

Codes Review Panel  
ASA Secretariat  
PO Box 10675  
Wellington

13 April 2016

Dear Hon Sir Bruce Robertson

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

Healthy Families Lower Hutt welcomes the opportunity to put recommendations forward for the review of the two Codes above (the Codes).

Healthy Families NZ is the Government's flagship prevention platform – a key part of the Government's wider approach to helping New Zealanders live healthy, active lives. It is a large-scale initiative that brings community leadership together in a united effort for better health. It is being designed and implemented in ten locations throughout the country and Lower Hutt is one of ten chosen Healthy Families NZ communities.

Healthy Families Lower Hutt aims to address the underlying causes of poor health in the community. This involves working across the multiple systems that influence our everyday lives including workplaces, early childhood education centres, schools, sports clubs, marae and churches as well as the media, food, transport and planning systems so good health and wellbeing becomes easier and more accessible for all.

The key outcomes sought from Healthy Families NZ are: improved nutrition, increased physical activity, more people smokefree, and reduced alcohol related-harm.

We are happy to provide further advice or clarification on any of the points raised in our written submission. The key contact for this submission is:

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Kind Regards



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## Context

*“Childhood obesity undermines the physical, social and psychological well-being of children and is a known risk factor for adult obesity and non-communicable diseases. There is an urgent need to act now to improve the health of this generation and the next.”<sup>(1)</sup>*

Preventable diseases like type 2 diabetes, cardiovascular disease and some types of cancers are known killers – and their rates are rising, especially in our Māori and Pacific communities. Being obese or overweight is one of the key risk factors for developing these diseases – and New Zealand is now the third most obese nation in the OECD.<sup>(2)</sup> Even more worryingly, **one in three New Zealand children are now obese or overweight.**<sup>(3)</sup>

Childhood obesity is a serious public health issue, both in New Zealand and internationally. Childhood obesity rates in some countries are reaching what has been described as alarming and serious proportions.<sup>(3)</sup> The childhood obesity rate has increased from 8% in 2006/07 to 11% in 2014/15,<sup>(3)</sup> highlighting the importance of taking action now. Obesity can affect a child’s immediate health, increase a child’s risk of being overweight or obese in adulthood and increase risk of chronic illness.<sup>(1)</sup>

The causes of obesity are complex, but are largely attributed to what is known as the ‘obesogenic environment’, an environment with greater availability and promotion of food that is cheap, energy dense and nutrient poor, and limits opportunities for physical activity.<sup>(5)</sup> Recognition of this has led to international support for a range of strategies to address childhood obesity.

There is clear evidence that promotion of food and beverages influence children’s eating habits, food requests and choices<sup>(6-9)</sup> and the majority of food advertised to children through a range of mediums is for food high in sugar, salt and poor quality fats.<sup>(10)</sup> The recent ‘Report of the Commission on Ending Childhood Obesity’ also 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.”<sup>(1)</sup>*

There is a clear case for action to address childhood obesity and the promotion of unhealthy food and beverages. It is recognised that there is no single solution; it requires everyone playing their part to protect children’s health and wellbeing. Strengthening these Codes to further restrict exposure to, and power of, advertising and marketing will be a positive step towards reducing children’s exposure to food and beverages that contribute to unhealthy weight gain.

This submission will refer mainly to the ‘Children’s Code for Advertising Food’. When using the term ‘unhealthy food’ we are referring to food and non-alcoholic beverages that are high in sugar, fat and salt commonly found in overly processed foods that are high in energy and have little to no nutritional value (for example: sugary cereals, confectionery, fast-food, crisps, pastries and sugar sweetened beverages).

## Responses to questions

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

- (i) The Codes recognise the vulnerability of children and the importance of social responsibility, which we see as a strength. They also take into account provisions within the United Nations Convention on the Right of the Child (UNCRC); however evidence suggests that the ASA is selective in its choice and use of provisions within UNCRC. <sup>(11)</sup>
- (ii) The use of these Codes is voluntary and self-regulated by industry. We see this as a key weakness due to a conflict of interest and overall ineffectiveness of self-regulation in reducing the amount of unhealthy food and beverage marketing children are exposed to. <sup>(12)</sup>
- (iii) The current Codes set out guidelines that sound good, but are open to interpretation as they lack clear and specific definitions and criteria for their use and application. Healthy Families Lower Hutt recommend using more direct language within these Codes, for example replacing 'should' with 'shall'.
- (iv) Healthy Families Lower Hutt believe the definition of a child as under the age of 14 years is a weakness (refer to question 7).

