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Codes Review Panel
ASA Secretariat
PO Box 10675
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Dear Hilary

Thank you for the opportunity to provide feedback on the Code for Advertising to Children and the Children's Code for Advertising Food.

Toi Te Ora – Public Health Service (Toi Te Ora) is the public health unit for the Bay of Plenty and Lakes District Health Boards and serves a population of over 300,000 people. The purpose of Toi Te Ora is to improve and protect the health of the population with a focus on reducing inequalities in health. A priority goal for Toi Te Ora is to reduce childhood obesity and to help ensure that every child in the Bay of Plenty and Lakes area grows up in an environment which enables them to be a healthy weight throughout their lives.

Therefore, Toi Te Ora welcomes this review that the ASA is undertaking to support the implementation of initiative nine of the Government's *Childhood Obesity Plan*. Currently, children have an unprecedented level of exposure to the advertising and marketing of brands promoting unhealthy food and beverage products and services.

Toi Te Ora supports the view that childhood should be free of the influence of the commercial interests of the food and beverage industry.

Reducing and, where possible, eliminating exposure to the marketing of brands representing food and beverage products and services in all the spaces where children live, learn and play is a necessary step towards reducing the risk of childhood obesity and improving the health of New Zealand children.

This review by the ASA has the potential to make a substantial, ongoing difference to the health of current and future generations in New Zealand. Therefore in their deliberations I would urge the ASA review panel to give precedence to the rights and health of children, and to be bold and demonstrate leadership in their decision making.



Thank you for considering this submission.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Neil de Wet', is written over a light blue horizontal line.

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Context: Toi Te Ora's goal to reduce childhood obesity

Toi Te Ora – Public Health Service (Toi Te Ora) welcomes the opportunity to comment on the Advertising Standards Authority's (ASA) *Code for Advertising to Children* and the *Children's Code for Advertising Food*.

Toi Te Ora is the public health unit for the Bay of Plenty and Lakes District Health Boards and serves a population of over 300,000 people. The purpose of Toi Te Ora is to improve and protect the health of the population in the Lakes and Bay of Plenty area with a focus on reducing inequalities.

In New Zealand approximately one in 10 children are obese and a further two in 10 are overweight, meaning that about three in 10 children are either overweight or obese. Approximately two thirds of adults are overweight or obese. The prevalence data for overweight and obesity in the Bay of Plenty and Lakes area are similar to the national picture.

With the increasing prevalence of childhood obesity as a global, national and local phenomenon, Toi Te Ora has identified childhood obesity as a public health issue for the Bay of Plenty and Lakes area and has committed to the long term goal of reducing childhood obesity by one-third in ten years.

With respect to this goal, our vision is that every child in the Bay of Plenty and Lakes areas grows up in an environment which enables them to be a healthy weight throughout their lives. Objectives to achieve this vision include improving children's nutrition by reducing the consumption of sugar and sugary drinks, reducing the consumption of processed foods, and increasing consumption of fresh and whole foods.

Creating a healthy environment that enables children to be a healthy weight throughout their lives includes creating an environment that is free from the influence of the commercial interests of the food and beverage industry.

Children are vulnerable to the influence of advertising and marketing as they do not yet necessarily have the critical thinking skills to recognise its persuasive intent (Centre for Science in the Public Interest, 2005). Toi Te Ora is convinced by the current evidence that marketing and advertising of unhealthy food and beverages to children contributes to the obesity epidemic (Hastings et al, 2009; Lobstein et al, 2009; Livingstone, 2006; Gootman et al, 2006).

The concerns voiced in this submission are not unique to Toi Te Ora and provide our professional view of the evidence and of what is necessary to reduce the risk of childhood obesity. The need to strengthen the current codes to protect children from commercial exploitation and the obesogenic influence of marketing of unhealthy food and beverages is widely supported across New Zealand and internationally.

