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ADVERTISING - A REAL RISK TO CHILDREN?

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Abstract

Advertising, in particular advertising to children, is a highly controversial issue. The aim of this research paper was to consider the arguments for both the advertising industry and the anti-advertising child advocates and assess the most appropriate manner in which to address the problem. Why advertising is claimed to be necessary is examined, as well as how these arguments apply to advertising to children. This is in order to determine whether the need for protection is greater than commercial necessity in light of child advocates' concerns.

The paper considers a narrow aspect of advertising as the main source of commercials to which New Zealand children are exposed is television. Because the international dimension takes regulation out of the purely domestic sphere, regulation of promotion on the internet is not considered. As New Zealand's laws already prohibit tobacco advertising and impose severe restrictions on alcohol promotion, neither of these types of commercial are considered.

Children are at a greater risk of manipulation than their adult counterparts and their protection from exploitation is essential. The Codes of Advertising, maintained by the New Zealand Advertising Standards Authority do put safeguards in place. However, critics of the self-regulatory system remain unconvinced as to the appropriateness and effectiveness of this type of regulation, preferring to see stronger enforceable mechanisms put in place.

This paper considers the concerns about abuse of the credulity of children, in particular the purported link between advertising snack and treat foods to child audiences and the increasing problem of childhood obesity.

Taking these concerns into account, the existing protective and regulatory mechanisms are examined and alternatives to self-regulation are considered in an attempt to decide which is the most desirable means to address the issue in New Zealand.

Advertising is blamed for a wide range of social problems, childhood obesity included. However, the causes for such problems are complex, and while the advertising industry cannot claim total innocence, it is unwise to blame it entirely, particularly as changes to advertising practice cannot solve the problem. It is important too that it be used as a tool in attempting to provide a solution by enabling pro-nutrition campaigns. The commercial need for advertising must be balanced against the need to protect children from harm.

Having assessed the concerns, the conclusion drawn is that the existing codes, the proposed revisions to these codes and the operation of self-regulation in are a highly effective satisfactory mechanism for control in this area. However, there is room for improvement and the paper points to areas in need of reform, making suggestions as to possible areas of research.

Word Length

The text of this paper (excluding contents page, footnotes and annexures) comprises approximately 16,194 words.

Advertising - a real risk to Children?

Whether advertising to children is ethical is a much debated subject. The industry's opponents seek tougher, legally enforceable means of regulation, primarily concerned that the average child is incapable of distinguishing fact from promotional hype. A particular concern is the potential link between commercials for food aimed at children and poor nutrition. However, the advertising industry considers itself to be a legitimate means to make product information available to the consumer. They see no need to replace the existing self-regulatory system.

The aim of this paper is to identify current domestic and international concern, in particular as relates to food advertising and the purported link with childhood obesity.

Part I examines whether advertiser's claims that it is a necessity can be borne out, in particular when children are the target audience. It will describe the existing regulatory system and how self-regulation operates under the current Codes of Practice. In light of the concerns relating to children, the proposed amended children's code and new food code will be discussed.

Part II will outline the issues involved with advertising to children, including the human rights argument that not only should advertisers be able to promote products to children, but it is their duty to do so in order for child consumers to be fully informed. The influence of children on household consumption, as well as who should assume responsibility for diet and nutritional education will also be examined.

Part III addresses a central issue of this research - whether advertising itself can truly be considered a health threat to children and the relationship between junk and snack food promotion with childhood obesity, taking into account findings from overseas studies.

Part IV identifies need in a New Zealand context and suggests areas for reform, identifying crucial areas where more research is required.

While children are exposed to a wide range of media, the overwhelming amount of television young people are exposed to means television is the most significant source of advertising to children. Accordingly, this paper will primarily consider TV advertisements. These also tend to be more easily remembered by audiences of all ages as the combination of music and images accompanying the product hype are often quite "catchy". A further point is that child-specific print media is not usually commercially oriented. In any household with a television, children will see and hear ads at all times it is turned on. Print advertising needs to go further to catch the child's attention and also requires a sufficient level of literacy which eliminates the concern in relation to the pre-school group.

Related issues not covered here are substance advertising and labelling. Both alcohol and tobacco advertising are already subject to strict governmental as well as self-regulatory control. While labelling, also an information distribution issue, is related, it is not in the realm of advertising per se and should be considered separately. Internet advertising is a highly complex issue and will not be addressed here as it cannot be adequately covered as a part of another paper. As the implications are international, not simply domestic, regulatory measures will need to be on a different scale from what is required for general advertising.

Concerns are not limited to advertising for products targeting children, often the content or presentation of products for older members of society are deemed inappropriate for younger audiences. It is feared that exposure to material beyond what is considered "healthy" for their age and stage of social development could lead to an abuse of credulity, can induce dangerous or anti-social behaviour, or cause children to be afraid¹ and confused. However, of a total 3000 complaints received by the New Zealand complaints board since 1991, only eleven related to children of which 4 were upheld. Two alone related to food products. The

¹ The "Bertie Germ" dentist campaign was effective to get children to brush their teeth, however this was essentially through fear that an evil being lurked in their mouths and lead to somewhat manic brushing! (Helen Everts, former dental nurse, Rotorua). More recently, a campaign for "Toilet Duck" showing monsters living under the rim caused an outbreak of bed or pants-wetting

indication is that the perception of the magnitude of the threat by the anti-advertising group is not shared by the general public, at least not to the same extent.

Unfortunately, while some statistical data exists on amounts and subject matter of ads viewed by children², to date very little research on their impact has been conducted in New Zealand³ and overseas studies must be relied upon. Of most relevance for New Zealand are those conducted in countries with a similar self-regulatory framework and comparable social climate⁴.

Extensive overseas studies have been conducted into the effects of product promotion on children, primarily by means of television commercials. Depending on the location of the study, the upper age of a "child" can range between 12 to 14 years⁵. Pre-schoolers, the under-fives in New Zealand, are a distinct sub-set.

These studies examine the quantities of commercials children see on average and their content, and assess the level of comprehension of what is seen. Attitudes of both children and adults to the advertisements are obtained and compared with findings on the actual impact on a child's behaviour and imagination. The general conclusion in most of these cases is to recognise a heightened potential for manipulation and abuse of credulity in child consumers, the average child is capable of, and does distinguish hype from fact. Certainly advertising is not seen as the only, nor the most significant, influence on a child's behavioural patterns.⁶

Advertisers argue that children have a fundamental right to receive information - information which is also their fundamental right to impart. Freedom of expression,

in a large number of younger children, fearing that these creatures would "get them" should they sit down (Anne McElwee, Paediatric Speech Therapist, South Auckland).

² Kay M Hammond, Allan Wyllie and Sally Casswell "The extent and nature of televised food advertising to New Zealand Children and Adolescents" (1999) 23:1 Australian and New Zealand Journal of Public Health 49, 51-53. See Annex I for reproduction of tables.

³ This may soon change: the Association of Advertising Agencies (3As) has put forward a proposal for a pilot research study to assess what New Zealand children do think of advertising. It is hoped that this will trigger sufficient interest to lead to further, more in depth studies in this country.

⁴ Australia and some European Union States, notably Belgium, France, Spain and the UK.

⁵ Individuals reach developmental stages at different times - some eight year olds may well be more capable of recognising the promotional nature of an ad where a thirteen year old might not. The cut off point is usually set approximately at the time of transition from primary to secondary school where children's horizons are expanded and new ways of looking at the world develop.

enshrined in international documents⁷, domestically guaranteed by the Bill of Rights Act, includes the right to seek, impart and receive information. Banning advertising to children infringes the rights of manufacturers and advertisers to impart information, but also denies a child the right to receive it. It is felt that commercial speech where children are concerned is not covered by a general right to information, believing only that which is beneficial or educative ought to come under this umbrella. However, the counter argument is that as long as children are consumers themselves, they share the same rights to information about these products as adults, subject only to such reasonable limitations as specifically provided for and are necessary in the interests of their protection⁸. To be lawful in a "free and democratic society" an infringement must be "demonstrably justified". A need for protection of that child from harm must be established.

Regulation of advertising content is controlled in New Zealand by a self-regulatory system, governed by a set of codes. Compliance is voluntary. Recently, calls have been made for a review of these codes and the Advertising Standards Authority (ASA), as the body responsible for these, have drafted new proposals in response, revised since initial circulation following public comment and submissions. A trigger for the call to review the system was concern about a potential link between childhood health problems and exposure to advertising for unhealthy foods. In 1999 the Australian and New Zealand Journal of Public Health published the findings of an Auckland University study into the extent and nature of televised food advertising to New Zealand children and adolescents⁹. This commented on the problems of poor nutrition and obesity, noted the importance of advertising for sales, and compiled data as to the percentage of ads for food viewed on average. However, while these statistics are an invaluable starting point, the study failed to assess the extent to which disproportionate nutritional information impacts on an

⁶ These studies are further detailed below, in particular in Parts II and III of this paper.

⁷ International Covenant on Civil and Political Rights; International Covenant on Economic Social and Cultural Rights; Convention on the Rights of the Child; Universal Declaration on Human Rights - all of which NZ is party to.

⁸ See discussion on the Convention of the Rights of the Child - below, See discussion on the Convention of the Rights of the Child - below, Part II, A, I - "the human rights argument" at p 28.

⁹ Kay M. Hammond, Allan Wyllie and Sally Casswell, above n 2, 49.

unbalanced diet. In a subsequent volume of the same journal, a report by a public health physician and the Ministry of Health was published but despite its title "Food ads on TV: a health hazard for children?", it too only reported facts about obesity and about the content of advertising, without assessing the presence of a causal link¹⁰. The media attention to such reports triggered widespread public concern about the relationship between ads for sugary and fatty foods and the growing obesity problem in New Zealand children. Not surprisingly, the industry denied this link, the ASA further noting that advertising *healthy* products was significantly hindered by conflicting legal provisions¹¹ which curtail the particular information which may be included in an advertisement for a product if it purports to be medically or therapeutically beneficial to the consumer. The aim of this paper is to establish the general actual and potential impact of advertising on children, the influence over diet and health concerns, and how best the problem should be addressed in a New Zealand context in light of existing protective measures¹².

In New Zealand, present Labour-led Government policy includes implementation of a ban on all advertising to pre-schoolers. Far from disagreeing, advertisers and broadcasters already ensure this is the case: both government and privately-owned free to air stations have dedicated pre-school time slots which screen entirely ad-free and uninterrupted. Legislation here would essentially regulate for the status quo.

This paper will explain why, despite a recognised potential for danger of manipulation of children, the self-regulatory system is not only an adequate, but the most effective means available to address this problem.

¹⁰ Nicholas Wilson, Robert Quigley and Osman Mansoor "Food Ads on TV: a health hazard for children?" (1999) 23:6 Australian and New Zealand Journal of Public Health 647.

¹¹ Food Act 1981; Medicines Act 1981.

¹² Namely the advertising codes, in particular the Code for Advertising to Children, the draft proposal for reform of this code and the draft Food Code. Advertising Standards Authority Inc., Advertising Standards Complaints Board *Advertising Codes of Practice* (Wellington, January 2000); ASA website <http://www.asa.co.nz>. See also Annexes to this paper II, III and IV.

PART I: A NEED TO ADVERTISE?

Defenders of advertising¹³ claim that, without this industry, not only would consumers be deprived of their vital right to information, enabling awareness of product availability and variety, but the range of goods would be restricted and there would be very few, highly expensive, newspapers, magazines, radio and television stations. Opponents¹⁴ on the other hand see advertisers as avaricious exploiters of human weakness. They do not believe that attention paid to children by marketers and advertisers is a form of respect at all but cynical manipulation thinly disguised. The truth probably lies somewhere in between.

“Advertising” is the term assigned to public announcements which are designed to promote the sale of specific commodities and services¹⁵ and is distinguished from other persuasive or coercive techniques. Today the advertising industry is huge, providing jobs for hundreds of thousands of people world-wide¹⁶. If it is used purely as a vehicle for self-promotion or competition as it is sometimes feared is the driving motivation for some companies, it is possible that self-interest may dominate over fairness, integrity and decency, particularly when large amounts of money are at stake. However, advertisers and manufacturers will point out that, they are performing a public service and depend on public support. Alienation of their customers through obvious manipulation and outright lies will stand to hurt them more than the consumer. This defence does not consider the dangers inherent in subtle manipulation, nor in manipulation of particularly or unusually susceptible audiences of which children are a major category. Advertisers *do* recognise this potential however, and for this reason the Codes are in place. Queried is the extent to which these actually meet the problem and the effectiveness of a system with no power to compel compliance.

¹³ Namely the advertising agencies, and their associated organisations - the ASA, the 3As etc., as well as broadcasters.

¹⁴ Most vocal are “watchdog” groups such as “Young Media Australia”, and in New Zealand, child-interest groups including the Kindergarten Association or the Children’s Television Foundation.

¹⁵ Internet encyclopaedia Encarta - <http://www.msn.encyclopedia.com>

¹⁶ In the late 1980s the US saw \$120 billion spent on average every year. Encarta, above n 15.

A popular conception of advertisers is that they are avaricious, greedy and manipulative, prepared to stoop to any level in order to ensure a sale. This is an image greatly resented by advertisers. Ross Goldsack, of Wellington's Goldsack Harris commented that advertisers are parents and members of the community themselves and objects to the self-labelling of certain interest groups as "concerned parents". Advertisers point to several examples which are evidence that they too have a social conscience. Since the 1960s a trend has emerged towards campaigns promoting awareness of skin cancer, or creating a distaste for smoking by having other young people declare it "uncool". Organisations with specific fund-raising days market themselves for weeks beforehand, "daffodil day" and "red nose day" are now national events. Companies take on charitable organisations free of charge, or at significant reduction in fees - one example is Red Rocks, a Wellington agency who have taken on *pro bono* promotion for the Mary Potter Hospice. A new campaign launched this year is the "feed the mind" series which shows parents or caregivers using a range of innovative techniques to teach children basic skills. In one a father or uncle-figure has one child paint all the lettered posts of a fence and the other the ones which are numbered. The message is that there are many ways to help children learn and that advertising can play a positive role.

That advertising entails a degree of manipulation is not denied: if it didn't succeed in persuading viewers to a certain extent, the entire process would be redundant. The concern is not that people are persuaded to purchase particular items, but that they will be *mised*. In other words, that a false impression is created which induces action, rather than through truthful communication of positive attributes. However, generally speaking, the audience is aware of this fact. It is the fear that children have a reduced likelihood to be capable of exercising this judgement which have lead to the development of specialised codes for advertising to them.

Advertising costs are blamed for making products more expensive. Yet promotion increases consumption, which leads to more production. Economic reality is that prices can be kept lower when production is in large quantities - if outgoing costs for materials and labour are marginally higher, this is countered by a significantly

greater return of profit. Production in small quantities can only lead to higher prices.¹⁷ Competition policy is another economic argument for the benefits of advertising - where competition exists, no one person or group can hold a monopoly in a market. Competition forces "price wars" where lower prices are incentives for consumers to select one brand over another. Advertising is the major vehicle to transmit these messages. Joe Cappo, World President of the International Advertising Association (IAA) claims

"freedom of commercial speech also gives consumers the right to choose between the brands, it creates competition, which prompts marketers to improve their products and lower their prices. And in the long run, advertising creates jobs and wealth and tax dollars"¹⁸.

