

Federal Trade Commission: Food Marketing to Kids Workshop

Public Comment

Submitted by:

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Self-Regulation of Food Advertising: What it Can, Could and Cannot do to Discourage Unhealthy Eating Habits among Children

Introduction

Self-regulation is a system whereby industry actively participates in, and is responsible for, its own regulation. Led, funded and administered by the industries concerned, self-regulation of advertising and other forms of promotional marketing typically comprise two basic elements. The first, a code of practice — a set of ethically-based guidelines — governing the content of marketing campaigns; the second, a process for the establishment, review and application of the code of practice. This process can be structured in many different ways, but usually involves a self-regulatory organization (SRO) set up by the advertising and media industries, and in many cases involves companies that use advertising to promote their products or services. Self-regulation may be mandated by government framework legislation, yet can equally exist completely independently of government regulation. Self-regulation thus involves a lot more than voluntary codes and initiatives developed by individual companies.

The general aim of self-regulation is to ensure that advertisements and other forms of marketing do not deceive nor mislead consumers, thereby promoting trust in advertisers and advertising among consumers and government authorities. Self-regulation therefore exists to protect advertisers as well as consumers – a classic case of “enlightened self-interest.”

If implemented in a fair and robust manner, self-regulation of advertising and other promotional techniques seems like a win-win for consumers and advertisers alike: a low cost, flexible, incentive-driven mechanism to ensure truthful and fair advertising. But what if perfectly truthful advertisements send out messages inconsistent with public policy goals? Take food advertising. Every day, large numbers of advertisements for high calorie, fatty, sugary foods of low nutrient value directly target children worldwide, with the clear objective of increasing brand and category consumption (Hawkes, 2002). As stated by the Coca-Cola Company: “We define marketing as anything we do create consumer demand for our brands” (Coca-Cola, 1995 p.27). Companies aggressively seek “stomach share” for their products using not just advertising, but a wide range of marketing techniques, including point-of-sale promotions, in-school sponsorship, viral marketing, product placement and Internet marketing. The cumulative effect of this wide range of techniques stands in marked contrast to nutritional advice encouraging children to develop healthy, balanced diets over the long-term. Children, therefore, are growing up in an environment of mixed messages about good diet and nutrition.

The most recent – and most comprehensive – review of the evidence suggests that advertising does affect children’s food choices and dietary habits (Hastings et al., 2003). At the same time, obesity among children in the United States is now being termed an epidemic (Koplan et al., 2004), a trend echoed in most parts of the world (Lobstein et al., 2004). The apparent association between marketing, poor food choices and obesity has led international, governmental and non-governmental organizations around the world to call for action to reduce the effects of food marketing to children (Hawkes, 2004). Self-regulation is one of the suggested policy options. Although treated with skepticism by most consumer and public health groups, some governments are considering what role self-regulation could play in addressing the obesity problem. The United Kingdom and United States are illustrative. Influential bodies in both countries recently called for a testing period for self-regulation – followed by government action if it fails. In the United Kingdom, a government White Paper (2004) called on the food industry to self-regulate their promotional activities so as to reduce children’s exposure to marketing for unhealthy foods. If the food industry fail to “produce change in the nature and balance of food promotion” by 2007, the government went onto say, “we will take action through existing powers or new legislation to implement a clearly defined framework for regulating the promotion of food to children” (UK Department of Health, 2004 p.36). In the United States, the Institute of Medicine (IOM) of the National Academy of Sciences set up a Committee on Prevention of Obesity in Children and Youth to advise congress on how to address obesity. Their 2004 report recommended “an approach to address advertising and marketing directed especially at young children under 8 years of age, but also for older children and youth, that would first charge industry with voluntary implementation of guidelines developed through diverse

stakeholder input, followed by more stringent regulation if industry is unable to mount an effective self-regulating strategy” (Koplan et al., 2004 p.175). They called on “industry to develop and strictly adhere to marketing and advertising guidelines that minimize the risk of obesity in children and youth”, and for the FTC to have the authority and resources to monitor their implementation (Koplan et al., 2005 p. 177).

