

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD
HEALTH
ORGANIZATION



JOINT OFFICE: Viale delle Terme di Caracalla 00100 ROME Tel: 39 06 57051 www.codexalimentarius.net Email: codex@fao.org Facsimile: 39 06 5705 4593

AGENDA ITEM NO. 8

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JOINT FAO/WHO FOOD STANDARDS PROGRAMME

**CODEX COMMITTEE ON FOOD LABELLING
THIRTY-THIRD SESSION
KOTA KINABALU, MALAYSIA, MAY 9 – 13, 2005**

**DISCUSSION PAPER ON ADVERTISING
(CL 2004/54-FL)**

GOVERNMENT COMMENTS

COMMENTS FROM:

**CANADA
CONSUMERS INTERNATIONAL (CI)
WORLD SUGAR RESEARCH ORGANISATION (WSRO)**

DISCUSSION PAPER ON ADVERTISING (CL 2004/54-FL)

GOVERNMENT COMMENTS

CANADA:

Canada will remind the Committee that its Discussion Paper on Advertising (CRD 21) that was provided at the 32nd Session was developed principally to support the inclusion of the word “advertising” in Section 1.1 of the Draft Guidelines for Use of Nutrition and Health Claims. The 26th Session of the Codex Alimentarius Commission requested CCFL to “consider the development of a definition of advertising as related to health and nutrition claims.” (ALINORM 03/41 Paragraph 80). Essentially, this is new work assigned to the CCFL by the CAC. Therefore, it is appropriate that it be considered as a separate agenda item - either as “definition of advertising” or as an “amendment to the Guidelines on the Use of Health and Nutrition Claims.” Since the Guidelines have been adopted, work on the definition in the context of health and nutrition claims amounts to an amendment.

Canada provides the following suggestion for a definition for consideration by the Committee:

Advertising: means any representation to the public, by any means, other than a label, whether direct or indirect, that is intended, or is likely, to influence and shape attitude, beliefs, and behaviours so as to further the marketing of a product.

CONSUMERS INTERNATIONAL (CI):

Members of Consumers International (CI) thank the Canadian Government for taking the initiative to prepare a discussion paper for comments and to consider advertising as a separate Agenda Item at the 33rd Session of the Committee on Food Labelling (Kota Kinabalu, Malaysia, 9-13 May 2005).

From the consumers’ perspective it is very important that advertising is considered within the scope of CCFL. Measures that only refer to the label will not protect the consumer from unfair practices as it neglects the impacts of marketing and advertising. For example, controls over claims can only be effective if they regulate the use of claims not only on food labels but also in advertising. Otherwise it could happen that a claim that would not be permitted on a label could still be used in advertising, potentially misleading consumers.

Therefore we strongly agree with the notion that CCFL needs to consider advertising in its work. We also agree with Canada’s proposal to develop a definition of advertising, as this would be a helpful tool for CCFL when considering advertising in its work. As recognized in the discussion paper, it is clear that advertising does fall within the mandate of Codex.

Definition

Consumers International considers that the definition provided by Canada is a useful starting point for the discussion and includes most forms of advertising. However, we have concerns that as currently proposed, it does not deal with the following issues:

- it refers to visual or oral communication or representation, but advertising may also use other means. We therefore consider that reference should be made to ‘any form of communication or representation’
- the definition only refers to products and not to services
- it only makes reference to advertising direct to the public, however, business to business advertising and surrogate advertising may also be an issue

We therefore propose that these issues are addressed by amending the definition as follows:

‘Advertising – means to make any form of direct or indirect communication or representation, other than a label, to the public, a section of the public or to businesses, to convey information (expressed or implied) to influence choices, impressions, opinions or behaviours towards products and their features, product classes, companies or organizations, to promote directly or indirectly the sale of a product or service.’

