



23 November 2007

The Coalition on Food Advertising to Children (CFAC) offers the following submission to Res Publica who is conducting a review of the Code for Advertising to Children, on behalf of the Australian Association of National Advertisers (AANA).

The CFAC is a coalition of public health organisations and prominent individuals that recognise that the commercial promotion of food and beverages high in fat, sugar and salt to children is a significant threat to their nutrition and future health, and as such the review of the Code for Advertising to Children is of high interest to the CFAC. The members of CFAC are listed in Appendix 1.

The CFAC prepared a submission to AANA in June 2007 when the review of this Code was first announced. The comments made in our first submission remain current and we reiterate our concerns from that submission.

CFAC's position

The CFAC is highly concerned about the increase in overweight and obesity in children. We do not suggest that food marketing is the only factor contributing to childhood obesity. However the overwhelming weight of the evidence suggests causal links between food promotions and children's food preferences, household purchases, and children's food consumption patterns. Restrictions on food marketing to children are likely to be a cost-effective strategy, as part of a comprehensive approach to obesity prevention.

The CFAC believes the existing mix of industry self-regulation, co-regulation and statutory regulation of advertising and marketing is complex and confusing and that there should be a single legislated regulatory scheme that is pro-actively policed by the regulator rather than being complaints driven.

As was stated in the CFAC's submission to the Australian Communications and Media Authority (ACMA) on the review of the Children's Television Standards earlier this year, our position on the issue of food marketing to children is as follows:

The review of the Children's Television Standards must:

- Extend regulations to reflect children's peak viewing times more accurately*

The CFAC recommends that standards related to food advertising need to apply between 7am to 9am and 4pm to 9pm weekdays and 7am to 9pm on weekends.

- Place the rights of children and parents above commercial interests*

Children do not have sufficient cognitive skills to counter the impact of food advertising, and as the majority of food advertisements are for unhealthy foods, they need to be protected from influences that may harm their wellbeing. Parents deserve to raise their children in an environment that is conducive to healthy eating.

- Include new standards addressing the advertising of unhealthy foods to children to better protect children in the current advertising environment*

The CFAC supports the use of the Food Standards Australia New Zealand (FSANZ) Nutrient Profiling Model to establish criteria so that unhealthy foods and beverages are not advertised at the times when large numbers of children are watching television.

- Provide clear and unambiguous specifications for all relevant standards*

The CFAC is concerned that food advertisers use a diverse array of marketing techniques to entice children to consume unhealthy foods. Clear and unambiguous standards are required, in particular, to regulate premiums, competitions, the use of personalities and characters, and the selective use of nutrition information to market food products to children.

□ *Address monitoring of compliance and prompt and appropriate sanctions for breaches*

The current system of complaints is not adequate and very difficult for consumers to understand.

General Comments

If, as stated in the Discussion Starter document, the object of the Code is to ensure that advertisers develop and maintain a high level of social responsibility in relation to advertising to children in Australia, there is certainly much that AANA can do to ensure this objective is fulfilled.

The current Code has not kept pace with prevailing community standards. An independent survey of 400 parents, commissioned by the CFAC this year, found that:¹

- 86.2% supported a ban on advertising of unhealthy foods at times when children watch TV.
- 88.7% agreed the government should introduce stronger restrictions on food advertising at times when children are watching.
- 74.6% of parents were concerned about advertising using toys and giveaways to promote unhealthy food to children.
- 66.7% of parents were concerned about the use of popular characters or personalities to promote unhealthy foods to children.

The comments in this submission are relevant to “unhealthy” food and beverage advertising, as determined by the nutrient profiling model put forward by Food Standards Australia New Zealand (FSANZ).

AANA Food and Beverages Advertising and Marketing Communications Code

The CFAC remains unclear as to how AANA’s two Codes, namely the Code for Advertising to Children and the Food and Beverages Advertising and Marketing Communications Code, will operate together.

