



HEALTH PROMOTION & POLICY RESEARCH UNIT

DOES CURRENT INDUSTRY SELF-REGULATION OF FOOD MARKETING IN NEW ZEALAND PROTECT CHILDREN FROM EXPOSURE TO UNHEALTHY FOOD ADVERTISING?

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Does current industry self-regulation of food marketing in New Zealand protect children from exposure to unhealthy food advertising?

BACKGROUND

This research explored whether the New Zealand food advertising system protects children's right to health by protecting them from exposure to the marketing of foods high in fat, salt and sugar (HFSS). It examines the decisions made through the New Zealand Advertising Standards Authority (ASA) complaints process in relation to international obligations to protect child rights under the United Nations Convention on the Rights of the Child (UNCROC).²

MARKETING OF HFSS FOODS HARMS CHILDREN

The consumption of HFSS foods is one of the main risk factors for non-communicable diseases (NCDs),³ the rates of which are rising globally and present a public health crisis.^{3 4 5} In 2004, the World Health Organization (WHO) estimated that at least 14 million deaths globally are caused by the consumption of HFSS foods every year, representing 40% of all NCD deaths.⁶ Childhood rates of nutrition-related NCDs such as diabetes and obesity are also increasing globally, and as obesity in childhood often tracks into adulthood,⁷ there will undoubtedly be increased risk of chronic disease.^{8 9}

As a result, policymakers and researchers internationally are increasingly highlighting environmental contributors to unhealthy diet, such as the aggressive marketing of HFSS foods.^{10 11} Content analysis research shows that marketing to children is dominated by food promotion, and that the majority of this promotion is for HFSS foods.¹² A rapidly changing media context, including new media technologies, the targeting of children by transnational companies,¹³ and the use of a wide range of marketing techniques (such as television advertising, in-school marketing, sponsorship, product placement, internet and text marketing and sales promotions), creates and reinforces demand for HFSS foods.¹²⁻¹⁵ A series of systematic reviews provides evidence that food promotion influences children's diet-related behaviours and health outcomes.^{12 15 16}

Global nutrition action groups recommend that “marketing restrictions of unhealthy food products, especially to children and young people, are listed as an immediate priority action for promoting healthy diets”.³ Targets have been set by the WHO to achieve major reductions in NCDs and their associated risk factors by 2025. Eliminating the marketing of HFSS foods to children is listed as an important policy approach to dietary risk reduction.¹⁷

Children have a right to be protected from harm to their health caused by the marketing of HFSS foods. UNCROC is the world’s most widely accepted international human rights treaty², having been ratified by all countries except the United States and Somalia.¹⁸ Its 54 articles cover actions required to respect children and protect them from harm. They include non-discrimination (Article 2); primary consideration of the best interests of the child (Article 3); and the right to life, survival and development (Article 6).² Signatory governments report to the UN Committee on the Rights of the Child (the Committee) every five years, outlining actions taken to improve children’s rights. New Zealand has been a signatory since 1993 binding it to recognition of children’s rights, including the right to health, as a matter of international law.¹⁹ In 2000, the New Zealand Government acknowledged that more needed to be done to ensure that the Convention was applied proactively.²⁰ By 2008, the Government considered that ‘significant effort and commitment’ had gone into giving better effect to UNCROC,²¹ although the Committee observed that inequalities still exist for children in New Zealand.²²

INDUSTRY SELF-REGULATION IS NOT PROTECTING CHILDREN GLOBALLY

Regulation of the marketing of HFSS foods to children and young people is one of the most frequently proposed policy measures to address the obesity epidemic.²³ There has been a growth in industry self-regulation and greater restrictions on food marketing to children in developed countries since 2004, in response to increased demand from policy makers and civil society. The advertising industry have responded accordingly by developing more voluntary codes to guide the advertising of food to children.²⁴

According to Hawkes, while industry self-regulation “can assist in the control of clearly deceptive and misleading food advertisements targeted at children”, it does not stop the delivery of messages which are inconsistent with public health

policy goals.²⁵ Hawkes argues that the goal of self-regulation is “the proliferation of more (nondeceptive) advertising”, which is why statutory legislation is traditionally used in those countries where the goal is to restrict advertising.²⁵ However, New Zealand is like most other developed countries in that it relies solely on self-regulation (the exceptions being the UK, Quebec and Sweden).²⁶

If self-regulation was effective in delivering on public health goals then we would expect to see a trend towards less advertising of HFSS food to children globally. However, a 2009 WHO review of the evidence on the extent, nature and effects of food promotion to children concludes that there continues to be a ‘great deal’ of promotion of HFSS foods to children and “almost no promotion of foods that public health evidence encourages greater consumption of – for example fruit and vegetables”.¹² Research from Australia and New Zealand replicates these findings. In Australia, in 2009 the exposure of children to unhealthy food advertising on free-to-air televisions continued to be disproportionate.²⁷ New Zealand evidence suggests that there was no decline in children’s exposure to advertising of unhealthy food between 1997 and 2006,²⁶ based on content analysis research of free-to-air television advertising to children.^{28 29}

