

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD
HEALTH
ORGANIZATION



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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:

**ARGENTINA
AUSTRALIA
BRAZIL
COSTA RICA
GUATEMALA
MEXICO
NEW ZEALAND
UNITED STATES
VENEZUELA**

**COUNCIL FOR RESPONSIBLE NUTRITION (CRN)
INTERNATIONAL ASSOCIATION OF CONSUMER FOOD ORGANIZATIONS (IACFO)
INTERNATIONAL COUNCIL OF BEVERAGES ASSOCIATIONS (ICBA)
INTERNATIONAL CHAMBER OF COMMERCE (ICC)
INTERNATIONAL COUNCIL OF GROCERY MANUFACTURERS ASSOCIATION (ICGMA)
WORLD FEDERATION OF ADVERTISERS (WFA)**

DISCUSSION PAPER ON ADVERTISING (CL 2004/54-FL)**GOVERNMENT COMMENTS****ARGENTINA:**

Argentina appreciates the opportunity to submit comments on this document.

Currently, the broad reach of mass media makes advertising sales promotion mechanism with multiplier effects which are more significant than the information provided to consumers through product labels.

Given that advertising may communicate misleading information on the qualities of foods which may lead consumers to make purchases based on the emphasis placed on nutrition and health properties, such as those related to disease prevention, it is of great importance to establish standards on these matters.

As regards the Definition of "Food Advertising", we believe that it should be broad enough to cover the various definitions used in Member countries, without losing sight of consumers and fair trade practices.

Argentina therefore proposes the following definition:

"Food advertising" means any representation or message, expressed in any language and communicated by mass media and electronic means, intended to highlight health or nutrition properties of foods in order to influence consumers in the choice of a food promoting directly or indirectly its purchase or use.

AUSTRALIA:

Australia is pleased to comment on this discussion paper.

Question 1. The definitions proposed in the discussion paper.

The proposed definition for advertising - *advertising means to make any visual or aural communication or representation, other than a label, to the public or a section of the public, to convey information (expressed or implied) to influence choices, impressions, opinions or behaviours towards their products and their features, product classes, companies or organizations, to promote directly or indirectly the sale of a product.*

The proposed definition for advertisement - *advertisement means any representation by any means whatever for the purpose of promoting directly or indirectly the sale or disposal of any food.*

Australia does not have an issue or concern with the definition of *advertising* and *advertisement* suggested by Canada in the *Discussion Paper on Advertising*. However,

we note that there appears to be an apparent inconsistency between the two definitions with regard to the treatment of labels, in that the definition for advertising specifically excludes a label while that for an advertisement does not.

Australia is of the view that the definition of ‘advertising’ is intended to be read in the context of the amendment in paragraph 1.1 of the *Draft Guidelines for Use of Nutrition and Health Claims* (Alinorm 04/27/22) at Step 8 (where in addition to labelling, the scope of the Guidelines is proposed to be extended to ‘**advertising**’); whereas the definition for ‘advertisement’ is intended to be read in relation to the terms of reference for CCFL.

If this is not the case then we suggest it may be appropriate to amend the definitions so that the inconsistency regarding the treatment of labels is removed.

Question 2. Does CCFL need to consider amending its Terms of Reference in order to develop a definition for advertising that could be applied to health and nutrition claims or are the current Terms of Reference adequate?

Given the legal advice provided and outlined within the *Discussion paper on Advertising*, Australia believes that the CCFL Terms of Reference are adequate in order to develop a definition for advertising.

BRAZIL:

Brazil is thankful for the opportunity to present the following comments:

The Brazilian Delegation proposes the following definition to Advertisement:

Advertisement- means any representation or communication to the public by any means, expressed or implied, for promoting, directly or indirectly, the sale or disposal of any food product.

The Brazilian Delegation proposes that this definition can also be applied to the following Codex Standards on Claims where it is present the term "advertising", such as:

- General Standard for the Labelling of and Claims for Prepackaged Foods for Special Dietary Uses – Codex Stan 146 – 1985, and;
- Labeling of and Claims for Foods for Special Medical Purposes - Codex Stan 180 – 1991

Notwithstanding the Codex Alimentarius Commission (CAC) mandate, the Brazilian Delegation also proposes that the CCFL considers the possibility of forwarding a consult to the Commission for the **Advertisement** definition to be included on Section 2: “Definitions of the Codex General Standard for the Labelling of prepackaged Foods” - Codex Stan 1-1985 (Rev. 1-1991) to apply for all foods.

COSTA RICA:

After a wide debate during the 32nd Session of the Codex Committee on Food Labelling (CCFL), that took place in Montreal, Canada, May 10 – 14, 2004, regarding the discussion document presented by Canada (CRD 21), this Committee recognized that, due to the complexity of the subject and the opposing points of view, an answer could not be given to the Codex Alimentarius Commission and, therefore, decided that the document would be circulated for comments and further consideration to be included as a priority issue in the next Session of the Committee. Due to the above, the Committee agreed to circulate the discussion document prepared by Canada, with some wording changes, to collect comments and examine advertising as a separate issue of the program during the next Session, giving priority to the elaboration of a definition of advertising in respect to nutritional and health claims (ALINORM 04/27/22, párr.128-133).

Through the Secretariat of the Codex Alimentarius Commission, the document presented by Canada was distributed to the Member Countries, to present their comments before the 20th of February, 2005, for review during the 33rd Session of the Codex Committee on Food Labelling (Kota Kinabalu, Malaysia, May 9-13, 2005).

Regarding this consultation Costa Rica would like to make the following comments:

1. Should the CODEX regulate Advertising and engage in directly discussing this issue?

Analyzing the discussion document and having discussed the subject in detail, we agree that the reply to this question must be a negative one, and that Costa Rica, as a country, must present a strong position against opening this issue to discussion within the CODEX context.

2. In spite of the implications of the 1984 report of the FAO/ WHO legal counsel, that indicated that advertising was within the mandate of the CODEX, we reach the conclusion that the CODEX labelling standard is enough and has been sufficiently developed to guarantee that food consumers receive the information required regarding the safety of the foods they consume.
3. Regarding the above, it was agreed that the Labelling and Nutritional Labelling standards have been efficiently developed on scientific parameters and through serious research. The CODEX standards have been characterized by their scientific basis and the reliability of their sources, which act as the basis to issue certain objective criteria with solid foundations. Furthermore, it is clear that we have national control mechanisms in Costa Rica. Specifically, government institutions, and many private organizations, work in a system of checks and balances that act as a guarantor of national food safety. The development of national technical and juridical standards is within the guidelines of the CODEX and is also based on scientifically provable parameters.

4. All of the above leads us to the conclusion that the issue of Advertising is beyond the natural scope of the CODEX and is subject to a series of subjectivities more appropriate to a social science. This is because Advertising is precisely subject to a series of factors, such as culture, gender, geography, history, myths and traditions; and something that is acceptable in one country or region is totally rejected in another place or culture. This is a rapidly evolving issue whose regulation is subject to very different regulations around the world. Furthermore, aspects such as unfair competition, censorship, and others similarly important, are the subject of constant debate or conflict between different interest groups.

From all of the above we want to make clear that the issue of Advertising must **NOT** be discussed within the CODEX and its regulation and development must be under the legal dispositions of each country, so as to be responsive to the cultural, social and juridical characteristics of each of them and, therefore, Costa Rica does not agree with the proposal that has been advanced to develop a definition of advertising regarding nutritional and health claims.

Food safety and food security are guaranteed within the CODEX for the issue under discussion through the General Labelling and the Nutritional Labelling regulations. With their development it is guaranteed that the consumers have access to factual and timely information, with the support of the public and private institutions that take monitor the compliance with these standards.