The CFAC was disappointed in the AANA’s Food and Beverages Advertising and Marketing Communications Code, developed last year. The CFAC considers this Food and Beverages Advertising and Marketing Communication Code disappointing in its lack of true commitment to ensure responsible advertising and to address the current concerns about the levels of unhealthy food advertising directed at children. The standards continue to be ambiguous and open to interpretation. It primarily addresses advertising problems that do not actually exist or are of minor concern. Most importantly it fails to tackle the core of the problem with food marketing to children, namely:

- (1) the very *raison d’être* of marketing which is to create desire for the product (i.e. *pester power*),
- (2) the subject matter of the advertisements (i.e. unhealthy foods) and the volume and intensity of food advertisements watched by children, and
- (3) many advertisements are inherently misleading to children through their use of language, techniques and visuals, that the Code does not show any attempt to restrict misleading and deceptive marketing practices.

These are the real issues that both Codes need to address in order to be meaningful and sincere about contributing to regulatory measures to ensure children’s well being and arrest the rising rates of childhood obesity.

AANA’s Food and Beverages Advertising and Marketing Communications Code contains a section specifically related to advertising and children. Will these provisions be simply adopted in the updated Advertising to Children Code? Is it possible that the Advertising to Children Code, once reviewed, will provide more significant provisions and protections for children, than what was adopted last year? If more significant provisions and protections for children are adopted in the

review of the Advertising to Children Code, what impact will this have on the Food and Beverages Code? We are concerned that a situation may arise where there is further ambiguity within the different Codes, which may provide a loophole for advertisers to take the lesser course of action in protecting children from the harmful effects of marketing.

Timing

The CFAC believes it would be prudent for AANA to await the outcome of ACMA's review of the Children's Television Standards and advice from that review before undertaking any changes to this self-regulatory code. The CFAC is concerned that this pre-emptive review of the Code for Advertising to Children will undermine the government's review of the Children's Television Standards. We urge AANA to genuinely be proactive in addressing the issues related to marketing to children, particularly the concerns raised in the review of the Children's Television Standards.

Involvement of the ACCC in Review and Administration of the Children's Code

We note that the Australian Competition and Consumer Commission (ACCC) is able to provide guidance to industry associations, such as AANA, in relation to the development or administration of voluntary industry codes, and in some cases may participate as an observer on code administration committees or help code administration committees review a code's effectiveness.

We also understand that when the AANA self-regulatory scheme was developed following the disbanding of the Media Council of Australia advertising self-regulatory scheme, the ACCC along with the Australian Consumers' Association sought representation on an advisory committee to the scheme, but this was refused by AANA.

The CFAC believes the ACCC's expertise would be very valuable in the review of the AANA Code for Advertising to Children and any future review of the AANA Food and Beverages Advertising and Marketing Communications Code. Representation or guidance from the ACCC would also be very useful in administration of the AANA scheme, particularly since consumers are not currently represented. The CFAC would therefore strongly encourage AANA to seek such representation or advice from the ACCC during this review of the Code.

Our Specific Comments Relating to the Advertising to Children Code

1. The Advertising to Children Code must be broadened to address all forms of commercial marketing communications and not just advertisements. The CFAC does acknowledge that the Food and Beverages Advertising and Marketing Communications Code did broaden its definition of advertising and/or marketing communication to media such as "cinema, internet, outdoor media, print, radio, television or other direct to consumer media". However we note the Food and Beverages Advertising and Marketing Communications Code excluded labels and packaging for products, which should be encompassed, as these are also avenues used to market products to children. We would also suggest that there is further clarification around the definitions of these specific types of media, in particular direct-to-consumer media (e.g. mobile phone alerts, mail alerts) that have ramifications for privacy legislation and parental consent issues.

2. The current Code for Advertising to Children only applies to advertising or marketing where a third party has been paid to publish or broadcast. Consequently, direct marketing to children from a food company, including on food company websites, SMS messages or mail outs are not covered by the code. The CFAC is calling for the extension of the code to apply to all food advertisements and marketing directed at children, regardless of the involvement of a third party.