This is standard economic theory, however it is important to remember that there is an inherent danger in where the source of financial information is provided by those with a particular agenda. The figures can be distorted.

A major argument in favour of advertising is that it a major, sometimes the only, form of funding for media sources¹⁹. Brent Impey, Chairman of the ASA explains

"Advertising is a vital component of the New Zealand economy. Through advertising consumers are informed about the various goods and services which are available in the market place. The media (...) are a part of our everyday life and depend on advertising for their revenue. In a world without advertising not only would there be a restricted range of goods available to

¹⁷ David Innes, Executive Director of Advertising Agencies Association, member of ASA Executive - Speech delivered to European Advertising Agencies Association Conference (Portoroz, 8 October 1999) <http://www.asa.co.nz>

¹⁸ May 28 1999, World Federation of Advertisers, Seoul, Korea; Joe Cappo "Advertising as a Force for World Communication and Understanding" (Seoul, May 28, 1999).

¹⁹ See Annex V for "New Zealand Advertising Industry Turnover" table - ASA website <http://www.asa.co.nz>

the consumer but there would be very few (and expensive) newspapers, magazines, radio stations and television stations.²⁰

While Radio New Zealand is fully funded as the public broadcaster, other radio stations depend on advertising for survival. Channel Z, a popular music and information station for young people is 100% funded by advertising²¹. Newspapers also depend on this source of funding – Wellington Newspapers accounts department report that while 35% of their funding comes directly from sales, the remaining 65% is dependent on revenue from ads²². City Voice, a free paper, relies on advertising for 95% of their funding²³.

Advertising clearly does have certain ostensible benefits. However, the potential for persuasion to become manipulation or exploitation exists either through false manifestations, or by omission of vital facts about the product. Children in particular require special attention - less developed cognitive skills magnify the potential for them to be manipulated as they tend to find it more difficult to differentiate between programmes and advertising, and often are less cynical. Consequently their decisions are less likely to be the result of an in-depth analysis of information presented to them than result from simple trust in something a “grown-up” has told them. The question is who ought to control this situation: should it continue to be industry dominated through voluntary self-regulation, or is it necessary for a more formal system to be established.

A. The present regulatory mechanism: self regulation

No one, not even the advertisers, want to see free reign for anyone to make any statement at all regardless of truthfulness, or in spite of any potential for harm. An ability to trust advertising claims is essential to ensure the already sceptical

²⁰ Brent Impey, ASA Chairman, Advertising Standards Authority Inc., Advertising Standards Complaints Board *Advertising Codes of Practice* (Wellington, January 2000) 3.

²¹ Station sales and accounts manager, Channel Z (phone conversation 18.9.00).

²² Phone communication 18.9.00.

²³ City Voice Editor – Mac Neil (phone conversation 18.9.00)

consumers don't eventually ignore advertising altogether. Before even coming to the point where a complaint is laid and redress required, advertisers have internal mechanisms to ensure the appropriateness of each commercial that will go to air. One example is with advertisements for beer – every proposal for a beer or liquor ad has to go before LAPS, the Liquor Advertising Pre-vetting System, who rule as to whether the ad is inappropriate for a range of reasons, the most important consideration being whether it encourages excessive consumption²⁴. Because of the risk of harm to all advertisers, self-regulation is the industry-preferred means. The IAA reasons:

“[w]e know advertising better than any government official. And if a marketer is running false and misleading advertising, the first person who is going to complain is the marketer's competitor.”²⁵

The World Federation of Advertisers (WFA) is an international organisation which acts to protect the interests of its members. They explain self-regulation as industry recognition for the need to ensure legality, decency, honesty and truth²⁶. Preservation of a sense of social responsibility is fundamental and there must be respect for rules of fair competition. These are achieved by establishing clear sets of rules and principles of best practice with which the industry agrees to comply. The WFA note the need for compatible domestic legislation that will empower the self-regulatory system, rather than conflicts with or actively works against it:

“the law and self-regulation working independently but in harmony provide the swiftest and most comprehensive protection for consumers”²⁷.

²⁴ Rob Kavanagh, Copywriter, Goldsack Harris, Wellington. This advertising agency is responsible for the Tui campaign, among others.

²⁵ Joe Cappel, World President, International Advertising Association “Advertising as a force for World Communication and Understanding” Address to World Federation of Advertisers (Seoul, May 28, 1999).

²⁶ <http://www.wfa.be>

²⁷ WFA website, <http://194.8.6.145/wfa2k/sro-intro.ctm>

The Right Hon. Marian Hobbs, broadcasting minister under the current Labour-led Government, is not dissatisfied with self-regulation in itself. Government concern is with the effectiveness and level of responsibility under the present codes.

i. The ASA and ASCB

Similar to the UK, US and European organisations, the role of New Zealand's Advertising Standards Authority (ASA) is to ensure advertisers uphold the standards to which they commit themselves. Complaint to this body is open to all.

Their basic principles and codes ensure

- compliance with the laws of New Zealand;
- that ads do not mislead or deceive the consumer;
- promote respect for principles of free and fair competition; and
- require ads to be prepared with due sense of social responsibility²⁸.

The ASA was formed in 1973, then known as the Committee of Advertising Practice. Its representatives are from the Advertising Agencies Association of New Zealand (3As), the Magazine Publishers' Association, the Newspaper Publisher's Association of New Zealand, the Radio Broadcasters Association, the New Zealand Television Broadcasters Council (NZTBC), the Association of New Zealand Advertisers (ANZA), the New Zealand Community Newspapers, the New Zealand Cinema Advertising Council, the New Zealand Direct Marketing Association, Outdoor Advertisers and the Pay TV Group. The membership agrees to be bound by the decisions of the separate self-regulatory body - the Advertising Standards Complaints Board (ASCB). It adjudicates on complaints, advises the ASA on interpretations or improvements of the Codes, and reports concerns to the ASA. As well as four industry representatives, there are four public representatives with no connection to media or advertising groups, one of whom is the Chairperson. A

²⁸ Advertising Standards Authority Inc., Advertising Standards Complaints Board *Advertising Codes of Practice* (Wellington, January 2000) 13.

separate, and smaller appeals board exists comprising two representatives from the public, and one from the industry.²⁹

The combined opinion of the ASA, ANZA, the 3As and the NZTBC³⁰, is that self-regulation is highly responsible and extremely effective. They reject claims that government regulation is needed. These organisations do recognise a potential for harm to children, but see no need to depart from protective mechanisms already contained in general guidelines as well as the specific code for advertising to children. Codes of practice are laid down by the ASA and are readily accessible either direct from the organisation or through the internet. When concerns arise, or if the organisation itself feels that there is significant concern in relation to one area, existing codes will be revised, or an entirely new one will be drafted by the Authority. The draft form of this will be made publicly available and notices of its availability widely distributed. Any person or group with a particular interest will be notified. The draft will then be open for submissions from all interested parties for a specified time. At the end of this period, submissions will be considered, and a final version produced which will then be implemented.

Complaints can be made by any person about any advertisement in any media which is considered to be in breach of the Codes. Complaints are addressed to the Board directly and will be heard following the Chairman's decision that the complaint is suitable for consideration or within the Board's jurisdiction. All parties involved are issued with a copy of the complaint. The Board's role then is to rule on whether a breach of one or more of the Codes has been breached. Advertisers will be requested, not ordered, to withdraw any advertisement found to be in breach, often modification will suffice to correct the problem.

Appeal is possible to the Advertising Standards Complaints Appeal Board but is limited to occasions where there is either new evidence, a failure to follow natural

²⁹ ASA, ASCB, above n 28, 9-10.

³⁰ ANZA, 3As, NZTBC, "Advertising to Children - A Review and Analysis of the Issues" (March 2000) 4.

justice or where the decision went against the weight of the evidence. Appeal to the Chairman of this board is possible from the preliminary decision of the Chairman of the first board's ruling on complaint suitability.³¹

The aspect of voluntary compliance is a contentious issue: opponents of self-regulation want tougher, legally enforceable measures to enable mandatory withdrawal of an infringing advertisement. However, the industry maintains that their own codes and practices adequately protect the interests of children and that compliance is one hundred percent³². This suggests governmental control would be redundant. The only role for legislation is to provide social guidelines³³, and empower the relevant bodies to take action.

ii. Self-regulation in practice

The industry states that it takes its social responsibility very seriously, particularly where children are concerned. The popular image of avaricious and unscrupulous salespeople lacking in morals does not fit with the numerous examples of advertisers' social conscience. Accepting to take on charity promotion free of charge is one example - and while others in the industry may be aware of who is responsible, the general public are usually unaware which company is involved with which charity. The argument that self-regulation is simply a means to ensure the industry's interests are protected is more than partially true. The industry don't deny that they believe this is the best way to guard against unscrupulous or offensive advertising, however there is a distinct advantage in this to the consumer. A further benefit for the public is that the current structure provides a fast and free means of complaining about ads. It is also effective: in 1999 there were 571 complaints about 326 different advertisements - 245 were duplicates. 107 were not accepted, 26 were resolved. Of the remaining 193 substantive complaints (five related to children), 47

³¹ ASA, ASCB, above n 28, 5.

³² ASA website - Decisions table <http://www.asa.co.nz>

³³ Eg. Fair Trading Act 1986 and Consumer Guarantees Act 1994.

were upheld, 47 were settled, and 99 were not upheld meaning that percentage of upheld/settled complaints was 48.7% - the decisions were complied with³⁴.

Advertising is a dynamic industry - to be successful it is essential to stay in tune with current societal values and trends. Typically legislation requires a lengthy process in order to effect change and values are frozen at the time the Act is passed. One example of broadcaster response to public concern, supported by the advertising industry, is the policy for ad-free television during pre-school programming³⁵, as well as reduced amounts of advertising to school age children³⁶. 29% of all children's programming is now entirely ad-free³⁷. Advertising must be clearly distinguishable from programmes³⁸ and no product directly related to a particular programme can be promoted during or immediately before or after that programme³⁹. These changes were able to be brought about with limited delay in response to public concern due to the nature of self-regulation. Clearly, this is not a perfect solution - children do watch television outside the set hours. This does require that parents exercise a level of responsibility in deciding when their children can view programmes unsupervised.

As compliance is voluntary, where a complaint is upheld, recommendation to withdraw or modify is not mandatory, but it is always followed⁴⁰. This is testimony to the high level of compliance and the effectiveness of the self-regulatory system. The fact that the system is entirely voluntary is often singled out as a reason why it should be replaced. The codes are not law, and no decision by the board can be enforced against the infringing company or agency. Despite the lack of compulsion,

³⁴ Glen Wiggs, ASA Executive Director - email communication 26 September 2000.

³⁵ These times were defined conjointly by the TV networks and the Children's Television Foundation in 1995: pre-school time on TV2 and TV3 is 8.40 to 9.40 am, and 8.30 to 9.30 am plus a one hour afternoon slot between 2.30 and 3.30 on TV3.

³⁶ 7.00 to 8.40 am and 3.30 to 5.00 pm on TV2, 3.30 to 5.00 on TV3.

³⁷ ANZA, 3As, NZTBC, above n 30, 4.

³⁸ Existing Code for Advertising to Children, 1; Proposed Code, Principle 3(a).

³⁹ This second principle is in fact not provided for in either the existing or the proposed code. Perhaps the intention was that it be implicit in proposed Principle 3(a), however due to the importance of this point, it is something which ought to be made absolutely clear.

failure to follow a recommendation of the Board to modify or withdraw an ad found to be in breach would be very damaging both for the manufacturer and for the agency. A major concern is that as it has never been put to the test and if a recommendation to amend or withdraw were to be ignored, nothing could in fact be done to force the company to act against its will. However, as commercial entities thrive and fall depending on consumer support, support which would be very quickly withdrawn from a company who flagrantly refused to act in the best interests of children. The potential damage is such that it is extremely unlikely a refusal would occur. If this were to occur, the matter could be reviewed at that point.

Advertisers do not seek to harm children. Many are parents or caregivers themselves, and as such are themselves concerned about child welfare and will act in accordance with authoritative direction which finds a risk to child health. It is also a useful system for the advertisers: the authority and the Board act as a form of protection against vexatious complaints, and if a particular advertisement comes under attack, vindication through this process can be extremely valuable to the parties concerned. The combination professional respect for industry codes as well as the extreme vulnerability of commercial entities to public opinion are what ensures the continued success of this system.

As with any process available for the public interest, it is essential that people know that complaint is possible through this group, and how to go about lodging concerns and complaints. The ASA are in the process of introducing a promotional campaign to increase public awareness of the availability of the Board⁴¹. It is understandable however that any such body refrain from making complaint too easy - increased ability to complain often leads to an increase in vexatious complaints rather than encourage more legitimate concerns to be aired.

⁴⁰ An assessment in March 2000 noted that, in the past 9 years, only eleven of a total 3000 complaints related to child-targeted ads, and of those eleven, just four were held to breach the standards. ANZA, 3As, NZTBC, above, n 30, 6.

⁴¹ The contract for this campaign is with Goldsack Harris, Auckland Office. It is currently at the design and negotiation stage.

B. The Codes

Industry consensus is that primary responsibility for education and guidance lies with parents, schools and caregivers but advertisers are committed to provide active support for these relationships. In 1989 the code for advertising to children was incorporated into the general Codes of Practice⁴². New concerns have brought this under review⁴³ and the Food Code, an entirely new document, contains principles relating specifically to children⁴⁴.

Under the existing code, an advertisement includes anything which promotes the interests of any person, product or service to children, in all advertisements in children's media. A product is a good, service or facility whether paid or given free. The proposed new version simply covers all ads directed at children, whether in children's media or otherwise.

As it now stands, this code is divided into 7 sections, preceded by the introductory statement of the importance of advertising to inform children of products and services as well as aspects of the society in which they live. The sections are as follows:

1. Separation - this covers the clear separation of advertisements from programmes;
2. Content - this section specifies certain prohibited subject matter such as violence, aggression, elements likely to disturb, encourage anti-social behaviour. It also indicates the desirability for children depicted in ads to be well-mannered and prohibits urging parents to buy for them. It also ensures that children are not made to feel inferior through not owning the product.
3. Safety - ads must not show children doing unsafe acts, encouraging consorting with strangers, or entering strange places. Furthermore,

⁴² Code for Advertising to Children (1989) - see Annex II.

⁴³ Proposed Code for Advertising to Children (2000) - see Annex III.

⁴⁴ Proposed Code for Advertising of Food (2000) - see Annex IV.

products must not be shown to be used in a dangerous manner, nor should they depict toy weapons which are realistic.