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

The weaknesses of the current codes are:

- The current codes allow children to be exposed to advertising and to various forms of marketing of unhealthy food and beverages, specifically associated with commercial brands. They do not provide any restrictions on exposing children to the marketing of brands of unhealthy food and beverages in the places where they live, learn and play. Exposure to marketing of brands of unhealthy food and beverages increases consumption of products that are known to cause harm to children.
- The current code is too narrow in terms of the types of media forms that children are accessing. An example is that the current *Television Advertising Code* does not acknowledge that children watch TV and utilise media outside programmed children's hours. The codes do not prevent children being exposed to the marketing of unhealthy food and beverages through all the various digital media technologies that children may use.
- The current codes do not protect children from the pervasive marketing of branded food and beverage products and services and so do not protect them from exploitation by the commercial interests of the food and beverage industry.

Recommendation 1.1

Toi Te Ora recommends that the codes ensure that children are not exposed to advertising and marketing of brands promoting food and beverage products and services.

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

The current self-regulatory process has not sufficiently protected children from the harms arising from exposure to advertising and marketing of unhealthy food and beverages.

A study analysing industry self-regulation of advertising in New Zealand, reviewed all complaints submitted to the Advertising Standards Complaints Board (ASCB) between 2007 and 2011 and the subsequent rulings made by this committee (Bowers et al, 2012). This showed that the ASCB demonstrated inconsistent decision making and unreliable, partial enactment of the ASA codes. The authors raised concerns regarding the lack of monitoring of advertising, lack of penalties for industry and lack of adherence to the guidelines. They concluded that the current system of self-regulation failed to adequately protect children from advertising of unhealthy foods and failed to adequately protect children's right to health as stipulated by the *United Nations Convention on the Rights of a Child* (UNCROC).

A stronger regulatory process rather than the current retrospective complaints procedure should be enacted, in order to protect children from harm or exploitation by commercial interests.

Recommendation 2.1

Toi Te Ora recommends that a stronger regulatory approach is developed that is enforceable and ensures that the exposure of children to advertising and marketing of brands promoting food and beverage products and services is minimised to the extent that is practically possible and that children are not the target of any marketing by the food and beverage industry.

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

There are many studies that show that exposure of children to the advertising and marketing of unhealthy food and beverages causes harm to the child through increased consumption of these products leading to poor health and wellbeing.

Young children do not have the developmental maturity to assess product marketing messages or to discern the persuasive intent of marketing. In addition, children (particularly older children) have buying power and younger children can have *pester* power that can influence parents and guardians to make poor choices.

The advertising and marketing of unhealthy food and beverages is at odds with children's rights. ASA makes special mention of Article 13 of the UNCROC which recognises the child's right to freedom of expression: *This right shall include the freedom to seek, receive and impart information and ideas of all kinds*. This implies that children therefore have the right to receive all kinds of information, including commercial communications on unhealthy food and beverages. However, the full quote from UNCROC specifically states the importance of restrictions for the protection of public health (as highlighted in bold below):

1. *The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*
2. *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 or of **public health** or morals.*

Furthermore, failing to protect children from exposure to commercial messages in childhood settings, does not uphold Article 17(e) of the UNCROC to protect a child *"from information and material injurious to his or her wellbeing."*

The current voluntary, industry-led, self-regulated system has resulted in failure to protect children from marketing of unhealthy food and beverages and so from the subsequent harm to health. Arguably, this in turn has contributed to the increase in childhood overweight and obesity that has occurred over the last 30 years.

Recommendation 3.1

Toi Te Ora recommends that the codes provide a comprehensive ban on the marketing to children of all brands associated with food and beverage products and services, and especially of those associated with sugary drinks. This restriction should apply to all settings and media channels where children are the primary audience or substantial audience and ensure, to the extent that is practically possible, that children are protected from the influence of the commercial interests of the food and beverage industry and retailers.

Recommendation 3.2

Toi Te Ora recommends that future initiatives to protect children through code regulation need to be led and developed by the government, rather than by industry alone.

