



(Non)regulation of marketing of unhealthy food to children in New Zealand

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Abstract

Three and a half years ago an editorial in the *NZMJ* called for restrictions on marketing of unhealthy food to New Zealand children. This paper discusses progress since then. There has been a seemingly relentless documentation of adverse health consequences of the obesity epidemic in the intervening years, increasing evidence that marketing of unhealthy food contributes to the epidemic, growing knowledge about New Zealand children's exposure to marketing of unhealthy food, and evidence of public support to decrease children's exposure to marketing of unhealthy food. Yet there is still a lack of substantive action on the restriction of marketing of unhealthy food to children in New Zealand.

New Zealand (NZ) continues to be saturated by research documenting the presence of overweight and obesity in adults and children, and by research looking at the serious impacts of these conditions on individual and population health.

Three and a half years ago, in an editorial in this journal, Carolyn Watts and Rob Quigley issued an election year challenge to regulate marketing of unhealthy food to children, as a step towards addressing obesity.¹ In the interim we have had two elections, a Select Committee Inquiry into these issues, and a Government response to the Select Committee report,^{2,3} so it seems an appropriate time to revisit these issues and mark progress.

Child overweight and obesity statistics in NZ are so often cited that they now cause little reaction, but the facts still bear repeating. In NZ, approximately 61,800 children aged 2–14 years are obese (8.3%) and 155,000 (20.9%) are overweight.⁴ Like most conditions in NZ, overweight and obesity are not equitably distributed among different groups of children.^{4,5}

International longitudinal studies suggest that 40–80% of children who are obese at adolescence will remain so into adulthood.⁶ If this is correct in NZ, then up to 49,500 (of the 61,800) children will experience obesity throughout their life. This is in addition to expanding waistlines that develop in adulthood.^{7,8}

The health consequences of overweight and obesity are better described than they were 3 years ago, particularly in relation to increased cancer risk.^{9–11} Less well understood are the economic and social effects of this population weight increase. In addition, the current generation of children are not yet old enough for the full extent of their body mass index (BMI) related health issues and healthcare needs to be experienced.¹²

Marketing of unhealthy food to children is harmful

The evidence of harm from food marketing has become even more compelling in the last 3 years. There have now been four, independently-funded, systematic reviews of the evidence looking at the evidence of a relationship between marketing and children's dietary beliefs, dietary choices, and diet-related health.¹³⁻¹⁶ All of these reviews have concluded that there is an adverse effect.

The 2003, United Kingdom (UK) Food Standards Agency-funded, Hastings' review concluded that food promotion is having an effect, particularly on children's preferences, purchase behaviour, and consumption—and that the effect is independent of other factors, and operates at both a brand and a category level.¹⁴

The Hastings' review was subjected to a rigorous peer-review process,¹⁷⁻²⁰ and was judged sound enough to inform policy change in the UK around television advertising to children. While the precise magnitude of the effect of marketing is unclear, the Institute of Medicine systematic review noted that even a small effect accrued over an entire population of children substantially increases in the number of obese children.¹⁵ This population effect is supported by modelling work in Australia which showed that interventions with a small effect on population mean BMI translated into substantial population gains.²¹

Additionally many debates over the harmful effects of children's exposure to marketing fail to acknowledge a crucial difference between children and adults in this area. Young children do not understand the intent of marketing. Children are not cognitively developed enough, probably until early adolescence to understand the persuasive intent of marketing.^{15,22} It is not ethical to expose children, especially very young children, to something that we know is harmful and that they are not capable of understanding. This was the rationale for the restrictions of advertising to children under the age of 12 in Sweden.²³

Why do companies market to children? There are three main reasons:

- Firstly, the 1.1 million children and young people (aged 18 and under) in NZ have spending power of their own, through pocket money,²⁴ lunch money,⁵ and/or (in older children) employment. Overseas research (and parental experience) shows that unhealthy food is a common item purchased with that money.¹⁵
- Secondly, children are an important 'influence market' (i.e. they influence household spending). In 1993 in the USA this 'influence' was estimated to be worth \$295 billion.¹⁵
- Finally, today's children and young people are tomorrow's consumers; brand awareness and loyalty are a strategic investment by companies.

The power of marketing is impressive. For example in 2007 research was published showing that pre-school children have specific beliefs about brands by age 4, thinking that food wrapped in branded McDonalds' wrappers tastes better than identical plain wrapped food.²⁵ Despite extensive research on the effects of marketing activities, some members of the marketing and food industries continue to muddy the waters, for example by commissioning their own research²⁶ (with methodological issues which

limit the findings^{27,28}) or by casting doubt on the issue in other forums.²⁹ The irony of this position must surely be self evident: \$2.2 billion is spent on marketing annually in NZ,³⁰ so it seems untenable to be arguing that it does not affect consumer behaviour.

