



1 April 2005

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Submission on the Review of the Children's and Food Advertising Codes

Thank you for this opportunity to provide a submission on the Review of the Children's and Food Advertising Codes. FOE supports this initiative, given that obesity is increasingly becoming a major health issue for New Zealand, and that food advertising, particularly to children, is a contributor to the problem.

FOE (Fight the Obesity Epidemic Inc.) is a voluntary organisation dedicated to changing the New Zealand social, cultural, physical and regulatory environment so that it is easier for all New Zealanders, and especially children, to maintain a healthy body weight.

FOE has a strong interest in both codes under review. The Code for Advertising to Children is of particular interest to FOE in terms of its implications for the advertising of food and beverages.

The marketing of food to children is one of FOE's key concerns. FOE calls for:

- no marketing of food products or beverages to children under 12 years of age
- no marketing of food products or beverages that fail to meet healthy food criteria to young persons aged 12 to 15.

Given the growing national and international awareness of the dangers posed by the obesity epidemic, FOE believes that it is almost inevitable that something like this policy will be adopted in New Zealand. We would, however, be delighted if the food and advertising industries made major steps towards breaking the link between food advertising and obesity on a voluntary basis. We therefore welcome this opportunity provide input into the present review.

Our submission is in four parts: an executive summary, an outline of FOE's policy relating to marketing food to children, the rationale for the policy, and



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the implications of the policy and the research on which it rests for the review of the children's and food advertising codes.

1 Executive Summary

FOE proposes that there be no marketing of food products or beverages:

- to children under 12 years of age
- that fail to meet healthy food criteria to young persons aged 12 to 15.

The rationale behind FOE's proposal is:

- Obesity is increasing in New Zealand
- The costs of obesity in New Zealand are high, and growing
- Obesity is a serious health risk for children
- Most food marketed to children is of poor nutritional quality
- The influence of food marketing to children is pervasive
- Children are highly susceptible to advertising techniques
- Freedom of information for children does not imply that advertising to children is defensible
- Parents and other caregivers need to be given optimal support in developing healthy eating habits in their children, and this means some big changes to current advertising practice.

Implications for the advertising codes are:

- The codes need to be considered in the context of a burgeoning obesity epidemic that is particularly affecting children and young adults.
- There is a clear responsibility for advertisers of food, particularly to children, to make major changes to their practices in the light of current knowledge about the role of food advertising in obesity.
- There is evidence that public opinion in New Zealand, as has been found in the United Kingdom, favours a ban on advertising unhealthy foods to children.
- The Advertising Codes of Practice appears to be confined in its scope to direct advertisements as opposed to advertising and associated promotional techniques. Other marketing tools such as product placement are widely used in marketing food to children. The scope of the codes needs to be expanded to allow for their specific prohibition when associated with promotion of obesogenic food and drink.
- Unless the food and advertising industries voluntarily implement appropriate prohibitions and restrictions it is clear that the codes need to be augmented by public health legislation to ensure that the health of New Zealanders is properly protected.

2 FOE policy

2.1 No marketing of food products or beverages to children under 12 years of age

Television is the main medium for advertising food to children. FOE believes that a ban is justified on all food advertising to children on television for programmes where children make up a substantial proportion of the viewing audience. Such a ban would not preclude promoting healthy eating through public health advertising. This approach is identical to that of the Coalition on Food Advertising to Children in Australia, a national advocacy group with membership including the Royal Australasian College of Physicians (Paediatric Branch), the Royal Australian College of General Practitioners, the Public Health Association of Australia and a number of other prominent health organisations.¹⁹

Bans of this sort have already been implemented in Sweden, Norway and the Canadian province of Quebec (see Appendix).

It is very likely that, as public awareness of the trends in obesity and implications of these for health increases, other countries, including New Zealand, will over time adopt this policy. FOE believes New Zealand should be among the leaders.

2.2 No marketing of food products or beverages that fail to meet healthy food criteria to young persons aged 12 to 15

As children become older they increasingly make their own food purchases, and are increasingly capable of understanding the nature and intent of advertising. While the appropriate age will differ in individual circumstances, regulations need to be set for populations, and FOE believes on present evidence that 12 years is the age at which food advertising to children should be permitted. But adolescents are not adults, being particularly susceptible to some forms of advertising, and typically lacking concern about the implications of their current behaviour for their long-term health.

FOE has modelled its policy for young persons aged 12 to 15 years on the Private Members Bill introduced in the House of Commons by Debra Shipley in February 2005.²⁰ This Bill requires the Food Standards Agency to set criteria for deciding whether the content of food and drink is detrimental to the health of children aged 16 years and under, to be followed by prohibition of marketing to children any foods and drinks which contain content which is detrimental to their health.

FOE notes that Food Standards Australia New Zealand (FSANZ) is currently developing a new framework for food advertising that will allow health claims to be made for food products.²¹ This opens up the possibility that food advertising to those under 16 years should only occur for products meeting the criteria for making health claims. Whether the new FSANZ framework

forms an appropriate basis for regulating food advertising to children and young persons will need to be considered once it emerges in its final form.

