

Why An Apple a day should not be illegal in advertising

By Glen Wiggs, Executive Director of the Advertising Standards Authority

The barmiest thing about the law relating to the advertising of food is that it is illegal to advertise the health benefits of food. This is at a time when the finger gets pointed too often at food advertisers for the way they promote their products on television.

We want to see the law changed so that advertisements can promote the benefits of healthy food with sayings such as “an apple a day keeps the doctor away” or “eat oranges and lemons to help fight winter colds and chills”. There is even legal debate over the legality of the excellent heart tick developed by the Heart Foundation.

This has now become a trans Tasman issue with both Australian and New Zealand considering modifying the law from its current unsatisfactory state. Fortunately progress looks likely. The Governments on both sides of the Tasman are much more aware of the issue as a result of the widespread concern about the state of obesity, especially amongst our children. Earlier this year, the Australia New Zealand Ministerial Council produced a paper supporting reform.

This concern naturally focuses on the high profile advertising of food on television although the link between the advertising of food and poor eating habits is not a well researched area. I am convinced that if the health benefits of food could be advertised the Authority could set up relevant rules which would ensure only well-based, authentic claims were able to be made in advertising.

We already have a detailed set of rules set by both the Advertising Standards Authority and the television companies themselves to regulate food advertising.

The advertising rules are followed to the letter and anyone who does not like what appears on screen can complain, at no cost, to the Advertising Standards Complaints Board.

The standards cover all foods, whether it is treat food such as candy bars, or breakfast cereals and other food related advertisements such as for supermarkets. The rules are available in detail in two publications:

1/ The Advertising Codes of Practice published by the Advertising Standards Authority.

2/ “Getting It Right for Children – Advertising on Television”, published by the NZ Television Broadcasters Council.

1/ The Advertising Codes of Practice:

The ASA's Codes of Practice ensure that proper advertising standards are maintained at all times. The Codes aim to ensure that not only does advertising comply with the law but it is also truthful and not misleading or deceptive, and that it is socially responsible

The Codes relevant to food advertising are:

- **The Advertising Code of Ethics**
- **Code for Advertising to Children**
- **Code for Advertising of Food**

The Advertising Code of Ethics includes a set of basic principles including that:

- **No advertisement should be misleading or deceptive or likely to mislead or deceive the consumer.**
- **All advertisements should be prepared with a due sense of social responsibility to consumers and to society.**
- **All advertisements should respect the principles of free and fair competition generally accepted in business.**

The Code for Advertising to Children recognises the special characteristics of the children's audience. It acknowledges that children are entitled to certain rights and protection pursuant to the United Nation's Convention on the Rights of the Child ("Convention"). Article 13 recognises the child's right to freedom of expression. "This right shall include the freedom to seek, receive and impart information and ideas of all kinds." Children therefore have the right to receive advertisements along with other information. However, there are various fetters to that right; for instance Article 17(e) calls for "appropriate guidelines for the protection of the child from information and material injurious to his or her well-being." This Code provides the "appropriate guidelines" for advertisements directed at children.

The Code is designed to ensure that advertising to children will be conducted in a manner which is socially responsible and does not mislead or deceive children. Special care needs to be taken in advertising to younger children and in particular under eight.

The Code for Advertising of Food ensures that advertising of food will be conducted in a manner which is socially responsible and does not mislead or deceive the consumer.

Complaints Record:

The ASA keeps detailed records of the complaints under its Codes. Under the Food code 22 complaints were received in 2003 and 6 were upheld. Under the Children's Code, only three complaints were received and none were upheld.

2/ Getting It Right for Children – Advertising on Television

The rules exist as a result of the broadcasters recognising the special place of children in society and the need for a high level of social responsibility in communicating to children. These rules apply during programming dedicated to children which is screened on TV2, 3 and Prime. They are stringently applied.

The rules:

- **prohibit excessive repetition of commercials**
- **limit sponsorships**
- **ensure advertising is clearly recognisable as such and is not part of the editorial content**
- **limit advertising levels**
- **prohibit any advertising in programmes for pre-schoolers**
- **ensure a regular presenter/celebrity does not endorse or promote goods/services within a programme**
- **prohibit the screening of 0900 numbers promoting competitions/games.**

I consider this framework provides effective protection for consumers and television viewers. If only health claims could be made as well and New Zealand would have a world leading regulatory framework for the advertising of food.