New Zealand children are exposed to marketing of unhealthy food

So what do we know about NZ children's exposure to marketing of food? Children's exposure to marketing occurs in numerous ways including television, Internet, within the school environment, product placement, sponsorship, and sales promotions.³¹ Food marketing is ubiquitous; much of it may be reaching children while being largely unnoticed by caregivers. At this point there is no systematic monitoring, so our understanding is based on a number of ad-hoc research projects, mainly looking at television advertising during advertising industry designated 'children's viewing hours'. These projects have not used identical methodology so assessing trends over time is difficult.

Television marketing

- Television is probably the most common medium of exposure to marketing of unhealthy food, with two out of three children watching 2 or more hours of television per day.⁴
- Food advertising during after-school television is common, with 25–29% of products advertised being food.^{32–34} Seventy percent of this food advertising is for foods that are counter to healthy nutrition messages.³⁵
- Research in 2005 showed that children who watched 2 hours of the TV2 channel each weekday afternoon and 2 hours each morning in the weekend would see a total of 7134 food advertisements per year.³⁶
- Similar to international patterns the 'Big Five' (soft drinks, pre-sugared breakfast cereals, confectionary, savoury snacks, and fast food outlets) dominate food products advertised to children on television in NZ.^{32–36}
- While it is difficult to draw conclusions about trends in the amount of food marketing during children's viewing hours in the last decade it does not appear to have decreased.^{34,36}

Other forms of marketing

- Whilst there has been no systematic assessment of the extent to which food companies market into schools in NZ, there is evidence that it does occur.^{37,38} It has been noted overseas that companies with controversial practices or products tend to be the companies that place sponsored educational material in schools, which can allow them to influence discourses and discussions.³⁷
- Access to and use of the Internet is common in NZ children, and this is a growth area in terms of marketing spend.³⁰ The extent of children's exposure to marketing of food through this medium is currently not quantified.
- Product placement, which is embedded marketing, occurs in television programmes, films, advergames, music videos.¹⁵ (For example, in 2007, Pepsi-Cola had product placement in the following movies: *30 Days of Night*,

*American Gangster, Blades of Glory, I Now Pronounce You Chuck and Larry, Resident Evil: Extinction, Superbad, Transformers*³⁹) Product placement is a growth area: it is often not apparent as advertising to viewers, changing technology means it is easy to insert and viewers are increasingly able to avoid advertising breaks.⁴⁰ Product placement occurs in NZ, including in programmes such as *Shortland St*, but how much of this is food related is not clear.⁴¹

- Sponsorship is also common, although not well quantified. One NZ study identified that junior sport was 14 times more likely to be sponsored by companies that produce unhealthy food compared to all other sponsorship.⁴²

Arguments against marketing restrictions

Debate is vigorous around the issue of marketing restrictions aimed at reducing children's exposure to marketing of unhealthy food. Debate is largely grouped into two areas: firstly, the theoretical justification of any restrictions and, secondly, details of any restrictions (for example how to define 'unhealthy' or the type of regulatory framework).

Table 1. Objections and counter arguments to restrictions on marketing unhealthy food to children

Objection	Counter arguments
There is no causal proof between marketing and the obesity epidemic in children	Evidence from a health perspective is now sufficient for action to protect children. ¹³⁻¹⁶ At least \$2.2 billion per year is spent on advertising in NZ. ³⁰ It seems hard to believe that this is not effective at influencing children's diets. Marketing is one of a number of important factors that need to be addressed, part of larger picture of obesity prevention. A small effect of marketing on each individual translates to a large effect on the population (due to the large exposure).
Parents are responsible for their children and have control of the family budget	Children have access to pocket money and, sometimes, their own income and frequently purchase their own food. NZ parents report that advertising influences their children likes and requests for specific food and drink. ⁴³ International and national surveys show that parents want restrictions on marketing of unhealthy food to children. ^{44 45}
Restrictions on marketing would violate the freedoms of speech set out in the Bill of Rights Act 1990 and the right to advertise legal products as set out in the Fair Trading Act 1986 and Commerce Act 1986	There are national precedents for regulation of marketing activities, for example Smokefree Environments Act and regulations (including international treaty requirements for various controls on tobacco marketing and for warnings ⁴⁶). There is at least one legal precedent in a sub-national jurisdiction that supports a state's right to protect children from marketing (Supreme Court of Canada judgement on <i>Irwin Toy Ltd v Quebec Attorney General</i> 1989)
An advertising ban would be ineffective/the 'forbidden fruit' argument.	Similar arguments were made for tobacco advertising, but as part of a comprehensive package marketing restrictions are probably contributing to declining smoking rates in New Zealand. Marketing restrictions alone are likely to be of limited effectiveness; they need to be one of a number of anti-obesity interventions.