3 Rationale for the policy

3.1 Increasing obesity in New Zealand

There has been a dramatic rise in the prevalence of adult obesity over the last quarter century: from 9% of males and 11% of females in 1977 to 20% and 22% respectively in 2003.¹

New Zealand has very high levels of childhood obesity. The 2002 National Children's Nutrition Survey, with a sample of 3275 children aged from 5 to 14 years, found 21.3% overweight and 9.8% obese using international cut-off values.²

Our children are among the fattest in the world – we have a higher percentage of overweight and obese children than either the United States or Australia.⁶

Internationally, the prevalence of obesity among children has been increasing rapidly over the past ten to 25 years,³⁻⁵ and the limited data available suggest that this is also the case in New Zealand.⁶

Overweight and obese children and (particularly) adolescents are likely to become overweight and obese adults.^{13, 22}

3.2 The costs of obesity

'High' body mass contributed to an estimated 3154 deaths (11% of all deaths in New Zealand) in 1997.⁷

The rise in type 2 diabetes – the greatest contributor to the diabetes epidemic and only occurring among children in recent years – is strongly linked to an increasingly overweight and obese population. Services to people with diabetes currently cost about \$250 million per year, with this figure likely to rise to over \$1 billion by 2021 with the increasing incidence of diabetes.⁶

A 1997 study using 1991 data found that health care costs attributable to obesity for six conditions (non-insulin dependent diabetes, coronary heart disease, hypertension, gallstone disease, post-menopausal breast cancer and colon cancer) was about 2.5% of total health care costs.⁸ The Ministry of Health regards this estimate as conservative and believes that "the true cost of obesity in New Zealand could be much higher"⁹.

In addition to direct health care costs, the full economic costs to New Zealand will be higher again, including lost productivity due to incapacity and earlier death, costs incurred by family members as caregivers, and costs to individuals of attempts at weight loss.

Severely obese children, the number of whom are rapidly growing in New Zealand, pay the price of a substantially reduced quality of life.¹⁰

3.3 Nutritional status of New Zealand children

A major national survey of the nutritional status of New Zealand children aged 5 to 14 years was conducted in 2002.² The youngest children (aged 5 and 6 years) were found to have a healthier diet and more appropriate body weight than older children. In the Foreword to the report, Health Minister Annette King and Professor Jim Mann noted that the data suggest that where, for younger children, food intake is controlled by parents “the situation is appreciably more satisfactory than when [older children are] exposed to an environment often characterised by a wider range of food choices, peer pressure and advertising. Clearly the challenge is to find ways of continuing the more appropriate earlier practices”.

King and Mann go on to identify “an urgent public health requirement to find ways to ... decrease [children’s] intake of energy dense foods (particularly those containing saturated fats and sugars such as hot chips and sweet drinks)”.

FOE believes that a ban of food advertising to children is one of the best ways to meet the challenge posed by the Minister, both because of its direct effect on food consumption and because it would reduce the secondary effect via peer pressure that advertising feeds.

3.4 The dangers to health from poor nutrition for children and adolescents

Childhood obesity is associated with a number of serious health conditions in children including type 2 diabetes.^{5, 11} As well, development of obesity in childhood brings with it increased risk of adult obesity and its associated health problems including risk of earlier death.⁵

3.5 The poor nutritional status of most food marketed to children and adolescents

A major systematic review of international research on the effects of food promotion to children found that televised children’s food promotions have been dominated for years by ‘the big four’: breakfast cereals, confectionery, savoury-snacks and soft drinks. In recent years these have been joined by advertisements for fast-food outlets to make a new ‘big five’. The ‘advertised diet’ was universally found to be unhealthy compared to the recommended diet.¹²

In almost all developed countries the amount of food eaten or prepared away from home has been increasing, led by the rapid expansion of fast-food outlets. The high volume of fast food sales and the association with increased fat and energy intake make fast-food outlets a target for obesity prevention efforts.¹³

A comparison of food advertising to children on New Zealand television in 1995 with that in 13 other countries showed that New Zealand had the third-highest rate of food advertising, the highest rate of confectionery and drinks advertising, and the second-highest rate of restaurant advertising which included fast food restaurants.¹⁴

A study of the content of food advertisements directed at children on TV2 in 1999 found that of 269 food advertisements, 63% were for foods 'high in fat and/or sugar', and that the advertisements generally reflected a dietary pattern associated with an increased risk of obesity and dental caries.¹⁵

Soft drink consumption in New Zealand increased by about 45% in the five years to 2003, and we are now the 11th highest consumers per capita worldwide.¹⁶

3.6 The pervasiveness of food marketing to children

While most research on the effect of advertising on children has concentrated on television, a wide range of other techniques to promote food to children is widely used, including sponsorship, in-school marketing, point-of-sale, free samples of food items, free gifts or tokens with food items, novel packaging, and tie-ins with movies and computer software.¹²

The effect goes beyond individual consumers. "At the societal level commercial messages can influence social and cultural norms about, for example, the acceptability of a particular product".¹² In this way food marketing plays a major part in creating what has been termed the 'obesogenic environment'.²³ In this environment healthy food choices are made harder, and parents can become relatively powerless players in shaping the food preferences and eating behaviour of their children.