Many large food companies are now responding to concerns about food marketing to children. PepsiCo is a good example. In May 2005, the company promised not to target TV commercials at children in the United Kingdom (Anon, 2005). In the United States, no such promise was made. But in a statement to the IOM Committee, PepsiCo stated they would “continue to implement positive marketing practices” to promote healthy diets (Taaffe, 2005). Still, promoting unhealthy foods to children is a long way off diminishing. The most recent data published by the United States Department of Agriculture shows that:

“food manufacturers have been responding to increased concerns about childhood obesity rates and the marketing of high-fat, sugary foods to America’s children by developing new, more healthful foods and beverages...[but] despite the gains made in introductions of more healthful foods, candy remains the leading new product category heavily marketed to children. Over 2000-04, 46 percent of new food products targeted at children were candies, 8 percent were snacks, 6 percent were cookies and 5 percent were breakfast cereals (Harris, 2005, p.4).

Moreover, the United Kingdom and the United States already have self-regulatory schemes in place that cover food advertising to children. So calls for further self-regulation are obviously calls for *different* self-regulation, going beyond what already exists, to counter the still prevalent practice of advertising unhealthy foods to children. These comments will thus address if and how self-regulation could be more responsive to obesity in the United States and elsewhere, while also emphasizing the structural limitations of existing self-regulatory systems to address the problem of unhealthy diets among children.

Existing industry-wide self-regulatory organizations dealing with food advertising and/or advertising to children

To assess the potential role of self-regulation, it is instructive to examine self-regulatory programs from around the world. The functioning of self-regulation systems – how they work, the mechanisms involved, the method of monitoring and enforcement – varies widely between countries. In general, highly developed forms of self-regulation are associated with a highly developed advertising industry. All self-regulatory systems are focused around the

implementation of a code of practice, most of which include a clause on children and, occasionally, on food or health (for details, see Hawkes 2004).

Globally, the concept of self-regulation is championed by the International Chamber of Commerce (ICC), a global trade group representing “the voice of international business” (ICC, 2005). Part of its work is to forge “internationally agreed rules and standards that companies adopt voluntarily”. The ICC has developed a series of codes of practice that set out ethical standards for different types of marketing, each of which include a clause on children. Television advertising is covered by the ICC International Code of Advertising Practice (1997). According to the code, advertising should not be deceptive nor mislead, and should be clearly recognizable as advertising (ICC, 1997). The part of the code specific to children states that advertising should not: exploit the inexperience or credulity of children; mislead them about the nature of the product; have the effect of harming them mentally, physically or morally; nor make them feel inferior to their peers. These guidelines are echoed in related codes on sales promotions, the electronic media, direct selling and sponsorship. In 2003, the ICC compiled a *Compendium of ICC Rules on Children and Young People and Marketing* (ICC, 2003) to publicize their codes in the context of heightened global concern about food promotions to children. The following year, they released a new “framework” to guide “responsible” food advertising, based on interpretations of existing guidelines (ICC, 2004). The framework states that individual marketing campaigns should not encourage excessive consumption or undermine the promotion of a healthy diet. The ICC does not hold advertisers accountable to their codes; rather, their purpose is to help countries develop their own guidelines and enforcement systems. Many countries have applied or adapted the ICC codes to form the basis of their own national systems of advertising self-regulation.

The following examples of self-regulation in four countries have been selected to illustrate different approaches self-regulation of advertising food to children. Other interesting examples are the SROs in Australia, France, the Philippines and South Africa.

1. United States: Children’s Advertising Review Unit

Self-regulation of advertising to children was first introduced into the United States in 1972, when the Association of National Advertisers published the “Children’s Advertising Guidelines”. Two years later, the National Advertising Review Council (NARC) set up the Children’s Advertising Review Unit (CARU) to oversee the implementation of the guidelines and “to promote responsible advertising to children” (NARC, 2004). The stimulus for developing self-regulation was the threat of government legislation. In the early 1970s, pressure groups had

successfully raised concern about the effects of children's advertising, and, in 1974, the Federal Communications Commission (FCC) imposed some time limits on advertising to children. In 1978, the FTC began to draft rules to further regulate advertising, but congress barred any rule based on unfairness and the process ceased in 1981 (Story and French, 2004).