Recommendation 3.3

Toi Te Ora recommends that the ASA adopts the World Health Organisation (WHO) definition of marketing when considering advertising to children, where marketing is defined 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 (WHO, 2012).

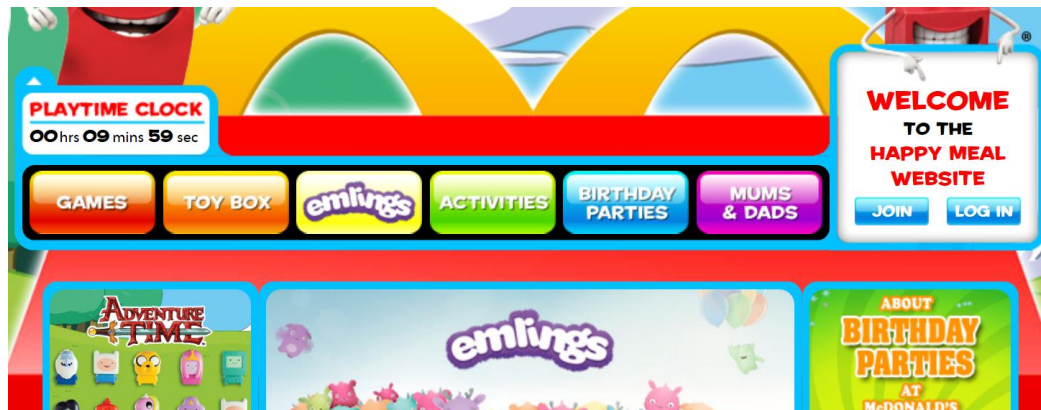
4. Please comment on any concerns you have with different media formats in relation to advertising to children (for example: magazines, television, social media, and websites).

In New Zealand, studies have shown that up to 70% of food and beverage advertisements on major television channels during morning and afternoon periods, when children are likely to be watching, are for food and beverages high in sugar, salt and fat (Wilson et al, 2006). It is estimated that children aged five to twelve years are exposed to up to 63 television advertisements per week for foods high in fat and sugar (Kelly et al, 2007). These statistics do not take into account the array of other forms of advertising and marketing to children. The food and beverage industry increasingly uses co-ordinated forms of communication across multiple media platforms such as online adverts, social media campaigns, YouTube videos, sports sponsorship, magazine or in-school adverts, shop displays, and packaging. The pervasive nature of this advertising means the impact of advertising on children has been substantially under-estimated (Kelly et al, 2015).

Rapidly evolving digital technologies provide an unprecedented variety of effective channels for the communication of commercial messages to children (Kelly et al, 2015). For this reason the code should be comprehensive in restricting advertising across all media platforms (Kelly et al, 2015).

Advertising which utilises 'new media' outlets to target children, such as digital or mobile technologies, are particularly effective in influencing children as this has the potential for peer endorsement across social networking communities, and can be integrated into multiple media, such as *advergaming* (advertising integrated into online gaming), making the persuasive intent of the content more difficult to discern.

These immersive modes of marketing also allow extended periods of exposure and can reinforce commercial messages across a variety of platforms (Kelly et al, 2015). The example below is a clip from the *McDonald's New Zealand* website illustrating the *playtime clock* and a variety of online games targeted to young children.



Research into the effect of new media marketing on children is an emerging area. However, a number of studies have investigated the impact of advergaming on children's food preferences and consumption. A study in Mexico demonstrated that 66% of children exposed to advergaming promoting *Oreo* biscuits later chose this product from a selection of foods (Chapa and Hernandez, 2010). An Australian survey showed that children who played an advergaming involving Kellogg's *Fruit Loops* were far more likely than children in the control group to report preferring this product to other foods and cereals (Mallinckrodt and Mizerski, 2007).