4. Presentation - in this section, the general principles of advertising standards are tailored to children's ads: children are not to be misled as to the product nature or quality, nor are products to be advertised in isolation where they are in fact dependent on additional material or part of a series. Where skill is required, the ad should be indicative of the level reasonably attainable by the average child in a certain age range.
5. Price - not only should ads make clear the price of the product both aurally and visually, but also indicate cost of any required additional items⁴⁵
6. Competitions - rules of competitions as well as details of prize value and chances of winning are to be made clear.
7. Premium offers - required here are that any reference to a premium should be secondary to the main product and conditions made clear to the consumer.

The draft codes have been prepared in response to concerns from the public that the existing documents did not go far enough to ensure protection from advertising manipulation. Initially these documents were circulated to interested parties and made available on the internet. Submissions were made and the revised versions have again been distributed for comment.

The legitimacy of concerns expressed by child welfare groups is recognised. Where the two diverge is on the issue of whether self-regulation is sufficient to deal with the problem. Bronwyn Hayward of the Children's Television Foundation points to the sequence of advertising during children's time on a Saturday morning, noting that the viewer is aggressively targeted with food and toy products aimed at them. The Children's Television Foundation would like to see more direct and

⁴⁵ It is important to note that this applies where the price is fixed by the manufacturer, not the retailer which is why prices are not usually available in television advertising as different retailers are free to adjust prices within specified margins and prices will vary from store to store.

consultative means for drafting the codes and see legislative change as essential. The problem highlighted by this group is the lack of cohesion between the bodies responsible for what children are ultimately exposed to (advertisers and different broadcasters) and believe that what is required is integrated regulatory leadership.

While it is always important to place overseas comment in a New Zealand context, the views of Young Media Australia (YMA) reflect concerns here. Barbara Biggins, executive director of YMA, notes the important impact all media has on a child's development as their limited knowledge of the world increases their tendency to believe. The responsibility is not on parents alone. Food advertising is seen as particularly worrying health hazard as highly persuasive promotion of foods which do not reflect balanced nutrition is likely to have an impact on the psyche of young children. YMA do not deny the potential for media to help in child development, but stress its harmful effect. Their comment on the New Zealand is that self-regulation allows exploitative marketing, in particular of sugary, unhealthy, fatty foods as well as a return to screening of programmes produced by toy manufacturers which are considered to be nothing more than 30 minute commercials. While her views relate primarily to Australia, Biggins highlights the importance of guarding against the change in children's media culture to become a culture of appearance, dictating what is successful, desirable, attractive or appropriate.⁴⁶ This trend is one which is noted in New Zealand by parents and advocacy groups alike⁴⁷ which questions the effectiveness of Section 2 of the Code when put to the test.

C. Proposed Food and amended Children's Codes

However, in New Zealand the codes have always sought to ensure the safety of children, guarding against abuse of their naïveté, preventing exposure to elements likely to disturb or frighten the young as a priority. In drafting the reformed

⁴⁶ Barbara Biggins, Young Media Australia "Are broadcasting standards to protect children necessary?" Keynote Address, Symposium to examine television broadcasting standards in relation to the protection of children (Wellington, 28 March 2000); YMA website <http://www.youngmedia.org.au>

⁴⁷ Children's Television Foundation, New Zealand Kindergartens' Association.

versions, concerns voiced both directly, or by way of complaint to the ASCB were taken into consideration. The importance of the UN Convention on the Rights of the Child was also noted. Food advertising received comment to a level that the decision was taken to introduce a new Food Code. This document aims not only to prevent harmful effects of inappropriate advertising, but also to address the problems presented by Food Standard A1(19) and the Medicines Act⁴⁸ which effectively prevent the advertising of the benefits of nutritional food. This was done in contemplation that the law will be reformed in the near future to both permit and encourage nutritional food advertising. The standards required by the code in relation to advertisements which contain nutrient, nutrition or health claims are higher than the general duty to "exercise a due sense of social responsibility" and state that "a high standard of social responsibility is required". This wording is important as it has been interpreted by the Complaint Board in a number of decisions to impose an extremely high standard.⁴⁹ The move to increase the potential educational role for advertisers in promoting nutritional food products is one viewed very favourably in the industry⁵⁰.

i. Proposed code for Advertising to Children

The proposal for the amended code is significantly different. Rather than adopt the current seven section structure, it follows four main principles, providing specific additional guidelines within these as required. The introduction makes specific reference to the Convention on the Rights of the Child and the need to interpret this Code in relation to the provisions in this document.

⁴⁸ Australia New Zealand Food Association (ANZA) Food Standard A1(19) and Medicines Act 1981 - for further discussion, see Part III, C below, p 42.

⁴⁹ Glen Wiggs, ASA, Introductory letters to the proposed Food Code and proposed revision of the Code for Advertising to Children when initially circulated for public comment (also made available early 2000 on the ASA website, preceding the draft codes, <http://www.asa.co.nz>).

⁵⁰ Lynne Clifton of the 3As and Ross Goldsack of Goldsack Harris both reported that general consensus among advertisers was that this was a very positive step. (Phone conversations, 17 July 2000).

Principle one: As for adults, this requires ads to comply with the laws of New Zealand and with appropriate media codes.

Principle two: this reflects general requirements for observance of a “high standard of social responsibility”

This principle contains seven guidelines which replace the existing Codes 2(i)-(vi) and 3(i) and (ii), removing a specific reference to toy weapons. They reiterate the requirements not to portray violence or aggression, or elements likely to disturb (a); that anti-social behaviour must not be encouraged, referring specifically to vindictiveness and bullying (b), and that children in advertisements must not be depicted behaving in an anti-social (c); ads must not urge children to pester their parents (d); ads should not suggest inferiority of the child without the product (e); children should not in any way portray children in unsafe acts or situations (f) or using products in unsafe or dangerous manners (g). Since the proposals were first made public, two new additions to the Principle 2 guidelines have been included: advertisements must not depict realistic toy weapons (h); nor portray degrading or sexually suggestive images (i).

Principle 3: notes the credulity of children and the risk of abuse of this lack of knowledge and states:

“advertisements should not (...) mislead or deceive (...) children, abuse the trust of or exploit the knowledge of children, exploit the superstitious or without justifiable reason, play on fear”

Guideline 3(a) is a new wording of an old concept, specifically requiring the level of knowledge, sophistication and maturity of the intended audience to be taken into account and requiring great care be taken in particular when communicating with younger children as

“[they] may have a lack of ability to comprehend the purpose of advertising and differentiate between in and non-advertising”.

Guidelines 3(b) and (c) require that ads not be ambiguous nor misleading as to true size, value, nature, durability or performance and that if additional items are required (d), or the product must be assembled (e), that this be made clear from the outset. Rules relating to price (f), competitions (g) and premiums (h) are essentially as in the existing code - namely that prices, rules of competitions and conditions relating to premiums be clear.

Principle 4: this is also a reflection of general standards, stating that ads should not encourage inappropriate purchase or excessive consumption.

The guidelines under this are new to the Code for Children. 4(a) notes the varied levels of understanding and maturity of children who ought not be seen as a homogenous group and calls for special care to ensure appropriateness for the particular audience. 4(b) specifically notes the need to stress to a child the importance of asking a parent before entering a competition which entails a fee, or dialling an 0-900 number. 4(c) is also a new addition, as it introduces guidelines for food and beverage advertising and cross refers to the draft Food advertising code principles 3, guidelines 3(a) and (b).

ii. Proposed Code for Advertising of Food

This Code is also divided into four main principles for which guidelines provide additional direction. It applies to all food advertising, not just when children are the target audience. Principle 3 is particularly relevant here - it is dedicated to children and restates the need for observance of a high standard of social responsibility where advertisements are directed at children.

Principle 3(a): this requires that ads for what are described as "treat foods" should not actively encourage consumption near bedtime nor to be eaten or drunk frequently. They must also not be suggested as a replacement for main meals.

Principle 3(b): this guideline concerns advertising for nutritional, healthy foods and says that such ads should use creative techniques to advocate the benefits of these, essential for a balanced diet.

Government imposed legislation would not allow such a high level of flexibility as legislative drafters are not best placed to assess real need, and tend to err on the side of caution. Restrictive requirements, likely to affect funding, will ultimately reduce children's programming. When guidelines are kept to, ads are *not* harmful, the ASA watching where any may have fallen through the gaps.

PART II: CHILDREN AND ADVERTISING – THE ISSUES

Many of the concerns of activists opposed to advertising to children are already covered by the voluntary broadcasting and advertising protocols in New Zealand. However, it is important to examine the effectiveness of existing controls in meeting these concerns.

With regards to nutrition, activists claim a relationship between children viewing advertised foods and an increase in requests for these. Considered a particular health risk is the high amount of processed and snack foods ads for children, teaching poor nutritional standards, balanced by little, if any, promotion of fruit, vegetables or foods high in protein.⁵¹

The concerns of Australian watchdog groups - in particular YMA - mirror New Zealand concerns, the primary issue being the inability of children to distinguish commercial promotion from programming. They also stress the risk of misinterpretation by children of claims in commercials - "good to eat" and "fruit flavoured" equated in young minds with "good for you" and "containing fruit".

⁵¹ These are common concerns among parental lobby groups and watchdog organisations such as Young Media Australia about the risks of the proliferation of junk and snack food advertising to children. Independent authors and concerned dieticians also express similar concerns in various journal articles - see Kay M. Hammond, Allan Wyllie and Sally Casswell above n 2, 49.

Selling techniques are deemed inherently unfair, particularly due to the likelihood that children will trust the claims.

With respect to children at the upper end of the age bracket, it is feared that their very knowledge that ads do not tell the whole truth can be harmful as this understanding is not accompanied by an ability to tell *how* the ad isn't entirely truthful.

The fact that the codes specifically call for clear distinction between ads and programmes, and that their levels of knowledge and sophistication must be taken into account is testimony to the fact that, as parents and members of society themselves, advertisers do act responsibly and will not put children at risk⁵².

Children's advocates believe that young minds are able to be manipulated through media tools. Advertising is particularly problematic as it has a specific aim to convince and persuade its audience. The problem for advertisers is that there are such a vast range of influences in a child's life that to blame the impact of advertising for their food choices or preferences is not only unfair but unrealistic and misleading. Children's parents and peers have considerably greater influence on their decisions and views. Advertising is but one potentially influential factor. The European Advertising Agents Association reminds readers that advertising does not exist in isolation in the preface to its handbook of ethical guidelines for advertising to children⁵³. Every day children are exposed to competing media, observe what happens in the world around them, and are highly influenced by the views and values of the people with whom they interact. The impact of a single potential influence on children's lives, attitudes, behaviour patterns must not be taken out of context and considered in isolation. This view finds support in a Belgian study

⁵² See for example the adjudication on the complaint about the Bull Rush advertisement discussed in Part II, A, ii, below p 32.

⁵³ J Goldstein, (ed.) EAAA *Ethical Guidelines for Advertising to Children* (1999).

which reported that while advertising does influence children, it does not do so uniformly and no more than personal contacts with friends and family⁵⁴.

Child advocates point to this very factor as evidence of a need for centralised control in the form of legislation in order to ensure that the standards were the same across the board and that all media to which children become exposed are subject to identical protective measures⁵⁵. But the ASA codes in New Zealand already require that advertisers not act to exacerbate existing situations. While they maintain theirs is not the primary duty to educate and protect children, evidence of their sincerity of dedication to support the parent-child relationship⁵⁶ can be seen in the proposed codes and the highly favourable response to what these can achieve.

A. A need to advertise to children?

A child's inability to distinguish programmes from advertising, to make informed decisions about a product, and susceptibility to believe what they are told, are feared to increase their vulnerability to exploitation. Where children are exposed to any medium with a high potential to influence a young mind, it is important to ensure that this is not exercised exploitatively.

Through advertising children are exposed to the availability of products beyond what is reasonable for purchase. Ads make toys and other goods highly attractive without imparting any sense of cost. Inevitably this will lead to family tension, further fuelled by constant requests - pestering of parents by their children. Commercials for violent toys and imitation weapons are seen to be an encouragement to be violent in play.

⁵⁴ E De Bens and P Vandenbruaene *TV Advertising and Children* (Centre for Media, Opinion and Advertising Research, University of Gent, Belgium, 1992).

⁵⁵ Bronwyn Hayward, Children's Television Foundation, comment at Symposium to examine broadcasting standards in relation to the protection of children (Wellington, 28 March 2000).

⁵⁶ ANZA, 3As, NZTBC, above n 30.

Activists claim children are "disenfranchised" by not being able to watch programmes in their entirety without commercial interruption, feeling that programming ought not to be fragmented by intrusive ad breaks which break their attention span.

The predominant concern in relation to food products is that advertising encourages consumption of unhealthy foods and doesn't reflect a well-balanced, nutritional diet. The argument is that, if children are incapable of distinguishing between hype and factual statements, it is not ethical to target promotion to them at all.

In the European Union, two countries have adopted extensive government restrictions to guard against this problem. A total ban on advertising of any products aimed at children has been in place in Sweden since 1991. Swedish experts reason that, if children cannot distinguish ads from programmes, they should simply not be exposed to advertising at all. In Greece the government prohibits all advertising of toys between 7am and 10pm.

A major public policy conference on children's advertising in the European Union was the 1999 International Conference on Children's Advertising. Speaking at this Conference, representatives from Greece and Sweden reported that these bans have had a measurable negative effect on the marketplace, including higher prices, inferior product quality and fewer children's programmes⁵⁷.

This would suggest that this type of regulation may not be a favourable solution overall. Instead of implementing like regulation, the existing codes in New Zealand should be revised when concerns arise, bringing practice in line with the contemporary social and political climate. The New Zealand Government must address concerns about existing legislation to ensure greater flexibility and more effective operation of the self-regulatory system as well as introduce the possibility for advertising to take on a greater social role where appropriate. Certainly, any

⁵⁷ International Conference on Children's Advertising - summary of the Conference proceedings and findings from American Association of Advertising Agencies: <http://www.aaa.org>

negative impacts of advertising must be weighed against the potential for harm caused by denying access to quality children's programming altogether.

Young Media Australia note the particular vulnerability of children to "host selling" - sales by popular presenters or programme characters; the difficulty they experience in evaluating product claims as well as their high likelihood to trust these claims. They also note that commonly exercised techniques to display products to their best advantage, when directed at children have a much greater potential to mislead or deceive their audience⁵⁸. Barbara Biggins comments that while children may well be more technologically savvy than their parents, they need protection from content that exploits their immaturity⁵⁹. However, research suggests that children are often far more "media savvy" than they are given credit for⁶⁰. In a study from 1994⁶¹ the author, Marquis, found that today's generation of children are not only considerably more media literate than previously, but that they are aware of the value of money and show considerable ability to choose. Three studies into children's categorisation of foods⁶² found that branding had little, if any, influence on perceptions of food and that they were able to differentiate between what was healthy or unhealthy, what was meal food or snack food. Most importantly the findings revealed that nutritional perceptions come primarily from parental/family influences. Advertising does play a part in influencing children, but these studies suggest that its role has been overestimated. Children, like adults, are willing to suspend their disbelief. More caution *is* required than when making claims to an older audience, especially to the very young who would be likely to accept things at face value, but it is important that children are not seen to be more naïve than they really are.