Codex work on advertising

The discussion paper prepared by Canada originates from discussions in the context of nutrition and health claims. However, CI members believe that Codex should also pursue work on advertising more broadly based on some of the established work already done within the Codex Process. For example:

- Advertising should not mislead the consumer to the point where their health may be endangered, or may constitute unfair practices in the food trade (CX/FL 85/7, Appendix II).
- Nothing in the labelling and advertising of foods to which the standard applies shall imply that advice from a qualified person is not needed. This has been explained under the General Principles of the General Standard for the Labelling of and Claims for Prepackaged Foods for Special Dietary Uses (Codex Stan 146-1985 1), item 3.2.
- Appropriate and adequate national food standards should be established and enforced taking into account that uniform consumer protection and the orderly marketing of food can be better achieved through the acceptance of food standards elaborated by the Codex Alimentarius Commission or the adaptation of national standards to such international recommendations. Codex’s Code of Ethics for International Trade in Food (CAC/RCP 20-1979 (Rev. 1-1985)1) states under Article 5.

- The labels, accompanying leaflets and/or other labelling and advertising of all types of foods for special medical purposes should provide sufficient information on the nature and purpose of the food as well as detailed instructions and precautions for their use. The advertising of these products to the general public should not be prohibited. The format of the information given should be appropriate for the person for whom it is intended. This was agreed under the General Principles of the Codex Standard for the Labelling of and Claims for Foods for Special Medical Purposes (Codex Stan 180-1991).
- Food inspection and certification systems should be used wherever appropriate to ensure that foods, and their production systems, meet requirements in order to protect consumers against food-borne hazards and deceptive marketing practices and to facilitate trade on the basis of accurate product descriptions. Codex Principles for Food Import and Export Inspection and Certification (CAC/GL 20-1995 1).
- Marketing should mean holding for sale or displaying for sale, offering for sale, selling, delivering or placing on the market in any other form. This was explained in the Codex's Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods (GL 32 - 1999, Rev. 1-2001).
- Marketing should also cover product promotion, distribution, selling, advertising, product public relations, and information services. This has been defined in The International Code of Marketing of Breast-milk Substitutes (WHO, 1981) (WHA 34.22).]

CI Members are of the strong view that all forms of advertising must be regulated based on full information to the consumer. The impact that advertising – particularly to vulnerable groups including children could have for safety, including the possible increase in non-communicable or chronic disease burden like hypertension, obesity and similar should also be taken into account. Advertisements should also carry advice for children and lactating/ pregnant women, depending on the food and its ingredients.

The members of CI feel this paper on advertising should ensure that there is clarity at every stage over what are acceptable trade practices that can be adopted by manufacturers to promote or market their products to consumers. Unfair trade practices should be defined based on the views expressed in this paper. In several countries all unfair trade practices have been brought under the purview of the Consumer Protection Laws. It is thus important for Codex to define advertising within the working of Food Labelling Standards.

Types of approach

We have also observed that globally, laws on advertising are usually based on the principle that advertisements should be truthful and not misleading. Existing regulations in this area implicitly prohibit the use of false or misleading health claims in advertising.

Some countries have implemented more specific regulations to restrict the use of health claims in advertising, for example. Regulations tend to exist in one of two forms:

- 1) The extension of the regulations on the use of health claims in labelling to include the use of claims in advertising; and/or
- 2) Insertion of clauses specific to the use of health claims in advertising within regulations on advertising and/or health.

In the form of statutory regulations or self-regulations, clauses either referred specifically to “health claims” or did so implicitly. On a snapshot review we found nineteen such references were in advertising regulations and three in health laws. A short summary of the observations are as follows to facilitate the Member States to examine the existing scenario in some of our member countries, which explicitly explains our definition on advertising:

- ***Advertisements should not associate foods with pharmaceuticals or medical products, or imply that foods can prevent, cure, or treat diseases.***

This clause was found in regulations on advertising in countries including: Brazil, China, France, Hong Kong SAR, Ireland, Italy, Romania, Singapore and the Republic of Korea. For example, the *Advertisement law* (1995) in China states that: “no medical jargon or words may be used so as to confuse them (foods) with pharmaceuticals”; the self-regulatory Code Of Advertising Standards in Ireland states that advertisements for “health products” should “not employ words, phrases or illustrations that claim or imply the cure of any ailment, disability, illness or disease”; the *Generic Code Of Practice on Television Advertising Standards* (2001) in Hong Kong SAR states: “Claims relating to the nutritional and dietary effects of products or services should be handled with care”; and “Claims of effects or treatment for conditions of health for which qualified medical attention or advice should reasonably be sought are not acceptable”.