3.7 The susceptibility of children to advertising techniques

A major systematic review of the international literature commissioned by the Food Standards Agency in the United Kingdom¹² came to the following conclusions regarding children's interactions with advertising:

- the ability for children to distinguish advertising from other programming emerges between the ages of 4 and 7 years;
- the ability to appreciate the persuasive intent of advertising emerges at about 7 or 8 years of age;
- the recognition of bias and deception in advertising emerges at about age 8 years;
- between 8 and 12 years children progressively develop the cognitive defences that enable them to respond in a more sophisticated and mature way to advertising messages.

3.8 The effect of food advertising on children

The same review¹² considered the effects of food advertising on children's food knowledge, preferences and behaviour, finding that:

- the weight of evidence suggested that food promotion may have little influence on children's general perceptions of what constitutes a healthy diet, but there is some evidence that exposure to food promotion for 'low nutrition' foods is associated with poorer nutritional knowledge;
- there is reasonably robust evidence that food promotion influences children's food preferences;
- there is strong evidence that food promotion influences children's food purchase-related behaviour in the direction of increasing purchase requests for food high in fat, sugar or salt.

The advertising of food to children is just one of a number of factors responsible for the rise in obesity among children. FOE believes that all the factors that can be changed need to be the focus of appropriate interventions. Food advertising to children is one area where intervention is required.

3.9 Advertising and the rights of children

The UN Convention on the Rights of the Child¹⁷ recognises "the right of the child to the highest attainable standard of health" (Article 24).

States that are party to the Convention have undertaken "to ensure the child such protection and care as is necessary for his or her well-being, ... and, to this end, shall take all appropriate legislative and administrative measures" (Article 3).

Parties must also "encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being (Article 17(e)), and must provide protection "against all ... forms of exploitation prejudicial to any aspects of the child's welfare" (Article 36).

Article 18 recognises that parents or legal guardians have the primary responsibility for the upbringing and development of the child, and that the best interests of the child will be their basic concern.

On the other hand, Article 13 gives children the right to freedom of expression, which includes "freedom to seek, receive and impart information and ideas of all kinds". This is interpreted by the New Zealand Advertising Standards Authority (ASA) as "the right to receive advertisements along with other information".¹⁸ The ASA does, however, recognise that there are various fetters to that right, including Article 13(e).

There is substantial evidence that in general advertising of unhealthy food to children may detrimentally affect their attainment of optimal health, is potentially injurious, exploits children's inability to interact with advertisements

in a mature way, and works against the efforts of parents to act in their children's best interests.

The advertiser's case rests on the assumption that advertising to children is information of the sort that the framers of the Convention had in mind in with Article 13. But advertising to children contains little information. It's intention is to persuade using a variety of techniques,¹² none of which involve making a rationale case to children as to why they should consume a particular product. Given the strong and consistent emphasis throughout the Convention on protection of children, it is difficult to read freedom of information for children as including the right of the child to be subject to the persuasive techniques of advertisers.

To conclude, the Convention when read as a whole should give no comfort to those who wish to advertise food to children.

3.10 The need for parents to be given optimal support in developing healthy eating habits in their children

FOE believes that the key to preventing obesity is to make healthy choices easier. Advertising to children makes it harder for parents and other caregivers to make healthy food choices for their children, and more likely that their children will reject the choices that they do make. Advertising techniques such as harnessing "pester power"²⁴ see to that.

The position that parents find themselves in is well put by the U.S. Centre for Science in the Public Interest.²⁵

Parental authority is undermined by wide discrepancies between what parents tell their children is healthful to eat and what marketing promotes as desirable to eat. In addition, while many parents have limited proficiency in nutrition, companies have extensive expertise in persuasive techniques. Companies also have resources to influence children's food choices that parents do not have, such as cartoon characters, contests, celebrities, and toy give-aways (p.2).

FOE believes that its policy of banning marketing of food to children under 12 years, and restricting it to healthy food for those aged 12 to 15 years, will make a marked difference to making the playing field a little more level for parents and caregivers.

4 Implications for the children's and food advertising codes

4.1 Introduction

FOE believes that for the most part the existing advertising codes are commendable in terms of their wording. The main thing at issue is how they are interpreted and enforced.

The codes need to be considered in the context of a burgeoning obesity epidemic that is particularly affecting children and young adults. One of the

principles in the Advertising Code of Ethics is that all advertisements “should be prepared with a due sense of social responsibility to consumers and to society”. This review provides an opportunity to take into account the information available on the contribution of food advertising to obesity that may not have been so salient when the original codes were written. There is a clear responsibility for advertisers of food, particularly to children, to make major changes to their practices in the light of current knowledge about the role of food advertising in obesity.

4.2 The code for advertising to children

Introduction to the Code

In the Code’s introduction, Article 13 of the UN Convention on the Rights of the Child is interpreted as a right for children to receive advertisements. FOE strongly disagrees with this interpretation (see Section 3.9 above), believing that a reading of the entire Convention shows an overwhelming emphasis on the protection of children, which would include their protection from advertising, the intent of which is persuasion rather than information provision. FOE suggests the following replacement wording:

Children are entitled to certain rights and protection under the United Nations Convention on the Rights of the Child. Of particular relevance for advertisers is the call in Article 17(e) for “appropriate guidelines for the protection of the child from information and material injurious to his or her well-being”.