Table 1 outlines some of the key objections and counter arguments to the theoretical justification of restrictions on marketing of unhealthy food to children. These objections are not necessarily specific to food marketing: similar themes are traversed in discussions about tobacco and alcohol marketing restrictions.

International developments around marketing restrictions

The increasing international concern around the role of marketing to children in the obesity epidemic has translated into some action. For instance, the World Health Organization's (WHO) *Global Strategy on Diet, Physical Activity and Health* calls for Governments to make changes in this area.⁴⁷

WHO have also commissioned two reports on the global regulatory environment around marketing to children.^{31,48} The first of these reports is a stocktake of the regulatory environment, and the second documents changes since the release of the Global Strategy. Broadly these reports note some increase in regulatory activity, although efforts are largely confined to developed countries, are not comprehensive, and mainly rely on self-regulation.

Attempts to regulate are being strongly opposed by some industry groups. Most activity is focused on television advertising but there is increasing interest in other media.^{31,48} There is some suggestion that, at least in Europe, advertising spend is being diverted into other areas (such as in-school marketing) as television advertising becomes restricted.⁴⁹

The UK has a system of co-regulation of television advertising of unhealthy food through their Office of Communications (Ofcom) and Communications Act 2003. While there are different permutations to co-regulatory systems, the basic premise of co-regulation is that it involves a mix of a statutory framework (giving Government some control) and self-regulation.

Under the UK co-regulatory model, food is defined as 'healthier' or 'less healthy' using a Nutrient Profiling Model developed by an independent body the Food Standards Agency.⁵⁰ Any 'less healthy' food is not permitted to be advertised on television when the proportion of children watching a programme is more than 20% higher than their proportion of the general population audience. Brand advertising is currently permitted but may be reviewed.^{51,52}

The UK Advertising Standards Authority regulates all other advertising, including 'healthier food' under it's codes and complaints system. There are also content restrictions on food being advertised, including no celebrity endorsements, health claims, use of cartoons, or promotions (such as toys).⁵³

While the Ofcom system has not yet been fully implemented or evaluated, it is already apparent there are serious limitations. Ofcom's preliminary review 6 months after the first phase of restrictions was implemented noted that while there was some decrease in exposure to advertising of food during 'children's airtime', there was an increase in exposure during adult airtimes.⁵³ Independent analysis by UK consumer advocacy group *Which?* shows that 8 out of 10 programmes most commonly watched by children are still permitted to advertise 'less healthy' food. Even once the system is fully implemented this will remain largely unchanged.⁵⁴ *Which?* calls for restrictions to cover all programmes up until 9pm at night instead of the use of the proportion-

based assessment of the audience.⁵⁴ The UK Government is reviewing the system due to concerns around the effectiveness of it.⁵⁵

The Australian Media and Communications Authority is currently drafting new Children's Television Standards.⁵⁶ The draft standards did not recommend a change to the rules around food and beverage advertising, although it signalled a willingness to review this area in the future.⁵⁷ Submissions on the draft standards were divided on this issue. Interestingly modelling work done by the Victorian Government in Australia, shows that a modest but sustained decrease in mean BMI of 0.17 units per child, as a result of restricting television advertising of unhealthy food, was one of the most cost-effective interventions available to Government to prevent obesity.²¹

There are three jurisdictions that have banned all advertising directed at children: Sweden, Norway, and the Canadian province of Quebec have all had statutory bans in place for up to 20 years to protect children from commercial interests.³¹ Opponents cite the level of obesity in these countries as evidence that regulation of advertising is ineffective. However regulation of advertising in these countries was not initiated to combat obesity and thus was not part of a comprehensive anti-obesity programme; and children in all these jurisdictions are subject to cross-border advertising that is unaffected by the regulations.

New Zealand: A laggard in the control of marketing?

NZ has an almost entirely self-regulatory system for marketing. Consumer protection legislation, such as the Commerce Act, applies to all advertising and the Broadcasting Act 1989 restricts advertising on television on certain days of the year and certain times. For all other matters relating to television advertising the Broadcasting Act devolves responsibility to the Advertising Standards Authority (ASA)—a voluntary industry body.