GUATEMALA:

Guatemala has the following comments regarding the CL 2004/54-FL Discussion Paper on Advertising:

Question:

At this time, does CCFL need to confirm that the terms of reference of the CCFL need to be amended in order to develop a definition for advertising which could be applied to health and nutrition claims or, are they adequate as noted in 1985 by the Commission?

Reply:

Guatemala considers that the reference terms of the CCFL do not have to be amended to develop a definition of advertising that may be applicable to the health and nutrition, and that they are already adequate, as the Commission indicated in 1985. Furthermore, the mandate of the CCFL clearly indicates it under indent d) *Examine problems related to food advertising, particularly those related to misleading claims and descriptions.*

Guatemala considers that a definition of advertising applicable to those claims must indeed be developed. It agrees with the definition proposed by Canada:

"Means any representation by any means whatever, for the purpose of promoting directly or indirectly, the sale or disposal of any food" and we suggest to add "and should not mislead or deceive the consumer."

MEXICO:

Mexico thanks the Government of Canada for its effort in preparing the discussion paper on advertising and would like to make the following comments:

Mexico considers that it is not necessary to work in new definitions or guidelines involving advertising in general, as this is an issue is defined by national legislation in the cases when national authorities have jurisdiction on the subject.

Regarding the Draft Guidelines for the Use of Health and Nutritional Claims, we consider that what should be sought is agreement between what is allowed for food advertising regarding health and nutritional claims and what is established for the labelling of the product to avoid deceiving the consumer.

However, if it is considered that a definition of advertising is required, only for the purpose of the Draft Guidelines for the use of health and nutritional claims, Mexico proposes to have a definition restricted to the specific case, based on the second option for a definition as offered in the discussion paper prepared by Canada, to read as follows:

Advertisement - Means any representation by any means whatever for the purpose of promoting directly or indirectly, through the use of health and nutritional claims, the sale or disposal of any food.

NEW ZEALAND:

New Zealand fully supports CCFL developing of a definition for advertising for the purposes of health and nutrition claims. We do, however, have a number of comments and would like to propose an alternative definition.

Our food legislation includes standards for health and nutrition claims and a definition for advertising. New Zealand and Australia have also recently developed new policy around health and nutrition claims and relevant standards are currently being reviewed. During this process we have spent considerable time debating various scenarios with health and nutrition claims, particularly around the interpretation and enforcement area.

It is our experience that reference to "implied" is problematic as it is difficult to enforce and interpretation as to what is actually implied varies considerably. Any definition of advertising for labelling purposes must be enforceable.

For example an advertisement that refers to maintaining heart health may be implied by some to refer to reduction of risk of heart disease and by others as purely maintaining positive heart health. Whose interpretation should be used?

For the same reasons reference to “influencing impressions and opinions” is not a tangible concept and is difficult to enforce.

We also have some difficulties with the broadness of the proposed definition and we believe it to be unnecessarily complicated.

One of the areas of difficulty that requires clarification is the difference between advertising and education. This is particularly relevant for the provision of product information or new product based research to health professionals. Under the proposed broad definition such information could also be deemed advertising. It is unclear in the proposed definition whether the “public or section of the public” covers groups such as health professionals.

We are also of the opinion that the advertising should relate to the promotion or the sale of the food and not refer to “products and their features, product classes, companies or organizations”. This is unnecessarily complicated.

New Zealand would like to propose a simplified definition:

Advertising as related to Health and Nutrition Claims for food refers to:

Any publication printed, written, spoken or in any electronic form or any pictorial representation or design or device used to promote the sale of any food.

Consideration needs to be given to appropriate exemptions such as not precluding industry from providing factual information about their food directly to health professionals. This includes release of scientifically peer reviewed research to health professionals.

As currently worded the Canadian definition would include editorial, opinions, news, entertainment, scientific papers, professional advice and education. New Zealand does not believe that the restrictions included in the definition would be justified and may be detrimental if they preclude the provision of important factual advice to health professionals that may impact on the health of consumers.

We are suggesting that consideration should be given to the appropriateness of the definition for advertising across other Codex Committees to ensure a consistent approach.

UNITED STATES:

The United States is pleased to respond to the request for comments to CL 2004/54-FL regarding the Discussion Paper on Advertising prepared by Canada. Specifically, the CL proposed definitions for the terms “advertising” and “advertisement” to be considered by Codex and posed the following question:

At this time, does CCFL need to confirm that the terms of reference of the CCFL need to be amended in order to develop a definition for advertising which could be

applied to health and nutrition claims or, are they adequate as noted in 1985 by the Commission?

General Comments

The United States believes that CCFL should confirm with CAC whether the terms of reference of the CCFL permit the Committee to elaborate a definition for advertising.

As noted in the Canadian Discussion Paper (CL 2004/54-FL), the issue of advertising has come before both CCFL and the Commission previously (1989-1991) and has been the subject of legal review by both FAO and WHO. In these earlier discussions, both CCFL and the Commission noted the limitation of the CCFL to only study problems associated with advertising. However, the current request of the Commission is for the Committee to consider the development of a definition of advertising as related to health and nutrition claims. Given the limitation noted in the 1989-91 discussions and the 1984 FAO/WHO legal opinion¹, it is unclear to the United States that the Commission ever confirmed that the terms of reference of the CCFL permit the Committee to elaborate provisions related to advertising, including a definition for advertising.

The United States believes that the terms of reference would have to be amended, should the CCFL agree to elaborate a definition for advertising as related to nutrition and health claims. However, the United States further believes that there is no need to consider a definition for advertising because advertising is best regulated at the national level, as noted in the text agreed to at the 32nd Session of the CCFL².

Specific Comments on the Proposed Definitions

Moreover, the United States does not support the adoption of a definition of advertising or advertisement for the following reasons:

1. Advertising is best regulated at the national level. Adopting a definition of advertising or advertisement in a Codex text would impede member countries from adopting appropriate definitions that reflect the legal, cultural, and social influences of their respective societies; and
2. Other existing Codex standards and guidelines provide principles that can be used to address the appropriateness of nutrition and health claims when presented in advertising.

¹ Paragraph 17 of the document titled "*Advertising*" in the mandate of the Codex Alimentarius Commission and its subsidiary bodies prepared by the Legal Counsels of FAO and WHO for the CCFL (March, 1984) states, in part: It should however be recalled that the action that the CCFL may take with respect to the advertisement of food is limited by the words "to study problems associated with."

² At the 32nd Session, CCFL adopted text within the Scope of the Draft Guidelines for Use of Nutrition and Health Claims that explicitly leaves matters related to the use of these claims in advertising to national authorities. Specifically, the Guidelines read, in part: "These guidelines relate to the use of nutrition and health claims in food labelling and, where required by the authorities having jurisdiction, in advertising" (ALINORM 04/27/22, Appendix III).

First, the United States observes that product advertising is treated separately from product labeling in many countries and the elaboration and adoption of Codex standards on advertising that are tied to product labeling raise broad policy, technical and legal questions that would need to be addressed before the adoption of any text. The United States believes that consumers and trade benefit from truthful and non-misleading nutrition and health claims in food advertising, as that term is defined within their country. Therefore, the United States is especially concerned about the potential for Codex standards on advertising to lead to restrictions of fair trade in foods that are safe and properly labeled when they leave an exporting country, but are improperly advertised in the newspapers of an importing country.

The United States opposes the definitions that Canada proposed in the Discussion Paper because such definitions within the Codex text would likely restrict the dissemination of truthful and non-misleading nutrition and health information, as the definitions cannot reflect how these terms are characterized in all countries. Accordingly, the United States believes that the term “advertising” should remain undefined in the Codex Guidelines such that, where required by national authorities that the Guidelines apply to advertising, countries would be able to adopt appropriate definitions of advertising taking into account legal, cultural, and social influences of their societies.