Recommendation 4.1

Toi Te Ora recommends that all advertising and marketing of branded food and beverage products and services that may influence children are banned from all media formats and platforms targeted to children or where children may be the primary or substantial part of the audience. This includes, but is not limited to websites, product packaging, point of purchase displays, printed media, mobile phone technologies, advergaming and social media.

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

For the purposes of the codes and in the context of our recommendations, Toi Te Ora opposes the current definition of a child.

It is noted that the *United Nations Convention on the Rights of a Child* defines a child as a person under the age of 18. However, on balancing the need to protect children from undue commercial influence and exploitation but also recognising the development of critical analysis skills of older children, Toi Te Ora is of the view that, for the purposes of the code and the recommendations made in this submission, the age of the child should be defined as a person under the age of 16. This would ensure that commercial messages are restricted in schools and environments near schools as well as other viewing platforms as described above.

Recommendation 7.1

Toi Te Ora recommends that for the purposes and recommendations described in this submission, the definition of a child should be amended to be a person under the age of 16 years.

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?

Toi Te Ora does not support a nutrient profiling system for use in the codes.

The voluntary health star rating system is unreliable as exemplified by the advertisement of Nestlé's *Milo* as having 4.5 stars. The advertisements do not include the critical information that the health star rating includes 200 mL of low-fat milk; Milo without milk has 11 teaspoons of sugar per 100g and a 1.5 star rating. The Heart Foundation "tick" is also under review. It is noted that some breakfast cereals with nearly 30% sugar have the Heart Foundation "tick" (Kellogg's *Just Right*) or may have a health star rating indicating that they are healthy. Furthermore, nutrient profiling systems do not take into account other factors such as the acidity of sugary drinks – a contributor to erosion of tooth enamel and dental decay.

To date, the nutrient profiling systems do not provide reliable information on healthiness of a product and are therefore inappropriate to use to inform codes of advertising. Using nutrient profiling systems to define healthy and unhealthy food and beverage products are fraught with difficulty and subject to manipulation by commercial influence and interests.

The consumption of sugary drinks is a particular public health concern for children. Consuming sugary drinks increases the risk of obesity, diabetes and tooth decay. Children who consume one sugary drink or more per day are 50% - 60% more likely to be overweight or obese than children who do not (Ludwig et al, 2001; Te Morenga et al, 2013). Having one or two sugary drinks per day may increase the risk of developing type 2 diabetes by 26% (Malik et al, 2010). In summary, the marketing and promotion of sugary drinks is likely to increase their consumption and so cause harm to children.

Recommendation 8.1

Toi Te Ora recommends that the codes ensure that, to the extent that is practically possible, children are protected from the commercial interests of the food and beverage industry and that children are not exposed to the marketing of any brands of food and beverage products or of branded services that primarily provide food and/or beverages. This protects the rights of children and obviates the need to define unhealthy food or beverage products.

Recommendation 8.2

Toi Te Ora recommends that the codes ensure that there is no marketing, sponsorship or other promotion of sugary drinks to children. Specifically, Toi Te Ora recommends that any marketing material for sugary drink products includes a health warning that advises that consumption of sugary drinks increases the risk of obesity, type 2 diabetes and tooth decay.

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

Toi Te Ora supports a specific guideline on sponsorship.



Schools used to be and should be a place where children are protected from commercial messages and commercial influence. Global corporations now sponsor educational materials, provide technology, offer 'deals' to schools, support fundraising, and sponsor various sports and community events attended by children. Examples of inappropriate marketing to children include McDonald's *Player of the Day* awards, Pizza Hut's reading incentives programme *Book It*, and Coca Cola's sponsorship of *First Foundation* and *Students in Free Enterprise* programmes.

A New Zealand study on marketing through sports showed that one-third of food and beverage companies could be classified as unhealthy (Carter et al, 2013). Rugby had the unhealthiest sponsorship with 23% of brands and logos linked to unhealthy food. Tactics including *Player of the Day* certificates for soccer players as young as four years old and national sports teams promoting sugary drinks not recommended for children illustrate the need for guidelines on sponsorships.