THE NEW ZEALAND CASE

In New Zealand, advertising is self-regulated by the communications and media industry, with the Advertising Standards Authority (ASA) at the centre of the system. The ASA is responsible for setting and enforcing voluntary codes of practice for advertisers that govern advertising in all media. Other industry bodies playing key roles in this system are: the Commercial Approvals Bureau (CAB) who approve all advertisements prior to their running (including classifications for intended audience); and ThinkTV (formerly the New Zealand Television Broadcasters’ Council) which has set voluntary codes for advertising to children on behalf of the major free-to-air television broadcasters.³⁰ Self-regulation is also influenced by a range of consumer protection legislation, including the Broadcasting Act which governs the Broadcasting Standards Authority, a government organisation tasked with setting codes of practice for broadcasting.³¹

Any individual who considers that there has been a breach of advertising codes may complain to the Advertising Standards Complaints Board (ASCB). The ASCB is made up of four industry representatives as nominated by the ASA, and five public representatives with no connection to media or advertising groups, one of

whom is the Chairperson.³¹ If the complaint is upheld, the advertiser, advertising agency and media are requested to withdraw the advertisement voluntarily. This request appears to have always been followed, but there are no penalties for the companies involved, and there is considerable time lag between the screening of the advertisement and the decision of the ASCB which means that the advertisement may have been running for some time before the request for its withdrawal.³²

In 2006, the ASA reviewed the Code for Advertising to Children 2001 and the Code for Advertising of Food 2001, and produced revised codes. Decisions on public complaints made to the ASCB were independently analysed for food advertising to children up to 2006, before and after the revision of the codes.³³ This analysis found that the implementation of the codes included partial, unjustified and inconsistent decision making by the ASCB and failure to prevent unhealthy food advertisements being developed and aired. The New Zealand ASA system was found to be reactive, to have limited sanctions, to provide little incentive for restraint by advertisers, and to lack independent monitoring. The authors concluded that the ASA system was not protecting the rights of children by failing to enact the spirit of UNCROC and specifically, by not adequately addressing Articles 3, 6 and 13, including the right to health. Ongoing lack of substantive action in restricting the advertising of unhealthy food to children in New Zealand continued to be observed in 2009.²⁶

In 2010 the ASA again revised their codes and a new code was established combining both food and children: the Children's Code for Advertising Food 2010 (the Children's Food Code).³⁴ The review panel was made up of three public members and three ASA members, and was chaired by a former Chairman of the ASA. Submissions were received from food and marketing industry groups and from a range of organisations with interests in children and healthy eating across government and non-government sectors. While some submitters questioned the value of self-regulation of food advertising to children, the context of the review was the *content* of the codes.³¹

In reviewing the submissions, the panel noted that the weight of these focused on food marketing to children. It also noted challenges relating to the application of codes around the issue of "whether or not advertising with a *level of appeal to children* was actually *directed to them*" [our emphasis]. Consequently, the panel decided that a code combining food advertising and children would "provide clearer guidelines to the advertising industry and the public about limits in relation to this type of advertising."

The Children's Food Code was developed in response to the issues raised by submitters and came into effect in August 2010.³¹ The Children's Food Code applies to:

“all advertisements for food and beverages that influence children, whether contained in children's media or otherwise”.³⁴

This new code has a broader mandate than its predecessor which was limited to products and services normally used by children, and depicting children.³¹

Separate food and children's codes were also created at this time, in August 2010.^{35 36} All guidelines relating to food were removed from the Code for Advertising to Children 2010. All guidelines relating to children were removed from the Code for Advertising of Food 2010 (the new Food Code). However, there is a statement in the introduction of the new Food Code that requires advertisers to:

“exercise a particular duty of care for food advertisements directed at young people aged 14-17 years”.³⁵

This means that the new Food Code still has relevance for children under the UNCROC definition of the child as under the age of 18.²

The Children's Food Code introduced further guidelines for the advertising of HFSS foods. Prior to August 2010, the Code for Advertising of Food 2006 (the Food Code) contained guidelines on the responsible advertising of HFSS foods to children such that advertisers should not: *encourage excess consumption of treat food, snacks or fast foods; suggest that they should be substituted for a main meal on a regular basis; or suggest that they are beneficial to health.* The last of these was also contained in the Code for Advertising to Children 2006 (the Children's Code).³⁴ These HFSS guidelines in essence, were carried over to the new Children's Food Code, with some additional text to indicate that food advertisements should not undermine government food and nutrition guidelines. In addition, new guidelines were created for advertisements featuring HFSS foods such that they should not: *promote a competition, premium or loyalty/continuity programme in a way that encourages frequent repeat purchases; or use people or characters well-known to children for their endorsement.*

The Children's Food Code does not contain guidelines restricting *viewing times* for children, despite the call for this by a number of submitters to the review.³¹ Some restrictions have been set by ThinkTV on behalf of the broadcasters as part of their "Getting It Right for Children" policy, which restricts advertising of HFSS foods during children's programmes.³⁰ This policy also includes the CF (Children's Food) rating, created by the CAB in 2008.³⁷ The definition of children's programme times varies between channels as they are determined by the individual Broadcasters (and based on the rating of the television programmes screened).

While the focus of this research is the ASA code changes, the operation of these codes are interrelated with, and have occurred alongside: increased viewing time restrictions; and the introduction of the CF rating. These changes together represent efforts made by industry, under considerable public pressure, to address some of the concerns raised by the public about the shortcomings of the self-regulatory system. Despite this, there is ongoing concern about the effectiveness of the self-regulatory system to reduce children's exposure to unhealthy food marketing.^{38 39}

In order to inform New Zealand policy-makers, public health advocates and those concerned with children's nutrition, this research aims to assess whether the latest change in the ASA codes has improved the level of protection for children from the marketing of HFSS foods.

