>5</sup> UK Advertising Standards Authority. (2013). Children and advertising on social media websites. ASA Compliance Survey, July 2013.

<sup>6</sup> Valkenburg, P. & Cantor, J. (2001). The development of a child into a consumer. *Journal of Applied Developmental Psychology*, 22(1):61-72.



## 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?

- 8.1 FBNZ agrees that there should be a nutrient profiling system in place to determine if a food is suitable to be advertised to children or not.
- 8.2 FBNZ currently register products with Heart Foundation's Fuelled4Life, which uses the Food and Beverage Classification System (FBCS) to determine if a product is suitable for children.
- 8.3 FBNZ considers that the Nutrient Profiling Scoring Criteria (NPSC) used to assess if a product is 'healthy' for suitability related to health claims under Standard 1.2.7 of the Food Standards Code may be an option to apply to advertising however, this doesn't align with the original intended use of the scoring nor was it specifically designed for children.
- 8.4 Health star rating (HSR) may also be an option for assessment criteria. While it wasn't developed specifically for children it does create consistent messaging to consumers.
- 8.5 As with the current voluntary code of practice for broadcasters, a provision should be allowed to consider individual cases where products may not entirely comply with any specific nutrient criteria system.
- 8.6 Both the NPSC and HSR were designed for use on packaged foods only. So the assessment of unprocessed wholefoods (e.g. fruits, vegetables, nuts, legumes) would not be covered under either of these assessments. On this basis, unprocessed wholefoods should automatically qualify as eligible for advertising to children.

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

- 9.1 FBNZ considers that there are a range of issues and challenges in relation to sponsorship that require further consideration and consultation.
- 9.2 It is not clear whether ASA envisages guidelines for only in relation to children's activities or for all events or activities that are subject to sponsorship. Not all sponsorship activities are targeted at children, but children will make up a proportion of the audience for events and activities that are targeted at the general population - for example Anchor sponsored the All Blacks during the recent Rugby World Cup.
- 9.3 If the guidelines are to be applied to child-focussed events and activities only, then it will be important to develop a definition or criteria that will capture these events accurately.
- 9.4 Any guideline for sponsorship should apply to any company or organisation providing information to children at the event/activity – not just official sponsors.
- 9.5 A further challenge for a guideline on sponsorship is the equitable treatment of NZ advertisers relative to offshore advertisers, recognising globalisation of media. Footage from international arenas is frequently aired on NZ television or is available online. For example, Red Bull sponsor the Formula 1 Championships, Gatorade sponsor American Football. Companies sponsoring the football in the US would not have to abide by any NZ sponsorship guideline. When that footage is aired here, if that company (E.g. Gatorade) also have a local presence an uneven playing field is created between NZ companies and global businesses.
- 9.6 Some schools and community sports groups rely on sponsorship. Sponsorship is therefore considered a positive activity for the team or group who benefits from receiving the sponsorship, as well as the sponsor in terms of brand exposure (where appropriate).
- 9.7 FBNZ currently considers sponsorship activities as an opportunity to talk about and encourage healthy lifestyles, including food choices and exercise. For example,
  - Anchor sponsored the All Blacks during the World Cup,
  - Symbio Yoghurt supports the Pink Ribbon Breakfast.
- 9.8 Although we would want to see a separate proposal for further consultation, in principle, FBNZ would support a sponsorship guideline for child centric events (E.g. Sanitarium Weet-Bix Kids Tryathlon). We would expect this to align with any prescribed nutrient criteria chosen by the ASA as well as encouraging healthy lifestyles and exercise.



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

- 10.1 This is a very broad question and it's not clear what sort of independent monitoring may be proposed. While FBNZ is open to considering other forms of monitoring, we would need to understand the specifics of any proposal before commenting on it.
- 10.2 In general, FBNZ supports industry self regulation of advertising. As a global company, Fonterra constantly looks at what other markets are doing and at standards globally. We note that Australia, Europe, and Singapore have self regulating advertising codes similar to New Zealand while the UK has self regulation with a co-regulatory framework.
- 10.3 FBNZ considers the current ASA self regulation process to be efficient and effective. The current process should only be amended if there is a real need for change. The concern with introducing independent monitoring is the process may become more complex and more expensive to monitor or comply with.

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

- 11.1 When a complaint to the ASA is upheld, the advertiser, agency and media are required to withdraw the advertisement. From an advertiser perspective, this is a strong deterrent. Creation of advertising is expensive and the write off costs involved as a result of an immediate withdrawal are significant with the advertiser paying costs associated with the ASA complaint as well as retractions for media. There are also direct impacts to the bottom line if a proposed advertising strategy is not able to be completed.
- 11.2 In addition to the sanctions imposed by the ASA, all ASA decisions are made public. The publicity, particularly for larger companies, can attract significant media coverage. The potential harm to reputation and damage to consumer trust is significant.
- 11.3 FBNZ considers that the current sanctions provide a clear signal that companies need to take their responsibilities under the ASA Codes seriously. For example, as noted above FBNZ has implemented internal policies requiring legal and regulatory compliance checks for marketing programmes. FBNZ also conducts regular internal training sessions focussed on the ASA Codes.

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

- 12.1 FBNZ considers that the existing restrictions adequately cover environments where targeted marketing to children may apply.
- 12.2 FBNZ considers that foods which meet the appropriate nutrient criteria when combined with promoting a healthy active lifestyle should be acceptable to advertise to children through media of the companies choosing.
- 12.3 Any attempts to introduce prohibitions on advertising in specific environments will need to be carefully considered to make sure they do not create unintended consequences. For Example, nutrition programmes such as Milk for Schools and KickStart Breakfast are most effectively delivered through schools. Nutrition education programmes, such as 5+ A Day and Fuelled4Life are best delivered at least in part through schools. Child focussed sporting events such as Sanitarium Weel-Bix Kids Tryathlon also provide important opportunities for nutrition education.
- 12.4 FBNZ believe if a food rates as 'unhealthy' based on the appropriate nutrient criteria then it should not be advertised to children.

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

- 13.1 There is already overlap between the Children's Codes with the guidelines around children asking parents for products and the need for advertisements to be clearly recognisable as such. In the interests of simplification, it makes sense to have one "Code for Advertising to Children" which includes a principle relating to "Advertising Food".

If there are any queries relating to this submission, please contact Sarah Lochrie.

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Yours faithfully,



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