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

- (i) The current process allows for complaints to be made online as well as in the form of a written letter, allowing those without computer and internet access to submit a complaint. This is a great strength, but the process relies on the public being aware that they can complain, understanding the ambiguous guidelines and principles, and having the knowledge and ability to write a formal complaint. Support with writing a complaint could be improved by stating the names of people and/or agencies that offer support with writing a complaint or answering questions about this process, for example, Agencies for Nutrition Action. <sup>(13)</sup>
- (ii) Healthy Families Lower Hutt believe that the public are not well informed about the complaints process and the principles/guidelines of the Code. We therefore recommend that the Codes and complaints process are regularly promoted.
- (iii) In general, having a complaints process for the public as the main form of identifying potential breaches of the Code is a reactive approach to protecting children, rather than a proactive approach. We see this as a weakness to the effectiveness and use of these Codes in protecting children's health and wellbeing.

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

Healthy Families Lower Hutt support and encourage the following changes to protect the rights of children and their health and wellbeing:

- (i) A co-regulatory approach to monitoring and evaluation. This would allow for use of industries' expertise in the ever-advancing advertising platforms, but with independent criteria, shared funding of the process and less conflict of interest in the review process. A co-regulatory approach would also allow food and advertising industry to demonstrate their commitment to being a part of the solution. <sup>(10)</sup>
- (ii) Independent monitoring and evaluation of the Codes by a panel that includes predominantly health and child rights experts and children's representatives.
- (iii) As unjustified and inconsistent decision making has been identified as a problem with the current system <sup>(11)</sup>, we support the use of transparent criteria and defined guidelines for the use and application of the Codes. For example when is it appropriate to apply both Codes, or only one?
- (iv) Effectiveness of the use and implementation of these Codes requires clear definitions for better public understanding, for example understanding of restrictions, advertising mediums and settings that are covered, as well as what constitutes advertising to children and what foods are to be covered by these restrictions. Clearer guidelines and definitions would make it easier for companies advertising to avoid breaching Codes and make it easier for the public to know if a Code is likely to have been breached. It would also allow for greater consistency in the review process.
- (v) Healthy Families Lower Hutt recommend banning advertising and marketing of unhealthy food and beverages to children in any settings where children regularly spend time (see Question 12), in physical settings such as schools, and through interactive online media that attracts children, for example on YouTube and children's websites.

**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) The media and advertising environment for children has changed dramatically in recent years, where children are not only exposed to television advertisements, but to a range of marketing and advertising techniques through product placements, immersive websites, advergames, viral marketing, mobile ads, social media marketing, location targeting, native and stealth advertising and a combination of any or all of the above. <sup>(14)</sup>

- (ii) Healthy Families Lower Hutt recommend that the Codes encompass the wide range of broader marketing techniques and mediums with set guidelines to keep up with the changing environment. We recommend that that the Codes include 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'.<sup>(15)</sup>

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

Please see images 1-4.

**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. (Please see images 1-4).**

- (i) On Sunday 3 April 2016, two children aged five and 10 searched for videos or songs they would usually watch. In the space of about 5-10 minutes, the children were exposed to three separate advertisements for sugary drinks played before their cartoon video would play. Most searches were for 'Frozen' related content, a very popular children's movie. The content of all three advertisements were for sugar-sweetened beverages, which cause dental disease and are associated with increased risk of type 2 diabetes and unhealthy weight gain.<sup>(16)</sup>