METHODOLOGY

DATA SET

Complaints made to the ASCB before and after the 2010 code changes (January 2007 to August 2011) and relating to advertising of food to children.

METHOD

Complaints were identified using the ASA website search facility. Up to July 2010 this required searching both the separate children's and food codes. From August 2010 the search included complaints listed under the Children's Food Code *and* the separate children's and food codes updated in August 2010. This was to ensure that the new Children's Food Code was capturing all relevant complaints.

The Food and Beverage Classification System (FBCS) ¹ developed by the Ministry of Health for use in schools⁴⁰ was used to determine whether the advertised foods met the criteria for being considered HFSS. The FBCS system provides nutrient frameworks which classify foods into *everyday*, *sometimes*, or *occasional* categories based on nutrient values and portion sizes. Foods that are high in fat, salt and sugar and provide minimal nutritional value fall into the *occasional* category.⁴¹

To understand identify how decisions were made, a content analysis was undertaken on the complaints, ⁴² focusing on decisions involving HFSS guidelines for children. Relevant codes and guidelines for the advertising of HFSS foods to children before and after the 2010 code changes are shown in Table 1 below.

Table 1: Relevant codes and guidelines for the advertising of HFSS foods to children, before and after the 2010 code changes

Before the 2010 code changes	After the 2010 code changes
<p><i>Code for Advertising of Food 2006</i></p> <p>Guideline 3(a): “Advertisements for treat foods directed at children should not actively encourage children to eat or drink them inappropriately or in excess.”</p> <p>Guideline 3(b): “Advertisements for treat food, snacks or fast food should not encourage children to consume them in substitution for a main meal on a regular basis.”</p> <p>Guideline 4(f): “Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and/or salt, especially those marketed to and/or favoured by children, should not be portrayed in any way that suggests they are beneficial to health.”</p>	<p><i>Children’s Code for Advertising Food 2010</i></p> <p>Guideline 1(c): “Advertisements for treat food, snacks or fast food should not encourage children to consume them in excess.”</p> <p>Guideline 1(d) “Advertisements for treat food, snacks or fast food should not encourage children to consume them in substitution for a main meal on a regular basis, nor should they undermine the Food and Nutrition Guidelines for Healthy Children.”</p> <p>Guideline 2(c) “Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and/or salt, especially those marketed to and/or favoured by children, should not be portrayed in any way that suggests they are beneficial to health.”</p> <p>Guideline 2(f) “Care should be taken with advertisements promoting a competition, premium or loyalty/continuity programme to ensure that advertisements do not encourage frequent repeat purchases of foods high in fat, salt and sugar.”</p> <p>Guideline 3(b) “Persons or characters well-known to children should not be used to endorse food high in fat, salt and /or sugar.”</p>
<p><i>Code for Advertising to Children 2006</i></p> <p>Guideline 3(i) “Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and/or salt, especially those marketed to and/or favoured by children, should not be portrayed in any way that suggests they are beneficial to health.”</p>	<p><i>Code for Advertising of Food 2010</i></p> <p>Contains a statement in the introduction to the code stating that “Advertisers are also required to exercise a particular duty of care for food advertisements directed at young people aged 14 to 17 years.” There is no specific guideline relating to the advertising of HFSS foods to this age group.</p>

RESULTS

ADVERTISED PRODUCTS

In the first time period (January 2007 to August 2010), 20 complaints were received by the ASCB for advertisements that featured *treat food* products favoured by children. Of these, 13 met the FBCS criteria for being considered *occasional* (or HFSS), and six met the criteria for the *sometimes* category. ⁴¹

Of the six products in the *sometimes* category, five came in multiple serving packages and only met the *sometimes* criteria if serving size suggestions were followed. These were fairly modest serving sizes and perhaps not reflecting real usage (e.g. 200ml serve using trim milk, or 60g serve of yoghurt ice-cream). The remaining complaint, for an oil product, was included in this category because the Chair considered that the HFSS guideline was relevant.

In the second time period (September 2010 to August 2011), four complaints were listed under the Children's Food Code and all food products featured met the criteria for *occasional* or HFSS foods.

The food products for which there were complaints (for both time periods) included: fast food items (n=8); full sugar beverages (n=6); flavoured milk (n=2); savoury snack foods (n=2); confectionary (n=2); ice block, ice-cream, frozen yoghurt (n=2); biscuits (n=1); and an oil product (n=1). None of the foods about which complaints were made fell into the *everyday* category.

SCREENING OUT OF COMPLAINTS

Of the complaints described above, five of 20 (a quarter) were screened out in the first time period, compared with two of four (or half) in the second time period. A further two complaints were settled prior to consideration, leaving 13 before and 2 after the 2010 code changes. For both time periods, this left a total of 15 complaints which were considered by the ASCB.

For this research the codes were reviewed as per the previous analysis.³³ However, in later reviewing, as a cross-checking exercise, the full list of advertisements screened out for 2011 a number of complaints for HFSS foods were identified which did not have the new Food Code applied to them (n=27). For these complaints, either the Code of Ethics or the Code of People in Advertising were applied. Given that the new Food Code states that *all advertisements for food and beverage shall adhere to it*, it is not clear why these complaints were not listed under the Food Code. It seems likely that a review of the complaints screened out for the years prior to 2011 would reveal further complaints for HFSS foods which were not listed under the Food Code. One might speculate that had the Food Code been applied to these complaints further code breaches relating to children may have been identified.