Second, the United States notes that the existing *Codex General Standard for the Labelling of Prepackaged Foods* includes definitions and provisions for “labeling” such that information that accompanies a food product (for example, on the shelf next to the product or in the container) is covered under the provisions of the text. The United States believes that this provides a sufficient basis for international standards, without venturing into other aspects of what may be considered advertising or advertisement in some countries but not in others. Further, the basic principles of the *Codex General Guidelines on Claims* and the *Codex Guidelines for Use of Nutrition and Health Claims* can be used to address the appropriateness of nutrition and health claims when presented in advertising.

VENEZUELA:

Venezuela has the following comment regarding the “Discussion Paper on Advertising”:

The subject of “Discussion on Advertising” **must** be included in the general principles of the Codex General Standard for the “Labelling of Prepackaged Foods”, and not to establish another legislation on the subject as the CCFL indicated in 1985.

COUNCIL FOR RESPONSIBLE NUTRITION (CRN):

Wyeth Nutrition, a US-based, multinational manufacturer of formula for infants and young children, a member of the Council for Responsible Nutrition (CRN) has developed comments on Food Labeling on the Discussion Paper on Advertising (CL 2004/54 FL) with respect to products consumed by infants and children 0-3 years of age including

infant and follow-on formulas. CRN submits these comments for consideration by the Codex Committee on Food Labelling.

Response to CL 2004/54 FL

Advertising of infant formula (for infants 0-6 months of age) is governed by the WHO International Code of Marketing of Breast-milk Substitutes (WHO Code). Article 5 of the WHO Code states “There should be no advertising or other forms of promotion to the general public of products within the scope of this Code”. Therefore, Codex oversight of advertising of infant formula is unnecessary as it would be redundant with the WHO Code.

WHO’s prohibition is intended to protect breastfeeding; the Codex standards for infant formula and follow-on formula are intended to protect the health of consumers of these products. Restriction of advertising of breast milk substitutes by Codex does not protect health of consumers of infant formula.

Advertising of follow on formulas, which are not covered under the WHO Code because they are not breast milk substitutes and are intended for older infants, should be governed according to basic principles of Codex. Article 1 of the Statues of the Codex Alimentarius Commission states that the Codex Alimentarius’ purpose is “protecting the health of consumers and ensuring fair practices in the food trade.” Wyeth therefore supports the 1984 opinion of the legal counsels of WHO and FAO, “ that the authority [Codex] on advertising encompasses all forms of advertising for the purposes of protecting the health of consumer and ensuring fair practices in food trade” (CX/FL 85/7). Extension of Guidelines for Use of Nutrition and Health Claims to include advertising should therefore be limited to those situations when advertising adversely impacts the health of the consumer or adversely impacts fair practices in the food trade.

Truthful advertising that provides information or appropriate claims to aid consumers’ product choice should be permitted. Providing factual, science-based nutrition information on labeling and advertising protects the health of older, formula-fed infants by differentiating the composition of follow on formula from less nutritious alternatives including cow’s milk. Prohibition of truthful, not misleading advertising may have an adverse effect on health, by limiting the flow of useful nutrition information to consumers. Advertising allows new scientific information on product composition and product attributes to reach consumers in a timely way. For example, the inclusion of docosahexaenoic acid (DHA) in infant formulas and follow-on formulas was rapid across the marketplace, providing visual acuity benefits to infants long before Codex Committee on Nutrition and Foods for Special Dietary Uses could revise the standards governing the composition of these products to permit DHA. Thus, appropriate, science-based advertising can directly contribute to the protection of the health of consumers.

Restricting all advertising may also adversely affect fair trade. Truthful, valid claims are important to ensure fair trade because they allow manufacturers to identify recent science-based changes in product composition and differentiate their products from competitors’ products. Prohibition of truthful and non-misleading advertising will selectively harm companies who make substantial research commitments by inhibiting their ability to receive a fair return on their research investment. Restricting advertising

could thus significantly hinder research and innovation. Over 2000 papers supported or conducted by formula manufacturers have been published in the scientific literature in just the last 5 years, and these discoveries have implications for human health beyond infancy.

In summary, advertising of infant formula for infants age 0-6 months is already covered by the WHO Code and need not be covered by Codex. Consistent with the WHO legal opinion from 1986, advertising is relevant to Codex insofar as it affects the health of consumers or fair trade. Evidence of an adverse impact of advertising on the health of consumers of infant formula and follow-on formula is currently lacking. Appropriate, factual advertising benefits consumer health by rapidly communicating product innovations. Advertising also ensures fair trade by helping manufacturers to differentiate products and by rewarding research and innovation. Any restrictions by Codex on advertising should be limited to situations where there is evidence of adverse effects on consumer health or fair trade.

INTERNATIONAL ASSOCIATION OF CONSUMER FOOD ORGANIZATIONS (IACFO):

A. Introduction

The International Association of Consumer Food Organizations (IACFO) urges the Codex Committee on Food Labeling (CCFL) to acknowledge that issues relating to food advertising come within its mandate and to energetically pursue the development of advertising standards, guidelines, and recommendations.

B. CCFL has the authority to work on food advertising

The government of Canada has provided a very informative discussion paper analyzing the CCFL's authority to work on food advertising issues. According to the paper, a 1984 report by the FAO/WHO joint legal counsel left no doubt that advertising, is "ancillary to the protection of health of consumers and to promoting the observance of fair practices in the food trade," and thus falls within the mandate of the Codex Alimentarius Commission and is properly delegated to the CCFL.

Consistent with that view, the Commission formally considered the subject of food advertising in at least five sessions and directed the CCFL to work on the subject on at least three occasions. Also, since its inception, the Commission has approved five official general standards that include provisions referring to advertising or marketing practices, three of which were elaborated primarily by CCFL. Furthermore, the CCFL has explicitly considered the subject of advertising in at least nine of the previous 32 sessions of the Committee.

C. CCFL should address food advertising issues to complete its work on *Guidelines for Use of Nutrition and Health Claims*

The present controversy has arisen in conjunction with CCFL's work on *Guidelines for the Use of Nutrition and Health Claims*. In order for national authorities to responsibly oversee the use of nutrition and health claims, they must consistently regulate such claims in both labelling and advertising. Rules governing label claims can be completely undermined by lax or non-existent rules that apply to claims in advertising. Codex's *Guidelines for the Use of Nutrition and Health Claims* must reflect this reality.

For the purposes of elaborating the *Guidelines for the Use of Nutrition and Health Claims*, the prohibition on, for example, unsubstantiated health claims should apply equally to labels and advertisements. Achieving this result requires that advertising claims be covered by the *Guidelines*. In other situations, there may be a need to review the *Guidelines* to determine whether any additional work is necessary for applying them to advertisements. For instance, it may not be practicable to require that a 15 second radio advertisement making a nutrient content claim disclose the amounts of all other nutrients listed on the nutrition label.