**Image 1: Cartoon advertisement for Red Bull played at the beginning of a Play-Doh video**

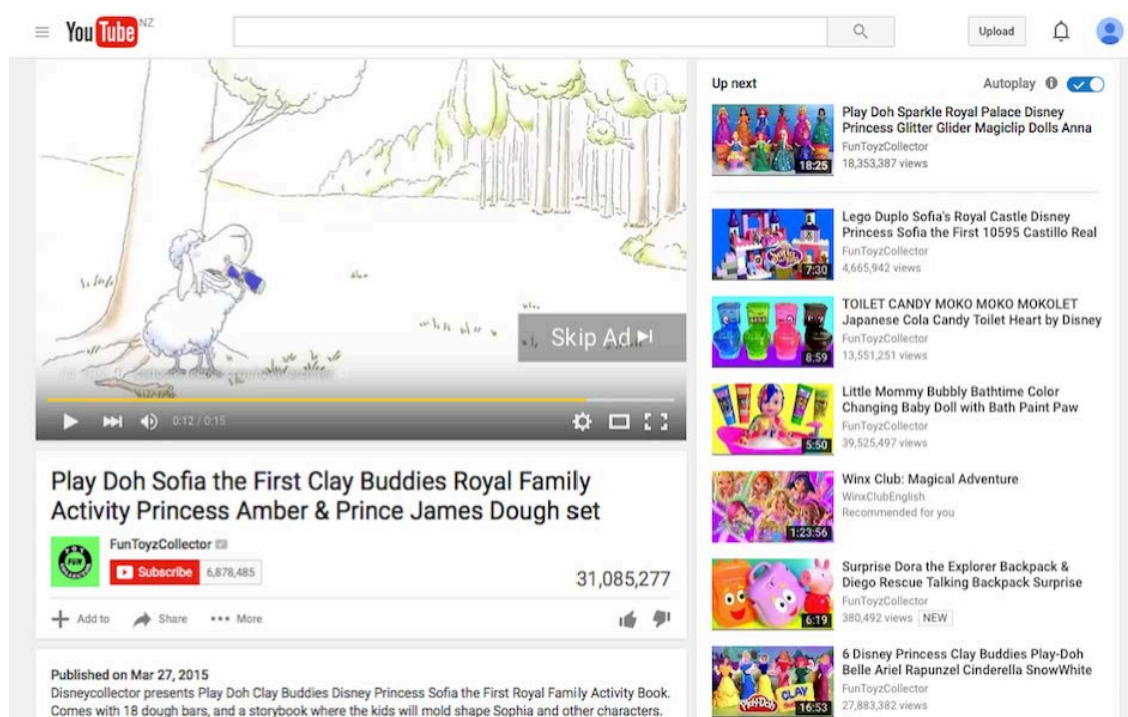


Image 2: Advertisement for Sprite played at the beginning of a Disney Frozen Princess Song on You Tube NZ

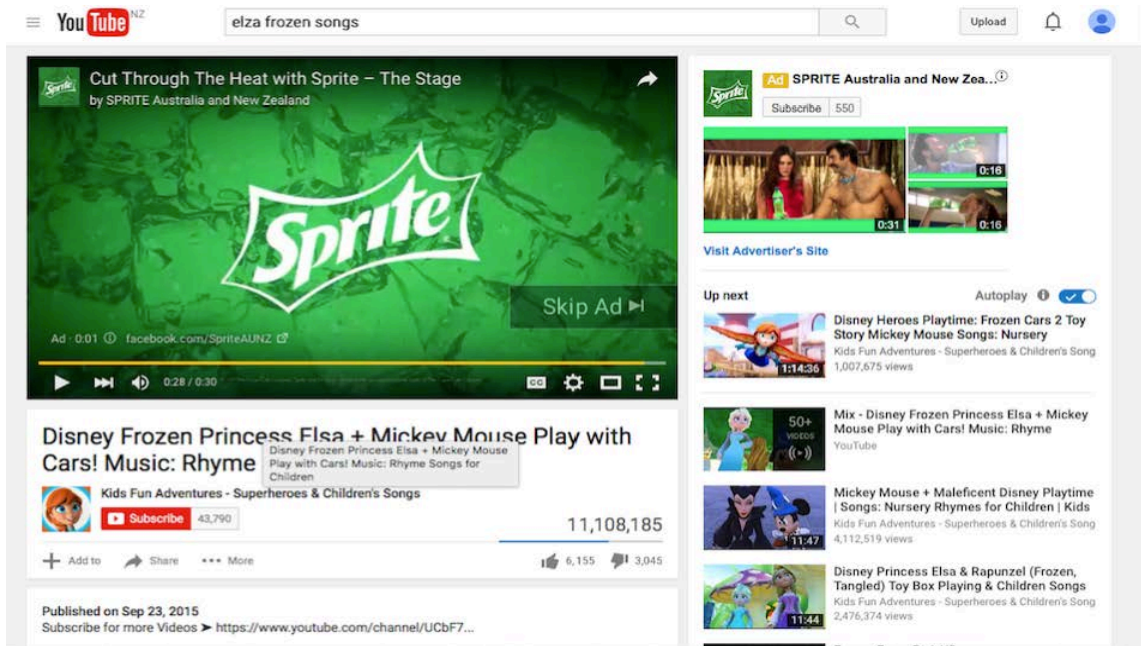


Image 3: Advertisement for L&P and confectionery in the background in example 4 below. Played at the beginning of a Frozen-Disney Princess (and others) Children's Nursery Rhymes