The ASA has codes of practice relating to advertising of food and to children, which members are required to follow, and a complaints process, in case of perceived breaches to those codes.⁵⁸ These codes apply to advertising in its 'broadest sense', although some types of marketing, such as product placement, are not specifically mentioned in the codes or in the definition of marketing.⁵⁸

In terms of a response to obesity, a codes and complaints based self-regulatory system is fundamentally flawed. A codes and complaints based self-regulatory system is not designed to be a public health policy tool; it is designed to identify advertising 'outliers' who breach acceptable standards, rather than reduce large volumes of effective advertising that inundate children everyday.⁵⁹ Under a codes and complaints system it is difficult to argue that a single advertisement is inconsistent with a healthy diet, but given that 70% of food advertising in 'children's viewing hours' is for food that is counter to healthy nutrition,³⁶ television advertising does not support and promote healthy diets.

One comparison of international regulatory systems of television advertising of food to children identified that NZ is one of the few developed countries in the world that is entirely self regulatory.²³ From the evidence available it appears that the current self-regulatory system has thus far failed to decrease children's exposure to advertising of unhealthy food.^{34,36}

In the last three years the issue has been on the policy agenda in NZ to some extent including:

- In May 2007 a '5-point plan' by the Ministers of Health, Education and Broadcasting and New Zealand Television Broadcasters Council (which includes TVNZ, CanWest, and Māori Television). This plan has a children's food rating system and only food products that receive this rating will be able to advertise in programmes directed at children from October 2008.^{60,61} While this is a start, it will be of limited effectiveness as children watch television more commonly outside the industry designated 'children's viewing hours' than they do within.⁶²
- In August 2007, the report of the Health Select Committee Inquiry into obesity and Type 2 diabetes was released. This called for clear targets around advertising and marketing of food to children and a commitment to regulation depending on progress.² In their response to this inquiry, Government committed to reviewing the industry's progress towards reducing advertising unhealthy foods and beverages to children and developing targets in this area (in conjunction with the food industry) by June 2008.³ At the time of publishing this article (January 2009) targets had yet to be announced.
- The draft Public Health Bill, which underwent consultation in 2008, attempted to establish a generic framework, and some tools, for dealing with non-communicable diseases and their causes. This section was opposed by media organisations and the food industry who perceived it as a Trojan horse to regulate food advertising.⁶³ The Public Health Bill was not passed before the election.

What the new Government intends to do in relation to these issues is not yet clear.

What does New Zealand need to do?

The rationale for why we need to address this issue has been outlined above. In order to advance the agenda in NZ a number of things need to occur. Ideally these would include the following:

- Government needs to articulate a vision about what it wants to achieve in this area. The outcome needs to be of clear, measurable, and time-specific. (For example, a 90% reduction in exposure of children aged under 16 to any marketing of unhealthy food by 2012, from 2007 baseline.) This process should be independent of the advertising and food industry to have public credibility. Additionally there needs to be a broad definition of marketing to encompass the range of current activities as well as to allow flexibility to deal with the dynamic changes in media technology and usage.⁴⁰
- Once a vision is developed, methods to achieve it can be considered. Options for the legal framework include co-regulation or full Government regulatory systems. A self-regulatory system is simply not capable of addressing this issue, based on current evidence or practice. Any framework could be incorporated within current or planned legislation (e.g. the Broadcasting Act or the Public Health Bill) or could be a stand alone Act.

- While a specific NZ system needs to be developed, there are principles from the International Obesity Task Force and Consumers International that could be used to underpin a framework.⁶⁴ Additionally there are exemplars from other jurisdictions that have been successful (e.g. the FSA nutrient profiling model) or less successful (e.g. the use of a proportion based measure of audience) that NZ can learn from.
- There needs to be independent systematic monitoring of all forms of food marketing activities, so that progress (or lack of it) can be measured and policy interventions can be evaluated for effectiveness.
- NZ should start taking leadership on the possibility of using an international treaty approach (similar to the Framework Convention for Tobacco Control) to dealing with cross border marketing.

Conclusions

The obesity epidemic is a serious threat to public health in NZ. NZ children deserve appropriate protection from marketing of unhealthy food as part of a response to this issue. Despite the need for action limited progress in policy in the control of food marketing has occurred in the last 3 years in this country.

Fortunately NZ is in a position to learn from other countries as they implement regulatory systems. This agenda needs to be commenced now; this is a complex and time-consuming process. NZ is already lagging behind other jurisdictions, we need to advance this work quickly and decisively.

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