* Australian Competition and Consumer Commission website, 'Non-prescribed voluntary industry codes of conduct', <<http://www.accc.gov.au/content/index.phtml/itemId/783116/fromItemId/783096>>, at 22 November 2007; Australian Competition and Consumer Commission, *Guidelines for Developing Effective Industry Codes of Conduct*, 2005, <<http://www.accc.gov.au/content/index.phtml/itemId/658186>>, at 22 November 2007

3. The current Code for Advertising to Children does not add clarity to the current co-regulatory system nor does it provide any additional protections for children. Many items in the draft Code are ambiguous and can be circumvented so as to allow advertisers to continue to advertise to children and parents in ways that they already do.

Definition of Advertisements to Children

The definition of “Advertisements to Children” in section 1(a) refers to advertisements “directed primarily for children”. This terminology is extremely ambiguous and leaves open a loophole for many advertisers. Advertisements to children must be defined according to the appeal of the food product; the programs in which they appear; and by the numbers of children watching the programs in which the advertisement occurs. This would ensure that any advertisement for a product that has **any** appeal to children, regardless of whether it also applies to adults as well, is captured.

Food and Beverages

Section 2.10.1(a) states advertisements to children for food and beverages “should not encourage or promote an inactive lifestyle combined with unhealthy eating or drinking habits”. Single advertisements for individual food products can rarely be said to undermine healthy lifestyles or healthy diets, however it is the totality of the current high volumes of food and beverage advertising of unhealthy foods that is undermining healthy eating practices among children. There are no standards in either AANA Code that address this significant problem. An improvement to this section would be to restrict advertisements from promoting inactivity and unhealthy food and beverage products, as based on the FSA NZ nutrient profiling.

Section 2.10.1(b) states advertisements to children for food and beverages “must not contain any misleading or incorrect information about the nutritional value of that Product”. This is an example of an ambiguous guideline open to a wide variety of interpretations. The CFAC would recommend that this be clarified by the addition of a statement that all advertising and marketing communications fully disclose all the relevant nutritional characteristics of the product being advertised. For example, some food and beverage advertisements currently highlight a single nutritional characteristic (e.g. the presence of a vitamin or mineral or a claim for low fat) but fail to highlight the more negative characteristics of the product, such as the overall fat, sugar and sodium content of the product. Claims about a product being x% fat free are misleading and of very little use to consumers, if the product is also high in sugar and energy.

Parental Authority

Section 2.4 of the current Code refers to advertisements to children that “must not undermine the authority, responsibility or judgement of parents or carers”. The very nature and clear intent of food and beverage advertising in Australia is to have the effect of undermining parents' roles in guiding children to make healthy food choices. TV is a powerful medium of education and information for children. The very fact that the majority of advertisements during children's peak viewing times promote unhealthy foods means that food advertisements are undermining parents' roles. The only recourse to address this problem is to restrict advertisements for foods high in fat, sugar and salt, during children's peak viewing times.

As mentioned earlier, AANA should be mindful of the high levels of parental concern about unhealthy food advertising, with 86.2% of parents supporting a ban on advertising of unhealthy foods at times when children watch TV.¹

Premiums

Section 2.8 on premiums in the current Code does not meaningfully address the problem of premiums being used to market products to children, by harnessing pester power. In a recent random survey of parents across Australia, 75% of parents expressed concern at the use of

premiums on unhealthy foods.¹ The CFAC believes that the use of all premiums to promote unhealthy food and beverage products to children should be prohibited.

We disagree that premiums defined as an integral element of the food product being sold should be exempt from advertising restrictions. This interpretation has allowed food companies to bundle food and non-food items (toys) as a single “product” and to advertise that “product” in a way that focuses solely on the non-food item. For example complaints about use of toy premiums in conjunction with McDonalds Happy Meals have not been upheld, as the toys within a Happy Meal have been defined as an integral part of the Happy Meal. The CFAC believes this is ludicrous as fast food retailers are in the business of manufacturing and selling food, not toys.

Promotions by Popular Characters or Personalities

The current Code for Advertising to Children does not address the issue of promotions by popular characters or personalities. We acknowledge that the Food and Beverages Advertising and Marketing Communication Code does include a provision about this issue, although it is limited in its application to not obscuring “the distinction between commercial promotions and program or editorial content”. The CFAC believes that a standard should be included which prohibits the use of popular characters or personalities from promoting unhealthy food or beverage products (as defined by the FSANZ nutrient profiling model) to children, during children's peak viewing times.