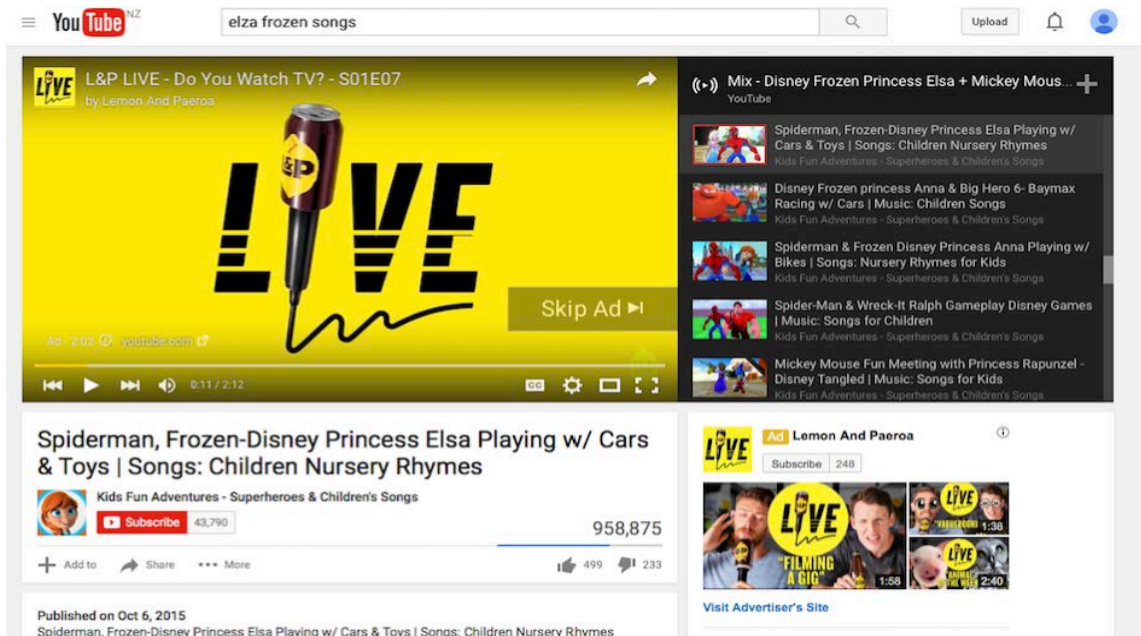
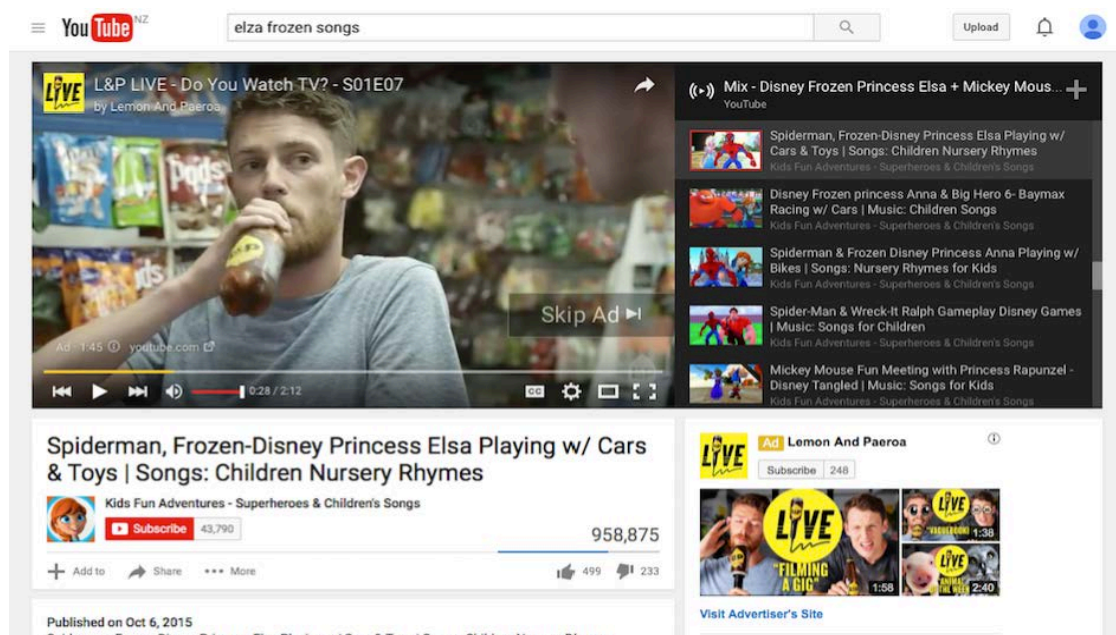




