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**COMMENTS ON THE PROPOSED NUTRITION PRINCIPLES
OF THE INTERAGENCY WORKING GROUP ON FOOD MARKETED
TO CHILDREN
BY THE FOUNDATION FOR ADVERTISING RESEARCH**

1. These comments are by the Foundation for Advertising Research (FAR), which is based in Australia and New Zealand but operates globally including the United States.

2. FAR is an independent organisation providing research, information, advice and expertise on matters of concern relating to advertising and other marketing issues, with the objective of assisting policy-makers make evidenced based decisions and policy. A key area of expertise is best practice self-regulation and we have conducted audits on advertising self-regulatory organisations. We also have expertise in the design of nutrient profiling systems and led the design of a system that operates on a self-regulatory basis for advertising food to children in New Zealand.

3. We confine our comments to two questions:
- Are self-regulatory best practice principles being met?
- Is the proposed nutrient profiling system practical?

Consequently we will not be answering the 30 specific questions.

4. Our comments relate to both the nutrition principles and general matters and are intertwined so both need to be considered together as well as separately. Therefore the comments are in one document.

Are Self-Regulatory Best Practice Principles Met?

5. The peak world advertising self-regulatory body is the European Advertising Standards Alliance (EASA). It has 26 European advertising self-regulatory organisations (SROs) as members plus 8 non-European SRO's. EASA defines self-regulation as

"Self-regulation in the advertising sector is the recognition that the advertising industry (advertisers, agencies and the media) create advertising that complies to a set of ethical rules, namely that it should be

- *legal*
- *decent*

- *honest*
- *truthful*
- *prepared with a sense of social responsibility to the consumer as well as society as a whole*
- *created with due respect to the rules of fair competition.*

These ethical rules are usually drawn up in the form of a code and the ICC code very often forms the basis of the national codes."

And in explanation states

"The advertising industry draws up a code of standards and practice, which it formally agrees to support, financially, morally and practically. Then it sets up a body to apply the code and ensures that it is properly staffed and funded. This body is called a Self-Regulatory Organisation - SRO for short. The aim is to keep advertising standards high and ensure consumer trust and protection to the benefit to all."

6. Two features should be noted.

- The system should be tripartite involving advertisers, agencies and media who are owners and funders of the system. Best practice principles require the tripartite model, as advertisers, agencies and the media are jointly responsible for advertisements being in accordance with the codes. Some SROs and self-regulatory initiatives are advertiser owned and funded. This can be in accordance with best practice if agencies and media give active support and enforcement of the system. For instance media have an enforcement role and will not accept advertisements that are in breach of the codes.

The tripartite model has not developed in the US for historical reasons. The peak body is the Better Business Bureau (BBB) that operates an advertising code and complaints system and the CFBAI initiative. It has advertiser and agency members but not media. This deficiency was recognised in the White House Taskforce Report on Child Obesity (White House Taskforce Report) in Recommendation 2.7 by recommending that media become involved in enforcement.

- Industry draws up the codes. The codes are owned by industry. However in accordance with best practice key stakeholders should have legitimate input in the drafting of them. Some SROs establish an independent codes committee with industry, Government and consumer representatives that is responsible for drafting the code and hearing submissions. What is important is that no individual stakeholder should direct what is in the code or its wording.

7. In our view the current self-regulatory setup does not meet best practice standards. There is a need for media involvement and transparent procedures for the drafting of codes. This is a matter for industry to solve and can be achieved with minor alterations in structure and procedures. It is legitimate for Government to prod industry to solve this issue.

8. In our view the proposals by the Working Group to *"to guide industry self-regulatory efforts to improve the nutritional profile of foods that are heavily marketed to children"* is flawed. The wording of the paper makes it clear that they are not a 'guide' but a 'direction'. There is a clear expectation that the recommendations will be adopted in total. This is not in accordance with best practice principles and is tantamount to 'Government directed self-regulation'. Certainly the Working Group can make recommendations to industry and it is industry's duty, in accordance with best practice, to consider them fairly and impartially along with the views of other stakeholders. The research and investigation done by the Working Group is thorough and

valuable but in accordance with best practice one stakeholder cannot impose its views on the ultimate decision maker. The procedure adopted is not conducive to reaching a consensus outcome that industry will embrace in the spirit as well as the letter. Instead it will encourage confrontation and ultimately regulatory cat and mouse.

Are the Proposed Nutrition Principles Practical?

9. Best practice standards require codes to be written in plain unambiguous language and easy to understand. The nutrition principles define what foods should and should not be advertised or otherwise promoted to children and adolescents. The nutrition principles are hugely complex and fail to meet best practice standards by a considerable margin.