Principle 2 – Advertisements should observe a high standard of social responsibility

FOE supports the current guidelines under this principle, but suggests new wording for 2(d). This currently reads that “children should not be urged in advertisements to ask their parents to buy particular products for them”. This needs to be strengthened to “advertisements should not either directly or indirectly encourage children to ask their parents to buy particular products for them”.

A new guideline is suggested to head the list. “Products, including food, that are unhealthy for children should not be advertised.” For this to be effective criteria will need to be available as to what constitutes unhealthy food. The new FSANZ standards currently in preparation may be helpful here (see Section 2.2 above). Another option is to restrict food advertising to children to products listed in the School Food Registration Programme designed by Regional Public Health.

Principle 3 – Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children, abuse the trust of or exploit the lack of knowledge of children, exploit the superstitious or without justifiable reason play on fear.

This statement of this principle and the guidelines under it are commendable as far as they go. The difficulty is the focus on single advertisements, which ignores the cumulative impact of repetitive advertising of a product. Sugar-based drinks are a good example. Children are constantly exposed to advertisements for a range of these products, and given their lack of cognitive skills to adequately interact with advertising (see Section 3.7 above), the cumulative effect is that they come to regard these drinks as an accepted and expected part of their diet. Given the detrimental effect of these drinks on their health, they are being misled. Sugar-based drinks are one example of a product that should not be advertised to children at all.

Principle 4 – Advertisements should not encourage inappropriate purchase or excessive consumption

Most food advertised to children is high in energy density and of poor nutritional quality (see Section 3.5 above). The portion sizes typically advertised and sold typically contribute much more than they should to daily energy intake. Food advertising to children in general therefore encourages both inappropriate purchase and excessive consumption. FOE recommends a tightening of the food code (below) as the means of addressing this.

4.3 The code for advertising of food

Introduction to the Code

FOE supports the continued definition of food as including food and beverages, since increasingly beverages are contributing to the excessive calorie intake that is one of the main drivers of the obesity epidemic.

Principle 2 – All food advertisements should be prepared with a due sense of social responsibility to consumers and to society. However advertisements containing nutrient, nutrition, health or therapeutic claims, should observe a high standard of social responsibility.

In the context of the obesity epidemic this principle implies that advertising of calorie dense food and drink to children would be prohibited (see discussion under Principle 3 below).

FOE notes that with the pending approval of FSANZ for health claims to be made for healthy food, there is an opportunity to refocus advertising of food intended for children from the children themselves to their parents and caregivers by emphasising the product's contribution to a healthy diet.

It is suggested that Principle 2 might be better expressed by replacing "However" with "In particular".

Principle 3 – Advertisements directed at children should observe a high standard of social responsibility.

Given the growing obesity epidemic (Section 3.1 above), its costs and dangers to health (Sections 3.2 and 3.4) and the contribution to these made by current advertising practices (Sections 3.5 to 3.7), a high standard of social responsibility clearly implies that the advertising of calorie dense food and drink to children would be prohibited. In fact it is all but unchecked. FOE considers, on the basis of a mountain of evidence of which only a fraction of is referred to in Part 3 above, that the relatively unregulated advertisement of unhealthy food is a significant adverse influence contributing to the obesity epidemic. Policy makers, consumer groups and health workers internationally share this view, and in several countries tight controls on advertising food to children have been introduced (see Appendix).

It is clear that New Zealand's response to the obesity epidemic in terms of putting limits on food advertising fall well short of international best practice, and indeed of public expectations. A mail survey of 413 people in 2003 by Professor Janet Hoek of Massey University found that 67% of respondents thought the government should ban fast food advertising during children's television.²⁶ A 2004 interview survey of a representative sample of over 1000 people across the UK found that 73% wanted "a stop on advertising junk food to children".²⁷

4.4 Conclusions

The Advertising Codes of Practice appears to be confined in its scope to direct advertisements as opposed to advertising and associated promotional techniques. Product placement, for example, is increasingly used to promote products and the evidence is that children (and presumably adults as well) are more likely to watch the programmes in which these occur than the advertisements in between. Product placement is also occurring outside the traditional avenues for advertising, such as on web-based chat rooms.^{28, 29}

Other marketing tools such as upsizing, bundling of food items together, loyalty programmes and give-aways that are collected as sets are widely used in marketing food to children.¹² The scope of the codes needs to be expanded to allow for their specific prohibition when associated with promotion of obesogenic food and drink.

Finally, it is clear that, as written, the principles in the codes already provide ground for prohibiting the advertising of energy dense food and drink to children. The fact that the fast food, confectionery, soft drink and advertising industries have not heeded the letter or spirit of the codes indicates that more specific restrictions may need be put in place. The powers of the Advertising Standards Authority may be insufficient to ensure that children are protected from the adverse effects of advertising – particularly with regard to the promotion of food and drink. Even if a complaint is upheld by the self-regulatory Complaints Board, the offending advertiser is merely requested to voluntarily immediately withdraw the advertisement, and the media are

requested not to publish or broadcast it. Unless the food and advertising industries voluntarily implement appropriate prohibitions and restrictions it is clear that the codes need to be augmented by public health legislation to ensure that the health of New Zealanders is properly protected.

Thank you again for this opportunity to contribute to the review.

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On behalf of FOE (Fight the Obesity Epidemic Inc.)