Popular characters and personalities need to be clearly defined so that this includes all cartoon characters, registered spokes-characters, and popular culture personalities such as musicians, sports people and actors. Studies have shown that the use of characters in advertising is effective in attracting children's attention, helping children connect with products, creating positive associations with brands and products, and improving children's long-term product and brand memory.

Again AANA needs to be mindful of the high levels of parental concern on this issue, with 66.7% of parents concerned about the use of popular characters or personalities to promote unhealthy foods to children.¹

Enforcement of the Code

The current Advertising to Children Code does not state how AANA will enforce the Code, and what, if any, sanctions would be imposed on advertisers who fail to comply with the Code. This goes to the very heart of the limitations and inadequacy of a self-regulatory system. If compliance with the current Code is not independently monitored, it remains up to the public to make complaints about breaches to the Code to the Advertising Standards Board. A system that relies on public complaints is inadequate because members of the public do not always have sufficient time, awareness or understanding of the system to make complaints, and because complaints are not dealt with until after the relevant advertisement has been published or broadcast.

The CFAC does not accept that because there have only been a limited number of complaints made under this Code, that the system is working adequately. We believe that the low level of complaints is instead a reflection of the complexity of the complaints process, not of the adequacy of the system.

Conclusion

Overall the CFAC believes the review of the Advertising to Children Code should be conducted after the ACMA review of the Children's Television Standards, in order to be better informed by the outcomes of that review. We would also recommend that AANA consult with the ACCC during the review of this Code, so that the needs and views of consumers are duly considered. The current Advertising to Children Code adds very little value or substance in protecting children from the harmful effects of commercial promotions.

The Advertising to Children Code demonstrates the inadequacy of self-regulation for dealing with food and beverage marketing and protecting children. We would urge AANA to address the issues described above in a meaningful and unambiguous way in order to contribute regulatory measures to arrest childhood obesity.

We hope that the issues we have raised will be given careful consideration. We have also included a section addressing Res Publica's Discussion Starter questions, to reiterate our position according to the specific regulatory areas in question.

Should Res Publica or AANA wish to discuss this further, please contact Kathy Chapman, Chair of the Coalition on Food Advertising to Children on (02) 9334 1720 or kathyc@nswcc.org.au.

Specific questions raised in Res Publica's Discussion Starter about the AANA Code for Advertising to Children

The answers to these questions should be read in conjunction with the rest of this submission.

Should there be a specific AANA Code for advertising to children?

The CFAC believes the existing mix of industry self-regulation, co-regulation and regulation of advertising and marketing is complex and confusing and that there should be a single legislated regulatory scheme that is pro-actively policed by the regulator rather than being complaints driven.

Should the Code be broadened to include marketing communications to children as, for example, in the recently adopted AANA Food & Beverages Advertising & Marketing Communications Code?

If the Code for advertising to children is to continue, then it must be broadened to include all marketing communications to children.

1. DEFINITIONS

Does the definition of "Advertising and/or Marketing" cover the field of communications to children that should be included in the Code

All forms of marketing to children must be included and covered in the Code, including those where a third party has not been paid or involved.

Should Products that have any appeal to Children be regulated by the Code, rather than those targeted toward and directed primarily at Children as currently in the Code?

Yes, children are influenced by advertising that they are exposed to regardless of whether they are the direct target for the advertising message.

Should advertisements and/or marketing communications that have any appeal to Children be regulated by the Code, rather than those directed primarily at Children as currently in the Code?

Yes, children are influenced by advertisements that may be targeted at adult age groups.

Should the age definition of children in the Code be revised?

The age definition of children should be consistent with Ofcom regulations, which define children as less than 16 years.

Are there premium offers being made which are not covered by the definition and therefore suggest that the definition should be amended and, if so, how?

The CFAC is concerned about the loopholes within current wording about premium offers. Refer to the section in the submission about premium offers (page 4).