⁵⁸ Young Media Australia "Topical issues: The Impact of Advertising on Children" YMA website <http://www.youngmedia.org.au>

⁵⁹ Barbara Biggins, above n 46.

⁶⁰ Lynne Eagle and Anne de Bruin "Advertising Restrictions: Protection of the Young and Vulnerable?" Massey University Working Paper Series No. 00.06 ISSN 1174-5230 (Albany, Auckland February 2000) 7.

⁶¹ S Marquis "The Young Ones" in *Marketing* (March 10 1994) 22-23.

⁶² B Young and M Claessen, "Research Study: Children's categorization of food" (1998) <http://www.europa.eu.int>.

There is dispute over at what age children begin to understand and take on board the nature and purpose of advertising. YMA are of the opinion that children under the age of eight simply cannot understand the possibility of their being manipulated as they are unable to assess the possible motivation behind the promotional message. They also point out that this age may not be high enough yet noting the Swedish ban and Canadian restriction on advertising to children under twelve.⁶³ Following initial submissions to the ASA on the revised children's code how the organisation is seeking public input as to how to define a child for the purposes of this code. They note that for the purposes of the UN Convention a child is a person under the age of 18⁶⁴ but there is an important distinction to be drawn between what is appropriate for a seven year old and what is for a seventeen year old⁶⁵.

The codes in operation in New Zealand do reflect these concerns, despite a certain amount of evidence that the danger is not so great as is often feared, preferring to be cautious where children may be affected. Research in the UK studied children over seven years of age across 74 schools and found that not only were most capable of differentiating programming from advertising, but some even had discerning views on the topic⁶⁶. With respect to younger children, another study which included pre-schoolers reported that almost all four to five year olds and all six to eight year olds could identify an advertisement as distinct from a programme when asked⁶⁷. A US study has even found that children as young as three and four show evidence of understanding selling intent⁶⁸.

Of particular significance for children is that any need to stop production or reduce the quality of programming, it is likely to impact on children's programming first.

⁶³ Barabara Biggins, above n 46.

⁶⁴ UN Convention on the Rights of the Child, article 1.

⁶⁵ ASA, Summary of submissions on the revised code, ASA website <http://www.asa.co.nz> (accessed 24.9.00).

⁶⁶ Online YORG research on children's perception of advertising - UK.

⁶⁷ EJ Butler "Discrimination of television programmes and commercials by pre-school children" (1981) 21:2 Journal of Advertising Research 53 - 56.

⁶⁸ Gaines and JF Esserman "A quantitative study of young children's comprehension of television programmes and commercials" in JF Esserman (ed.) *Television Advertising and Children* (Child Research Service, New York, 1981).

This is only logical: broadcasters, relying on revenue from advertising, would be reluctant to buy many - or any - children's programmes as this would be an outgoing cost for which there would be no return as advertising during these slots would be banned. Broadcasters would be forced to continue shows during which ads can air in order to ensure continued funding. If the programmes have a diminished market, fewer will be produced. Any educative role will be lost. This is one area where research into the real impact this would have on New Zealand children would be invaluable. If children were to simply substitute viewing children's programming for less suitable, or non educative programmes, or videos, they will undoubtedly suffer from this cutback. However, if what resulted instead was the pursuit of other forms of activity which would develop physical or intellectual abilities in other ways, this perhaps would not be the best argument on which the industry should rely.

i. The Human Rights Argument

The right to impart as well as receive information is fundamental. It is enshrined in the New Zealand Bill of Rights Act 1990 under section 14 which protects freedom of expression. This document also expressly upholds New Zealand's commitment to its international counterparts, namely the United Nations administered Covenants on civil and political and economic, social and cultural rights.

Children's rights⁶⁹ are further protected by the Convention on the Rights of the Child⁷⁰. When ratified by New Zealand, a list of questions for written response was issued by the Committee on the Rights of the Child. This committee is concerned in particular with ensuring the protection of children from excesses of free speech. The New Zealand Government's response to queries about the relationship with the media, was that

⁶⁹ Already secured in the International Covenant on Civil and Political Rights, the International Covenant on Economic and Cultural Rights as well as the New Zealand Bill of Rights Act 1990.

⁷⁰ Adopted by the United Nations General Assembly in 1989, ratified by New Zealand in 1993.

“Broadcasters take their obligations under the Code of Practice seriously”⁷¹

in this country. At that time at least, there was satisfaction with how the codes operated, and how effectively they met concerns. There is no reason why the system itself should be replaced so long as it continues to respond to changing needs in society.

Article 13 of the Convention states that

“1. The child shall have the right to freedom of expression; this right shall include the 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.”

Inherent in this is a child’s right to receive the information presented by advertisers - products are made for children, for their benefit, amusement or education and children are entitled to be informed about such items which may be of benefit to them. While the exercise of this right may be subject to restrictions, paragraph 2 states

“2. (...) 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 public order (ordre public), or of public health or morals”.

Article 17 actually imposes a positive duty on States to ensure that

“(...) the child has access to information and material from a diversity of national and international sources, (...) To this end state parties shall:

⁷¹ Ministry of Foreign Affairs and Trade *Convention on the Rights of the Child. Human Rights, No 2* (Wellington, May 1997).

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child (...);
- (...) and
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well being, bearing in mind the provisions of articles 13 [see above] and 18 [parental responsibilities]”

This does *not* enable justification of exposure of children to material which is harmful to them in the name of protection of their freedom of expression. Read consistently with Article 13, a child's right is to have unconditional freedom of expression, including the right to receive information, *so long as no harm is caused*. The issue then is how best to ensure this is the case.

This article goes on to encourage that information and material of benefit to children be disseminated. As explained above, this can be achieved only in so far as is financially viable. Advertising can be seen as way to ensure this is possible.

The correct approach to be adopted in New Zealand in relation to human rights interpretation is to analyse a case from a rights-centred approach. (New Zealand and European courts have ruled that limitations on rights must be given as restrictive an interpretation as is possible, while rights are to be interpreted as broadly as possible.) To impose any ban or limitation on advertising requires convincing justification as the rights infringed would be two-fold: those of the child to receive, and of the advertisers to impart.

Becoming “overprotective” and implementing very restrictive controls on advertising can seriously infringe these rights. There is more to this line of reasoning than claiming it is a fundamental right to watch a “Coco-Pops” ad. Children are consumers themselves needing the same access to product information about products manufactured for them as do adult consumers. While it is true children do not actively demand the exercise of this right, this is due to a lack of knowledge of

the existence of such rights, or how to go about ensuring they have proper access to them. Furthermore children are far more concerned with their immediate interests, long-term benefits take a back-seat. This is precisely the reason why adults *must* take on the role of ensuring proper and full enjoyment of children's rights. It is also why adults must take on the role of protection from harmful ads, however the balance must be struck between excessive paternalism and justified concern.

So long as children's products are produced, whether it is toys or food, they have a corresponding right to the information that it exists. Both play and eating are encouraged, and in order to allow a child consumer to exercise any degree of control over this aspect of their life, they are entitled to know the range of what is potentially available. From then on, how far a child can go in exercising their own choice is dependent on those responsible for ensuring the child's welfare. What is crucial when considering children as the target consumer audience is to guard against exposure to promotion of harmful foods, or ads encouraging violent behaviour as this group is less likely to recognise the harm to themselves. Regulation in some form is required. The question to be resolved is *how*.

States do have a duty to protect children from harm and certainly an illegitimate restriction of a fundamental freedom is in itself a form of harm. To fulfil its duty under Article 17(e), the State does not need to legislate itself so long as it has taken steps to ensure the existing bodies - namely the ASA - is appropriately performing its function. This could lead to the suggestion that the failure by the Government to facilitate research in this area amounts to a neglect of duty and that perhaps the move to legislate is seen as a less expensive way to resolve the issue, regardless of what is the most effective and appropriate means to examine and control the effects of advertising.

Existing provisions which currently hinder rather than help the dissemination of health information through advertising should be reviewed. Currently provisions in

the Medicines Act and the Food Act⁷² control any "therapeutic" claims. This includes statements that a product can treat or prevent disease, diagnose or point to the existence of a disease or condition, alter the human body in shape, structure, size or weight, or alter any normal physiological function in any way at all. Effectively no claim can be made that something will be beneficial to the consumer's health or well-being but this makes nutritional education through advertisements exceptionally difficult.

Whether advertising to the young is in fact necessary was an issue raised during the April 2000 Global Advertising Summit in Paris⁷³. Concluding children were a group requiring special care, advertising to them should sometimes be avoided. At the summit the key issues seen to be a potential threat to children echoed the concerns of anti-advertising lobby-groups, namely misinterpretation or lack of understanding by children of the aims and purposes of product promotion. The most desirable means to address these problems was seen to be self-regulation.

In New Zealand, ASA guidelines already provide for "special consideration" of children. The group does heed public concern as is evidenced by the draft revision of the Children's Code and the draft new Food Code, responding to the growing public concern. When implemented, the new and revised codes will provide further protection still.

ii. Complaints and Decisions

A past complaint which was upheld by the board related to advertising for "Bull Rush", one of the many varieties of energy drink available on the market. The

⁷² Medicines Act 1981, s 4 - "Meaning of Therapeutic Purpose" and Food Act - date and section numbers

⁷³ Attended by representatives of the American Association of Advertising Agencies (AAAA), the Association of Agencies of South Africa (AAA), the Association of National Advertisers - USA (ANA), Associacao Brasileira de Agencias de Publicidade (ABAP), European Advertising Tripartite (EAT), European Association of Advertising Agencies (EAAA), European Society for Opinion and Market Research (ESOMAR), Federation of European Direct Marketing (FEDMA), Federation of International Periodical Press (FIPP), FAST Europe, International Advertising Association (IAA), International Chamber of Commerce (ICC), World Association of Newspapers (WAN) and the World Federation of Advertisers (WFA).

television commercial was brightly coloured and animated and the voices used were of both adults and children. The complaint was on two grounds - first that its claim to have a combination of ingredients which would

“boost vital bodily functions and convert them to energy, stimulating recovery”

was misleading; and secondly that the high appeal to children was irresponsible because the ad had no reference to the large amount of caffeine in the drink. The Board found for the complainant on both grounds.

One example of the type of claim the Board declined to uphold was a complaint made about another television advertisement, this time for the lollipop “Chupa Chups”. This depicted a child requesting the particular brand and upon tasting an imitation, turned into a monster. The Board ruled this ad would not cause children to be disturbed as the time slot during which it was screened was aimed at an older audience and that its content was not substantively different from the programmes, such as “Gargoyles” and “Blazing Dragons”, which were on at that time. The irony here of course is that this assessment did not consider whether or not such depictions do cause children to be afraid, instead it is dismissed because any part the ad would play in generating this fear is minimal in comparison to the effect of the programmes during which it airs. This sort of approach is precisely what Barbara Biggins of the Children’s Television Foundation points to as a major deficiency in the current system - a lack of cohesiveness or centralisation of standards. In this case the advertisers were proceeding on the basis that if the programme passed broadcasting standards, it must not be harmful to children, and so ruled accordingly. Research is required on the impact of exposure to such material on New Zealand children, rather than continuing to rely on findings from overseas.

Both of these examples however show that the board rules with the interests of children in mind, while taking into account the position of the advertisers in moderating findings based on what the impact will be of the ad given the whole context in which it is viewed.

A decision from the UK is an example of how advertisers might be asked to modify, rather than withdraw an ad found to be problematic: Atlas Edition UK Ltd published a leaflet sent in response for an advertisement for Barbie "fact files". The leaflet headlined "Your 8 Free Gifts" and provided photographs of these. The leaflet went on to state that there was nothing else to buy, to throw away the invoice for the first set of "fact files". However it transpired that in order to be entitled to the free gifts, the next set of fact files had to be purchased, at cost. The objection was to the exploitation of the credulity of children. An adult might view such claims with scepticism, a child will see "nothing more to buy" "free" etc and take it at face value. The Authority ruled that no child would be able to grasp the full meaning of this advertising and that it was unconscionable to obscure the requirement for another purchase. Accordingly the advertisers were asked to change the initial advertising as well as the follow-up leaflets with the help of the Committee of Advertising Practice Copy Advice Team.⁷⁴

Complaints lodged in the interests of children are not limited to the confines of the children's code alone – a recent decision involving a complaint about the sexual nature of a chocolate bar commercial arose under the Code of Ethics, basic principle 4. This principle provides that advertisements should not contain anything which clearly offends against generally prevailing community standards of decency taking into account the context, medium, audience and product. The complainant felt that as children are consumers of chocolate, the strong sexual image was inappropriate and should not be shown during children's viewing hours. As the target audience was not children at all but young adult women, the advertisers had never intended that this run during children's viewing. As a result of this complaint the advertiser instructed its media buying company to ensure that the channels ran the advertisement in general family or adult programming. The recommendation of the Board was for any future ads of this nature been given a classification to this effect.

⁷⁴ UK ASA website <http://www.asa.org.uk>

This example shows how the Board can intervene to ensure that particular commercials are not seen outside times when it is appropriate for their viewing.

B. Children - influence on household consumption patterns

The extent to which a child's demands can and do influence shopping patterns is an area where research needs to be conducted in New Zealand. No society will be identical to another - in countries where there is limited emphasis on good nutrition it may be unreasonable to expect parents to override requests in the interests of health. In societies - as is increasingly the case in New Zealand - where busy parents shop when they can snatch the time, often in overcrowded supermarkets as this is the same time others have managed to fit in buying groceries, a performing child may be more likely to get their own way in the interests of peace and quiet. It can be argued that as advertisers are aware of this phenomenon the risk of manipulation is in fact increased in this respect as they are effectively arming children with information which will surface at the precise moment a parent's guard is down. This said, the industry alone cannot be expected to bear full responsibility. The codes already explicitly require that no ads actively attempt to induce a child to coerce their parent, and that the content not be misleading, meaning that the child's statements are at least factually accurate. Beyond this parents must take a degree of control and make decisions for themselves.

Parents buying treats for their child will select something that has been requested, often without ever having seen promotion for it and without a real appreciation of what is being bought. However, it would be absurd to conclude that these will be the only items purchased, or that junk, treat or snack food will make up a child's entire diet. What percentage of a diet is made up of non-essential food is a choice for individuals, or, in the case of children, for those charged with their care and wellbeing. Where families live on takeaways and convenience foods, high in fats and lacking adequate vitamins and minerals, it is generally little to do with advertising and more because of a total lack of desire, motivation or care. For cost-conscious families a "no-frills" pie would be equally unhealthy if consumed regularly

for dinner as the well-known, brightly packaged one by Ernest Adams. Advertising will have had little if any role at all in the decision to purchase this exact produce, it will be bought for convenience and because it is affordable.

