

Codes Review Panel
ASA Secretariat
PO Box 10675
Wellington

13th April 2016

Submission on the:
REVIEW OF THE CODE FOR ADVERTISING TO CHILDREN AND
THE CHILDREN'S CODE FOR ADVERTISING FOOD
From the Healthy Eating, Active Living Tai Tokerau (H.E.A.L)
Network

Thank you for coordinating a review of these Children's Advertising Codes and allowing an open submission process.

The H.E.A.L Network is a network of people from nutrition and physical activity health and wellbeing workforce across Northland. The networks' vision is that the people of Tai Tokerau live, learn and grow in environments that support healthy eating and physical activity. The purpose of the network is to collaborate on actions that foster and support a sustainable healthy eating and active living environment for the people of Tai Tokerau. As a network we believe that good health is a fundamental right, and the collective responsibility of all society and that making healthy choices needs to be easy. The environment and setting in which choices are made are a key factor in determining people's health and choices. We all work in health and nutrition and know that there is no stand alone "cure" for obesity, but a combination of changes to the environment we live in, services and the food system will all contribute to improving the situation. We feel strongly that food advertising has a great influence on the food choices our families and children make as well as their perception of certain foods and or brands.

Below are the key points this network wishes to elaborate on and or support.

Key Points:

- Food advertising and marketing is a contributing factor to the current obesity epidemic.
- A child should be defined as anyone under the age of 18 years of age, as is used by the United Nations Convention on the Rights of the Child as well as being consistent with the New Zealand Childhood Obesity Plan.
- The ASA's interpretation of the regulations set out in the code favour the interests of advertisers, and should instead prioritise the interests of children. Advertising affects food choices and obesity rates, which means food advertising is a public health issue and children need to be offered protection from advertising.

- The complaints process is difficult to understand, and is weighted on the side of the advertiser.
 - Once a complaint is received, advertisements continue to run while a decision is being made. Once a decision is made that is no penalty or deterrent to the advertiser or the broadcaster other than to cease showing the advertisement. This does not encourage people to make complaints and it does not protect children from harmful advertising.
 - Penalties for the advertiser and broadcaster that are relevant to the breach need to be in place.
 - In order for the code to be effective it must be enforced.
- We support and recommend that only healthy foods should be advertised to children. The contentious issue is how to define a 'healthy' food.
 - For children we strongly recommend being cautious and not using the Health Star Rating as there are inconsistencies and anomalies in the star rating between categories and products. We recommend the *Heart Foundation Fuelled 4 Life* buyers guide is used to categorise healthy foods and only "Everyday" foods are allowed to be advertised.
- ASA code should reflect the 7 principles of Sydney Principles.

We acknowledge the great wealth of research that shows "food advertising, marketing and promotion has an effect on children's (and adults) preferences, purchase behaviour and consumption and that this effect is independent of other factors, and operates at both a brand and category level". New Zealand has high rates of adult and childhood overweight and obesity and therefore the link between regulation of advertising and improving Public Health is necessary. We support WHO's statement in the recent *Report of the Commission Ending Childhood Obesity*; "*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.*"

Although marketing affects children and adults, the important ethical point for advertising to children is that children do not understand the persuasive nature of marketing until early adolescence. If we know that children do not understand the intent of marketers and are influenced by their messages, we should do our best to protect them from the influences of advertisers.

The following are our responses to your questions.

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

Strengths:

The current codes are comprehensive and cover the responsibility of advertisers to ensure advertising is ethical and responsible.

Weaknesses:

Although the content of the Children's Codes cover most situations, they are open to some interpretation and are not adequately implemented or monitored.

The Codes do not address aggressively enough the prevalence of values and emotion-based advertising techniques aimed at children through imagery, slogans and additional incentives to consuming and purchasing unhealthy foods.

The Children's Advertising Codes do not address responsible marketing of products e.g. product placement responsibilities in stores which can contravene *Principle 1(b): children should not be urged in advertisements to ask their parents, guardians or caregivers to buy particular products for them.*

The Children's Code 3(b) *Persons or characters well known to children should not be used to endorse food high in fat, salt and/or sugar* needs to be tightened more to monitor the use of aligning to children's movie, popular books and games as an enticement to purchase unhealthy foods.