At the core of CARU are the *Self-Regulatory Guidelines for Children's Advertising* (latest revision 2003), which apply to broadcast and print advertising targeted at children under the age of 12. The guideline on food advertising was added in the early/mid 1990s following growing concern about the effects of food advertising targeted at children. The guideline states that:

“Representation of food products should be made so as to encourage sound use of the product with a view toward healthy development of the child and development of good nutritional practices. Advertisements representing mealtime should clearly and adequately depict the role of the product within the framework of a balanced diet. Snack foods should be clearly represented as such, and not as substitutes for meals” (CARU, 2003).

The guideline has been enforced for a wide range of food promotions over the years, leading to several advertisements being withdrawn or altered (for details, see NARC, 2004). The focus has been firmly on the content of the advertisement – the elimination of phrases that directly encourage excessive consumption such as “the more you scarf the better your chances”, and the storylines which represent healthy food as “dorkish”. The guidelines do not extend to the *quantity* of food advertisements, nor to the location of advertising (e.g. in schools), product placement, or many of the alternative forms of advertising technique. In the late 1990s, CARU developed guidelines to prevent companies unfairly collecting data from children over the Internet in response to threats of legislation; legislation was eventually enacted in 1998 (Children's Online Privacy Protection Act), but the language was based on guidance from CARU (E. Lascoux, personal communication, May 14, 2003).

CARU applies the guidelines almost exclusively through internal monitoring. It reviews television, radio, website and print advertisements and if an advertisement contravenes the code, they contact the advertiser to negotiate an amendment or withdrawal of the advertisement within a 10 day period. If the advertiser does not comply within 10 days, the case is written up and publicized. The system thus relies on compliance and fear of negative publicity – CARU have no sanction to fine or withdraw the advertisement, but if necessary, they can refer the case to the FTC to be dealt with by legislation on deceptive and misleading advertising.

CARU can also deal with complaints from industry competitors and consumers, but does not actively encourage them. Its subsequently low-public-profile prompted the Director of the Grocery Manufacturers of America, the food industry trade group, to write to CARU, requesting that they “embark on a campaign to raise the visibility of its role and to expand its monitoring of

food and beverage advertising” (Manly Molpus, 2003). CARU responded by publishing a White Paper clarifying its activities. The White Paper states that the guidelines “adequately address advertising of food to children” (NARC, 2004). According to CARU’s Director, the effect of the guideline has been to encourage food advertisers to develop advertisements that neither encourage excessive consumption nor discourage the consumption of healthy foods (E Lascoutx, personal communication, May 14, 2003). This has been disputed by consumer and public health groups, who believe that CARU allows advertisements clearly violating the guidelines.

2. United Kingdom: Advertising Standards Authority

Self-regulation in the United Kingdom is the responsibility of the Advertising Standards Authority (ASA). For decades, the ASA only oversaw the print media, but in 2004 was contracted by independent broadcast regulator, Ofcom, to oversee broadcast advertising as well (it had previously been regulated by Ofcom using a statutory code). The ASA was founded by the industry in 1961, amid fears that existing statutory regulation of broadcast advertising would be extended to print advertising. During the 1990s, it extended its remit into new media advertising (e.g. on the Internet, via e-mail). The ASA consists of the Committee on Advertising Practice (CAP), an industry body (with representatives from marketers, agencies, service suppliers and media owners) that writes and enforces the rules, as well as the ASA itself, an independent entity, that investigates and adjudicates breaches of the rules.

The rules written by the CAP comprise the Code of Advertising, Sales Promotions and Direct Market (the CAP Code, latest edition 2003). Through this code, the ASA has the mandate to regulate advertising to children (ASA, 2003a). The Code states that child-directed advertising should “contain nothing that is likely to result in their physical, mental or moral harm”, “should not exploit their credulity, loyalty, vulnerability or lack of experience” harm, and “should not actively encourage them to make a nuisance of themselves to parents.” Of note, the code contains no specific rules on food advertising. It used to cover tobacco advertising until it was banned by statutory legislation. The Code contains very few restrictions on advertising (one example is that sales promotions of alcohol should not be targeted at children under the age of 18), and does not refer to the quantity or location of child-directed advertising.