Image 4: Second screen-shot of advertisement above



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

- (i) We oppose the current definition and believe the age of a child should be any person aged under 18, in line with the Convention, the recent Report of the Commission on Ending Childhood Obesity,<sup>(1)</sup> the Governments Childhood Obesity Plan<sup>(17)</sup> and New Zealand's Food and Nutrition Guidelines for Healthy Children and Young People (Aged 2-18 years).<sup>(18)</sup>
- (ii) We recognise that it could be argued children 14 and above have greater critical thinking capacity than those of a younger age. However, evidence suggests children aged 14-17 are still vulnerable and susceptible to outside influences.
- (iii) Adolescence has been described as a paradoxical time of development where there is rapid advancement in mental and physical capabilities, and at the same time there is an increase in risky behaviour and decision making.<sup>(19)</sup> Research has also shown that sections of the brain remain unconnected leaving "teens easily influenced by their environment and more prone to impulsive behaviour".<sup>(20)</sup>
- (iv) The Code currently states that advertisers need to "exercise a particular duty of care directed at young people aged 14-17 years", with no further explanation or guidelines on what this should look like in practice, therefore not taking into account the vulnerability and susceptibility that adolescents still experience.

**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?**

- (i) Yes, Healthy Families Lower Hutt believes there is a role for nutrient profiling, and suggest the use of the Ministry of Health's Food and Beverage Classification System (FBCS) <sup>(21)</sup> which is specific to children. The FBCS classifies food into 'everyday', 'sometimes' and 'occasional'. Based on the evidence linking food marketing to children's food choices, Healthy Families Lower Hutt encourages and supports a complete food ban on marketing and advertising of 'occasional foods' to children.

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

- (i) Healthy Families Lower Hutt strongly encourages and supports a specific guideline on sponsorship, particularly around unhealthy food and beverage sponsorship of sports teams, high profile sports people and events that appeal to children. This guideline should be developed with health and child rights experts.
- (ii) Sponsorship is a key marketing strategy used to increase awareness and promote brand loyalty. <sup>(22)</sup> Sport is a big part of New Zealand Culture, with 50-90% of children engaging with sport in some form. <sup>(23)</sup> Sponsorship of sport and sports stars is visible across different sport and across different levels. <sup>(24)</sup> See Image 2 and 3 for examples.
- (iii) Although it may not be considered advertising as such, we believe this exposure of brands with appealing events (see image 5) and sports people or teams, adds to the power of brands to influence and connect with children, normalises these brands and builds relationships with these companies from a young age, and should therefore be covered by guidelines that protect children's health and wellbeing.

**Image 5: Coca Cola Christmas in the Park, Auckland**





Image 6: McDonald's New Zealand Football Juniors – handbook.



Image 7: KFC Super Rugby TV Advertisement – image taken from Google Images



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

- (i) We support the introduction of independent monitoring and evaluation of the Codes, allowing for less conflict of interest in the process and greater transparency and accountability. Independent monitoring and evaluation should be undertaken by a panel consisting of child right and health experts/advocates.

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

- (i) Lack of enforcement and sanctions for advertisements that are in breach of these Codes is a significant weakness. Advertisers and/or media and advertising agencies currently voluntarily remove their content if a complaint is upheld.
- (ii) There are no punitive consequences for breaching either of these Codes. In some cases, by the time a complaint has been written, submitted, accepted and upheld the advertisement could be finished, allowing for no consequence for the advertiser or media/advertising agency. (Note – in 2007, the average time for a complaint to be decided was 25 days).<sup>(25)</sup>
- (iii) We believe that there should be some form of substantial penalty for the advertiser and media or advertising agency to act as a deterrent, and to place greater emphasis on the importance of protecting children and their health and wellbeing.

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

- (i) Settings such as schools provide a captive audience where children are exposed to messages for ongoing and extended periods of time. We strongly recommend that school settings be free of all advertising of unhealthy food and beverages. This is in line with WHO's 'Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children' recommendation number 5: "Settings where children gather should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt."<sup>(15)</sup>
- (ii) For this reason we recommend banning all advertising and marketing of 'unhealthy' food in places where children typically spend their time, including but not limited to school settings (Early Childhood Centres, Primary, Intermediate and Secondary settings), school sports fields and sports clubs.

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

- (i) Healthy Families Lower Hutt believe that as long as all principles are included, along with clearer definitions and guidelines for the application of principles, and guidelines for when the Code(s) is to be used, we can't say whether a single Code or two would be in the best interests of children.

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