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

Strengths:

- There is a complaints process
- There are a number of representatives from outside the advertising and business sector
- It is a cost effective system

Weaknesses:

- Members of the complaints board do not declare conflicts of interest
- There is no compulsion or legal enforceability of the code
- The process is time consuming and difficult for people to make complaints
- The code is interpreted in a very limited manner, often on the side of providing advertising freedom.
- Advertisements still air while a decision is being made.
- There is no penalty for the broadcaster or the advertiser if an advertisement is found to be in breach of the code, aside from withdrawing the advertisement, which may have come to the end of its run anyway.
- No corrective advertising in place for obvious deception in regards to the health value of a food or obvious falsehoods or breaches of the code.

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

- **A time restriction:** As per Principle 3 of ASA Code of Advertising -Alcohol, the time limitations 6am - 8.30pm stipulated in this principle should also be applied to both of the Children's codes.
- **Tighter evaluation and monitoring** of advertisements played in *all* advertising mediums (social media, YouTube, internet etc.)

- **No junk/ unhealthy foods allowed for marketing.** All foods marketed must be healthy as defined by a panel of nutrition/health experts with no biases to industry, manufactures etc. The use of well developed nutrient profiling tools may be used in the process.

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).

Online media is a type of advertising media that children are increasingly been exposed to. Although the code covers online media, monitoring and regulation of these sites may be difficult. Our codes need to be robust enough to deal with new media types and styles.

Just a general comment in regards to the imagery used in unhealthy food advertising that appeals to a young audience across all media outputs.

- Unhealthy foods are often associated with visual imagery that evokes excitement, a sense of fun and adventure, belonging, playfulness, curiosity, discovery and other values that appeal to a child's senses. The use of bright colours, busy patterns, flowing fonts, rounded shapes, punctuation for emphasis (e.g. exclamation marks), brand characters (e.g. clowns, furry animals), photographic imagery of happy children and/or families enjoying the products and high resolution graphics all combine together to an intoxicating mix to lure children into engaging with the products.
- In audio advertising, voiceovers can be engineered to deliberately capture a youthful audience. A higher pitch/tone of voice, a faster delivery and the use of a younger voice are examples of advertising that is again potent and attractive to children.

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.

Example of sponsorship and advertising on a New Zealand parenting website:



<http://www.kidspot.co.nz/SchoolHolidayPlanner/index.asp?show=1>

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.

We are concerned with the placement of Junk Food Ads at times when large numbers of children are watching. Examples include during The Simpsons (7pm weekdays), Modern Family, Home and Away (5.30pm weeknights), Neighbours (6pm weeknights) and Shortland Street (7pm weeknights). During this time period there are a high number of advertisements for treat foods and fast food restaurants including Snickers Bars, McDonalds, KFC, Burger King, Domino's and Pizza Hut. These advertisements the ASA feels are not currently are not in breach of the code as they are not directly targeting children. However they are in a timeslot where many children will see the advertisements and as per clause 2(b) *Advertisements should be understood by children to whom they are directed, not be ambiguous, and not mislead as to the true size, value, nature of the advertised product*

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

We support this definition as, according to the Children's Commissioner, the law allows parents to leave a young person without supervision from the age of 14 and a young person of 14 can be charged with committing a criminal offence.

We support that 'Children' should be as anyone under (minimum) the age of 18. The UNICEF Convention on the rights of the Child defines children as anyone under 18 years of age. Even the ASA acknowledges that people under 18 years of age should not be marketed to as aggressively as adults in their Code for advertising food as described in the statement:

"Advertisers are also required to exercise a particular duty of care for food advertisements directed at young people aged 14-17 years"

How is this interpreted? What is a 'particular duty of care'. If a 'particular duty of care' is required, this age group should come under the Children's Code.

Sir Peter Gluckman, the Science Advisor to the New Zealand Government has stated that:

"Modern science has discovered that the last parts of the brain do not mature until 25-30 years of age. Tests of wisdom, judgement, and responsibility suggest that there is a significant change in these skills soon after the age of 20".

Is it ethical to advertise and use sophisticated techniques to persuade young people to buy products when they are still developing impulse control, wisdom and judgement? The nature of most marketing directed at teenagers is inappropriate, and often based around sexuality and societal compliance as described by Sir Peter Gluckman in his Address to the University of Auckland. Clearer regulations on marketing to teenagers is required. It would make sense to include them in the definition of a child.