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APPENDIX

Legislative Interventions to Address Obesity in Overseas Jurisdictions¹

There is much concern worldwide about the effect of television advertising on children.² In Britain, food advertisers spend huge amounts of money on television advertisements for chocolate and potato chips (fifty million pounds),³ which shows that they believe that advertising to children does work. The American Public Health Association recently released new policies that support the prohibition of television food advertising to children,⁴ and there are reports that a draft World Health Organisation report also recommended restricting food advertising to children.⁵ A study recently completed by researchers at the University of Strathclyde and commissioned by the UK Food Standards Agency found that such food promotion does have significant effects on children's preferences, purchase behaviour and consumption.⁶ There is evidence that television advertising of unhealthy foods that are high in added sugar and fat can lead to unhealthy eating patterns.⁷ Children are particularly susceptible to television advertising, being the main advertising medium for children between 6 and 13.⁸

Some states have acted on this evidence to prohibit advertising to children in general or for specific products and services.⁹ Many other states have debated child advertising restrictions at the highest level. This section examines both the legislation that has been enacted so far and proposed

¹ Section from Diabetes NZ Inc and Fight the Obesity Epidemic Inc. (2004). *Legislative interventions to address obesity in overseas jurisdictions*. Available from <http://www.foe.org.nz/archives/ObesityLegislation.pdf>.

² See Broadcasting Commission of Ireland *Advertising and Children* (December 2002) <http://www.irtc.ie/Advertising%20&%20Children.doc>.

³ *Ibid*, 2.2.

⁴ <http://www.apha.org/news/press/2004/policies.htm>

⁵ *Obesity Policy Report* January 2004 volume 2 no 1, available at www.obesitypolicy.com. http://www.obesitypolicy.com/ejournals/issues/issue_km.asp?cf=periodicals/1125/V2.I1.20040101.47E4A28-864F-45D5-8E3D-329E440F46FB.pdf 4

⁶ Gerard Hastings, Martine Stead, Laura McDermott, Alasdair Forsyth, Anne Marie MacKintosh, Mike Rayner, Christine Godfrey, Martin Caraher and Kathryn Angus *Review of Research on the Effects of Food Promotion to Children* (22 September 2003, Centre for Social Marketing, University of Strathclyde, Glasgow) 3.

⁷ The Pod Report *The POD Report* (March 2003, Diabetes New Zealand and Fight the Obesity Epidemic Inc) available at www.diabetes.org.nz/publications/pod_report.doc, 9.

⁸ Broadcasting Commission of Ireland *Advertising and Children* (December 2002) <http://www.irtc.ie/Advertising%20&%20Children.doc>, 2.2.

⁹ For a good overview of European legislation regulating advertising to children see European Audiovisual Observatory *Regulation on Advertising Aimed at Children in EU-Member States and Some Neighbouring States* (2000, EAO, Strasbourg) located at http://www.obs.coe.int/online_publication/reports/childadv.pdf, and the various country reports located at the European Union's Audiovisual Policy website <http://europa.eu.int/comm/avpolicy/>

legislation in order to provide a model for such legislation in Aotearoa New Zealand.

Many states regulate television advertising to children. Such limitations usually follow a similar pattern that falls short of general prohibition of advertising to children. Many European states have enacted such restrictions in order to implement the Television Without Frontiers Directive.¹⁰ Article 16 of the directive reads:

Television advertising shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection:

- (a) it shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;
- (b) it shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- (c) it shall not exploit the special trust minors place in parents, teachers or other persons;
- (d) it shall not unreasonably show minors in dangerous situations.¹¹

This directive regulates advertising to children on television without imposing a complete ban. States have generally implemented the article 16 of the directive in similar language, with many states providing that advertisements should not exploit children's inexperience and credulity.¹²

1 Completed Legislation

(a) Sweden

The most comprehensive ban on advertising aimed at children exists in Sweden. Sweden has a clear ban on television advertising of any kind aimed at children under 12 years old. The ban is based on the view that children under 12 are not as able to distinguish between advertisements and programmes as adults, and are thus misled by television advertising.¹³ Advertising in radio and television is governed by the Radio and Television Act 1996.¹⁴ Chapter 7, section 4 of the Radio and Television Act 1996

¹⁰ Television Without Frontiers Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (89/552/EEC) located at http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31989L0552&model=guichett

¹¹ Ibid, Article 16.

¹² See Irish Code of Standards, Section 14; Norwegian Executive Order no 489 of 11 June 1997 on Radio and Television Advertising and Programme Sponsoring; Spanish Law 25/1994 http://www.obs.coe.int/online_publication/reports/childadv.pdf.en, 17; Franch Decree of 27 March 1992, article 7 http://www.obs.coe.int/online_publication/reports/childadv.pdf.en, 25; Italian 30/11/91, no 425, article 3 http://www.obs.coe.int/online_publication/reports/childadv.pdf.en, 38.