In a very different approach to that taken by CARU, the ASA operates largely as a complaints system, enabling consumers, and companies, to complain in writing or through a website. The system has a relatively high level of recognition, with around 13,000 complaints are received each year (ASA 2002, 2003b, 2004). Over 90% come from consumers, the rest coming from competing advertisers. The ASA also has a self-monitoring system, and, while not actively

encouraging it, a “Copy Advice” in which advertisers can check if their advertisements adhere to the Code.

Should CAP members find that the advertisement violates the Code, the advertiser is asked to change or withdraw it. The central sanction is fear of negative publicity, but if an advertiser persistently breaks the Code, there are tougher sanctions: CAP can send out Ad Alerts to warn the media about problem advertisers and advertisements; CAP trade associations and professional bodies can refuse advertising space in the future, or withdraw trading privileges; the advertiser can be disqualified from entering awards; and, ultimately, the ASA can refer misleading marketers to the Office of Fair Trading for legal action.

The vast majority of the complaints submitted to the ASA concern decency, truthfulness and misleading ads. Relatively few complaints are received about advertising to children (59 in 200, of which 9 were upheld) (ASA, 2001). The number of complaints about food advertising has varied over the years: food is often one of the largest categories of complaint, although recent trends have been downward: 292 in 2004 compared with 489 in 2003 (ASA, 2004). But the complaints are almost exclusively about false claims. On occasion, this means an advertisement will be withdrawn as a result of giving a misleading impression the product is healthy. In 2004, for example, the term “Eat Right” had to be withdrawn from an advertisement for high-sugar cereal (ASA, 2004). The ASA also point out they receive relatively few complaints about food advertising to children in new media.

3. Canada: Advertising Standards Canada

The national industry association in charge of self-regulation in Canada is the Advertising Standards Canada (ASC). Founded as the Canadian Advertising Advisory Board in 1957, the ASC developed the industry’s principal regulatory instrument, the Canadian Code of Advertising Standards in 1963, and assumed its current name in 1997. Its aim is to “foster the ethical practice of advertising” (ASC, 2005).

ASC have a very specific role in regulating food advertising to children. There are four components: the Canadian Code of Advertising Standards; the Broadcast Code for Advertising to Children (“Children’s Code”), the Children’s Clearance Committee, and a complaints committee. The Canadian Code of Advertising Standards sets down the basic ethical principle that advertising should not exploit the credulity of children, and, in 2004, added an “Interpretation clause” to address food advertising to children, as follows:

“Interpretation Guideline #2: Food product advertising addressed to children that is inconsistent with the pertinent provisions of the Food and Drugs Act and Regulations, or

the Canadian Food Inspection Agency's Guide to Food Labeling and Advertising shall be deemed to violate Clause 12 (Advertising to Children). This Guideline is intended, among other purposes, to ensure that advertisements representing mealtime clearly and adequately depict the role of the product within the framework of a balanced diet, and snack foods are clearly presented as such, not as substitutes for meals. (April 2004)" (ASC, 2004a)

The Children's Code is supplementary to the main code, and contains detailed rules on factual presentation, avoiding undue pressure, safety and social values. It also includes some restrictions: a limited role for characters well-known to children, and only four minutes per 30 of children's television shows can be dedicated to advertising. The third pillar, the Children's Clearance Committee, reviews and approves children's broadcast advertising messages to ensure compliance to the Children's Code. In requiring pre-clearance, the ASC parts with the majority of SROs elsewhere in the world – including CARU and the UK's ASA (Hawkes, 2004). The Committee meets every other week to review submitted advertisements targeted at children, and approves or disproves them by the end of the same day. The final pillar is a consumer complaints mechanism, which covers all advertising. Food advertisements are typically one of the largest categories of complaint: 139 complaints in 2000, of which 10 were upheld, and 186 out of a total of 1540 complaints in 2004, of which 6 were upheld (ASC, 2004b). Complaints are dealt with by the consumer committee with representatives from the industry and public sector. If the ASC determines that the advertising in question violates the Code, the advertiser is requested to withdraw the ad, or to amend it to comply with the decision. If the advertiser does not comply, the media involved are notified and, according to the ASC, generally do not exhibit the advertising in that form. The ASC does not regulate other promotional activities or their location.