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

We recommend only healthy foods should be marketed to children. There should be a system of identifying and categorising healthy foods. This system should not compromise on its values. Foods high in salt, sugar or fat should not be allowed to advertise during shows where children are likely to be watching. This includes family shows and shows with PG ratings.

We support the The Heart Foundation's Fuelled 4 Life Buyers Guide as a system of profiling food and within this only Everyday Foods should be allowed to advertise to children. Sometimes foods, are generally foods which do not need added promotion to be appealing to children and are not foods we wish to promote to children as 'healthy' or to be consumed everyday. The buyers guide was developed for use by schools and early childhood centres and classifies items with children's needs in mind which makes it superior to the Health Star Rating system.

We do not support the use of the Health Star Rating in determining which foods are healthy, and appropriate to advertise to children. The Health Star Rating can be inconsistent, and many products receive higher ratings than public perceive they should be. We debated determining healthy foods as those with a Health Star Rating of 5. However as shown below there are some surprising inconsistencies, which decrease public confidence and make the Health Star Rating difficult to use as a way of classifying healthy choices. Health Star Ratings are also only assigned to packaged and processed foods. The healthiest foods such as fresh fruits and vegetables are not given health star ratings as well as lean meat, fresh fish. Many products still do not have health star ratings. On a recent visit to the Supermarket no sugar sweetened beverages (except milk drinks) had health star ratings and even within breakfast cereals it was difficult to compare based on health star ratings alone as few products had ratings.

Example 1- Breakfast Foods:

Milo drink is found in the cereal aisle next to the Up and Go receives a rating of 4.5 stars for a chocolate milk drink, which is higher than expected. Per 100g it is quite low in added sugar as half of the sugar comes from lactose, it is very low in fibre compared to other cereals and has only 70mg Sodium. Chocolate flavoured milk is not a 'core' food nor would it be considered a 'healthy food' by most consumers and we would not like it to be advertised to children or promoted as 'healthy'.

Nutrigrain has a rating of 4.0 Stars. It also has 26.7% sugar, with sugar being the second ingredient by weight in the ingredients list. It is also high in sodium for a cereal with 330mg per 100g. It would not be considered a healthy choice by most health professionals and should not be advertised or promoted to children. In this case the rating of 4.0 stars given seems overly generous. Of note other high sugar cereals such as Nestle Milo cereal also receive a 4 Health Star rating.

Pam's Wheat Biscuits have a Health Star rating of 4.5, however Sanitarium Weet-Bix have a health star rating of 5. The products are only marginally different. For the consumer, are the Weet Bix a superior choice? In this case if using a cutoff of a Health Star Rating of 5 Sanitarium Weet Bix would be able to be advertised, however Pam's Wheat-Biscuits could not be able to be advertised.



Ingredients

Wholegrain wheat (97%), sugar, salt, barley malt extract, vitamins (niacin, thiamin, riboflavin, folate), mineral (iron).

Contains cereals containing gluten.



NUTRITION INFORMATION (Average)

SERVING SIZE: 30g		SERVINGS PER PACK: 24	
	PER SERVE	PER 100g	
Energy (kJ)	444	1480	
- (Cal)	106	353	
Protein (g)	3.6	12.0	
Fat, Total (g)	0.4	1.4	
- Saturated Fat (g)	0.1	0.3	
- Trans Fat (g)	0.0	0.0	
- Polyunsaturated Fat (g)	0.3	0.9	
- Monounsaturated Fat (g)	0.1	0.2	
Carbohydrate, Total (g)	29.1	67.0	
- Sugars (g)	0.8	2.6	
Dietary Fibre (g)	3.0	10.1	
Sodium (mg)	61	270	
Potassium (mg)	105	350	
Thiamin (Vitamin B1) (mg)	0.55 (50% RDI)*	1.83	
Riboflavin (Vitamin B2) (mg)	0.42 (25% RDI)*	1.4	
Niacin (Vitamin B3) (mg)	2.5 (25% RDI)*	8.3	
Folate (µg)	66 (33% RDI)* **	220	
Iron (mg)	3.0 (25% RDI)*	10.0	



Example 2- Vegetables:

Most New Zealanders do not eat enough vegetables (reference) and many parents struggle to get their children to eat vegetables. Vegetables and fruit are two items most parents would be happy to see advertised if they are unprocessed without added sugar, fat or salt. It was of great surprise to see tinned tomatoes with a Health Star rating of 4.5, our group would have expected tinned tomatoes, with no added salt or sugar to receive a rating of 5 Stars. Although we acknowledge that Health Stars are determined via within category comparisons, we would expect vegetables to have quite high ratings as they are such a beneficial food that we are actively encouraging people to eat. The tinned tomatoes are extremely low in energy (71kJ per 100g), low in sodium (10mg) and low in carbohydrate and sugar. What could be done to these tomatoes for them to have a rating of 5? Is it fair for tomatoes and flavoured milo milk to have an equal star rating? We would be happy for tinned tomatoes to be advertised, but they would not meet our criteria of having a health star rating of 5 to qualify.

Of note frozen mixed vegetables get a health star rating of 5, we would be happy for this to be advertised.

Tinned asparagus in Brine had a surprisingly low health star rating of 3.5. The rating we expect is due to the salt content which is 315mg per 100g. However the food is asparagus, a vegetable which is very low in calories and the only way to improve on the product would be to reduce the salt content. Nutrigrain had a much higher sugar content and a marginally higher salt content and still achieved a health star rating of 4. It seems vegetables are being discriminated against in favour of processed foods.



Example 3 Frozen Fruit

Another anomaly in the Health Star Classification System are ratings given to frozen fruit. As shown in the photographs Pam's Mixed Berries (blackberries, raspberries and blueberries, 100% fruit no other ingredients) have a health star rating of 5, while Pam's Berry Smoothie (blackberries and strawberries) and Pam's Blueberries (100% blueberries) have a health star rating of 4.5. Are blueberries not as healthy as blackberries and raspberries? How could frozen blueberries achieve 5 stars? We would be happy for frozen blueberries to be marketed to children, however they do not have a health star rating of 5 (best choice, healthy food). This is another example of inconsistencies in the Health Star Rating.



The packet to the left is for Pam's Mixed Berries, The packet to the right is from Pam's Blueberries



Example 5- Protein Foods:

It seems protein foods, even when unprocessed and in their natural state have difficulty achieving a Health Star Rating of 5. Despite children needing protein and these foods often being foods children need encouragement to eat, if using a Health Star Rating as the definition of “Healthy Choices” able to be advertised to children eggs, peanut butter (with no added sugar or salt) and tuna in Springwater would not be able to be advertised. Again how would you improve these products to give them a Health Star Rating of 5? Are these not healthy foods? It is hard to determine how these ratings were given. If it is not easy for Health Professionals to understand, how will the general public react to these inconsistencies?

	Avg Qty. per Serving	% DV** (per Serving)	Avg Qty. per 100g
Energy	2596kJ	3%	4236kJ
Fat	15.4g	31%	22.0g
Total	0.6g	1%	1.2g
Saturated	0.3g	1%	0.4g
Cholesterol	0.7g	0.2%	1.0g
Sodium	0.0g	0%	0.0g
Iron	198mg	9%	280mg

NUTRITIONAL INFORMATION				
Per 100g Serving				
	Avg Qty per 100g Serving	% DI* (per Serving)	Avg Qty per 100g Serving	% DI* (per Serving)
Energy	800kJ	7%	650kJ	410mg
Protein	11.0g	36%	19.0g	17%
Fat total	4.3g	8%	4.7g	8%
of which saturated	0.7g	3%	0.8g	1%
Carbohydrate	0.2g	0.1%	0.2g	0.1%
Sugars	0.1g	0.1%	0.1g	0.1%
Sodium	378mg	16%		



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

We support a specific guideline on sponsorship. Especially in relation to the marketing of unhealthy food options, alcohol, gambling and sugar sweetened beverages.

The precedent was set by the Smokefree Environment Act 1990 which successfully banned tobacco advertising and sponsorships and established the Health Sponsorship Council (HSC). This provided the ASA with proven and successful methods of sponsorship; over time we have a society have adapted to smokefree environments as the norm. The same can be achieved within the food and beverage industry.