10. To determine whether a food meets the requirements of the nutrition principles several different measurement criteria are used:

- 10 food categories
- 9 food groups
- 50% by weight
- Cups
- Ounces
- Per 100 grams
- Grams per RACC
- Grams per serving
- % of calories
- Milligrams per serving

The online assistance seems to add to the complexity. The RACC requirements are contained in Code of Federal Regulations at 21 C.F.R. § 101.12, 9 C.F.R. §§ 317.312 and 9 CFR 381.412. We searched the FTC website regarding RACC – but the explanation is little help to the layperson – see link

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/ucm064904.htm#raccs>

In our view for a nutritional profiling system to succeed the input information must be on the packaging so it is easily obtainable.

11. There is little doubt that multi-national food and QSR companies will be able to comply with the requirements as they have the necessary resources and specialized knowledge about their products. However small independent operators will not have those resources or knowledge. Consequently there is likely to be widespread non-compliance. This would unfairly discriminate against the big brands.

Similarly media would not possess the expert knowledge. A local newspaper would not be able to determine whether or not to accept an ad targeted at teenagers for a particular food product. Advertising agencies that create the ads will also not possess the knowledge.

12. This would not meet the requirements of a level playing field and media involvement clearly set out in the White House Taskforce Report (p30):

"Second, any framework for voluntary reform must provide a level competitive playing field within the industry. If compliance results in significant competitive disadvantages to participating companies, long-term compliance becomes unsustainable. It is therefore critical to have broad participation by all companies that market food and beverage products to children. These efforts must be supported by cooperation from the major media companies that target

child audiences. Media companies can directly control the type and volume of advertisements shown on their platforms”

13. To give an example of the unworkability of the proposal the city of Sheboygan, Wis. has a population of 51,000. There are 14 radio stations, a daily newspaper, a community newspaper and 26 schools with over 10,000 students in the Sheboygan School District. The Yellow Pages lists 67 fast food restaurants of which 21 are independents and the remainder members of chains.

If a radio station broadcasts a high school basketball game between Sheboygan North and Sheboygan South potential advertisers would be fast food restaurants. The chain restaurants would only advertise a list of products on a schedule provided by Head Office. The independents would have little idea of the requirements and if they did would not have the resources to determine which foods qualify. Similarly the radio station would not have the expertise to understand such a complex system. There is therefore likely to be widespread non-compliance and the playing field would be tilted against the chain restaurants. Faced with this situation the local managers of chain restaurants are incentivized to ignore head office guidelines.

The same issues apply to websites, packaging, point-of-purchase displays, contests, sponsorship of events, in-school marketing, etc. Independents and locally owned convenience stores and shops would not possess the knowledge as to whether the food products were compliant and furthermore would not have the skills to find out.

14. The proposed Nutrition Principles need to be simplified to meet best practice principles so any layperson can easily interpret them. The consequence is a level playing field and widespread compliance.

By way of example Food Standards Australia New Zealand (FSANZ) developed an improved model of the Rayner model used by OFCOM in the UK and referred to on page 4 of the report. The model is easy to operate and data from the nutrition and ingredient information on the label can be entered into an online calculator to determine if the product is compliant. The process takes less than a minute.

Furthermore where small operators manufacture products there is an online calculator where the ingredients and their amounts are entered and the nutrition data determined – again it takes about a minute. The FSANZ nutrient profiling system has its anomalies but these can be overcome with commonsense and minor adjustment. The chief advantage is its simplicity and that laypeople can operate it. The Taskforce Nutrition Principles has more anomalies than the FSANZ model and huge complexity.

15. We recommend that the proposed Nutrition Principles be abandoned. We further recommend that the Taskforce in consultation with industry and other stakeholders develop a nutrition profiling model that meets best practice self-regulatory principles. The test will be whether a layperson can determine whether a product is compliant from information on the packaging in less than a minute. In short the model must be practical and workable and therefore can be understood and adopted by the entire industry rather than just multi-nationals.

Developing the perfect nutrition profiling model is much like searching for the Holy Grail. Therefore there must be compromise and complexity forsaken for simplicity. Allowing commonsense to apply can satisfy the lack of purity in the model.

Finally, child obesity is a very serious issue that requires innovative solutions. Imposed solutions will not be effective particularly when they are unduly complex. Government has a vital role to play but it must resist the 'imposition by fiat' approach. If self-regulatory best practice principles are followed this will engender goodwill and consensus resulting in a solution in a short timeframe.

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