APPLICATION OF CHILDREN'S AND FOOD CODES BEFORE THE 2010 REVISION

The Children's Code states that it should be applied to advertisements for products and services that are *'normally used by children'* and/or *depict children*.³⁶ Correspondingly, the Food Code states that *'all advertisements for food and beverages shall adhere'* to it.³⁵

The products featured in the complaints are among those favoured by children and normally used by children, including: full sugar beverages (n=4); fast food items (n=2); ice block, ice-cream, frozen yoghurt (n=2); savoury snack foods (n=2); confectionary (n=1); flavoured milk (n=1); and biscuits (n=1).

Given the statements in the codes about when a code should be applied, comparing this with the list of featured products and the nature of the complaint, it appears that both the Children's Code and the Food Code should have been applied to the 13 complaints prior to the 2010 code revision. This was not the case. The Children's Code was applied in only four of the 13 complaints and the Food Code was applied in 12 of the 13 complaints. Both codes were applied in only three cases.

HFSS guidelines were applied in ten of 13 complaints, and only in one case was this under the Children's Code. The guidelines applied were: not to suggest the product is beneficial to health (n=8); not to encourage excess consumption (n=4), and not to suggest the product should be substituted for a main meal on a regular basis (n=1). More than one guideline was applied in three complaints. In

one complaint where HFSS guidelines were applied under both the Children's and the Food Code, different guidelines were applied for each: for the Food Code, this was *not to substitute for a main meal*; and for the Children's Code *not to suggest the product is beneficial to health*. This is despite the fact that the same guideline (as applied under the Children's Code) exists under the Food Code.

Three complaints involving energy drinks highlighted a gap in the complaints system of the earlier time period valid for young people aged 14-17. The complaints were that the advertisement: sensationalised drug branding to young people (08/671); encouraged bad behaviour and excess consumption, aimed at children and young people and (09/786); and was aimed at children and young people and promoted marijuana use (10/284). Despite the complaint focusing on children in two of these cases, the Children's Code was only applied in one.

APPLICATION OF CHILDREN'S FOOD CODE AFTER THE 2010 REVISION

According to the ASA, "all advertisements for food and beverages that influence children, whether contained in children's media or otherwise, shall adhere" to the Children's Food Code.³⁴ The new Food Code requires advertisers to "exercise a particular duty of care for food advertisements directed at young people aged 14-17 years".

Two complaints were considered under the new Children's Food Code. The first complaint was for a poster providing information about food handling and storage directed at staff working in school canteens. The poster had a border of 12 food advertisements which include full sugar drinks and ice-blocks. The complainant said the poster promoted unhealthy products and was visible to students in the school canteen. The Chair applied HFSS guideline: *to not suggest that the product is beneficial to health*. The Food Code was also applied, but not the corresponding HFSS guideline contained within it. This is despite the *extra duty of care for 14-17 years* embodied in the Food Code and the fact that the students exposed to the poster advertisement may have been adolescents. While the age of the students was not mentioned in the complaint, we would speculate that as canteens are not often in primary schools, that the students were probably in the 14-17 age group.

The second complaint was for an alcohol flavoured sauce promoted by Burger King. The complainant considered that it was irresponsible to promote an

alcohol flavoured food at a family restaurant. The Food Code was applied, but no HFSS guidelines were applied under either code. This is surprising given that the target group for the advertisement, according to the advertiser, included young people.

ASCB RULINGS RELATING TO HFSS FOODS BEFORE THE 2010 REVISION

Of the 13 complaints which were considered by the ASCB prior to the 2010 code changes, four were upheld overall. Upheld complaints were more likely to have had the Children's Code applied to them. The Children's Code was applied to three of the four upheld complaints, but only one of the nine complaints that were not upheld.

HFSS guidelines had been applied in three of the four upheld complaints, and were upheld in two. In the remaining case, the advertisement was ruled not in breach of the HFSS guideline applied to it, but the complaint overall was upheld overall on the grounds that it was likely to mislead children and create a negative stereotype about everyday food choices (09/757).

Analysis of the decision making process revealed that *four main criteria* were used by the ASCB to decide whether a code breach had occurred for *children, specifically*: 1) whether the product was favoured by children; 2) whether the advertisement had appeal for children; 3) whether the intended target audience included children; and 4) whether the advertisement was likely to have been seen or heard by children.

In two of the nine complaints which were not upheld, where a child-focussed guideline had initially been applied by the Chair, the ASCB ruled that the guideline not apply because the advertisement did not meet one or more of the above criteria (07/356, 07/387). In five of the nine complaints not upheld, one of the reasons given by the ASCB was that the advertisement was *not likely to be seen or heard by children*. Three of these were for television advertisements where the scheduled viewing times were considered to be outside of children's programme times (07/387, 08/453, 08/605). In each of these three cases, the ASCB noted that the HFSS guideline had not been breached anyway, regardless of whether viewing times included children.