An international study which examined parental responses to children's requests in Britain, in Japan and in the United States found considerably fewer requests from Japanese children, than from children in America. Japanese children watch far less television and are exposed to fewer ads than kids in the UK or in the US implying a clear link between viewing and making demands⁷⁵. Other studies have found that children are an important source of consumer information to parents⁷⁶ and that in supermarkets it is a child's knowledge of and desire for a particular brand which often determine the selection of a product⁷⁷. However these findings indicate influence over choice of brands, rather than inducement to purchase a type of product the parent was not intending to buy at all. It is important to remember that while advertising may influence first time purchase, ultimately, regardless of whether the consumer is a child or an adult, it is their actual knowledge of a product which will affect future consumption. Children are just as likely – if not more so - to demand a product that they have tasted from a friend's lunchbox when they see it on a shelf as one that they only have intellectual knowledge of.

C. Children's Education - whose responsibility?

When it comes to education, it is parents, family members and teachers who have the primary duty towards the child. This however does not mean that advertisers and manufacturers or any media organisation can be absolved of all social responsibility. Advertising is a powerful influence in peoples lives - if it were not there would be no incentive to do so at all. The Codes provide a mechanism for

⁷⁵ S Ward, T Robertson and R Brown "Commercial Television and European children" (Gower, Hampshire, 1986).

⁷⁶ Ruby Roy Dholakia "Intergeneration differences in consumer behaviour" (1984) 12 Journal of Business Research 19 - 34.

⁷⁷ Charles K. Atkin "Observation of parent-child interaction in supermarket decision-making" [1978] Journal of Marketing, October, 41 - 48.

protection but the question is whether it is sufficient not to act irresponsibly - ought advertisers to adopt a pro-active role in educating the young?

Advertisers *do* adopt this responsibility to a certain extent. Advertisers instigate and provide funds for research; act in conjunction with broadcasters to impose ad-free and ad-reduced programming slots by not reducing funding accordingly; and take on charity promotion and health campaigns often at no cost. The industry has gone further than simply taking care not to breach prescribed standards. It is true that the research is on their terms and carried out by others with similar interests, but the obvious solution is for independent, possibly state, funding to be provided in order to ensure that this research is not unduly prejudicial. If any credence can be given to the anti-advertising attacks on industry-funded research findings, it must be supported by otherwise funded findings of their own.

The purpose of advertising *is* primarily commercial and manufacturers of brightly coloured, attractively packaged treat foods generally have more liquid funds at their disposal to promote their product, as well as a more visually appealing item on which to base their campaign. And until a butcher, a spinach-grower or an apple-orchardist is able to make the most of their best selling-feature - its potential health benefit - the competition for consumer appeal will be tough.

PART III: ADVERTISING - A HEALTH THREAT?

In assuming a protective role, the Government is faced with weighing conflicting considerations and must attempt to decide which is the most significant in a particular circumstance in order to protect the public as a whole. Under Article 18 of the Convention on the Rights of the Child they have a duty to provide assistance to parents raising a child. Childhood obesity in New Zealand is an increasingly prevalent health risk⁷⁸. The perception that children in New Zealand are significantly

⁷⁸ National Nutrition Survey, Report of the Hillary Commission as reported in Noel O'Hare "Immovable Objects" *The Listener*, 12 August 2000, 60. The survey reported that while children

better off than their overseas counterparts due to the importance of sports, while true several years ago, is no longer accurate: more and more children are replacing physical play with television and electronic games.

The extent to which the State's duty to protect public health overrides its duty to ensure preservation of fundamental human rights is an important consideration. As any ban or restriction on freedom of expression will impact both on children as receivers and advertisers as conveyers of information, conclusive and persuasive evidence is necessary before prohibition of commercials for "bad" foods can be justified. In New Zealand, the lack of in-depth research is a serious problem, most studies being compilations of fact rather than assessment of impact or effect. Funding is limited and the lack of financial resources for studies into causes of obesity have caused Boyd Swinburn, one of this country's top health experts, to leave for Australia⁷⁹ where he will be able to conduct his research. There is a lack of preparedness from less involved parties – namely the government – to ensure that this problem, one that is claimed to be so important where children are concerned, is properly and thoroughly researched so that any solution can truly be effective rather than a stab in the dark.

A. Food Advertising - a link with obesity?

That obesity in young people is a serious health problem is not in dispute: being overweight in childhood leads to reduced bone mass and density⁸⁰ which can cause osteoporosis and breakage problems later in life. It also increases the likelihood for obesity in adulthood, when weight loss is harder to achieve. It is true that an alarming number of children are overweight: Otago University found that 30% of children aged between 3 and 15 were overweight. Their proposed solution: to

need to have twenty to sixty minutes of active exercise, at least four times a week, most have less than thirty minutes a day. 35% of adults and 30% of children are considered overweight according to the 1999 National Nutrition Survey.

⁷⁹ "Top health expert joins brain drain" Nicholas Maling, Sunday Star Times, Wellington, New Zealand, 9 July 2000.

⁸⁰ Caused by mineral deficiencies and the stress on a child's skeleton of bearing the weight of an adult body.

reverse this trend, fat and sugar-rich "convenience foods" must be replaced with foods high in nutritional value⁸¹. Compared with a survey conducted ten years ago, today's average New Zealander carries 3.2 kg more on their frame than before.⁸²

However, blaming advertising alone for excessive consumption of "problem" foods is an oversimplification of a complex problem, failing to address any related causal factors. It is quite possible that advertising does play a part, but how significant this is in contrast to other influences is something that requires research in order to establish how to address the problem.

B. Causes of Obesity

A combination of societal factors contribute to this growing health issue. At issue here is how significant advertising is on its own. Obesity occurs when a brain chemistry change causes the body to reset fat storage at an unhealthy level. This can occur genetically, but for the most part obesity in adults results from excessive fat storage during childhood. Accustomed to maintaining an unhealthy goal weight, it is very difficult for the body to reset itself. Healthy eating and vigorous regular exercise alone will rectify the problem. Advertising may make the task more difficult for health conscious individuals to convince their children, but it is only one part of an extremely complex problem. Once accurate New Zealand data is gathered, and laws and codes are modified to reflect the actual situation, advertising can become one part of a complex solution.

There is a major obstacle in attempting to impose diet and exercise regimes on children: they rarely want to do it. Such programmes are difficult enough for adults who want to see the results and have decided to undertake this particular exercise. However children tend to be more concerned with satisfying immediate needs and succumb easily to temptation. Advertisers accept temptation does nothing to help,

⁸¹ Otago University "Overweight Children More Likely to suffer from Bone Fractures" (Wednesday 12 July 2000) <http://www.otago.ac.nz> Reported in "Many children too fat - study" The Dominion, Wellington, New Zealand, 14 July 2000, 6. The first study considered a sample of 100 girls, the follow up targeting boys. Both produced similar results.

⁸² Noel O'Hare "Immovable Objects" above n 78.

but deny it is a *cause*. In the end, to pose a health problem, the product viewed on a TV screen must be easily accessible in the kitchen.

Overeating alone is not responsible: today's increasingly sedentary lifestyles both in leisure and work have much to answer for. Children are too are less active, often preferring to watch videos, go to movies or play computer and video games than engage in physical play. Fears for safety see far fewer children walking or riding bikes. The increased rarity of a stay-at-home parent leads to higher consumption of convenience foods. On average, a family in New Zealand watches 22 hours of TV per week⁸³ which in addition to long hours of sedentary work, inactive means of transport, etc, not to mention hours sleeping, leave little time for physical activity.

The problem for advertisers is that it logically follows that if there are less children's programmes, children watch less television. Not only would they see less advertisements but they would spend fewer hours occupied with sedentary viewing. The resulting increase in activity combined with less exposure to ads for non-nutritious foods would theoretically result in lower rates of obesity. This defeats the main argument that advertising does not cause obesity as indirectly it does since it is from the industry that revenue is gained to promote in the first place. Again the need to balance protection of fundamental rights to information, against interests of health. Limiting rights and freedoms for public health purposes is entirely legitimate. However, it can only be justified if there is a real and significant risk to health in the first place. Research here would be beneficial to establish if in fact children would replace TV viewing with physically active pastimes. There is no evidence to show that a child deprived of kids television would not simply substitute television for video games, or worse still, start watching adult programmes.

In New Zealand the education system has a heavy emphasis on physical education, particularly in the primary curriculum. Despite evidence of the benefits of a school-based educational programme combining physical activity with nutritional

⁸³ Noel O'Hare "Immovable Objects" above n 78.

education, many US schools still do not include this in the curriculum⁸⁴. For this reason New Zealand research is needed on this topic - reliance can only be placed on US findings to a limited extent, allowing for societal differences to be taken into account. Before any conclusion can be reached as to the effectiveness of the inclusion of combined nutritional and physical education in the school curriculum, New Zealand data on both of these and corresponding rates of obesity in different school areas where this type of programme is in place is crucial.

Critics are concerned about the inconsistency between proportions of foods advertised and dietary guidelines. If children were to eat a diet composed exclusively of "junk" or snack foods, there would be a significant negative impact on their health⁸⁵, but what makes up a whole diet is not exclusively dictated by advertising. Children have access to what their parents will buy, most lacking sufficient independent funds to buy so much "junk" food as to cause major health problems. Even "pester power" cannot be blamed entirely: parents can say "no". In moderation no foods are harmful. The balance to be struck in attributing responsibility here is between advertising need, and any moral duty not to unduly exacerbate parents' situations, making the maintenance of the welfare of children a difficult task to achieve.

A study of parents of 7 to 11 year olds in the UK⁸⁶ also suggested that while there is a correlation between advertising foods and requests for these, far more influential factors include family income, television viewing habits and whether the family sat down to eat together at mealtimes. Other research found that 7 to 13 year olds' eating patterns and whether they categorise food as "healthy" or not are based on parental and family influences not advertising or branding⁸⁷.

⁸⁴ Microsoft Health <http://msn.health.com> "What causes obesity".

⁸⁵ Dr N Wilson "Food ads on TV: a health hazard for children?" Australian and NZ Journal of Public Health, (1999) 23(6).

⁸⁶ AJM Donkin, CH Tilston, RJ Neale and K Gregson "Children's Food Preferences; Television advertising vs Nutritional Advice" (1992) 94(9) British Food Journal. MCB University Press.

⁸⁷ B Young and Webley, University of Exeter, and M Hetherington and S Zeedyk of University of Dundee *The Role of Television Advertising in Food Choice* (1996).

C. Advertising of Nutritious Food: legislative barriers

Instead of providing *more* protection for children from the ills of food advertising, existing government legislation⁸⁸ actually prevents claiming foods are “healthy for you” if it can be construed as making an actual claim that it has therapeutic properties. Promotion is only permitted of the *features* of a food product, not its benefits. Initially to avoid health statements inducing people to buy or eat products in excess, any claim considered “therapeutic” was prohibited, unless the product was registered with the Ministry of Health and accompanied by any relevant health warning(s)⁸⁹. It is acceptable for “Sultana Bran” to say “don’t tell them its good for them and they’ll eat it by the bowl-full”, and for beef and lamb ads to refer to iron content, but claims that a product is “healthy” or “nutritious” must stop short of explaining why, or how it can help. A statement that broccoli can be beneficial in the reduction of heart disease, or that omega-3 fatty acids have been shown to reduce asthma is not permitted.

To accept that advertising is necessary, yet to prohibit promotion of healthy foods inevitably leads to food advertising not being representative of a balanced diet and fails to use advertising as an opportunity to provide balanced nutritional information to child viewers.

This is the same reasoning behind forcible retractions of advertising for particular drugs⁹⁰. However, while it is clear that to claim green-lipped mussel extract is an alternative cure for cancer may lead desperate patients to turn from doctors’ advice,

⁸⁸ Food Act 1981, Medicines Act 1981, ANZFA Food Standard A 1 (19).

⁸⁹ This resulted a ridiculous situation which saw New World supermarket have to remove a section of an advertising pamphlet in which they quoted Boyd Swinburn, then President of the New Zealand Heart Foundation, stating that eating broccoli was good for the heart.

⁹⁰ Lyprinol promotion was prohibited because it was felt that cancer sufferers would be particularly vulnerable to statements about its potential to cure to the extent they could ignore medical advice. The recent concern involves a complaint that statements about the power of Roaccutane to cure acne on the TV One programme “Holmes” were “misleading and unbalanced” and would lead to vulnerable people putting pressure on their doctors to have the drug prescribed. Pharmac general manager backed his complaint quoting research which “shows that 80 per cent of doctors who are asked for a particular brand of drug give in to that pressure and patients get what they ask for”.

the same risk of manipulation of highly susceptible people cannot be said to exist in relation to claims about the affect eating broccoli may have on a person's heart. The problem is where should the line be drawn? A solution would be to present a balanced and factually accurate account of divergent views and leave viewers to come to their own conclusions.

New Zealand is currently exploring how to enable health claims to be made under strict ASA guidelines. It is hoped that if advertisers can promote healthy products and make claims to that effect, not only will more ads of this type replace some "problem" advertising, but children can be made more aware of the importance of nutrition and be exposed to a more realistic range of foods. The situation is not yet totally prohibitive - information is allowed to a certain, highly controlled, extent and people are able to draw inferences for themselves based on their own knowledge. The current problem is largely due to an ANZFA proposal, "P153", to amend Standard A1(19) of the Australian *Food Standards Code*⁹¹. It seeks to ensure protection of public health and safety by preventing food labels from containing misleading or deceptive claims about the benefits of individual foods or nutrient components⁹². This constraint is seen in New Zealand advertising circles as an unjustified infringement on freedom of expression. If implemented, the standard would make advertising for nutritious foods even less likely, doing nothing to reduce sugary/fatty food promotion. This review is hailed as a means to ensure consumers do not receive information on the health or other benefits of food that place the products outside the context of the total. However, this assumption presupposes that advertising is the sole source of nutritional information and that consumers are incapable of making judgements in their own interests.

The ASA believe that statements such as "eat oranges and lemons to fight off winter colds", or "eat meat because it contains iron which is good for you" are positive and

Alan Samson, "Authority frustrated by "free ad" for drug" *The Dominion*, Wellington, New Zealand, 14 July 2000, 10.

⁹¹ See Annex VI for current wording.

⁹² ANZFA Information Summary *Application A399: Review of Standard A1(19) Claims about Food* (January 2000).

ought to be encouraged, not prevented. They argue that the variation will compromise ANZFA's statutory objectives to protect public health and safety and to provide adequate information to allow informed decisions about food⁹³. Any risk that this be abused by advertisers touting the advantages while ignoring health disadvantages can be met by existing consumer protective legislation⁹⁴ as such claims would fall into the category of misleading, false and deceptive statements.

In a 1981 study which examined the effects of screening humorous and serious commercials for oranges, immediately prior to advertising a sweet food or toy it was found that the frequency at which oranges were requested over sweets at snack time was measured. The results suggest that serious advertising for good nutrition was more effective than a humorous one⁹⁵ and provide support for the proposition that nutritional information in an advertisement can be influential. Children have a right to receive accurate information, particularly where it is beneficial to their well-being. The State has a duty to ensure this is possible.