D. CCFL should work on food advertising issues to help implement the WHO's Global Strategy on Diet, Physical Activity, and Health

The relevance of CCFL's ability to work on food advertising, however, extends beyond the current controversy involving the regulation of nutrition and health claims. The World Health Organization's (WHO) Global Strategy on Diet, Physical Activity, and Health recommends that the enormous toll of diet-related disease be addressed, in part, by setting standards for food advertising, particularly advertising directed at children. The relevant provision, section 46(3) states:

*Food advertising affects food choices and influences dietary habits. Food and beverage advertisements should not exploit children's inexperience or credulity. Messages that encourage unhealthy dietary practices or physical inactivity should be discouraged, and positive, healthy messages encouraged. Governments should work with consumer groups and the private sector (including advertising) to develop appropriate multisectoral approaches to deal with the marketing of food to children, and to deal with such issues as sponsorship, promotion and advertising.*³

The Global Strategy is informed, in part, by *Report of the Joint WHO/FAO Expert Consultation on Diet, Nutrition, and the Prevention of Chronic Diseases*.⁴ That report states:

During the past decade, rapid expansion in a number of relevant scientific fields...has helped to clarify the role of diet in preventing and controlling morbidity and premature mortality resulting from

³ WHO Global Strategy on Diet, Physical Activity and Health, Fifty-Seventh World Health Assembly WHA57.17, Agenda item 12.6, May 22, 2004 at p. 13.

⁴ WHO *Technical Report 916*, April 2003 at pp.1-2.

noncommunicable diseases (NCDs)...The Consultation provided an opportune moment for FAO and WHO to draw on the latest scientific evidence available and to update recommendations for action to governments, international agencies and concerned partners in the public and private sectors. The overall aim of these recommendations is to implement more effective and sustainable policies and strategies to deal with the increasing public health challenges related to diet and health.

Section 4 of the World Health Assembly Resolution (WHA57.17) endorsing the Global Strategy specifically calls on Codex to help advance its objectives. Furthermore, Section 46(4) of the Global Strategy specifically refers to the past work of the CCFL. As a subsidiary body of the WHO, both the Codex Alimentarius Commission and the CCFL are obligated to heed these calls and help facilitate the policy goals of the World Health Assembly and the WHO.

CCFL should specifically respond to this request for action by asking the Executive Committee and the Commission to approve new work on setting standards for advertising directed at children. Such standards should permit bans on children's advertising, where national authorities have determined that such steps further the public's health and/or prevent unfair trade practices. In regions where advertising to children is permitted, Codex standards should delineate which foods can be responsibly promoted to children. Such standards should delineate nutrition criteria that can be applied by national authorities in setting limits on food advertising to children.

In addition, for countries that permit advertising, CCFL should develop a Code of Good Nutrition Practices for the Promotion of Foods to Children. The Code could include standards for the use of entertainment, sports, or media celebrities to promote foods to children, for the promotion of foods in schools, and for specific promotional activities such as the free distribution to children of foods of low nutritional value. Such work by CCFL is essential to responding to the WHO's call for action.

E. Conclusion

In sum, CCFL has had a long history of working on advertising issues and should continue to do so. Such efforts are essential to completing its work on *Guidelines for the Use of Nutrition and Health Claims* and for commencing new work consistent with the call to action in the WHO's Global Strategy on Diet, Physical Activity and Health.

INTERNATIONAL COUNCIL OF BEVERAGE ASSOCIATION (ICBA):

The International Council of Beverages Associations (ICBA) is a nongovernmental organization that represents the interests of the worldwide non alcoholic beverage industry. The members of ICBA operate in more than 200 countries and produce, distribute, and sell a variety of water-based beverages, including carbonated soft drinks and non carbonated beverages such as juice-drinks, bottled waters, and ready-to-drink

coffees and teas. ICBA is pleased to provide the following comments in response to CL 2004/54-FL.

Terms of Reference

ICBA does not support the amendment of the terms of reference. We believe that the current terms of reference already permit the Committee to study problems associated with the issue of advertising with particular reference to claims and misleading descriptions.

Definition for Advertising

ICBA does not believe that there is a special need to develop a Codex definition for advertising. The current Codex provisions in the General Guidelines on Claims and the Guidelines for Use of Nutrition and Health Claims leave advertising to national authorities. Advertising reflects national values, customs, and traditions and is best addressed at national levels. Further, product advertising is treated separately from product labelling in many countries.

INTERNATIONAL CHAMBER OF COMMERCE (ICC):

ICC recognizes the important mission of Codex Alimentarius in protecting the health of consumers and ensuring fair practices in the food trade. ICC also supports the efforts of Codex Alimentarius to promote coordination of all food standards work undertaken by intergovernmental and non-governmental organizations.

The Codex Committee on Food labelling (CCFL) was established to focus on provisions on labelling applicable to all foods. Recently, CCFL has considered undertaking projects on advertising in relation to health and nutrition claims, including a definition of advertising, as complementary to labelling, in view of the terms of reference of the Committee. Regulations and standards for claims on food labels and claims in advertising are neither identical, nor need to be identical, to appropriately serve the communications goal. Advertising and labelling face very different constraints in terms of space, time, costs and objectives. Consequently, they are treated under different regulatory regimes at national level for good reason.

As it has been pointed out by participants in Codex themselves, “advertising” is already defined and regulated under national law, so this proposed initiative by Codex is perplexing. There are no deficiencies in current definitions which could or should be appropriately addressed by Codex. Moreover, ICC is seriously concerned that the proposed Codex work in the field of food advertising would undermine the successful and robust advertising self-regulatory system currently in place.

For the last 70 years, world business has worked through the ICC to promote high standards of ethics by business self-regulation through the ICC international advertising and marketing codes. These codes have been implemented, referenced and endorsed by

companies, associations, governments and national organizations across the world. The ICC codes govern all products, including food and beverage products. In the case of food and beverage products, the ICC International Code of Advertising Practice has been supplemented by a Framework on Responsible Food and Beverage Communications to provide further guidance for industry and self-regulatory bodies. The result, with the ICC Codes as a guide, is a dynamic system of advertising self-regulation which on a daily basis benefits consumers, governments and businesses by providing accessible, effective and flexible mechanisms to handle complaints and enforce the self-regulatory framework for advertising communications, including food and beverage advertising.

ICC codes on marketing and advertising

The ICC codes set forth ethical principles on advertising aimed at protecting consumers, including special provisions on children and young people. The ICC International Code of Advertising Practice applies to the advertising of food and beverage products, just as it does to other advertised products, and has been supplemented through the adoption of the ICC Framework on Responsible Food and Beverage Communications. Below are relevant examples of principles established by the ICC International Code of Advertising Practice and the Framework on Responsible Food and Beverage Communications:

- All advertising should be legal, decent, honest and truthful. Every advertisement should be prepared with a due sense of social responsibility.
(Article 1, International Code of Advertising Practice – see Annex 1)
- Descriptions, claims or illustrations relating to verifiable facts should be capable of substantiation.
(Article 21, International Code of Advertising Practice – see Annex 1)
- Information provided with the product should include proper directions for use and full instructions covering health and safety warnings whenever necessary.
(Article 15, International Code of Advertising Practice - see Annex 1)
- Advertisements should be so framed as not to abuse the trust of consumers or exploit their lack of experience or knowledge.
(Article 3, International Code of Advertising Practice - see Annex 1)
- Advertisements should not contain any statement or visual presentation which directly or by implication, omission, ambiguity or exaggerated claim is likely to mislead the consumer.
(Article 5, International Code of Advertising Practice - see Annex 1)
- Food and beverage advertisements should not encourage or condone excess consumption and portion sizes should be appropriate to the setting portrayed. Advertising should not undermine the importance of healthy lifestyles.
(ICC Framework on responsible food and beverage communications - see Annex 2)
- Claims about nutrition and health benefits should have a sound scientific basis. The claims should be conveyed consistent with the nature and scope of the evidence, providing the consumer with supportable information. The claim should

also be judged by the likely perception of the reasonable consumer, especially where children and young people are concerned.