4. Singapore

Advertising in Singapore is subject to self-regulation by the Advertising Standards Authority of Singapore (ASAS). The organization was founded in 1973 by the Consumer's Association of Singapore (CASE), as an advisory board on advertising (ASAS, 2005). The Singapore Code on Advertising Practice was developed in 1976 with the aim of encouraging ethical advertising (latest revision, 2003). The Code includes a section on children, which follows ICC language, and another on food, which states that: "Advertisements should not actively encourage children to eat excessively throughout the day or to replace main meals with confectionery or snacks foods" (ASAS, 2003). If advertisements do not comply, ASAS has the power to suspend advertisements pending investigation. Advertisers are pressured to comply for fear of adverse publicity and the withholding of advertising space and time by the media. ASAS

also provides a system for complaints from industry members, media groups and consumers, and has a pre-copy advice service.

ASAS is administered from CASE offices, and funded by member associations, including advertising associations, media associations, representatives from medical and pharmaceutical associations, government agencies and CASE (ASAS, 2005). The close relationship with a consumer group, and the presence of a representative of the group on its board is unusual: as already indicated most SROs have no consumer representation on their boards on the basis that self-regulation must be led and controlled by business in order to be truly effective.

What the functioning of different types of SROs tells us about what self-regulation can, could and cannot achieve to address unhealthy diets among children

What self-regulation can achieve now to regulate food advertising to children

The activities of the regulatory systems described here suggest that self-regulation can assist in the control of *clearly* deceptive and misleading food advertisements targeted at children. It can police the *content* of individual advertisements that children are likely to misunderstand, or those depicting (in words or graphics) potentially dangerous or harmful actions likely to be copied by children. Interpretation of guidelines can ensure food and food consumption is portrayed in the words and pictures used on marketing materials in a way that does not *directly* encourage excessive eating of the particular product. Self-regulation can achieve this relatively fast, cheaply and flexibly, in part because it is more amenable to industry compliance than legislation, given it is developed, implemented and “owned” by industry.

Two aspects of self-regulatory systems are clearly needed to ensure a well-functioning system. First aspect is the code itself. Self-regulatory codes typically recognize that children must be treated differently to adults given their different interpretation of the world. These codes are likely to have encouraged advertisers – in a positive sense – to be careful when designing the words and graphics used in promotions to children. The CARU Code is interesting in its higher degree of specificity about food advertising to children; this is helpful in guiding the adjudicators of the code whether healthy food is depicted in a way that would discourage consumption. Second, effective monitoring and enforcement is necessary to ensure industry compliance. As illustrated, most self-regulatory systems evolve in the face of the threat of government legislation, strongly indicating that effective self-regulation requires: a) the underlying possibility that government will be willing to act if self-regulation fails; and b) a “legal backstop” of a threat of government adjudication. While every country context is different, the examples of the UK and Canada also point to the advantages of more stringent systems of

monitoring and enforcement over and above private, internal self-monitoring. In the absence of an effective consumer complaints mechanism, code interpretation relies on an inner circle. While these may be the “experts” at interpreting the code, advertisements are viewed by the public who filter what they see with different sets of eyes: what is truthful to one may be misleading or offensive to another; what might be seen as direct encouragement of excessive consumption by some may be viewed differently by others. This subjectivity must be taken account in the monitoring process so that the SRO understands how the advertisement is interpreted by the public, whatever its intention. Another form of monitoring, exemplified by Canada, is to mandate pre-screen advertisements directed at children. The SROs in the UK and the US are clearly not in favor of *requiring* pre-market approval, nor do they encourage advertisers to use them as a *de facto* service. But requiring pre-screening has a major advantage of reducing the chances that a misleading, deceptive or offensive food advertisement targeted at children will ever be seen. The Canadian system is unusual, but functional.