- ***Advertisements for food should not contain false, exaggerated, or confusing statements.***

This very general clause appears in regulations in four countries: France, India, Japan and the Republic of Korea. For example, the self-regulatory code on advertising in Japan states “advertising (of food) that contains exaggerations or false statements shall not be handled”.

- ***Claims made in food advertisements must be based on scientific evidence or be substantiated.***

This clause was found in countries and areas including: France, Hong Kong SAR, Ireland, Romania and South Africa (for “protein claims”). For example, the recently implemented advertising law (January 2003) in Romania states that: “the precise affirmations regarding nutrition (for instance, the effects of vitamin C) or health (for instance “promotes healthy digestion”) shall rely on solid scientific facts and shall not create a deceptive idea regarding the nutrition or healthy benefits of the food”.

- *Advertisements for foods with health claims should not imply that the product is necessary for good health.*

This clause was found for example in France and Nigeria. In Nigeria, the Code of Advertising Practice has just one clause under the heading health claims, stating: “No advertisement should present to the audience the impression or claim that the consumer’s good health or well-being is totally dependent on the use of the product”.

- *Food advertisements making claims must be preapproved*

Specific preapproval of advertisements for food is required in Canada, Malaysia and Thailand. In Canada, preapproval is conducted by Advertising Standards Canada, a self-regulatory organization, and is required if the advertisement makes any form of “food claim”. In Thailand, prescreening is required by the Food and Drug Administration, and is required if the commercial mentions any product benefit, product efficacy or promise about the product.

WORLD SUGAR RESEARCH ORGANISATION (WSRO):

In particular the World Sugar Research Organisation (WSRO) wishes to comment on the proposed definition of advertising on page 5 of the paper.

While this definition has considerable merit it has two significant disadvantages, both related to the fact that the definition is drawn too widely.

First: the wording “Advertising – means to make *any* visual or aural communication or representation, other than a label, to the public *or section of the public*, to convey information.....to promote directly *or indirectly* the sale of a product” (my italics) could limit the ability of any organisation (whether trading or not) to convey factual educational information to health professionals, journalists and public authorities, as well as to the public at large. The legitimate activities of organisations that are not engaged in trade but are funded partly, or wholly, by industry could be seriously hampered by mischievous challenges by pressure groups intent on monopolising public information. It could also have the same effect on charities wholly unconnected with trade if they convey information to which pressure groups take exception.

Secondly: the wording “....to *promote* directly or indirectly the sale of a product” (again my italics) is open to very wide interpretation. A non-commercial organization that recommends the consumption of fruit and vegetables, for example, would be deemed to be engaged in advertising. In countries where there are taxes on advertising, this could seriously impede useful nutrition education work.

We would argue that, at a time when Governments are encouraging the food industry to play a constructive part in educating and informing the consumer about nutrition, it would be a major discouragement to such worthwhile activity to have it potentially considered to be advertising.

The definition of advertising should exclude legitimate educational and information activities, whether or not they are associated with a particular product class, *unless* such activities can be demonstrated to be materially misleading. In judging this matter, regulatory authorities and the Courts should have regard to the local circumstances in which the education and information is conducted. In particular, even though health professionals, government officials and journalists could be said to be sectors of the public, they should be excluded from any restriction on the provision of written or graphical material or verbal comment. These groups of well informed and well educated citizens should be allowed to judge the worth of such material for themselves.

We would urge the Codex Alimentarius Commission to consider a more circumscribed definition of advertising than that proposed in this paper. Indeed, there are exceptions specified in Section 8.10 of Canada's Guide to food Labelling and Advertising on "Educational Material Versus Advertising Material" that are not mentioned in this paper and could usefully be included in this proposal (<http://www.inspection.gc.ca/english/fssa/labeti/guide/ch8e.pdf>).