(ICC Framework on responsible food and beverage communications - see Annex 2)

- Where claims or terminology used in advertisements might reasonably be interpreted by a consumer as health or nutrition claims, they should be supportable with appropriate scientific evidence.
(ICC Framework on responsible food and beverage communications - see Annex 2)
- Food and beverage advertisements should not mislead consumers about potential health or other benefits from the consumption of the advertised product.
(ICC Framework on responsible food and beverage communications - see Annex 2)

The benefits of self-regulation

ICC firmly believes that there is no need for the Codex Commission and CCFL to prepare specific texts on food and beverage advertising or definitions of advertising in relation to health and nutrition. Indeed, any further work by CCFL in this field would add complexity to the existing legal framework at an international and national level, increase cost to companies and put SMEs in a competitive difficulty given their lack of sophisticated legal infrastructure to cope with additional laws. It is also important to note how further regulatory work would jeopardize the benefits of the existing self-regulatory system including:

- the ability to swiftly update codes to address new issues. The ICC Commission on Marketing and Advertising keep the codes under constant review, adjusting them when necessary to meet changing public sensitivities and the demands of new technologies. For example, in order to address the international focus on nutrition and health, ICC called on food and beverage companies to champion the ICC Framework on Responsible Food and Beverage Communications, which offers additional guidance on how existing general principles of truthful and fair advertising reflected in the ICC International Advertising Code apply to food and beverage communications.
- a set of universal standards that can be accepted by different cultures and political systems. The self-regulatory codes and guidelines offer a basis for national codes applied by professional associations.
- a true global consensus with buy-in from business. ICC's unique consensus building process means that the self-regulatory codes reflect the views of companies from all sectors, of all sizes, and from developed, transition and developing economies.
- an effective and cost-efficient system. Self-regulation assures consumers of ethical and responsible advertising. It reduces costs that otherwise would be required for governments to legislate and administer detailed regulatory codes.

Adoption of existing standards

ICC respectfully encourages Codex to acknowledge, endorse and promote existing international advertising standards, which have roots in a solid historical tradition of responsible and ethical advertising practices, and maintain its focus on food safety, quality and science. In essence, the principle of advertising substantiation that is at the heart of the ICC Codes serves to establish that claims in labelling and advertising will not be contradictory.

These considerations were taken into account by CCFL's 18th Session as well as the Codex Alimentarius Commission's 16th and 19th Sessions. ICC believes that these decisions are still valid.

ICC would welcome a dialogue with Codex Alimentarius and its member governments, delegations and observers on issues that may arise from discussions within CCFL related to advertising and marketing communications.

About ICC

ICC is the world business organization, the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. ICC promotes an open international trade and investment system and the market economy. Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. ICC was founded in 1919 and today it groups thousands of member companies and associations from over 130 countries. Within a year of the creation of the United Nations, ICC was granted consultative status at the highest level with the UN and its specialized agencies.

ANNEX 1**ICC International Code of Advertising Practice**

Commission on Marketing, Advertising and Distribution, April 1997

Introduction

This edition of the ICC International Code of Advertising Practice follows the well-established policy of the ICC of promoting high standards of ethics in marketing via self-regulatory codes intended to complement the existing frameworks of national and international law. The Code, which was first issued in 1937, and revised in 1949, 1955, 1966, 1973 and 1987, is an expression of the business community's recognition of its social responsibilities in respect of commercial communications. The globalization of the world's economies, and the intense competition which ensues therefrom, require the international business community to adopt standard rules. The adoption of these self-disciplinary rules is the best way that business leaders have of demonstrating that they are motivated by a sense of social responsibility, particularly in light of the increased liberalization of markets. A manifestation of this commitment to social responsibility is to be found in the ICC's decision to incorporate formally within this code the former ICC Guidelines for Advertising Addressed to Children.

This edition combines past experience with current thinking based on the concept of advertising as a means of communication between sellers and customers. In this respect the ICC considers freedom of communication (as embodied in article 19 of the United Nations International Covenant of Civil and Political Rights) as a fundamental principle.

The Code is designed primarily as an instrument for self-discipline but it is also intended for use by the Courts as a reference document within the framework of applicable laws.

The ICC believes that this new edition of the Code will promote adherence to high standards of commercial communications leading to efficient international markets and significant consumer benefits.

Scope of the Code

The Code applies to all advertisements for the promotion of any form of goods and services. It should be read in conjunction with the other ICC Codes of Marketing Practice, namely:

- ICC International Code of Sales Promotion
- ICC International Code of Practice on Direct Marketing
- ICC Code on Environmental Advertising
- ICC Code on Sponsorship
- ICC/ESOMAR International Code of Marketing and Social Research Practice

The Code sets standards of ethical conduct to be followed by all concerned with advertising, whether as marketers or advertisers, advertising practitioners or agencies, or media, and is to be applied against the background of the applicable law.

Interpretation

The Code is to be applied in the spirit as well as in the letter.

Because of the different characteristics of the various media (press, television, radio and other broadcast media, outdoor advertising, films, direct mail, fax, e-mail, Internet and online services, etc.) an advertisement which is acceptable for one medium may not necessarily be acceptable for another. Advertisements, therefore, should be judged by their likely impact on the consumer, bearing in mind the medium used.

The Code applies to the entire content of an advertisement, including all words and numbers (spoken and written), visual presentations, music and sound effects.

Definitions

For the purpose of this code:

- the term "advertisement" is taken in its broadest sense, and means any form of advertising for goods or services, regardless of the medium used;
- the term "product" refers to any good or service;
- the term "consumer" refers to any person to whom an advertisement is addressed or who can reasonably be expected to be reached by it whether as a final consumer or as a trade customer or user.

Basic Principles

Article 1

All advertising should be legal, decent, honest and truthful.

Every advertisement should be prepared with a due sense of social responsibility and should conform to the principles of fair competition, as generally accepted in business.

No advertisement should be such as to impair public confidence in advertising.

Decency

Article 2

Advertisements should not contain statements or visual presentations which offend prevailing standards of decency.

Honesty

Article 3

Advertisements should be so framed as not to abuse the trust of consumers or exploit their lack of experience or knowledge.

Social Responsibility

Article 4

1. Advertisements should not condone any form of discrimination, including that based upon race, national origin, religion, sex or age, nor should they in any way undermine human dignity.
2. Advertisements should not without justifiable reason play on fear.
3. Advertisements should not appear to condone or incite violence, nor to encourage unlawful or reprehensible behaviour.
4. Advertisements should not play on superstition.

Truthful presentation

Article 5

1. Advertisements should not contain any statement or visual presentation which directly or by implication, omission, ambiguity or exaggerated claim is likely to mislead the consumer, in particular with regard to
 - a. characteristics such as: nature, composition, method and date of manufacture, range of use, efficiency and performance, quantity, commercial or geographical origin or environmental impact;
 - b. the value of the product and the total price actually to be paid;
 - c. delivery, exchange, return, repair and maintenance;
 - d. terms of guarantee;
 - e. copyright and industrial property rights such as patents, trade marks, designs and models and trade names;
 - f. official recognition or approval, awards of medals, prizes and diplomas;
 - g. the extent of benefits for charitable causes.

2. Advertisements should not misuse research results or quotations from technical and scientific publications. Statistics should not be so presented as to exaggerate the validity of advertising claims. Scientific terms should not be used to falsely ascribe scientific validity to advertising claims.

Comparisons

Article 6

Advertisements containing comparisons should be so designed that the comparison is not likely to mislead, and should comply with the principles of fair competition. Points of comparison should be based on facts which can be substantiated and should not be unfairly selected.

Denigration

Article 7

Advertisements should not denigrate any firm, organization, industrial or commercial activity, profession or product by seeking to bring it or them into public contempt or ridicule, or in any similar way.

Testimonials

Article 8

Advertisements should not contain or refer to any testimonial or endorsement unless it is genuine, verifiable, relevant and based on personal experience or knowledge. Testimonials or endorsements which have become obsolete or misleading through passage of time should not be used.