The decision-making criteria identified here have been inconsistently applied, as illustrated in the following examples:

In the first complaint, for an advertisement for mini biscuits (07/387), the Chair recognised that the product was *favoured by children* by applying a child-related HFSS guideline under the Food Code, but did not apply the Children's Code. The advertiser stated that the advertisement was aimed at household shoppers and that, 12 of the 16 slots were in news or current event programs. The ASCB accepted that the advertisement was *not directed at children*, on the grounds that it was *seen outside of children's viewing times*. However, the advertisement was played in a slot during *Americas Funniest Home Videos* at 4:20pm. The ASCB acknowledged that both the advertisement and the programme would appeal to children.

In the second complaint, for a flavoured milk drink (08/453), the Chair recognised that the product was *favoured by children* by applying a child-related HFSS guideline under the Food Code, but did not apply the Children's Code. The ASCB noted that the product had *appeal to children*. The advertiser stated that the *target audience* was household shoppers with active children, and that the advertisement was aired during programme times watched by household shoppers. The ASCB were satisfied that it was directed at adults as the advertisement had a GXC (general except children) rating (by the CAB) and was not shown in time zones targeted at children under the age of 10 years old. The actual times when the advertisement was shown were not mentioned.

In the third complaint, for an ice-block (08/605), again the Chair recognised that the product was *favoured by children* by applying a child-related HFSS guideline under the Food Code, but did not apply the Children's Code. The advertiser stated that the advertisement was directed at parents and that the advertisement seen by the complainant was during *One News* at 6.45pm, which was 'highly unlikely' to be seen by children. However, the advertiser acknowledged that the product would *appeal to children* and children were shown *having fun* in the advertisement. The ASCB took into account the time and placement of the advertisement and noted that the advertisement had been given a GXC rating and considered that the viewing time was not directed at children.

In the fourth case, for a magazine delivered with family meals, the ASCB considered that the advertisement was *not directed at or intended to be seen by*

children (07/356), The final case was for a radio advertisement where the ASCB considered the demographic for the station did not include children (08/671).

As a point of comparison, *viewing times* were mentioned twice in decisions where the complaint was upheld. In these cases the advertisement was ruled in breach of the guideline, independently of whether the advertisement was seen by children. In the first advertisement, for potato crisps (08/241), the advertiser stated that they did not target their advertising to children and that the advertisement was only shown during programmes aimed at the 18-39 age category. Of interest in this case is that the ASCB does not mention viewing times in their deliberation, commenting instead that the Children's Code applied because of the *high level of appeal* of the product to children. In the second advertisement, for a yoghurt ice-cream (09/757), the advertiser stated they were targeting females between 30-49 with children aged 0-14, and that the advertisement was shown during adult television programmes. The ASCB noted that the programmes listed in the media schedule supplied were not children's programmes, but many were shown between 6 to 8 pm when children do watch television. They also noted that the advertisement began with the words 'hey kids' and featured a child.

Therefore, overall, the viewing times argument was applied inconsistently. In some cases the view that programme times excluded children appeared to add weight to a decision dismiss a complaint, even where the product was HFSS and favoured by children, the advertisement was considered to have appeal to children, and/or was screened when children are known to be watching television. In the two cases which were upheld, the viewing times were similar to those which were not upheld as were the target audiences and advertisement appeal. There is notably a lack of detail given in the complaints about what the viewing times are, so it is difficult to say whether these time slots fell into the viewing times as defined by each of the Broadcasters (let alone children's real viewing times as documented in market research).

In the remaining four cases where the complaint was not upheld, the ASCB considered that the advertisements were not misleading and therefore not in breach of the HFSS guideline applied- *not to suggest the product is beneficial to health*. In reviewing these complaints, the decision appeared reasonable based on the information provided in the complaint record.

ASCB RULINGS RELATING TO HFSS FOODS AFTER THE 2010 REVISION

The Children's Food Code and new Food Code were both applied to the two complaints investigated, neither of which were upheld. As above, whether the advertisement was *seen or heard by children* featured in these decisions. In the first case, for a school canteen food information poster (10/704) with advertisements for full sugar drinks and ice-blocks, neither the advertiser or the ASCB commented on whether the poster would appeal to children. However, the advertisements were colourful and dominated the borders of the poster. The advertiser stated that the poster was not aimed at children and the ASCB commented that the placement of the poster was at the discretion of the school. The fact that the poster was placed in an area of the canteen where it was seen by children was not considered significant: the ASCB did not see that anything in the poster was detrimental to children. In a previous decision for a poster where the advertiser stated it was not aimed at children (10/284), the ASCB upheld the complaint as it considered that the poster would be visible to children at the point of sale.

In the second complaint, for an alcohol flavoured sauce promoted by Burger King (11/161), the advertiser stated that the advertisement was aimed at 15-39 age group and was screened after 7pm. The ASCB considered that the viewing times and the imagery used in the advertisement would not appeal to children and on these grounds ruled that the Children's Code did not apply. The ASCB noted the *extra duty of care for young people* under the Food Code but considered that the advertisement had been prepared with a due sense of social responsibility. A minority of the ASCB members disagreed as they considered the burger would have appeal for young consumers (aged 14 to 17) and that it normalised alcohol use for this age group.

PESTER POWER

Guideline 2d) of the Children's Code and 1b) of the Children's Food Code state that children should not be urged to ask their parents or caregivers to buy particular products for them – the 'pester power' guideline. Since 2007, the 'pester power' guideline has not been applied to any complaint relating to the advertising of food to children. A review of the description of advertisements given in the complaints records suggests that there were no advertisements where children were being urged to ask their parents to buy the featured product.