However, before any positive promotion of nutrition benefits of products can have any influence on children, common attitudes towards what is healthy must be changed. Children, like many adults, associate "healthy" with "tastes bad", or uninteresting at best and unlike adults, don't have the same concern for their general health and well-being which will convince them to eat vast quantities of green vegetables and fruit. Advertising can assist in changing views on what can be fun to eat. The "Five Plus a Day" campaign has a bright, colourful and easily recognisable identity. It plays an important role in school nutrition and can be viewed on television, in the print media, as well as in supermarkets and dairies. Another advertising campaign now screening regularly is for Sunmaid Raisins. The pitch is that raisins are fun to eat, taste good, and are especially packaged in small boxes "made just for kids", a positive campaign for raisins. Much would be gained through

⁹³ Submission by the ASA Inc. on Review of Standard A 1(19) Concerning Health Claims about food.

⁹⁴ Fair Trading Act 1986; Consumer Guarantees Act 1994.

⁹⁵ Joanne R Cantor (1981) "Modifying children's eating habits through television ads: Effects of humorous appeals in a field setting" (1981) 25 *Journal of Broadcasting*; 37-47.

endorsement of such foods as spinach by figures like "Popeye". However, ultimately what people do and don't eat has a lot to do with personal taste preference. It is important that healthy not equate in a child's mind with "gross" or "uncool" so that eating something healthy is not ruled out even before it has been tried for the first time.

Steven Pinker, Professor of Psychology and Director of the Centre for Cognitive Neuroscience at the Massachusetts Institute of Technology, devotes a section of his latest book to the phenomenon of what causes perceptions about tastes for foods. He explains that disgust is learned in the middle school-aged years from observation of other peoples' reactions to substances. Very young children are not exposed to advertising – before children can talk the majority of any television viewing falls within the ad-free times or videos. Pinker explains that they judge whether an item is good to eat or not on how it smells and whether it appeals to their own taste and will not be moved to refuse chocolate simply because it has been moulded to resemble dog faeces, as one experiment proved. Children's food intakes are controlled by what their parents feed them during their early years. Distastes developed during this early time when their mouths are more highly sensitive and less inclined to enjoy or appreciate more complex flavours are lasting, and can endure through to adulthood, the fear of having something they dislike in their mouth leading to a refusal to try it again until much later - or until it happens by accident⁹⁶. While friends and other sources will have an effect on continuing perception about what is good to eat or not, it is often simply a reinforcement of their own preconceptions developed during their formative years during which time the impact of advertising would have been negligible at best.

D. Food Advertising Research Studies

More than half of advertising to children in the USA is for food products⁹⁷. The main reason for opposition to this advertising is the failure of food commercials to

⁹⁶ Steven Pinker *How the Mind Works* (W.W. Norton, USA, 1997) 378 - 385.

⁹⁷ 56.5% of children's ads were for food, of which 44% were classified as fats, oils and sweet foods. Krista Kotz and Mary Story "Food Advertisements during children's Saturday morning

proportionately promote the elements of a healthy diet, thus contributing to obesity. Repeated exposure to disproportionate presentations of what is available in the way of food leads to distorted views on what makes up a nutritionally adequate diet. This plays not only on children's but on all people's susceptibility to be swayed towards eating foods which they crave, rather than foods of nutritional benefit.

The purpose of the codes is to ensure that advertising can safely put across its message without risk of harm to its viewers. The existing codes do not address food issues specifically which is a problem. However, the draft food code does lay down specific guidelines for all food advertising, with specific and more stringent provisions when children are targets. To begin with, the fact alone that it has been drafted in anticipation of legislative change which will permit more proactive endorsement of beneficial products creates the possibility for advertising to be used to convey social messages, and is also more likely to induce manufacturers and producers of nutritional products to invest in advertising as their principal selling point – health benefits of their product – will be able to be included. The draft children's code puts a wide range of safeguards in place, and with the cross reference to the child-specific Principle 3 in the Food Code, ensures stringent regulation of this category of advertising.

Many studies on the effects of food advertising on children's eating habits and nutritional beliefs ignore potentially relevant aspects in order to be sure to obtain a particular result. This makes it extremely difficult to rely on these findings and is only possible in so far as the research has actually gone. If the parties concerned were less interested in securing findings for their own motivation and combined these techniques, most likely the findings would not be nearly so contradictory.

In the UK, the National Food Alliance (NFA) released a report calling for more responsibility in food advertising to children⁹⁸. Based on dietary surveys of UK

television programming: Are they consistent with dietary recommendations?" (1994) 94 *Journal of the American Dietetic Association*; 1296-1300.

⁹⁸ Susan E Dibb (1995) "Children: Advertisers' Dream, Nutrition Nightmare? The Case for More Responsibility" (Food Advertising London, National Food Alliance, 1995).

children, their main point was that childhood nutrition was very poor. They stated a number of influences on a child's dietary preferences, namely taste, exposure to and availability of foods, parental and peer group influences as well as advertising and their own knowledge.

"Food adverts on television are dominated by re-sweetened cereals, confectionery, fast food, snacks and soft drinks. Advertising of such a narrow range of products cannot be said to encourage healthy choices or promote a varied and healthy diet".

The truth of these statements is not disputed here: excessive exposure to one thing does nothing to promote the opposite. What is questioned is the actual *causal* link from failure to promote the healthy to consumption of strictly the unhealthy. This study claimed

"[a]dvertising not only directly influences children's food preferences and choices but also does so indirectly through its influence on parents and peers.(...) Children are more responsive to and influenced by advertising than adults [and y]oung children may lack the skills to assess let alone understand advertising's purpose".

As a result, the NFA made several recommendations, including to advocate "pro-nutrition" advertising call for a restriction on snack food advertising.

This type of approach is one seemingly favoured in New Zealand. In general, the ASA will recommend the advertiser responsible for a commercial which has failed to meet the criteria in the codes take the necessary steps to remove the particular problem aspect of a commercial rather than take it out of circulation entirely.

The foundation of the NFA report attracted considerable criticism for its lack of research-based findings⁹⁹. In response research was generated and these studies found that the factors of innate taste preferences, parental example and food actually proved to be far greater influences on a child's whole diet. Noted in particular was the need to distinguish between influences towards individual foods from diets as a whole, commenting that

“nutrition is almost entirely about *product categories*, while advertising is almost entirely about *brands*.”¹⁰⁰

A behavioural study of the relationship between an attentive child's viewing of advertisements and requests in the supermarket for that product found a direct correlation existed¹⁰¹. Another similar project found a direct relationship between the reported amounts of requests by children and purchases by parents of foods advertised on television¹⁰². This is otherwise known as “pester power”, the direct encouragement of which by advertisers is specifically prohibited by both New Zealand and UK ASA codes. This will not stop children from making demands – no encouragement is necessary for a child who wants a particular item to ask for it. The question which remains unresolved is to what extent advertisers must take responsibility. The industry are prepared to comply with standards and not actively inducing children's nagging but do not see that they need to refrain from advertising the product altogether, absolving the family shopper from any obligation to simply refuse to give in to demands.

⁹⁹ In particular the Advertising Association examined each reference cited in this report, finding that many were incorrect, some quoting selectively to bolster the report's argument that children are unduly influenced by food advertising. Caroline Sharp (1994) “An Analysis of the References Used in the 1993 National Food Alliance Report “Children: Advertiser's Dream, Nutrition Nightmare?” (Advertising Association, London, 1994).

¹⁰⁰ TP Barwise (1997) “How much does food and drink advertising influence children's diet?” In Glen Smith (ed.) *Children's Food: Marketing and Innovation* (Blackie Academic and Professional Books, London 1997).

¹⁰¹ Joann Galst and Mary Alice White “The Unhealthy persuader: The reinforcing value of television and children's purchase influencing attempts at the supermarket” (1976) 47 *Child Development* 1089-1096.

However, while demands certainly influence a parent's decision to choose one brand over another it is unlikely that a parent would buy an altogether unnecessary product, or even choose a more expensive brand if it was not something the family could afford. Multiple factors, of which a child's knowledge of and preference for a particular brand is only one, influence what goes into a shopping basket. The industry, the ASA, parents and schools must complement one another, leaving no one group to assume total responsibility for all aspects of nutrition and health education.

It is difficult to reach any definitive conclusion on this topic - studies produce conflicting results and in many cases are criticised by the opposing side for skewing results. Some findings simply state rather than provide justification for a particular viewpoint such as the conclusions by two authors¹⁰³ that

“The heavy marketing of high-fat foods and foods of low nutritional value targeted to such a vulnerable group can be viewed as exploitation because young children do not understand that commercials are designed to sell products and do not have the ability to comprehend or evaluate the advertising.”

And as a counter to this, research by Lewis and Hill¹⁰⁴ into the link with obesity found that heavy and normal weight children behave differently in reaction to exposure to advertisements: overweight children felt less inclined to eat sweets following food advertisements. This very finding suggests not only that children are capable of identifying “bad” foods that will exacerbate problems such as weight gain, but that where the product being promoted is of this nature, it will not provide temptation so great that it cannot be overcome. Furthermore, if children with weight problems are *not* induced to eat foods such as sweets by the commercials for them,

¹⁰² Howard L Taras, J Sallis, T Patterson, P Nader and J Nelson “Television's influence on children's diet and physical activity” (1989) 10 *Development Behavioural Paediatrics* 176-180.

¹⁰³ Krista Kotz and Mary Story, above n 97.

¹⁰⁴ MK Lewis and AJ Hill (1998) “Food Advertising on British Children's Television: A content analysis and experimental study with nine-year olds” (1998) 22 *International Journal of Obesity* 206-214.

then not only is advertising not a sole cause, but once the problem has manifested, is no longer even a contributing factor.

Temptation is flagged as a significant contributor to overeating in children as in adults and a study investigated the effect of advertising on self-control in children of kindergarten age¹⁰⁵. It was found that low-nutrition foods were significantly more tempting, regardless of the commercial shown. The conclusion ultimately was that television advertising had no significant impact on a child's tendency to transgress. It might be argued that, if this is true, why bother advertising to children at all. The answer is that of course advertising has an influence, the danger arises not from the use of promotion to induce consumption, but its *abuse*. Regulation in any form must ensure there is not disproportionate or undue influence.

PART IV: LOOKING TO THE FUTURE - SUGGESTIONS FOR REFORM

Although this some in the anti-advertising camp would prefer to see no advertising to children at all, self-regulation can be a highly effective and responsible way to ensure children are protected from undue manipulation. The purpose of the codes is to ensure maximum protection, yet no code for New Zealand can ever be entirely reliable or exhaustive until comprehensive analytical research has been undertaken in a specifically New Zealand context. Before the Government can justify legislative intervention to ban or reduce advertising, they have a duty to thoroughly assess the reality and produce conclusive evidence of a need to take such action. This is essential as bans which result in funding restrictions will not only affect the amount, availability and cost of various media sources, but have a serious risk of infringing fundamental human rights to information and expression.

A London study noted that perhaps a more significant problem with children's television is not in what *is* shown - already stringently monitored - but in what is

¹⁰⁵ Brenda L Dawson, DB Jeffrey and James A Walsh "Television Food Commercials' effect on Children's resistance to Temptation" (1985) 18 Journal of Applied Social Psychology 1353-1360.

*lacking*¹⁰⁶. The main criticism of this author is the degree to which consumerism dominates over education, a view which is strongly shared by the ASA in New Zealand who are pushing for legislative changes which will enable advertising to become an additional tool for education. Their argument is that if advertising does have a potential to influence consumers, children in particular, why not use it for a positive end.

A. Changes within the Codes

The existing codes do meet many concerns about promotion to the young, recognising and respecting that children have particular vulnerabilities and the complaints and review process enables problems to be addressed as they arise. Under the draft proposals, safeguards are much improved, but there is still room for more.

i. Code for Advertising to Children

Despite compliance with the prohibition on advertising for a spin-off product or related product during the airing of a particular programme, its non-inclusion is worrying and is a particular concern of the current Government¹⁰⁷. If this were made explicit it would ensure that this will *always* be a ground on which a complaint can be brought. It would also be beneficial to set out actual time limits so that it is entirely clear. Again research would be invaluable to establish how much time must elapse before the effect of screening such an advertisement will not be exaggerated by the viewing of a particular programme.

Further to this point is the related one that neither the codes as they now stand nor the draft revisions explicitly require ad-free zones, or ad-reduced time during school or pre-school aged programming. This clearly is due to the vulnerability of broadcasters - and indeed other media sources - to rely on advertising sponsorship

¹⁰⁶ Stephen Kline *Out of the Garden: Toys and Children's Culture in the Age of TV Marketing* (Verso, London, 1993).

¹⁰⁷ Rt. Hon. Marian Hobbs, Minister for Broadcasting.

to provide revenue. However, codification of this principle would be an important step and be indicative of the seriousness with which such measures are viewed by the industry. As long as no exact amount of time were required it still allows a sufficient degree of flexibility.

ii. Code for Advertising of Food

In relation to advertising food to children, further to the suggested Principle 3 concepts, it would be beneficial to not only encourage consumption of the nutritional foods, essential for a balanced diet, but to actively prohibit negative depictions of food types. This is not something which requires legislation, but can be incorporated into the codes. Also advisable, providing research bears out the claimed link between advertising and a real health problem – is to require both broadcasters and advertisers to ensure no advertising slot contains a disproportionate balance of messages. This would further require guidelines on how to interpret “disproportionate”.

B. Target Areas for Research

This issue is not one about which there has been a lack of interest, understanding or research internationally. However, while the concerns are universal, in order to effectively address them in New Zealand it is essential to fully evaluate the reality of conditions as they exist in this country. For example, while concerns about nutritional education in schools and the importance of physical activity to be part of the curriculum are comparable between New Zealand and the US, reliance on American research studies is totally irrelevant as the curriculum both at primary and secondary school levels in this country already place great importance on both. The question is, how this operates in practice, whether it is enough, and how do rates of obesity or nutrition levels vary in accordance with varying amounts of emphasis placed by different schools or communities.

The findings of New Zealand studies¹⁰⁸ do provide important background information on which research can be based, and in a New Zealand context. However they are not sufficiently analytical in themselves to be conclusive. Both have compiled data on numbers of different ads viewed, as well as described common eating patterns. Yet neither links the two together showing a causal relationship. The subject matter and research methods of overseas studies can be used to direct the focus of New Zealand social scientists, and the results will allow protection here to be more effective and target the real problems instead of applying findings from foreign societies.

Research must have as its focus the need to protect children from potentially harmful influences, while guarding against overprotection which will deny a child's right to participate in the media and compromise their integrity and intelligence.

Defining "child" will be important, and here reliance on knowledge in the field of psychology which describes the cognitive development of children at different ages will enable more highly specialised age groupings.

Clearly it is unlikely that funding or resources be available to allow one study to canvass all the following subjects, suggested topics include:

- i. the volume and content of advertising viewed by the average child in New Zealand; (already covered to a large extent by the above-mentioned studies)
- ii. the various influences - media and otherwise - in the lives of children;
- iii. the extent to which a child is able to understand the nature of the advertising message as conveyed in New Zealand;
- iv. the actual influence advertising has in swaying a child's desire to eat or request certain types of food;
- v. the extent to which children are consumers;

¹⁰⁸ Hammond, Wyllie and Casswell, above n 2; Wilson, Quigley and Mansoor, above n 10.