¹³ Broadcasting Commission of Ireland *Advertising and Children* (December 2002), section 5

¹⁴ Sw Radio och TV-lagen (1996:844) Chapter 7; *Study on the Impact of Advertising and Teleshopping on Minors - Sweden* http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_se.pdf.

prohibits advertising in television broadcasting directed at children under 12 years old.¹⁵ The relevant legislation reads:

Commercial advertisements in a television transmission may not have the purpose of attracting the attention of children under the age of twelve.¹⁶

In deciding whether the advertisement is directed at children under 12 years old, it is important to consider the type of product or service, the design of the advertisement and the context in which it occurs.¹⁷

Advertising is similarly prohibited immediately before or after television programming that is directed towards children younger than 12 years old.¹⁸ The relevant legislation reads:

Commercial advertisements may not occur immediately before or after a programme or part of a programme which is principally intended for children under the age of twelve except when it is a message referred to in Section 8.¹⁹

The exception referred to allows the sponsorship of a television programme to be indicated in a suitable way either before or after the programme.²⁰ Furthermore, television advertisements may not include people or characters that play prominent roles in programmes primarily intended for children under twelve years old.²¹ The legislation reads:

Persons or characters who play a prominent role in programmes primarily intended for children under the age of twelve may not appear in commercial advertisements in a television transmission.²²

(b) Norway

Like Sweden, Norway also bans advertising during children's programmes and advertising that is aimed at children. The legislation that provides for this ban is the Broadcasting Act 1992.²³ The relevant legislation reads:

Advertisements may not be broadcast in connection with children's programmes, nor may advertisements specifically target children.²⁴

¹⁵ *Study on the Impact of Advertising and Teleshopping on Minors - Sweden* http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_se.pdf, 21.

¹⁶ Radio and Television Act 1996, chapter 7 section 4.

¹⁷ *Study on the Impact of Advertising and Teleshopping on Minors - Sweden* http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_se.pdf, 21.

¹⁸ Radio and Television Act 1996, chapter 7 section 7.

¹⁹ Radio and Television Act 1996, chapter 7 section 7.

²⁰ Radio and Television Act 1996, chapter 7 section 8.

²¹ Radio and Television Act 1996, chapter 7 section 4. *Study on the Impact of Advertising and Teleshopping on Minors - Sweden* http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_se.pdf

²² Radio and Television Act 1996, chapter 7 section 4.

²³ Act No. 127 of 4 December 1992 Relating to Broadcasting, located at <http://odin.dep.no/kkd/engelsk/media/018041-200005/index-dok000-b-n-a.html>.

²⁴ *Ibid*, chapter 3 section 3-1.

Furthermore, there is also a prohibition on television advertisements that contain people or characters that are known from programmes directed to children.²⁵ The relevant legislation reads:

No advertisements may be broadcast for products or services of special interest to children and young people which involve the participation of persons or figures who regularly or over a long period of time in the preceding 12 months have appeared as important elements of programmes for children or young people on a radio or television channel that is received in Norway.²⁶

(c) Denmark

Denmark does not have a general ban on advertising to children. However, it does have some controls over television advertising aimed at children. In Denmark the Danish Broadcasting Act regulates television advertising.²⁷ Protection of children is contained in Executive Order no 489 of 11 June 1997 on Radio and Television Advertising and Programme Sponsoring.²⁸ The Executive Order prevents advertisement aimed at children from exploiting the inexperience of natural incredulity, or the fact that they are easily influenced.²⁹ It also provides that no advertisements can be shown during the course of programmes.³⁰

(d) The Netherlands

The Netherlands does not have legislation that prohibits television advertising for food that does not meet certain nutritional criteria. However, it does have some restrictions on advertising to children. The Media Act³¹ and Media Decree³² provide that advertisements to children must be clearly distinguished from programmes. National broadcasters cannot broadcast advertising messages.³³ On commercial broadcasting, only the Radio and Television Advertising Foundation (STER) may broadcast advertisements.³⁴ Commercially broadcast programmes that are addressed to minors under the age of 12 can be interrupted on commercial broadcasting only if they last for longer than 30 minutes.³⁵ Programmes directed to children under 12 may not have product placement or sponsoring.³⁶

²⁵ *Study on the Impact of Advertising and Teleshopping on Minors - Norway*
http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_no.pdf 16

²⁶ Regulations No. 153 of 28 February 1997 relating to broadcasting, chapter 3 section 3-6.
http://odin.dep.no/kkd/engelsk/acts_regulations/018001-990111/index-dok000-b-n-a.html

²⁷ *Study on the Impact of Advertising and Teleshopping on Minors - Denmark*
http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_dk.pdf

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ “Mediawet”, Stb 1987, 249.

³² “Media Besluit”, Stb 1987, 249.

³³ Media Act Article 52, sections 1 and 2 *Study on the Impact of Advertising and Teleshopping on Minors - Netherlands* (2001) 15 http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_nl.pdf

³⁴ Media Act Article 26 and 52 section 1; *Study on the Impact of Advertising and Teleshopping on Minors - Netherlands* (2001) 15 http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_nl.pdf

³⁵ Media Decree, article 52 e section 3. *Study on the Impact of Advertising and Teleshopping on Minors - Netherlands* (2001) 15 http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_nl.pdf

³⁶ Ibid.