Portrayal or imitation of personal property

Article 9

Advertisements should not portray or refer to any persons, whether in a private or a public capacity, unless prior permission has been obtained; nor should advertisements without prior permission depict or refer to any person's property in a way likely to convey the impression of a personal endorsement.

Exploitation of goodwill

Article 10

Advertisements should not make unjustifiable use of the name, initials, logo and/or trademarks of another firm, company or institution nor should advertisements in any way take undue advantage of another firm, person or institution's goodwill in its name, trade name or other intellectual property, nor should advertisements take advantage of the goodwill earned by other advertising campaigns.

Imitation

Article 11

1. Advertisements should not imitate the general layout, text, slogan, visual presentation, music and sound effects, etc., of any other advertisements in a way that is likely to mislead or confuse the consumer.
2. Where advertisers have established distinctive advertising campaigns in one or more countries, other advertisers should not unduly imitate these campaigns in the other countries where the former may operate, thus preventing them from extending their campaigns within a reasonable period of time to such countries.

Identification of advertisements

Article 12

Advertisements should be clearly distinguishable as such, whatever their form and whatever the medium used; when an advertisement appears in a medium which contains news or editorial matter, it should be so presented that it will be readily recognized as an advertisement.

Safety and health

Article 13

Advertisements should not without reason, justifiable on educational or social grounds, contain any visual presentation or any description of dangerous practices or of situations which show a disregard for safety or health.

Children and young people

Article 14

The following provisions apply to advertisements addressed to children and young people who are minors under the applicable national law.

Inexperience and Credulity

- a. Advertisements should not exploit the inexperience or credulity of children and young people.
- b. Advertisements should not understate the degree of skill or age level generally required to use or enjoy the product.
 - i. Special care should be taken to ensure that advertisements do not mislead children and young people as to the true size, value, nature, durability and performance of the advertised product.
 - ii. If extra items are needed to use it (e.g., batteries) or to produce the result shown or described (e.g., paint) this should be made clear.

- iii. A product which is part of a series should be clearly indicated as should the method of acquiring the series.
- iv. Where results of product use are shown or described, the advertisement should represent what is reasonably attainable by the average child or young person in the age range for which the product is intended.
- c. Price indication should not be such as to lead children and young people to an unreal perception of the true value of the product, for instance by using the word 'only'. No advertisements should imply that the advertised product is immediately within reach of every family budget.

Avoidance of Harm

Advertisements should not contain any statement or visual presentation that could have the effect of harming children and young people mentally, morally or physically or of bringing them into unsafe situations or activities seriously threatening their health or security, or of encouraging them to consort with strangers or to enter strange or hazardous places.

Social Value

- a. Advertisements should not suggest that possession or use of a product alone will give the child or young person physical, social or psychological advantages over other children or young people of the same age, or that non-possession of the product would have the opposite effect.
- b. Advertisements should not undermine the authority, responsibility, judgment or tastes of parents, taking into account the current social values. Advertisements should not include any direct appeal to children and young people to persuade their parents or other adults to buy advertised products for them.

Guarantees

Article 15

Advertisements should not contain any reference to a guarantee which does not provide the consumer with additional rights to those provided by law. Advertisements may contain the word "guarantee", "guaranteed", "warranty" or "warranted" or words having the same meaning only if the full terms of the guarantee as well as the remedial action open to the purchaser are clearly set out in the advertisements, or are available to the purchaser in writing at the point of sale, or come with the goods.

Unsolicited products

Article 16

Advertisements should not be used to introduce or support the practice whereby unsolicited products are sent to persons who are required, or given the impression that they are obliged to accept and pay for these products (inertia selling).

Environmental behaviour

Article 17

Advertisements should not appear to approve or encourage actions which contravene

the law, self-regulating codes or generally accepted standards of environmentally responsible behaviour. Advertisers should respect the principles set forth in the ICC Code on Environmental Advertising.

Responsibility

Article 18

1. Responsibility for the observance of the rules of conduct laid down in the Code rests with the advertiser, the advertising practitioner or agency, and the publisher, media owner or contractor.
 - a. Advertisers should take the overall responsibility for their advertising.
 - b. Advertising practitioners or agencies should exercise every care in the preparation of advertisements and should operate in such a way as to enable advertisers to fulfil their responsibilities.
 - c. Publishers, medium-owners or contractors, who publish, transmit or distribute advertisements should exercise due care in the acceptance of advertisements and their presentation to the public.
2. Those employed within a firm, company or institution coming under the above three categories and who take part in the planning, creation, publishing or transmitting of an advertisement have a degree of responsibility commensurate with their positions for ensuring that the rules of the Code are observed and should act accordingly.

Rules apply to entirety of advertisement

Article 19

The responsibility for observance of the rules of the Code embraces the advertisement in its entire content and form, including testimonials and statements or visual presentations originating from other sources. The fact that the content or form originates wholly or in part from other sources is not an excuse for non-observance of the rules.

Effect of subsequent redress for contravention

Article 20

While an advertiser's subsequent correction and appropriate redress for a contravention of the Code are desirable, they cannot excuse the original contravention of the Code.

Substantiation

Article 21

Descriptions, claims or illustrations relating to verifiable facts should be capable of substantiation. Advertisers should have such substantiation available so that they can produce evidence without delay to the self-regulatory bodies responsible for the operation of the Code.

Respect of self-regulatory decisions

Article 22

No advertiser, advertising practitioner or agency, publisher, medium-owner or contractor should be party to the publication of any advertisement which has been found unacceptable by the appropriate self-regulatory body.

Implementation

Article 23

This Code is to be applied nationally and internationally, and should be the basis for the decisions by bodies set up for the purpose of self-regulation.

Any request for interpretation of the principles contained in this Code should be submitted to the ICC Code Interpretation Panel.*

*FOOTNOTE: See the Terms of Reference of the ICC Code Interpretation Panel - www.iccwbo.org

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International Chamber of Commerce

The World Business Organization

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ANNEX 2

ICC framework for responsible food and beverage communications

INTRODUCTION

The increasing worldwide attention to diet, nutrition and physical activity is of great significance to the international food and beverage community and to the broader business community of which it is a part. The following framework has been prepared by the Commission on Marketing and Advertising of the International Chamber of Commerce (ICC) to address some of the issues raised by these concerns.

The International Chamber of Commerce (ICC), as the world business organization, promotes high standards of business ethics through the development and dissemination of rules, including codes and guidelines on how business should direct its efforts to assure that commercial communications to consumers are responsible.

World business supports the notion that responsible commercial communications can assist consumers in making appropriate choices about food and beverage products, and in understanding the role of nutrition, diet and physical activity in healthy lifestyles. By conveying commercial communications consistent with principles of good nutrition, diet, physical activity and personal choice, business can play an important role.

ICC's longstanding view is that commercial communications are best regulated by effective self-regulation within a legal framework that protects consumers from false and misleading claims. In this way, self-regulation best serves the consumer's interest in receiving truthful and accurate communications. More broadly, advertisers and marketers should be guided by self-regulatory principles and participate in self-regulatory processes.

As a multi-sectoral organization, ICC recognizes that its codes serve as an international standard and that they are used to develop regional and national codes by industry sector groups and by regional and national self-regulatory bodies.

To be effective, advertising self-regulatory systems bring together advertisers, advertising agencies and the media to develop standards, evaluate advertising for compliance with those standards, and take appropriate action to enforce them. World business agrees that effective self-regulation is the system that, through a combination of best practices and determined enforcement, can best inspire consumer confidence in advertising.

ICC welcomes the adoption by regional and national self-regulatory advertising bodies around the world of the general principles expressed in ICC's own codes. Furthermore, world business values the enforcement mechanisms such bodies have put in place to sanction or amend advertisements that do not meet applicable self-regulatory requirements.