- vi. the influence a message has on a child's view or perception of how desirable a particular product is and whether this is more, less or the same when the person conveying the message is an adult or a child of similar age to themselves;
- vii. how much time is required to elapse between a programme and an advertisement for a related product before the effect of the commercial is not magnified by having seen or heard the programme;
- viii. the ability of a child to estimate how much a product might cost and whether this has any bearing on their likelihood to demand products beyond what is realistic in a particular household;
- ix. the extent to which children influence household consumption;
- x. whether a child's influence affects brand selection or actual decision to purchase a product at all;
- xi. how much taste and actual knowledge of a product influences a desire for it as compared to simply being tempted to find out by way of advertising;
- xii. how aware New Zealand children are of nutritional information;
- xiii. how great an effect would result from using advertising as a means to convey nutritional information;
- xiv. the effect removal of advertising for products would have on desire for these products if the products were nevertheless available;
- xv. to what extent children, if deprived of television, would in fact turn to active, physical forms of entertainment, or whether other inactive pastimes would take the place of TV viewing;
- xvi. the extent to which television plays a positive role in a child's life - education, entertainment, promotion of culture, fostering of positive behavioural patterns etc... in order to assess whether television is in fact a sufficiently positive factor in a child's life to justify advertising as a means of ensuring it can continue.

Whatever research is undertaken, it is essential that it be as wide ranging as possible, taking into account all factors which might influence the outcome of an experiment

or impact on the situation studied. A lesson to be learned from overseas is that the most reliable results will come from research without a pre-determined idea as to the result, conducted by researchers without their own agenda. However genuine a person may be in wanting to remain fair, neither advertisers nor anti-advertising lobbyists will be the most appropriate people to undertake such studies as each school of thought is diametrically opposed, even down to beliefs about whether children are passive or active and innately social creatures. The appropriateness to accept verbatim the results of any research funded entirely by one side or the other is also questionable unless it is possible to establish that the research itself was conducted independently.

Recognising the need for a New Zealand perspective, the commercial sector have put forward a research proposal which will cover some of the above issues¹⁰⁹. It will be jointly funded by the Advertising Agencies Association, the Television Broadcasters Council, the Commissioner for Children, as well as by ANZA through which ad agencies are financially contributing to the research. However, because of limits on funding, it is not possible to canvass a particularly large age range and can only target five to eight year olds (pre-schoolers are excluded as their programming time is already ad free) and the sample size will need to be restricted as well. This may result in artificial or contrived findings but it is a risk the organisers are aware of and are prepared to take. While it is accepted that nothing will be able to be finally solved, it is hoped that an indigenous perspective will enable a more accurate understanding of the perspective of the New Zealand child and, having established a New Zealand benchmark, more studies will be commissioned from this starting point. If the findings can point to sufficient need and prove effective, the Government may be persuaded to inject finances into future research¹¹⁰.

The information to be obtained should come primarily from canvassing children themselves but also survey teachers and parents to gain a full insight into patterns,

¹⁰⁹ "What do Children Think of Advertising?: A Research Perspective" - jointly funded by the 3As, ANZA, The Television Broadcasters Council and the Commissioner for Children.

¹¹⁰ Information by email of 15 August 2000 from Lynne Clifton of the 3As.

behaviours and influences. It will be essential to consider the extent to which the impact advertising has on a child varies depending on their immediate environment, family life and parental behaviour in particular. As every family will be different, any regulation ought to reflect the national average, not be pitched to the most involved, interactive parent-child families, nor to homes where children are predominantly left to their own devices.

Ultimately advertising is but one influence - of as yet undetermined importance - in the lives of children. At present, protective measures respond purely to overseas findings on where need lies as well as to public concerns which are largely based on opinion rather than empirical research. However, New Zealand-centred studies will enable a far greater insight into need in our society and how the codes can ensure full and adequate protection for the young from manipulation, as well as enabling full exploitation of any benefits.

C. Alternatives to Self-Regulation

If research studies do conclusively show the potential for advertising to have significant harm on children and other vulnerable groups, the Government will need to consider how to address the problem. The current opinion of the Labour party-led coalition is that self-regulation itself is not a problem¹¹¹, seeing it as a highly satisfactory and effective system whose rules can be easily modified as the need arises. However, what remains to be seen from studies is whether the codes themselves are adequate.

Legislation has a number of problems: it is slow to change which is an important consideration in an area constantly affected by changes in the social climate. It is expensive to seek formal redress by way of judicial review and often does not succeed¹¹². It would also be drafted by parliamentary rather than advertising experts and ultimately be adjudicated by politicians instead of a group with considerable

¹¹¹ Rt. Hon. Marian Hobbs, above n 107.

¹¹² Mai Chen and Geoffrey Palmer - Judicial Review success rate for 1993: 12.5%.

knowledge in the field. Self-regulation is not the only alternative though: an independent regulatory organisation could be set up. This would serve the same purpose and follow the same type of system and practices as already exist. If evidence is found that the advertising industry ought not to play such a major role, this option should be borne in mind as a viable alternative. But until there is evidence to suggest an independent body would be wiser, the ASA already serve the same role. While compulsory powers to enforce decisions to be followed would not be any less effective, it remains to be seen that it would be *more* so as under the existing regime compliance is total.

Another option could be to leave it entirely up to parents to control what their child is exposed to. The problems inherent in this model are evident from the start: no child lives in a family environment where every second of every day is planned out to ensure maximum health and education benefits. Despite a parent's best intentions, children have a large amount of autonomy to act when they are not being watched. Handing over all responsibility to the caregivers allows advertisers to stand back and refuse to take any responsibility for their own actions. This is something which past and present practice have shown they do not want to do for their own reasons.

Self-regulation is a system adopted in 40 out of 47 countries with an important advertising industry¹¹³ and in the New Zealand experience allows for rapid response to concerns which arise. In the light of current knowledge as to the facts about the impact of advertising on the receivers of the information, the codes do serve to meet the risks. Legislation is not so problem-free itself as to be a desirable alternative in the absence of evidence to suggest it would be necessary. It would also undoubtedly slow the complaints process down when ads did slip through the gaps meaning any harm might be magnified not reduced if a lengthy official complaints process would have to be pursued every time a person objected to an advertisement.

¹¹³ USA, Japan, Germany, UK, France, Brazil, Italy, China, Hong Kong, Canada, Australia, South Korea, Spain, Netherlands, Poland, Mexico, Russia, Colombia, Switzerland, Belgium, Austria, India, Denmark, Finland, Greece, Peru, Turkey, Venezuela, Portugal, New Zealand, Ireland, Czech Republic, Slovak Republic, Romania, Slovenia, Uruguay, El Salvador, Hungary, Paraguay

CONCLUSION

Regulating what children are exposed to through advertising is extremely complicated. Firstly, determination of potential for harm is required, if what actually constitutes "harmful" can be agreed upon. Trusting in general compliance, problems are addressed if and when they arise. The ASA are also responding to views that the community doesn't know of the complaints board's existence, instituting a campaign to increase public awareness.

A serious impediment is the lack of New Zealand research as overseas conditions are never exactly the same, and many studies are not entirely impartial. The EAA complain that European research has been conducted by people trying to show advertising in its worst light, pointing to the need for other perspectives.

Advertising *is* an extremely powerful tool with significant potential for manipulation. However the existing mechanism provides guidelines to be followed in creating advertisements, and has established a means for complaint and redress when non-compliance does occur. Government intervention would be entirely unnecessary - any need for reform can be addressed internally. Enforcement of social duties on broadcasters, journalists and advertisers are already a reality, the question is to what extent will they be required to go? Do the public really want to see a climate where all media statements are dictatorial statements as to how people should live their lives? To assume the public need to be told what to do and when and how to do it is highly patronising and assumes the general public are incapable of making independent decisions. Children are particularly vulnerable however, and do require a higher level of guidance. This is already largely provided for under the existing system and is currently under revision, further improvement still will be possible in response to increased knowledge about effects. Advertising is necessary to ensure the viability of all media and advertisers should be considered as a potential part of the solution, not a primary cause of the problem.

and Zimbabwe. Those countries without self-regulation were Argentina, Sweden, Israel, Lebanon, Lithuania, Estonia and Latvia.

Advertising is blamed for encouraging bad behaviour across the spectrum from overeating to violence as well as fostering feelings of inferiority through inability to purchase particular items. However, nothing acts in isolation. Advertising may play a part, but the problem is more far-reaching. In the end marketing for products reflects what consumers want to see or hear. What is not acceptable is to exploit people's vulnerabilities to the extent that they are unable to appreciate the promotional nature of the information they receive. Self-regulation, backed by legislation which prohibits blatant misrepresentation, allows those in the best position to monitor and appreciate all the implications of a situation to have the final say over what is or is not acceptable. Prohibited from employing certain techniques themselves, competing companies do not want others to benefit from exploitation or abuse of the system allowing them to gain an unfair advantage. They are therefore likely to be particularly vigilant.

What is needed now is fair and impartial research to assess the actual situation in New Zealand, and more importantly how best to address any problems. This is vital and if the risk is one which is taken seriously, research must not be left to advertisers alone. Given the industry's importance to ensure the survival of different media sources, to remove or substantially reduce this means of funding without conclusive evidence as to its necessity is not only unfair, but unwise.

Activists' concerns must be listened to in order to ensure that all arguments are taken into account in determining the best means to protect children. However, they should not be stifled. Children are members of society with rights themselves and are a lot less vulnerable than it is sometimes thought. Overprotection can be more harmful, particularly where it contravenes their human rights. Whatever the remedy for the concerns, it must be proportionate to the actual magnitude of the problem. The lesson that not everything we are told is true is an important one and children must learn how to think for themselves. Removal of any influence in a child's life should be strictly limited to those *proven* to have a causal, negative, effect. Scapegoating the advertising industry for particular harms to children will mask other and more significant causes. Ultimately, the children will be the ones who lose.

ANNEX I

Table 1: Number and percentage of food advertisements by food category and time slot.

Food Category	4-5 pm	5-6 pm	7-8 pm	NZ Total	Sth Aust. Total
Sweet snacks (chocolate and confectionery)	37% (38)	30% (30)	23% (17)	30% (85)	20% (82)
Fast food services and restaurants	18% (18)	39% (39)	25% (19)	27% (76)	17% (72)
Drinks	20% (20)	6% (6)	13% (10)	13% (36)	17% (70)
Breakfast cereals	15% (15)	11% (11)	9% (7)	12% (33)	17% (71)
Dairy and margarine	5% (5)	6% (6)	11% (8)	7% (19)	8% (32)
Pasta and bread	3% (3)	2% (2)	7% (5)	4% (10)	NDC
Fruit and vegetables	2% (2)	2% (2)	5% (4)	3% (8)	NDC
Retail food services	1% (1)	3% (3)	4% (3)	3% (7)	NDC
Miscellaneous	0	0	3% (2)	1% (2)	NDC
Total no. of food advertisements	102	99	75	276	412

Table 2: Average number of advertisements per 20 hours for various food categories. Rankings are shown in bracket

Country	Confectionery	Breakfast Cereals	Restaurants	Drinks	Cakes, Biscuits	Fruit & Veg	Dairy Products
New Zealand (TV2)	68 (1)	24 (7)	52 (2)	27 (1)	0	0	12 (4)
Australia	15 (=9)	46 (2)	43 (3)	16 (2)	0	0	9 (6)
Austria	15 (=9)	6 (=9)	0	0	0	0	0
Belgium (Club RTL)	11 (12)	6 (=9)	22 (6)	0	0	0	0
Belgium (Kanaal 2)	22 (7)	0	8 (9)	0	0	0	0
Denmark	21 (8)	11 (8)	4 (=11)	5 (7)	8 (=3)	0	6 (8)
Finland	8 (14)	0	30 (4)	0	8 (=3)	15 (1)	8 (7)
France	40 (4)	31 (5)	18 (7)	6 (6)	6 (5)	0	17 (1)
Germany	15 (=9)	32 (3)	4 (=11)	0	0	0	16 (2)
Greece	64 (2)	26 (6)	10 (5)	0	12 (1)	0	11 (5)
Netherlands	36 (5)	0	14 (8)	8 (=3)	0	0	0
Norway (TV3)	9 (13)	0	2 (=13)	8 (=3)	0	0	5 (9)
Sweden (TV3)	2 (15)	0	0	0	0	0	0
Sweden (TV4)	1 (16)	2 (11)	2 (=13)	0	0	2 (2)	0
United Kingdom	54 (3)	32 (=3)	23 (5)	0	0	0	0
United States	31 (6)	71 (1)	61 (1)	8 (=3)	7 (2)	0	13 (3)

Table 3: Estimated annual exposure to food advertisements and promotions for 9-17 year olds.

Food category	Advertising	Promotions	Total	%
Sweet snacks: Biscuits/chocolate/confectionery/sweet milky products	1,121	133	1,254	29
Drinks: aerated, cordial/fruit flavoured drink/fruit juice/sport/tea/coffee/mineral & pure water	598	206	804	18.5
Fast food/take-aways & restaurants	604	32	636	15
Breakfast cereal: sweet & non sweet	503	95	598	14
Dairy products: standard & low fat	186	5	191	4
Nuts/pulses/beans	153	0	153	4
Others	638	24	662	15.5
Totals	3,803	495	4,298	100

ANNEX II

Advertising Standards Authority Inc.

Proposed Code for Advertising of Food

SECOND DRAFT

INTRODUCTION

All advertisements for food and beverages ("food") shall adhere to the Principles and Guidelines set out in this Code. The purpose of the Code is to ensure that advertising of food will be conducted in a manner which is socially responsible and does not mislead or deceive the consumer.

In interpreting the Code emphasis will be placed on the Principles and the spirit and intention of the Code. An advertisement which does or does not adhere to the letter of a particular law or Guideline nevertheless may or may not be in breach of the Code, depending on its compliance with the Principles and respect of the spirit and intention of the Code.

DEFINITION

For the purposes of this Code:

"Appropriate industry codes" includes the Infant Formula Marketers' Association "Code of Practice for the Marketing of Infant Formula" and any other industry Code endorsed by the ASA.

Principle 1

Advertisements should comply with the laws of New Zealand.

Guidelines

(a) In addition to food related legislation advertisers should be familiar with the restrictions on advertising in the ANZFA Food Standards, the Food Act 1981, the Food Regulations 1984, and the requirements of the Fair Trading Act 1986.

(b) The ANZFA Food Standards have labelling requirements. Pictorial depictions, names, descriptions and other information in advertisements should not be inconsistent with labelling requirements.

Principle 2

All food advertisements should be prepared with a due sense of social responsibility to consumers and to society. However advertisements containing nutrient, nutrition or health claims, should observe a high standard of social responsibility.

Guidelines

(a) Nutrient, nutrition and health claims should not be inconsistent with national health and nutrition policy.