(e) Canada - Federal

Television advertising to children is highly regulated in Canada.³⁷ At the federal level, the Broadcast code for Advertising to Children (Broadcast Code) governs television advertising to children.³⁸ Although the rules are developed by the Canadian Association of Broadcasters, and not by legislation, they have legal force because broadcasting licences carry the condition of all content conforming to the Broadcast Code.³⁹ The Broadcast Code contains varying provisions that generally prohibit content that exploits children's vulnerability by preventing undue pressure, presentation by programme characters, and inferences of superiority in the case of purchase.⁴⁰ The code also limits scheduling of advertisements, providing that advertisements may not be shown more than once per half hour, and limiting advertising to four minutes per hour.⁴¹ Advertisements broadcast during the early school-morning hours should be aimed at the family rather than children, due to pre-schoolers' inability to distinguish between advertising and programme content.⁴² Furthermore, the state broadcaster has voluntarily undertaken not to accept advertising directed to children under 12.⁴³

(f) Canada - Quebec

Quebec is the only province in Canada that has legislated for a complete ban on commercial advertising to children under the age of 13 years old.⁴⁴ The legislative provisions are contained in the Quebec Consumer Protection Act, and they read:

248. Subject to what is provided in the regulations, no person may make use of commercial advertising directed at persons under thirteen years of age.

249. To determine whether or not an advertisement is directed at persons under thirteen years of age, account must be taken of the context of its presentation, and in particular of

- (a) the nature and intended purpose of the goods advertised;
- (b) the manner of presenting such advertisement;
- (c) the time and place it is shown.⁴⁵

Various exemptions to this prohibition exist to allow advertising aimed at children under 13 in children's magazines, advertising a children's show or

³⁷ See generally Wendy S Reed, Catherine Bate and Douglas Simovic *Kid Law: Advertising to Children in Canada* located at <http://www.gala-marketlaw.com/pdf/kidlaw.pdf>, 63.

³⁸ *Ibid*, 63-64.

³⁹ *Ibid*, 64.

⁴⁰ *Ibid*, 64.

⁴¹ *Ibid*, 64-65.

⁴² Broadcast Code for Advertising to Children, III:2, located at <http://www.adstandards.com/en/clearance/childrencode.asp#preSchoolers>.

⁴³ Wendy S Reed, Catherine Bate and Douglas Simovic *Kid Law: Advertising to Children in Canada* (2003, World Advertising Research Centre), located at <http://www.gala-marketlaw.com/pdf/kidlaw.pdf> 65.

⁴⁴ *Ibid*, 66.

⁴⁵ Quebec Consumer Protection Act R.S.Q., chapter P-40.1, sections 248 and 249.

advertisements promoting a product in a store.⁴⁶ Quebec also dissuades advertising in schools by prohibiting the receipt of gifts, grants or other contributions from commercial solicitations, if conditions incompatible with the mission of the school are attached.⁴⁷ This provision has stopped some prominent promotions from proceeding.⁴⁸ There is some evidence that this legislation has had positive impacts, with French-speaking children who watch Quebec television showing less increase in household expenditure on advertised cereals than English-speaking children with access to American television.⁴⁹

(g) Other European States

Other European countries have restrictions on television advertising during children's programmes, often as a part of implementing the European Union's Television Without Frontiers directive. Austria does not permit advertising during children's programmes, and Italy prohibits cartoon films from being interrupted by advertisements.⁵⁰ In Belgium, the Flemish community has a complete ban on television advertising during or within five minutes of children's programmes.⁵¹ In Germany, private television may not broadcast advertising during programmes for children,⁵² and there are extensive guidelines regarding the method of advertising to children.⁵³

2 Proposed Legislation and Debates

(a) United Kingdom

The United Kingdom does not currently have a prohibition on the television advertising of certain foods to children. However, there is currently some restriction on advertising to children. The Broadcasting Act 1990 gives the Independent Television Commission (ITC) the power to draw up and enforce a code of standards for television advertisements.⁵⁴ Advertisements

⁴⁶ Wendy S Reed, Catherine Bate and Douglas Simovic *Kid Law: Advertising to Children in Canada* (2003, World Advertising Research Centre), located at <http://www.gala-marketlaw.com/pdf/kidlaw.pdf> 67-68.

⁴⁷ Quebec Education Act R.S.Q., chapter I-13.3, s 94.

⁴⁸ Wendy S Reed, Catherine Bate and Douglas Simovic *Kid Law: Advertising to Children in Canada* (2003, World Advertising Research Centre) <http://www.gala-marketlaw.com/pdf/kidlaw.pdf> 68.

⁴⁹ Gerard Hastings, Martine Stead, Laura McDermott, Alasdair Forsyth, Anne Marie MacKintosh, Mike Rayner, Christine Godfrey, Martin Caraher and Kathryn Angus *Review of Research on the Effects of Food Promotion to Children* (22 September 2003, Centre for Social Marketing, University of Strathclyde, Glasgow) 14.

⁵⁰ Broadcasting Commission of Ireland *Advertising and Children* (December 2002), located at <http://www.irtc.ie/Advertising%20&%20Children.doc>; Italian law of 30/08/90, No 223, Article 8(1), located at http://www.obs.coe.int/online_publication/reports/childadv.pdf.en 38.

⁵¹ Flemish Broadcasting Law, Article 82-6; European Audiovisual Observatory *Regulation on Advertising Aimed at Children in EU-Member States and Some Neighbouring States* (2000, EAO, Strasbourg) located at http://www.obs.coe.int/online_publication/reports/childadv.pdf.en, 6.