Currently sponsorship arrangements are in place with a number of high profile sports teams and players including Super Rugby, the New Zealand Cricket Team, NZ Triathlon and also a number of high profile events such as Christmas in the Park, which are an attraction to children. These sponsorship arrangements are inappropriate and there should be scope in the code to control for these.

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

We strongly support that introduction of independent monitoring and evaluation of the codes. We must ensure the Children's Codes have the reach and depth to maintain a strong position in a fast-changing world. A monitoring and evaluation of the code will provide a means to stay relevant and purposeful. Regular advertising 'audits' could be done in varying environments and a selection of advertisements examined in regards to their compliance to the Advertising Codes of Practice. We strongly recommend this process as with all processes within the Codes remain transparent.

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

Sanctions are required to deter advertisers and broadcasters from airing inappropriate advertising. Sanctions send a clear message that breaches will not be tolerated and relevant punishments will be put in place. Sanctions should vary accordingly to the degree of breach and level of operation. Sanctions should apply not only to a breach in the advertisement aired but also if advertisement is aired in areas highly populated and frequented by children (e.g. schools, ECEs, recreational centres etc.)

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

Any environment that has the potential to exploit the vulnerability of children should be free of advertising and marketing to children. We consider it inappropriate to have advertising in and around schools, early childhood centres, sports grounds and clubs, parks and reserves.

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

We support the combination of the two current codes as long as their content and quality remains strong and monitoring of the codes is effective. The benefit of combining the codes is it would be easier for parents and people making complaints to navigate the codes.

In addition, the following feedback may be outside the scope of this consultation process but has been flagged as a potential concern for our children's health and rights and has relevance to children advertisement.

- Sugar Sweetened Beverages (SSBs). These are 'treat' beverages that provide no nutritional value and yet are pervasive in retail outlets, events, community and family gatherings and have entire supermarket aisles dedicated to them. The sheer availability and accessibility of SSBs, coupled with low comparative prices to other drinks, weakens consumer choice and buying power. Although mass public re-education of the poor health outcomes of SSB consumption needs to be aggressive and ongoing through strategies noted in the Child Obesity Plan (particularly Health Star Rating promotion, partnership with industry, information and resources for general public, public awareness campaign, health promoting schools and Healthy Families NZ); the Children's Codes can contribute here:
 - All SSBs should forgo voluntary status and be compulsorily engaged with the Health Star Rating nutrition labelling system (if HSR labelling system remains the preferred choice for nutrient profiling tool).
 - All SSBs should include images of tooth decay, obesity and other relevant chronic diseases on packaging
 - Retail outlets should have restrictions placed on placement and size of SSB products in store
- Another interesting area is the use of toys in fast food outlets which are directly marketed to children e.g. the McDonald's Happy Meal, the Burger King Jr Meal. The presence of McDonalds Happy Meals or fast food meals with toys seems unethical in its targeting of children. The Code of Advertising to Children Guideline 2(j) states:

Care should be taken with advertisements promoting a competition, premium or loyalty/continuity programme to ensure that advertisements do not encourage excessive repeat purchase. The behaviour mentioned encourages pressure to repeat purchases of the products in the interests of collecting the series of toys. They create opportunities by the alignment of products with recent film releases and other events in popular culture that appeal to the value of children to be socially accepted and included.

- The sponsorship by McDonald's for "Player of the Day" certificates does not sit well alongside promoting and rewarding activity with high fat/high kilojoule dense food. The Children's Codes need to be more direct here:
 - These types of products must be monitored aggressively so as they advertise strictly the food and not the products associated with them.
 - Many of the combo packages have healthier options, such as fruit slices or water. Advertising codes should require that the healthier options in the combo be advertised as a priority over the less healthy options, such as SSBs and fries.
- Marketing and placement of products goes hand-in-hand with advertising and warrant their own set of codes. Concerns around the placement of unhealthy foods at children's eye level at checkouts, entire aisles in supermarkets dedicated to SSBs, placement of 'specials' (many salt/sugar/fat laden foods) in the supermarket before you get to the fruit and vegetable section and end-of-aisle specials featuring unhealthy foods must be seen as compromising the safety and wellbeing of children from products that do harm to their health.

Thank You for taking our submission into account.

Signed by Edith Bennett, administrator of the HEAL Network Te Tai Tokerau

For further information on this network please see: <http://www.manaiapho.co.nz/node/2140>