(b) Nutrient claims should be based on the nutrient content of the food, eg. "milk is a good source of calcium."

(c) Nutrition claims should be used in conjunction with the nutrient message and expressed as physiological consequences, eg. "milk is a good source of calcium: calcium is essential for strong teeth and bones."

(d) Health claims, when allowed by law, should relate the nutrient content in the product to risk reduction of a disease condition or a specific health outcome.

(e) Therapeutic claims are based on the relationship between a food and the prevention or treatment of a disease or condition. Such claims are subject to legislative provisions in New Zealand, which allow such claims only under certain conditions. The Code for Therapeutic Advertising would apply.

Principle 3

Advertisements directed at children should observe a high standard of social responsibility.

- (a) Advertisements for treat foods directed at children should not actively encourage children to eat or drink them near bedtime, to eat or drink them frequently throughout the day or to replace main meals with them.
- (b) Advertisements for nutritional foods essential for a healthy balanced diet are encouraged to use creative techniques to advocate the benefits of such foods, particularly when directed at children. A large and liberal but common-sense interpretation is allowed. However, benefits should not be exaggerated and should not imply that a single food should replace a varied diet.
- (c) Advertisements should not encourage excessive consumption of any particular food.
- (d) Attention is drawn to the Code for Advertising to Children.

Principle 4

Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

Guidelines

- (a) All nutrient, nutritional and health claims should be factual, not misleading, and able to be proved. A high standard of substantiation is required, such as authentication by ANZFA and/or appropriate government agencies or significant scientific agreement among experts that the claim or message is supported by publicly available scientific evidence.
- (b) The nature of the audience should be taken into account particularly when advertisements contain nutrient, nutritional and health claims.
- (c) Food advertisements can contain exaggerated or humorous depictions. This is acceptable provided it is obviously not misleading
- (d) Claims in an advertisement should not be inconsistent with information on the label or packaging of the food.
- (e) Advertisements should not claim or imply endorsement by any government agency, professional body or independent agency unless there is prior consent, the claim and the endorsement verifiable, current and the agency or body named.

ANNEX III

Advertising Standards Authority Inc.

Proposed Code for Advertising to Children

SECOND DRAFT

INTRODUCTION

The purpose of the Code is to serve as a guide to advertisers and agencies in preparing advertising messages which adequately recognise the special characteristics of the children's audience.

Responsible advertising of products and services normally used by children, and the depiction of children in advertising in general, can serve not only to inform children of these products and services but also about many aspects of society and the world in which they live. Children are entitled to certain rights and protection pursuant to the United Nation's Convention on the Rights of the Child ("Convention"). Article 13 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." Children therefore have the right to receive advertisements along with other information. However, there are various fetters to that right; for instance Article 17(e) calls for "appropriate guidelines for the protection of the child from information and material injurious to his or her well-being." This Code provides the "appropriate guidelines" for advertisements directed at children.

All advertisements shall adhere to the Principles and Guidelines set out in this Code. The Code is designed to ensure that advertising to children will be conducted in a manner which is socially responsible and does not mislead or deceive children.

In interpreting the Code emphasis will be placed on the Principles and the spirit and intention of the Code. An advertisement which does or does not adhere to the letter of a particular guideline nevertheless may or may not be in breach of the Code, depending on its compliance with the Principles and respect of the spirit and intention of the Code. Furthermore, notice is taken of Article 3 of the Convention, which states that "the best interests of the child shall be a primary consideration".

DEFINITION

For the purposes of this Code:

The term "children" means all persons [below the age of 18] or [of a younger age and in appropriate circumstances includes teenagers] *one to be chosen*.

"Advertisement" includes all advertisements directed at children whether contained in children's media or otherwise.

"Appropriate media and industry Codes" includes the Television Broadcasters' Council, Childrens' Broadcasting Code, and any other industry Code endorsed by the ASA.

Principle 1.

Advertisements should comply with the laws of New Zealand and appropriate media and industry codes.

Principle 2.

Advertisements should observe a high standard of social responsibility.

Guidelines

2(a) Advertisements should not portray violence, undue aggression, or menacing or horrific elements likely to disturb children.

2(b) Advertisements should not encourage anti-social behaviour or depict children behaving in an anti-social manner, *eg.* vindictiveness and bullying.

2(c) Children in advertisements should not behave in a socially unacceptable manner,

bearing in mind their age.

2(d) Children should not be urged in advertisements to ask their parents to buy particular products for them.

2(e) Advertisements should not suggest to children any feeling of inferiority or lack of social acceptance for not having the advertised product.

2(f) Advertisements, except safety messages, should not contain any statement or visual presentation that could have the effect of portraying children in unsafe acts, showing them in unsafe situations, encouraging them to consort with strangers, or behaving in an unsafe way.

2(g) Advertisements, except safety messages, should not show products being used in an unsafe or dangerous manner, or which would be unsafe if used by children without proper supervision.

2(h) Advertisements should not depict toy weapons which are realistic (in size, shape and colour) and can be confused with real weapons.

2(i) Advertisements should not portray sexually suggestive images, or images that are degrading to any individual or group.

Principle 3.

Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children, abuse the trust of or exploit the lack of knowledge of children, exploit the superstitious or without justifiable reason play on fear.

Guidelines

3(a) Advertisements must be clearly recognisable as such by children and separated

from editorials or programmes. If there is any likelihood of advertisements being confused with editorial or programme content, they should be clearly labelled "advertisement" or identified in an equally clear manner.

3(b) Advertisements should take into account the level of knowledge, sophistication and maturity of the intended audience. In particular care should be taken when communicating with younger children who may have a lack of ability to comprehend the purpose of advertising and differentiate between it and non-advertising messages.

3(c) Care should be taken to ensure that advertisements are able to be understood by children to whom the advertisements are directed, are not ambiguous and do not mislead as to the true size, value, nature, durability and performance of the advertised product.

3(d) If extra items are needed to use the product (eg. batteries) to produce the result shown or described (eg. paint, dolls clothes) this should be made clear. A product which is part of a series should be clearly indicated as such as well as the method of acquiring the series.

3(e) In the case of a product that must be assembled, this should be made clear, and where appropriate, the source of power and performance should be indicated.

3(f) If price is mentioned, the complete price of the product should be made clear, and advertisements should clearly indicate the cost of those items that constitute the original purchase and additional items that must be purchased separately.

3(g) Where reference is made to a competition the rules should be made clear and the value of prizes and the chances of winning should not be exaggerated.

3(h) Any reference to a premium (eg. an additional product or service offered free, at a reduced price or as a prize) should be secondary to the main product advertised, clearly displayed and conditions relating to it should be clearly represented.

Principle 4.

Advertisements should not encourage inappropriate purchase or excessive consumption.

Guidelines

4(a) Children are not a homogenous group but have varying levels of maturity and understanding. Care needs to be taken that the product advertised and style of advertisement are appropriate for the audience to whom it is primarily directed.

4(b) Advertisements for a competition requiring a fee to enter or requesting response to an 0900 telephone number should state "children ask your parents first" or similar words. Extreme care should be taken in requesting the names, addresses and other personal details of children.

4(c) For advertisements for food or beverages attention is drawn to the Code for Advertising Food and in particular Principle 3.

ANNEX IV

Codes of Practice

CODE FOR ADVERTISING TO CHILDREN

16 October 1989

INTRODUCTION

The purpose of the Code is to serve as a guide to advertisers and agencies in preparing advertising messages which adequately recognise the special characteristics of the children's audience.

Responsible advertising of products and services normally used by children, and the depiction of children in advertising generally, can serve not only to inform children of these products and services but also about many aspects of society and the world in which they live.

DEFINITION

The term "children" means all children 14 years of age and younger.

For the purposes of this Code:

The word "advertisement" is to be taken in its broadest sense to embrace any form of advertising to promote the interest of any person, product or service to children under 14 years of age and includes all advertisements in children's media.

The word "product" includes goods, services, and facilities whether paid or given free.

CODE

1. Separation of Advertisements

Advertisements must be clearly recognisable as such by children and separated from editorials or programmes. If there is any likelihood of advertisements being confused with editorial or programme content, they should be clearly labelled "advertisement" or identified in an equally clear manner.

2. Content

- i. Advertisements should not clearly portray violence or aggression.
- ii. Advertisements should not contain menacing or horrific elements likely to disturb children.
- iii. Advertisements should not encourage anti-social behaviour or depict children behaving in an anti-social manner. Vindictiveness, bullying and certain facial expressions and body movements can all be defined as anti-social.
- iv. Children in advertisements should be reasonably well-mannered and well-behaved.
- v. Children should not be urged in advertisements to ask their parents to buy particular products for them.
 - i. No advertisement should suggest to a child that he/she will be any way inferior through not owning the advertised product.

3. Safety

- i. Advertisements, except safety messages, should not contain any statement or visual presentation that could have the effect of portraying children in unsafe acts, showing them in unsafe situations, encouraging them to consort with strangers, or enter strange and hazardous places.
- ii. Advertisements, except specific safety messages, should not show products being used in an unsafe or dangerous manner, or which would be unsafe if used by children without proper supervision.
- iii. Advertisements should not depict toy weapons which are realistic (in size, shape and

colour) and can be confused with real weapons.

4. Presentation

- i. Special care should be taken to ensure that advertisements are not ambiguous and do not mislead children as to the true size, value, nature, durability and performance of the advertised product.
- ii. If extra items are needed to use the product (e.g. batteries) or to produce the result shown or described (e.g. paint, dolls clothes) this should be made clear. A product which is part of a series should be clearly indicated as such as well as the method of acquiring the series.
- iii. In the case of a product that must be assembled, this should be made clear and where necessary the source of power and method of operation should be indicated.
- iv. Advertisements should not understate the degree of skill required to use the product. Where results of product use are shown or described, the advertisement should represent what is reasonably attainable by the average child in the age range for which the product is intended.

5. Price

If price is mentioned, the complete price of the product should be made clear, preferably both aurally and visually, and advertisements should clearly indicate the cost of those items that constitute the original purchase and additional items that must be purchased separately.

6. Competitions

Where reference is made to a competition the rules should be made clear and the value of prizes and the chances of winning should not be exaggerated.

7. Premium Offers

Any reference to a premium (e.g. an additional product or service offered free, at a reduced price or as a prize) should be secondary to the main product advertised, clearly displayed and conditions relating to it should be clearly represented both aurally and visually.

NEW ZEALAND ADVERTISING INDUSTRY TURNOVER

(Includes all cash advertising revenue, inclusive of commission when sold via agencies)

ix

DECEMBER 1999 YEAR END

	1990		1991		1992		1993		1994		1995		1996		1997		1998		1999	
	\$ M	%	\$ M	%	\$ M	%	\$ M	%	\$ M	%	\$ M	%	\$ M	%	\$ M	%	\$ M	%	\$ M	%
NEWSPAPERS Including retail & classified	405	40.7	379	39.0	355	36.2	361	33.0	386	33.4	429	34.2	444	33.7	450	33.5	441	33.0	462	32.5
COMMUNITY NEWSPAPERS							85	7.8	86	7.4	87	6.9	94	7.1	102	7.6	102	7.6	104	7.3
TELEVISION Including Free-to-Air and Pay	351	35.2	352	36.2	395	40.1	423	38.7	425	36.9	456	36.4	476	36.2	478	35.5	473	35.4	487	34.3
RADIO	137	13.7	140	14.4	142	14.5	139	12.7	144	12.5	156	12.4	158	12.0	165	12.3	170	12.7	178	12.6
MAGAZINES	95	9.5	92	9.5	82	8.4	77	7.0	102	8.8	112	8.9	127	9.7	130	9.7	127	9.5	159	11.2
OUTDOOR	6	0.6	6	0.6	5	0.5	6	0.5	7	0.6	9	0.7	9	0.7	12	0.9	14	1.1	18	1.3
CINEMAS	3	0.3	3	0.3	3	0.3	3	0.3	5	0.4	6	0.5	8	0.6	7	0.5	10	0.7	12	0.8
TOTAL	997	100.0	972	100.0	982	100.0	1094	100.0	1155	100.0	1255	100.0	1316	100.0	1344	100.0	1337	100.0	1420	100

ANNEX V

Sources:

Newspapers
Community Newspapers
Television
Radio
Magazines
Outdoor
Cinema

Returns from NPA members
Returns from major community groups plus NPA estimates
Returns from NZTBC members and Sky.
Returns from RBA members
Returns from MPA members, plus two non-members; see special note.
Returns from virtually all major companies.
Returns from virtually all major companies.

* Special notes

1. The collection of data by the MPA has been changed. In previous years estimates were used to a large extent. With hindsight, previous years results were incorrect
2. Because of difficulties in getting accurate fixes on direct mail and telemarketing these figures are not included.
3. This years figures almost entirely consist of actual returns. In previous years greater reliance has been placed on estimates. This would account for variations with previous years.

**PROPOSED DRAFT VARIATION TO THE AUSTRALIAN
FOOD STANDARDS CODE**

Standard A1 of the Food Standards Code is varied by omitting paragraphs (19) (a), (b), (c) and (d)

Substituting -

- (19) (a) This clause applies to particular foods and classes of food.
- (aa) For the purposes of this clause, 'claim' means any statement, representation, design or information which is not prescribed by this Code, and includes an express or implied claim.
- (b) Save where otherwise expressly prescribed by this Code, any label on or attached to a package containing food or any advertisement for food must not include a claim, or a claim described by words of similar effect -
- (i) for therapeutic or prophylactic action; or
- (ii) that could be interpreted as advice of a medical nature from any person.
- (c) Any label on or attached to a package of food or any advertisement for food must not include the word 'health' or any word of similar effect as part of or in conjunction with
- (i) the name of any food;
- (ii) any generic or specific description of food; or
- (iii) the trade name or trade mark of any food.
- (d) Save where otherwise expressly prescribed by this Code, the label on or attached to a package of food or any advertisement for food must not expressly or by implication contain the name of or reference to any disease or physiological condition, disorder, ailment, syndrome, symptom, sign or defect.

VICTORIA UNIVERSITY OF WELLINGTON LIBRARY



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ANNEX VI

LAW LIBRARY

A Fine According to Library Regulations is charged on Overdue Books.

VICTORIA UNIVERSITY OF WELLINGTON

LIBRARY

STRALIAN

Standard A
(d)

Substituting

(19) (a)

(aa)
design or info
claim.

(b)
to a package c
described by v

raphs (19) (a), (b), (c) and

od.

ment, representation,
es an express or implied

; any label on or attached
clude a claim, or a claim

ature from any person.

(c) Any label on or attached to a package of food or any advertisement for food must not include the word 'health' or any word of similar effect as part of or in conjunction with

- (i) the name of any food;
- (ii) any generic or specific description of food; or
- (iii) the trade name or trade mark of any food.

(d) Save where otherwise expressly prescribed by this Code, the label on or attached to a package of food or any advertisement for food must not expressly or by implication contain the name of or reference to any disease or physiological condition, disorder, ailment, syndrome, symptom, sign or defect.

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