⁵² Broadcasting Treaty (Rundfunkstaatsvertrag) article 41 section 1; *Study on the Impact of Advertising and Teleshopping on Minors - Germany*, located at http://europa.eu.int/comm/avpolicy/stat/studpdf/minadv_de.pdf, 18.

⁵³ *Ibid.*, 19-21.

⁵⁴ *Study on the Impact of Advertising and Teleshopping on Minors - United Kingdom* http://europa.eu.int/comm/avpolicy/stat/studpdf/tab_uk.pdf

that use personalities or other characters (such as puppets or cartoon characters) who appear regularly in any children's television programme to endorse or present a product or service of particular interest to children may not be shown before 9 pm.⁵⁵ Advertisements for merchandise of a programme may not be shown for two hours before or after the relevant programme.⁵⁶ Furthermore, no advertisement shown during hours that large numbers of children are likely to be watching may use a method of advertising, which "takes advantage of the natural credulity and sense of loyalty of children".⁵⁷

There has been a significant movement to introduce legislation that would ban television advertising of foods high in fat, sugar and salt. The Labour MP Debra Shipley has tabled a bill "to ban the advertising of high fat, high sugar and high salt content food and drinks during pre-school children's television programmes and related scheduling."⁵⁸ The bill has the support of Diabetes UK, the British Heart Foundation, the Food Commission and the National Heart Forum.⁵⁹ Ms Shipley supported her bill with reference to the UK Food Standards Agency's report *Does Food Promotion Influence Children? A Systematic Review of the Evidence*, which reviewed 118 research papers and concluded that advertising "does have an effect on their preferences, purchase behaviour and consumption."⁶⁰ The chairman of the Food Standards Agency has also expressed concern over the marketing of food to children.⁶¹ In spite of this popular support there was a view that the bill was doomed to fail,⁶² and it eventually ran out of time in Parliament.⁶³

(b) Ireland

Advertising to children has been widely discussed in Ireland. In 2002 the Broadcasting Commission of Ireland released a report examining children and advertising.⁶⁴ In 2003, the Broadcasting Amendment Bill was brought as a Private Member's bill by Deputy Eamon Ryan before the Irish parliament. It was defeated at the second stage.⁶⁵ This bill would have required the Irish Broadcasting Commission to restrict the advertising of certain products to certain age categories of children.⁶⁶ The Commission would have been required to introduce measures to prohibit the advertising to children of unhealthy foods, with the legislation reading:

⁵⁵ *Study on the Impact of Advertising and Teleshopping on Minors - United Kingdom*

http://europa.eu.int/comm/avpolicy/stat/studpdf/tab_uk.pdf

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ House of Commons Hansard 4 November 2003 column 668, located at

<http://www.publications.parliament.uk/pa/cm200203/cmhansrd/cm031104/debtext/31104-06.htm>

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ <http://news.bbc.co.uk/2/hi/health/3254375.stm>

⁶² <http://media.guardian.co.uk/mediaguardian/story/0,7558,1081289,00.html>

⁶³ http://www.epolitix.com/debra-shipleys_campaigns

⁶⁴ Broadcasting Commission of Ireland *Advertising and Children* (December 2002) located at

<http://www.irtc.ie/Advertising%20&%20Children.doc>

⁶⁵ <http://www.irlgov.ie/oireachtas/>

⁶⁶ Broadcasting (Amendment) Act 2003, No. 54 of 2003, located at <http://www.irlgov.ie/oireachtas>.

(2A) A direction of the Minister under subsection (1) may also specify that the Commission shall introduce measures which allow for the restriction of the advertising of certain classes of products and the restriction of advertising to children under certain age categories 15 including, *inter alia*, measures to:

- (a) prohibit the promotion as part of children's television broadcast schedules of the sale and/or consumption of foodstuffs or beverages with high concentrations of
 - (i) sugar,
 - (ii) salt,
 - (iii) fat,⁶⁷

The bill would have also required the Commission to introduce measures allowing the restriction of toy advertising in children's programmes,⁶⁸ and allowing the restriction on advertising during programmes whose 'viewing profile' is below certain age limits.⁶⁹ These sections of the bill read:

- (b) restrict the promotion as part of children's television broadcast schedules of the sale and promotion of children's toys,
- (c) restrict the inclusion of advertising during programming where the viewing age profile is designated as being below certain age limits.'',⁷⁰

The bill would have set up a comprehensive action plan to improve children's protection from undue advertising influence, and would have also supported the acquisition of media literacy skills for children.⁷¹

3 Conclusion

Many states have seen fit to highly regulate or prohibit advertising to children and pre-schoolers. Therefore, there should be discussion and implementation of such regulation in Aotearoa New Zealand. It must be acknowledged that there are important issues surrounding the definitions that would be used in such child advertising legislation. Terms such as 'child', 'advertising', 'children's advertising' and 'sponsorship' would need to be accurately defined for the legislation to work well.⁷² “

⁶⁷ Broadcasting (Amendment) Act 2003, No 54 of 2003, s1.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Broadcasting Commission of Ireland *Advertising and Children* (December 2002), <http://www.irtc.ie/Advertising%20&%20Children.doc>, section 3