DISCUSSION

This research set out to assess whether the 2010 changes to the ASA codes for marketing of food to children has improved the level of protection for children from the marketing of HFSS products. The analysis of the 2006 code changes identified a number of flaws in the system at that time. These included: that the codes define children as aged under 14, thus affording no protection to youth aged 14–17 years; failure to address the extent of marketing of foods to children; evidence of partial, unjustified and inconsistent decision making; and failure to enact the spirit of UNCROC, specifically by not adequately addressing Articles 3, 6 and 13.

With the 2010 code changes, the wording of the Children’s Food Code has been strengthened (to provide broader inclusion criteria for advertisements) as has the guidelines for HFSS foods marketed to children. On paper, this appears to provide increased protection of children’s right to health. However, aspects of UNCROC are still not included in the codes, specifically, Article 13 clause 2: the right to restrict the freedom of expression in order to protect public health.

The previous analysis was based on eight decisions: four before and four after the 2006 code change. This analysis was based on 13 decisions before and two after the 2010 code changes. While only two decisions were recorded after the 2010 code changes, some observations can be made as to whether the latest change in the ASA codes has improved the level of protection provided for children from the marketing of HFSS foods.

INADEQUATE PROTECTION AFFORDED TO YOUTH 14-17

The ASA codes continue to define children as under the age of 14. The new Food Code contains a statement in the introduction that an *extra duty of care* should be given to young people aged 14-17, but no specific guidelines have been created for this age group. Both complaints after the 2010 code change provide examples of where needs of this age group have not been fully considered.

FAILURE TO ADDRESS THE EXTENT OF FOOD MARKETING TO CHILDREN

The new codes do not contain restrictions on *viewing times* as recommended by submitters to the review. The extent of food marketing to children has been addressed to some degree by the creation of the Children's Food rating and the viewing time restrictions imposed collectively by the major free-to-air television broadcasters. However, there is a misalignment between children's programme times as defined by broadcasters and actual viewing times of children.

The programming times are set by the individual broadcasters, are flexible and subject to change and, as at March 2011 ended at 5pm on the free-to-air channels.³⁰ The BSA code of broadcasting practise states that the normally accepted viewing time for children is usually up to 8:30pm.⁴³ A key issue with restrictions set by the broadcasters is that children are frequently watching TV after 8:30. For example, in 2008, about *one third* of 6-13 year old children were still watching television at 8:30pm during the week, rising to *a half* of children on a Friday night.⁴⁴

Handsley et al (2009) describe and evaluate regulatory controls for food advertising to children on television. They conclude that "restrictions centring on the time of day when a substantial proportion of children are expected to be watching television are... the most effective in limiting children's exposure to television".⁴⁵ Misalignment between children's programme times as defined by broadcasters and actual viewing times of children represents a major flaw of the current ASA codes.

EVIDENCE OF PARTIAL, UNJUSTIFIED AND INCONSISTENT DECISION MAKING

There continues to be clear evidence of partial, unjustified and inconsistent decision making by the ASCB. In addition, this research identifies vague and simplistic criteria embodied in the codes. Of particular note are issues around: inconsistent application of the codes and guidelines to advertisements; whether or not an advertisement is targeted at children; narrowly defined guidelines such as for preventing 'pester power'; and inconsistent use of arguments around viewing times.

INCONSISTENT APPLICATION OF CODES AND GUIDELINES:

Prior to the 2010 code changes, the Children's and Food Codes were applied inconsistently to complaints for HFSS foods marketed to children. Given the statements in the codes about when a code should be applied, comparing this with the list of featured products, and the nature of the complaint, it appears that both the Children's and the Food Codes should have been applied to each of the 13 complaints prior to the 2010 code revision. This was not the case. Although only two complaints were considered after the 2010 code change, inconsistencies still appear to exist in the application of codes at a broad level, as indicated by the failure of the ASA to apply the food code to a number of complaints for HFSS foods in 2011.

AMBIGUOUS INCLUSION CRITERIA FOR ADVERTISEMENTS

Whether or not an advertisement is directed at children is a critical decision as it determines whether or a child-related code or guideline is applied. The new Children's Food Code applies to *all advertisements for food and beverages that influence children, whether contained in children's media or otherwise.*³⁴ It is unclear from these definitions when an advertisement is considered to influence children.

This lack of clarity was reflected in the inconsistent decision-making identified in this research relating to whether or not an advertisement was directed at children, both before and after the code changes. Hebden et al (2011) found that regulatory guidelines internationally are 'overly simplistic and highly ambiguous' in defining when an advertisement is directed at children.⁴⁶ They highlight that children are influenced through a range of emotive and visual marketing techniques, even if an advertisement is not directed at them.

NARROW DEFINITION OF PESTER POWER

The 'pester power' guideline states that children should not be urged to ask their parents or caregivers to buy particular products for them. Handsley et al (2009) argue that "the only way to do away with pester power is to do away with effective advertising to children". This narrow definition of pester power does

not take into account the reality that children pester their parents when they want an advertised product badly enough, regardless of whether they were urged to do so in an advertisement.⁴⁵

That children place undue pressure on parents to purchase a product was noted by the ASCB in a television advertisement featuring a collectable card campaign (08/241), without specific calls to action directed at children in the advertising. In this complaint, the ASCB ruled that the advertisement had a high level of appeal to children and a minority of the ASCB believed that the promotion 'put pressure on parents to purchase the product within a certain timeframe'.