2. CODE OF PRACTICE

2.4 Parental Authority

Should the Code be amended to explicitly prohibit advertisements and/or marketing communications which contain an appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular products for them?

As we have stated, regardless of whether there is an appeal to children to urge parents to buy products, advertisements create a desire within children so that they will ask their parents for the product.

Should the Code be amended to include a requirement that any advertisements and/or marketing communications inviting Children to contact the advertiser also direct Children to first obtain parental permission?

Should the Code be amended to permit the disclosure of personal information about Children to third persons only with the parental consent or when authorised by law as set out in Chapter D7 of the ICC Code of Advertising and Marketing Communication Practice? Or should there be a specific privacy section of the Code?

As children are a vulnerable audience, it is of the utmost importance that the privacy of

children is maintained and not intruded upon by advertisers.

2.8 Premiums

Should Premiums be further regulated in the Code and, if so, why and how?

As we have stated, the use of premiums in conjunction with food is a concern for parents and premiums should not be permissible in association with the sale of food and beverages.

2.9 Alcohol

Should the Code be amended to say that Advertisements to Children must not be for, or relate in any way to alcohol products or have any association with alcohol?

This is essential especially in view of the updated Alcohol Guidelines for Australians, developed by the National Health & Medical Research Council (NHMRC), which recommend that children avoid all forms of alcohol.

2.10 Food and Beverages

Does the Code need to include specific provisions in regard to Food and Beverages? For example, in relation to the relevant nutritional characteristics of the product?

Or should the Code simply require that advertisements and marketing to children must comply with the AANA Food & Beverages Advertising & Marketing Communications Code?

As we have stated in this submission, the CFAC does not believe the AANA Food and Beverages Advertising and Marketing Communications Code is adequate for protecting children from unhealthy food advertising. AANA needs to ensure both Codes address the marketing of unhealthy food and beverages.

ADDITIONAL ISSUES

a) Popular Personalities or Celebrities

Does the Code need to include specific provisions in regard to personalities or celebrities as per the AANA Food & Beverages Advertising & Marketing Communications Code?

Or should the use of popular personalities or celebrities (live or animated) to advertise or market products, premiums or services to Children be prohibited as sought by some stakeholders?

As stated in this submission, the CFAC does not believe the provisions within AANA Food and Beverages Advertising and Marketing Communications Code relating to the use of popular personalities or celebrities are adequate, and the use of popular personalities or celebrities (live or animated) to advertise or market products, premiums or services to Children should be prohibited.

b) Complaints Process

Should the Code include a section transparently setting out how complaints under the Code may be made and how a complaint will be processed by the Advertising Standards Bureau and where further information may be obtained? Or is the information more appropriately available to consumers elsewhere?

Should the ASB report annually on the number and types of complaints made under the Code, and provide an overview of the ASB's processes and decision making rationale?

As stated in this submission, the CFAC does not believe that the complaints processes are clear to consumers, nor are they sufficient in protecting children from the detrimental effects of unhealthy food advertising.

Reference List

1. Morley B. National community survey of TV food advertising to children. Centre for Behavioural Research in Cancer, The Cancer Council Victoria. Coalition on Food Advertising to Children. 2007.

Appendix 1 - CFAC Members

The member organisations of the CFAC are:

- ❑ Australian Dental Association
- ❑ Australian Dental and Oral Health Therapists Association
- ❑ Australian Medical Association
- ❑ Australian Health Promotion Association
- ❑ Australasian Society for the Study of Obesity
- ❑ Home Economics Institute of Australia
- ❑ Nutrition Australia
- ❑ Public Health Association of Australia
- ❑ Royal Australasian College of Physicians, Paediatric Branch
- ❑ Royal Australian College of General Practitioners
- ❑ The Cancer Council Australia
- ❑ Young Media Australia
- ❑ Ms Kaye Mehta, Senior Lecturer in Nutrition and Dietetics, Flinders University
- ❑ Dr. Rosemary Stanton, OAM
- ❑ Professor Mike Daube, Curtin University of Technology