What self-regulation could achieve to discourage unhealthy eating habits, and promote healthier ones

As just described, the development of an appropriate code backed up with strong monitoring and enforcement mechanisms *can strengthen* self-regulation; but it *does not represent the different* type of self-regulation needed to change the nature and balance of food promotion (as called for by the UK government) and to minimize the risk of children in obesity and youth (as called for the IOM in the United States). There is a critical difference between a self-regulatory system that aims to prevent direct harm and promote trust in advertising (the current objective of the SROs reviewed here), and one which aims to address a public policy concern (which is needed to address obesity). As shown, current systems remain concerned with the *content of individual* marketing campaigns – whether they are truthful or not – not the alleviation of a public health problem. Yet it is not just individually deceptive or misleading marketing campaigns that are the cause for concern, but the *cumulative* effects of perfectly legal, truthful marketing campaigns, appearing in many forms, times and places. And while self-regulation can control advertisements that are deceptive and exploit credulity, it cannot not control advertisements that use creative and emotional techniques used to build brand (and category) power with children, such as depicting happy family scenes, romance, or success. Self regulation can prevent advertisements that show children eating several packs of chips at one sitting – but not control the quantity or location of advertisements targeting children at numerous times and places through the day. Self-regulation can ensure advertisements do not show children directly engaging in harmful acts or pestering their parents – but cannot prevent

beguiling children with effective, exciting and emotional images that make children want to try the promoted foods – and pester their parents to get them. Self-regulation, in other words, cannot prevent marketing that works.

There is thus an important disjuncture between the laudable (and important) aims of the prevention of deceptive advertising that exploits the credulity of children, and the very, very different aim of the prevention of the effects of advertising on children's diets. The difference means that CARU may well be justified in saying that its regulation of advertising to children is adequate – because its frame of reference is how, not if, promotional marketing successfully convinces children to eat the product. It means the ASA in the UK is right to pride itself on the relatively low number of complaints about food advertising, but wrong to imply this means there is no problem – the complaints mechanism is, after all, framed around the acute effects of deceptive and offensive advertisements, not the chronic effects of larger numbers of a panoply of types of promotions for less than healthy foods. In the system, there are no grounds to complain about the amount of advertising, or where it is, as long as it is honest and truthful.

If the food and marketing industry is going to make self-regulation work in the fight against children's obesity, it must thus begin to view the objective of self-regulation through a public health lens. Taking an industry-wide approach, it must first recognize that the marketing of energy-dense foods of low nutrient value to children affects food choices, something which it still tends to deny. This is essential to create a “better self-regulation” that is focused on public health goals. Self-regulation must become more than a process that monitors the deceptive nature of single advertisements and refocus on the cumulative effect of all forms of promotional activity in all locations on children's diets. Self-regulation “with teeth” thus needs some industry-wide self-regulatory guidelines that imposes some common-sense restrictions, such as:

- time-period restrictions on food advertising to children (e.g. during times when large numbers of children are watching)
- no branded promotional activity in specific locations (notably, schools)
- no targeting of certain products at children (e.g. carbonated soft drinks)
- restrictions of certain marketing practices used to target children (e.g. collector sales promotions, viral marketing, certain forms of product placement)
- restrictions on use of celebrities and cartoons

Such guidelines should cover the entire range of forms of promotional activities targeted at children (to avoid the situation in which advertisers simply use the “new media” to escape regulations), enforced by an independent body, with some consumer input (which the case of

Canada and Singapore show is not completely inconsistent with the values of self-regulation), plus a well-publicized system of consumer complaints.

But is this really a possibility for self-regulation? At the moment, self-regulation does not exist to encourage less consumption of the product being marketed, nor does it encourage less marketing. Self-regulation is not designed to ask consumers to *eat less* of their product, use techniques that *less effectively* inculcate brand identity, or broadcast *fewer advertisements*. It is usually the contrary. Restricting food advertisements would contravene the manufacturer's goal of promoting greater consumption of what is a perfectly legal, "age-appropriate" product. As such, it would conflict with the goal of self-regulation – the proliferation of *more* (non-deceptive) advertising. This is why, traditionally, regulations that actively restrict advertising are dealt with by statutory legislation.

Better self-regulation can be built in part by learning from the strengths and weaknesses of SROs in other countries to reduce the amount of advertising that unfairly exploits children. But to address the problem of unhealthy diets in its entirety, self-regulation may need to morph into something a little different. In the form of "multi-stakeholder" regulation, an independent body concerned with public health could be appointed to guide this process. Indeed, unless self-regulatory organizations further orient themselves towards creating a media environment more conducive to healthier choices — not only towards less deceptive and exploitative advertising — statutory powers will be needed to regulate food marketing to children.

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