AMBIGUOUS AND INCONSISTENT CONSIDERATION OF VIEWING TIMES

There is no guideline in the codes for dealing with breaches of viewing times. However, the argument over whether an advertisement was seen or heard by children frequently formed part of deliberations, both before and after the code changes, and appeared to be applied inconsistently. In some cases, the view that programme times excluded children appeared to add weight to a decision not to uphold a complaint, even where the product was HFSS and favoured by children, the advertisement was considered to have appeal to children, and/or was screened when children are known to be watching television. In two cases which were upheld, where viewing times were discussed, the viewing times were similar to those cases where the complaint was not upheld as were the target audiences and advertisement appeal.

FAILURE TO ENACT THE SPIRIT OF UNCROC

This research demonstrates that the New Zealand ASA system continues to fail to protect the rights of children by not enacting the spirit of UNCROC and specifically, by not protecting the rights of children aged 14-17, and by not adequately addressing:

- Article 3: Primary consideration of the best interests of the child - the right to not see such ads
- Article 6: The right to life, survival and development – the right to be supported to eat a healthy diet

- Article 13 clause 2: The right to restrict the freedom of expression in order to protect public health – to restrict advertising in order to protect child health.

THE CALL FOR GOVERNMENT REGULATION

If the flaws identified in the ASA system were addressed, self-regulation could provide a much greater level of protection than it currently does. However, regardless of how well self-regulation is delivering on its primary goal (to reduce irresponsible advertising), it does not deliver on public policy goals for reducing NCDs.²⁵ The International Obesity Taskforce consider that “only legally-enforceable regulations have sufficient authority to ensure a high level of protection for children”.⁴⁷

CONCLUSION

In conclusion, we have an obesity crisis amongst our children. There is a high likelihood that obese children will become obese adults with downstream impacts on chronic disease, including cancer. The current industry self-regulatory advertising system, despite some minor improvements the ASA codes, still fails to adequately protect children from exposure to the unhealthy food marketing. It therefore fails to adequately protect children’s right to health as stipulated by UNCROC. Although there are a number of improvements that could be made to the current ASA codes, such as the inclusion of restrictions on the advertising of unhealthy foods when children are watching television (i.e. until 8.30pm at the very least) this does not solve the other problems related to the partial, unjustified and inconsistent decision making characteristics of the current complaints system. Because of these and other problems associated with self-regulation in this area (e.g. lack on monitoring, no penalties, its reactive and voluntary nature), government regulation of food marketing is required.

REFERENCES

1. Ministry of Health. Food and Beverage Classification System for Years 1-13: a user guide. Wellington: Learning Media 2007.
2. United Nations Office of the High Commissioner of Human Rights. Convention on the rights of the child. Geneva United Nations Office of the High Commissioner of Human Rights, 1990.
3. Beaglehole R, Bonita R, Horton R, Adams C, Alleyne G, et al. Priority actions for the non-communicable disease crisis. *Lancet* 2011;377:1438-47.
4. Danaei G, Finucane M, Lu Y, Singh G, Cowan M, Paciorek C, et al. National, regional, and global trends in fasting plasma glucose and diabetes prevalence since 1980: systematic analysis of health examination surveys and epidemiological studies with 370 country-years and 2.7 million participants. *Lancet* 2011;378:31-40.
5. Swinburn B, Sacks G, Hall K, McPherson K, Finegood D, Moodie M, et al. The global obesity pandemic: shaped by global drivers and local environments. *Lancet* 2011;378:804-14.
6. World Health Organization. Risk factors estimates for 2004. Geneva: World Health Organization, 2008.
7. Wang Y, Beydoun M. The Obesity Epidemic in the United States - Gender, Age, Socioeconomic, Racial/Ethnic, and Geographic Characteristics: A Systematic Review and Meta-Regression Analysis. *Epidemiol Rev* 2007;29:6-28.
8. Sattar N, Lean M, editors. *ABC of Obesity*. Oxford: BMJ Books 2007.
9. Ogden C, Yanovski S, Carroll M, Flegal K. The epidemiology of obesity. *Gastroenterology* 2007;132:2087-102.
10. Caraher M, Landon J, Dalmeny K. Television advertising and children: lessons from policy development. *Public Health Nutrition* 2006;9(5):596-605.
11. Nestle M. Food marketing and childhood obesity – a matter of policy. *New England Journal of Medicine* 2006;354(24):2527-29.
12. Cairns G, Angus K, Hastings G. The extent, nature and effects of food promotion to children: a review of the evidence to December 2008.

Prepared for the World Health Organization. United Kingdom: Institute for Social Marketing, University of Stirling & The Open University 2009.