The application of self-regulation in food advertising requires that it be legal, decent, honest and truthful. This framework focuses on the three intertwined issues addressed in other ICC publications: the role of commercial communications in our information-

focused society, guidelines for communicating to children, and freedom of commercial speech.

THE ROLE OF COMMERCIAL COMMUNICATIONS IN AN INFORMATION-FOCUSED SOCIETY

Never has so much information been so broadly and readily available to so many as it is now. A plethora of information about healthy lifestyles, nutrition, and dietary choices is available from a great number of sources, including commercial communications.

Good communications, and indeed good business practice, means that communicators must remain mindful of the need to provide honest and truthful information about their products, both to make the consumer aware of the choices available and to enable the consumer to choose among them according to his needs, desires, tastes and personal priorities.

An informed consumer is also crucial in the matter discussed in this paper and, as such, the focus on the operative principles that should guide marketers in their commercial communications is all the more timely.

GUIDELINES FOR MARKETING TO CHILDREN

As children are consumers of food and beverages, they are legitimately a focus of marketing and have the right to information about the products that interest them. However, because of their lack of experience as consumers, young children deserve especially careful treatment by marketers in any commercial communications directed to them. ICC recognizes that children constitute an audience with a more limited capacity to assess information in advertising, which is why it includes specific provisions on commercial communications to children in its guidelines and codes.

Communicators must advertise and sell their products to children in a responsible manner. ICC remains mindful, however, that parents and other adults responsible for a child's welfare play a primary role in the broad range of decisions affecting their children, including choices about lifestyle, physical activity and diet. Moreover, parents, educators, the media, entertainment content providers and others have important roles in helping children develop a critical understanding of advertising and other media messages so that they become better informed.

These issues have been discussed at some length in the *Compendium of ICC Rules on Children and Young People and Marketing*, and these rules apply to food and beverage advertising as they do to any other type of commercial communications to children.

FREEDOM OF COMMERCIAL SPEECH

Freedom of commercial speech in the sale of all legal products is a fundamental principle of free markets. This freedom has nourished competition among companies and led to demonstrable benefits to consumers. As companies compete, consumers are presented with a wider array of choices, more information on which to base those choices and better prices.

But this exercise of freedom of speech, as with all rights, carries with it attendant obligations. ICC has long held that an essential element in freedom of commercial speech is responsibility.

CONCLUSION

ICC encourages food and beverage communicators to adhere to principles of responsible consumer communications, above and beyond compliance with laws and regulations, especially in communicating to children. In doing so, advertising from this sector will meet its obligation to remain responsible as well as legal, decent, honest and truthful. Food and beverage marketers, and national and regional self-regulatory bodies, should continue to review and update their self-regulatory guidelines to assure that communications reflect contemporary standards of responsible marketing.

While underscoring the multi-sectoral nature of ICC's guidelines, we set forth below how ICC believes that some important ICC principles contained in existing ICC codes would apply in the context of food and beverage commercial communications.

ICC PRINCIPLES

APPLICATION TO FOOD AND BEVERAGE
ADVERTISING**ICC International Code of Advertising Practice**
Article 1

All advertising should be legal, decent, honest, and **truthful**.

Application in the context of food and beverage advertising of this principle means that claims about nutrition and health benefits should have a sound scientific basis. The claims should be conveyed consistent with the nature and scope of the evidence, providing the consumer with supportable information. The claim should also be judged by the likely perception of the reasonable consumer, especially where children and young people are concerned.

Article 1 continued

Every advertisement should be prepared with a due sense of **social responsibility....**

Food and beverage advertisements should not encourage or condone excess consumption and portion sizes should be appropriate to the setting portrayed. Advertising should not undermine the importance of healthy lifestyles.

Article 1 continued

No advertisement should be such as to impair **public confidence** in advertising.

Advertisements should respect the spirit of ICC, local and sectoral self-regulatory codes, in order to maintain confidence both in advertising and in the self-regulation system.

ICC International Code of Advertising Practice
Article 3

Advertisements should be so framed as not to abuse the trust of consumers or **exploit their lack of experience or knowledge**.

Where claims or terminology used in advertisements might reasonably be interpreted by a consumer as health or nutrition claims, they should be supportable with appropriate scientific evidence.

ICC PRINCIPLES

APPLICATION TO FOOD AND BEVERAGE
ADVERTISING*ICC International Code of Advertising Practice
Article 5.1*

Advertisements should not contain any statement or visual presentation which directly or by implication, omission, ambiguity or exaggerated claim is **likely to mislead the consumer**, in particular with regards to
a. characteristics such as: **nature, compositions**, method and date of manufacture, range of use, efficiency and performance, quantity, commercial or geographical origin or environmental impact.

Copy, sound and visual presentations in advertisements for food and beverage products should accurately represent the material characteristics featured in the advertisement for the product, such as taste, size, content nutrition or health benefits, and should not mislead consumers concerning any of those characteristics.
Food products not intended to be substitutes for meals should not be represented as such.

*ICC International Code of Advertising Practice
Article 5.2*

Advertisements should **not misuse research results** or quotations from technical and scientific publications. Statistics should not be so presented as to **exaggerate the validity** of advertising claims. Scientific terms should not be used to falsely ascribe scientific validity to advertising claims.

All nutritional and health-benefit claims for food and beverage products should have a sound scientific basis. Consumer taste or preference tests should not be used in a way that might imply statistical validity if there is none.

*ICC International Code of Advertising Practice
Article 6*

Advertisements containing comparisons should be so designed that the comparison is **not likely to mislead**, and should comply with the principles of fair competition. Points of comparison should be based on facts which can be substantiated and should not be **unfairly selected**.

Nutritional or health-related comparisons should be based on an objectively supportable and clearly understandable basis.

ICC PRINCIPLES

APPLICATION TO FOOD AND BEVERAGE
ADVERTISINGICC International Code of Advertising PracticeArticle 12

Advertisements should be clearly distinguishable as such, whatever their form and whatever the medium used; when an advertisement appears in a medium which contains news or editorial matter, it should be so presented that it will be **readily recognised** as an advertisement.

Food and beverage manufacturers should particularly note that in advertising directed to children, broadcast or print media personalities (live or animated) should not be used to sell products, premiums or services in a way that obscures the distinction between programme or editorial content and commercial promotion.

ICC International Code of Advertising PracticeArticle 13

Advertisements should not without reason, justifiable on educational or social grounds, contain any visual presentation or any description of dangerous practices or of situations which **show a disregard** for safety or **health**.

Food and beverage advertisements should not undermine the promotion of healthy balanced diets, nor the importance of a healthy, active lifestyle.

ICC International Code of Advertising PracticeArticle 14

The following provisions apply to advertisements addressed to children and young people who are minors under the applicable national law.

INEXPERIENCE AND CREDULITY

a. Advertisements should not exploit the **inexperience or credulity** of children and young people.

Advertisements directed towards children for food and beverage products should not create a sense of urgency, or inappropriate price minimisation.

While fantasy, including animation is appropriate in communication with younger as well as older children, care should be taken not to exploit a child's imagination in a way that could mislead him/her about the nutritional benefits of the product involved.

ICC PRINCIPLES

APPLICATION TO FOOD AND BEVERAGE
ADVERTISINGICC International Code of Advertising Practice
Article 14 continued**Social Value**

a. Advertisements should not suggest that possession or use of a product alone will give the child or young person **physical, social or psychological advantages** over other children or young people of the same age, on that non-possession of the product would have the opposite effect.