Recommendation 9.1

Toi Te Ora recommends that guidelines are developed that prevent children being exposed to marketing through sponsorships, related to any brands of food and beverage products or of branded services that primarily provide food and/or beverages. Specifically, promotion of brands of food and beverage products and services should not be permitted in the school environment or at school events or at sports events where children are the primary or substantial audience.

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

The current ASA codes of practice do not restrict the location, distribution, or viewing times of advertisements.

ThinkTVs suggested restrictions on advertising during children's viewing times (ThinkTV, 2008) are insufficient as the definition of children's viewing times is inconsistent and broadcaster dependent and these restrictions only apply to major free-to-air television and not other forms of media (Bowers et al, 2012). Many broadcasters define children's viewing time as up until 5pm; however substantial numbers of children are still watching TV beyond this time (BSA, 2015).

The ASA codes do not place any constraint on the use of captivating imagery and emotive campaigns targeted at children, which build brand loyalty and prompt purchase requests. Common strategies used in advertising to promote unhealthy food to children include premium offers, promotional characters, nutrition and health related claims, the theme of taste and the emotional appeal of fun (Jenkin et al, 2014).

In order to uphold the UNCROC, the high degree of social responsibility stated in the ASA codes and to protect public health, it is therefore necessary to restrict the use of persuasive commercial marketing of unhealthy food and beverages to children.

Recommendations 12.1

To protect children from the commercial influence of the food and beverage industry Toi Te Ora recommends that advertising and marketing of brands of food and beverage products or of branded services that primarily provide food and/or beverages are not allowed:

- *On TV and Radio between 6am to 8.30pm (this end time aligns with the BSA definition).*
- *On TV shows, films, videos, radio, magazines and digital media that are likely to have children as their primary audience or a substantial part of their audience.*
- *In settings, including events and public spaces, where children are a primary audience or a substantial part of the audience.*

Recommendation 12.2

Toi Te Ora recommends that, subject to the above recommendations and where an advertisement is allowed, the code should restrict the use of persuasive techniques that may influence children and their parents or caregivers, that is:

- *Children should not be urged in advertisements to ask their parents, guardians or caregivers to buy particular products for them and beverages.*
- *Commercial messages and images for unhealthy foods which may influence children or their caregivers to purchase the product(s), should only refer to the qualities of the product(s), such as origin, composition, means of production, and patterns of consumption.*
- *Advertisements for food and beverages should not include awards, prizes, contests, toys, children's characters or any other marketing strategies or forms designed to entice children.*
- *The packaging of food and beverages should not entice or attract children. This includes, but is not limited to, devices such as use of color, animals, toys, characters, special effects or additional appealing uses.*

Appendix 1: Advertising of e-cigarettes

In reference to the ASA's consideration of the general code, we would like to highlight the need for the development of guidelines on the advertising of e-cigarettes.

The Ministry of Health has a goal for Smokefree Aotearoa 2025 where greater than 95% of the population are non-smokers (Ministry of Health). The promotion and use of e-cigarettes undermines smokefree legislation, and undermines attempts to denormalise smoking such as when used in non-smoking areas.

Unfortunately there is limited research available on the extent of e-cigarette advertising. However, an international study (WHO, 2014), which included analysis of New Zealand, identified that e-cigarettes are being marketed through television, sports and cultural sponsorship, celebrity endorsement, social networking, online advertising, and point-of-sale displays. The WHO (2014) also found that the marketing strategies emulate tobacco advertising by creating association with celebrities, fashion, youthfulness, and glamourising the product.

Recommendations

Toi Te Ora recommends that the ASA includes guidelines on advertising of e-cigarettes in order to:

- *Re-enforce related legislation, including the Medicines Act 1981 and the Smokefree Environments Act 1990.*
- *Align with the World Health Organisation's recommendations, which advise restriction of all advertising, promotion, and sponsorship of e-cigarettes (WHO, 2014).*

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