13. World Health Organization. Globalization, diets and noncommunicable diseases. . Geneva: World Health Organization 2002.
14. Hawkes C. Marketing food to children: the global regulatory environment. Geneva WHO, 2004.
15. Hastings G, McDermott L, Angus K, Stead M, Thomson S. The extent, nature and effects of food promotion to children: A review of the evidence. Technical paper prepared for the World Health Organization. United Kingdom: Institute for Social Marketing, University of Stirling & The Open University 2006.
16. Hastings G, Stead M, McDermott L, Forsyth A, MacKintosh A, Rayner M, et al. Review of the research on the effects of food promotion to children (final report) London: Food Standards Agency 2003.
17. World Health Organization. Targets to monitor progress in reducing the burden of Non Communicable Diseases: Recommendations from a WHO Technical Working Group on Noncommunicable Disease Targets: World Health Organisation, 15 July 2011.
18. United Nations. Statement by Chair of Child Rights Committee. Sixty-fifth General Assembly, Third Committee, 12th & 13th Meetings United Nations, 2010.
19. Geiringer C, Palmer M. Human Rights and Social Policy in New Zealand. *Social Policy Journal of New Zealand* 2007(30):12-41.
20. Government of New Zealand. Committee on the Rights of the Child. Consideration of reports submitted by states parties under article 44 of the convention. Second periodic reports of States parties due in 2000. New Zealand *CRC/C/93/Add.4 12 March 2003*, 2003.
21. United Nations Convention on the Rights of the Child. Committee on the Rights of the Child: Consideration of reports submitted by States parties under article 44 of the Convention. Third and fourth periodic reports of States parties due in 2008. New Zealand. *CRC/C/NZL/3-4*: United Nations, 2010.
22. United Nations Convention on the Rights of the Child. Committee on the Rights of the Child. Fifty-sixth session. Consideration of reports submitted by State parties under article 44 of the Convention. Concluding observations: New Zealand: United Nations, 2011.

23. Hawkes C. Regulating food marketing to young people worldwide: Trends and policy drivers. *American Journal of Public Health* 2007;97 (11).
24. Hawkes C, Lobstein T. Regulating the commercial promotion of food to children: A survey of actions worldwide. *International Journal of Pediatric Obesity* 2011;6 83-94.
25. Hawkes C. Self-regulation of food advertising: what it can, could and cannot do to discourage unhealthy eating habits among children. *Nutrition Foundation Nutrition Bulletin* 2005;30:374-82.
26. Shaw C. (Non)regulation of marketing of unhealthy food to children in New Zealand. *New Zealand Medical Journal* 2009;122(1288):76-86.
27. Hebden L, King L, Chau J, Kelly B. Food advertising on children's popular subscription television channels in Australia. *Australian and New Zealand Journal of Public Health* 2011;35(2):127-30.
28. Wilson N, Signal L, Nicholls S, Thomson G. Marketing fat and sugar to children on New Zealand television. *Preventive Medicine* 2006. 2006;42(2):96-101.
29. Wilson N, Quigley R, Mansoor O. Food ads on TV: a health hazard for children? *Australian & New Zealand Journal of Public Health* 1999;23(6):647-50.
30. ThinkTV. Advertising on television: Getting it right for children: ThinkTV 2011.
31. Advertising Standards Authority New Zealand. Final report on the review of the code for advertising to children and the code for advertising of food. Wellington: Advertising Standards Authority New Zealand, 2010.
32. Hoek J, Maubach N. Self-regulation, marketing communications and childhood obesity: a critical review from New Zealand. . *Loyola of Los Angeles Law Review* 2006;39(1):139-68.
33. Thornley L, Signal L, Thomson G. Does industry regulation of food advertising protect child rights? *Critical Public Health* 2010;20(1):25 - 33.
34. Advertising Standards Authority New Zealand. Children's Code For Advertising Food 2010. Wellington: Advertising Standards Authority New Zealand, 2010.
35. Advertising Standards Authority New Zealand. Code for Advertising of Food. Wellington: Advertising Standards Authority New Zealand, 2010.

36. Advertising Standards Authority New Zealand. Code for Advertising to Children. Wellington: Advertising Standards Authority New Zealand,, 2010.
37. Commercial Approvals Bureau. Advertising food and beverage products to children.
38. Fight the Obesity Epidemic. NZ: New ad code for children's food – FOE's response. Wellington: Fight the Obesity Epidemic, 2010.
39. New Zealand Press Association. Food ad code 'missed opportunity', 2010.
40. Ministry of Health. Food and Nutrition Guidelines for Healthy Children and Young People (Aged 2–18 Years): A background paper: Draft for Consultation. Wellington: Ministry of Health, 2010.
41. Ministry of Health. The food and beverage classification system nutrient framework for schools Wellington: Ministry of Health, May 2008.
42. Weber R. Basic content analysis Newbury Park, CA: Sage, 1990
43. Broadcasting Standards Authority. Free-to-air television code of broadcasting practice. Wellington: Broadcasting Standards Authority May 2011.
44. Broadcasting Standards Authority. Seen and heard: Children's media use, exposure and response. Wellington: Broadcasting Standards Authority 2008.
45. Handsley E, Mehta K, Coveney J, Nehmy C. Regulatory axes on food advertising to children on television. *Australia and New Zealand Health Policy* 2009;6(1):doi:10.1186/743-8462-6-1.
46. Hebden L, King L, Kelly B. Art of persuasion: An analysis of techniques used to market foods to children. *Journal of Paediatrics and Child Health* 2011;47:776-82.
47. International Obesity Taskforce. The Sydney Principles: Guiding principles for achieving a substantial level of protection for children against the commercial promotion of foods and beverages: International Obesity Taskforce, 2006.