Food and beverage advertisements should not mislead consumers about potential health or other benefits from the consumption of the advertised product. In advertisements to children or young people, this includes such things as status or popularity with peers, success in school or sports, or intelligence.

ICC International Code of Advertising Practice
Article 14 continued**SOCIAL VALUE**

b. Advertisements should not undermine the **authority, responsibility, judgement or tastes** of parents, taking into account **current social values**. Advertisements should not include any direct appeal to children and young people to **persuade their parents** or other adults to buy advertised products for them.

Food product advertisements should not undermine the role of parents and other adults responsible for a child's welfare in guiding diet and lifestyle choices. Advertisements should not include any direct appeal to children to persuade their parents or other adults to buy advertised products for them.

ICC International Code of Sales Promotion
Article 8

Sales promotions addressed to children and young people should not exploit their **credulity or inexperience**. No sales promotion should be undertaken which is likely to **harm** children or young people mentally, morally or **physically**, or to **strain their sense of loyalty vis-a-vis their parents** and guardians.

Sales promotion offers addressed to children should provide the conditions of the premium offer, sweepstake or contest being advertised in terms that children can understand.

Advertisers should strive to be sure that young children have an understanding of the products to be purchased, if any, to receive the premium; and for sweepstakes and contests, the conditions of entry, types of prizes and the likelihood of winning.

Document No. 240-48/19.

International Chamber of Commerce
The World Business Organization

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INTERNATIONAL COUNCIL OF GROCERY MANUFACTURERS (ICGMA):

The International Council of Grocery Manufacturers Association (ICGMA)⁵ appreciates this opportunity to provide comments on the above referenced public notice regarding the Canadian Discussion Paper on Advertising (CL2004/54-FL) that will be presented for discussion at the 33rd Session of the Codex Committee on Food Labeling held at Kota Kinabalu, Malaysia May 8th to 13th, 2005.

Background

In 2003, in conjunction with development of the *Guidelines for Use of Nutrition and Health Claims*, the Codex Alimentarius Commission requested the Codex Committee on Food Labeling (CCFL) "to consider the development of a definition of advertising as related to health and nutrition claims". In 2004, the CCFL agreed to consider advertising as a separate agenda item at its session in May 2005, with priority being given to development of the above definition. A Discussion Paper on Advertising has been circulated with a request to consider whether the Terms of Reference of the CCFL need to be amended in order to develop such a definition.

Position

There is no longer a rationale for developing an international definition for advertising at CCFL even though its terms of reference maybe sufficiently broad enough to enable study of such a question.

Justification

1. The Commission's 2003 instruction to the CCFL "*to consider the development of a definition of advertising as related to health and nutrition claims*" was based on a draft text for the Guidelines that placed advertising generally within its scope.⁶
2. Because of the desire of many member states to retain national authority over advertising matters, the draft Guidelines were not adopted by the Commission, and were returned to Step 6 for consideration at the 2004 meeting of CCFL.
3. At the May 2004 meeting, the CCFL adopted a text on advertising that explicitly leaves matters related to nutrition and health claims in advertising to be dealt with at the national level.⁷ The CAC adopted the text as such.

⁵ ICGMA, a recognized INGO before the Codex Alimentarius Commission, represents the interests of national and regional associations who collaborate with all sectors of the consumer packaged goods industry. ICGMA promotes the harmonization of scientific standards and policies concerned with health, safety, packaging, and labeling of foods, beverages, and other consumer packaged goods. ICGMA also works to facilitate international trade in these sectors by elimination or preventing artificial barriers to trade.

⁶ "These Guidelines relate to the use of nutrition and health claims in food labelling and advertising" (ALINORM 02/22A, Appendix IV)

⁷ "These guidelines relate to the use of nutrition and health claims in food labelling and, where required by the authorities having jurisdiction, in advertising" (ALINORM 04/27/22, Appendix III).

4. The Canadian Discussion Paper on Advertising (CL 2004/54-FL) recognizes that national differences influence the way advertising is defined.⁸ These differences are illustrated by the various definitions that are presented in the Discussion Paper.

5. Thus there is no longer a rationale for the development of an international definition for advertising as related to nutrition and health claims. Advertising matters should be left to national jurisdiction.

In summary, IGMA notes that advertising is best regulated by national or local codes, which take into account legal, cultural, political, educational, and societal sensitivities. We strongly believe that the basic principles of the *General Guidelines on Claims*⁹ and the *Guidelines for Use of Nutrition Claims*¹⁰ can adequately address such claims when they are presented in advertising. Therefore, there is no need to seek a change in the Terms of Reference of CCFL in order to consider a definition for advertising.

WORLD FEDERATION OF ADVERTISERS (WFA):

The World Federation of Advertisers is the voice of advertisers worldwide representing 90% of global ad spend through a unique, global network: almost 50 national advertiser associations across 5 continents as well as numerous multinational corporate members. Through them, WFA represents more than 10,000 businesses operating in a broad spectrum of sectors at national, regional and global levels.

the European Association of Communications Agencies (EACA) is a Brussels-based non-profit organisation whose mission is to represent full-service advertising and media agencies and agency associations in Europe. EACA aims to promote honest, effective advertising, high professional standards, and awareness of the contribution of advertising in a free market economy and to encourage close cooperation between agencies, advertisers and media in European advertising bodies.

Both organizations hold NGO status at Codex.

Background

1. In 2003, during the development of the Guidelines for Use of Nutrition and Health Claims, the Codex Alimentarius Commission (CAC) requested the Codex Committee on Food Labelling (CCFL) “to consider the development of a definition of advertising as related to health and nutrition claims”.

⁸ "Different countries have varied political, cultural, social and educational influences which impact how they define advertising in their country."

⁹ CAC/GL 1-1979 (Rev. 1-1991)

¹⁰ CAC/GL 23-1997

2. In 2004, the CCFL agreed to consider advertising as a separate agenda item at its session in May 2005, and to consider the development of the above definition.
3. A Discussion Paper on Advertising has been circulated with a request to consider whether the Terms of Reference of the CCFL need to be amended in order to develop such a definition and to seek views on what definition might be appropriate.

Position

There is no longer a rationale for developing an international definition for advertising at the CCFL, even though its Terms of Reference may be sufficiently broad to enable the study of such a question.

Justification

1. The Commission's 2003 instruction to the CCFL "to consider the development of a definition of advertising as related to health and nutrition claims" was based on a draft text for the Guidelines that placed advertising generally within its Scope¹¹.
2. Because of the desire of many member states to retain national authority over advertising matters, the Guidelines were not adopted by the Commission, and were returned to Step 6 for consideration at the 2004 meeting of CCFL.
3. At the May 2004 meeting, the CCFL agreed a text on advertising that leaves matters related to nutrition and health claims in advertising to be dealt with at the national level¹². The CAC adopted the text as such.
4. The Canadian Discussion Paper on Advertising (CL 2004/54-FL) recognizes that national differences influence the way advertising is defined¹³. These differences are illustrated by the various definitions that are presented in the Discussion Paper.
5. Thus there is no longer a rationale for the development of an international definition for advertising as related to nutrition and health claims. Advertising matters should be left to national jurisdiction.

The CCFL should recommend to the CAC that national definitions for advertising are appropriate for use in conjunction with the Codex Guidelines for the Use of Nutrition and Health Claims, thereby reflecting the political, cultural, social and educational influences of individual countries.

¹¹ "These Guidelines relate to the use of nutrition and health claims in food labelling and advertising" (ALINORM 02/22A, Appendix IV)

¹² "These guidelines relate to the use of nutrition and health claims in food labelling and, where required by the authorities having jurisdiction, in advertising" (ALINORM 04/27/22, Appendix III).

¹³ "Different countries have varied political, cultural, social and educational influences which impact how they define advertising in their country."