

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD
HEALTH
ORGANIZATION



JOINT OFFICE: Viale delle Terme di Caracalla 00153 ROME Tel: 39 06 57051 www.codexalimentarius.net Email: codex@fao.org Facsimile: 39 06 5705 4593

AGENDA ITEM NO. 7

CX/FL 08/36/10

E

JOINT FAO/WHO FOOD STANDARDS PROGRAMME

**CODEX COMMITTEE ON FOOD LABELLING
THIRTY-SIXTH SESSION
OTTAWA, CANADA, APRIL 28 - MAY 2, 2008**

**DRAFT DEFINITION OF ADVERTISING IN RELATION TO NUTRITION AND
HEALTH CLAIMS
(CL 2007/34-FL & ALINORM 07/30/22 – APPENDIX VI)**

GOVERNMENT COMMENTS AT STEP 6

COMMENTS FROM:

**ARGENTINA
BRAZIL
EUROPEAN COMMUNITY (EC)
KENYA
MEXICO
PERU
PHILIPPINES
UNITED STATES
INTERNATIONAL DAIRY FEDERATION (IDF)
WORLD SUGAR RESEARCH ORGANISATION (WSRO)**

**DRAFT DEFINITION OF ADVERTISING IN RELATION TO NUTRITION AND HEALTH CLAIMS
(CL 2007/34-FL & ALINORM 07/30/22 – APPENDIX VI)**

GOVERNMENT COMMENTS AT STEP 6

ARGENTINA:

Argentina is grateful for the chance to comment about the placing of the definition of advertizing in the Codex tests.

Regarding this issue we would like to indicate that the Argentinean Food Code establishes a general definition for advertizing, applicable to all issues regarding food advertizing, which should be consistent with the information provided in the labelling. Furthermore, the Argentinean Food Code has also established specific provisions to prevent misleading advertizing regarding the health characteristics of foods.

Therefore, although we believe that the advertizing definition should have an impact on all labelling issues, when the advertizing definition¹ approved by the Codex Alimentarius is taken into account, our opinion is that it should be included in the Guidelines for the Use of Health and Nutrition Claims (CAC/GL 23-1997, Rev 1-2004), although we would not be against including it in the General Guidelines for Claims (CAC/GL 1.1979 Rev 1991)

BRAZIL:

Brazil agrees with the definition agreed in the 35th Session of the Codex Committee on Food Labelling.

“Advertising means any commercial communication to the public, by any means other than labelling, in order to promote directly or indirectly, the sale or intake of a food through the use of nutrition and health claims in relation to the food and its ingredients.”

The Working Group understands that the definition should be included in the Guidelines for Use of Nutrition and Health Claims considering: (a) that the section 1.1 of the Guidelines for Use of Nutrition and Health Claims are related to the use of nutrition and health claims in food labelling and, where required by the authorities having jurisdiction, in advertising; (b) that the mandate given to the CCFL by the Commission requested the development of a definition of advertising related to health and nutrition claims.

EUROPEAN COMMUNITY (EC):

The European Community and its 27 Member States would like to propose that the definition of advertising in relation to nutrition and health claims should be included when finalised in the "Guidelines for use of nutrition and health claims", paragraph 2, Definitions.

¹ “Advertising means any commercial communication directed to the public, by any means other than the label, in order to promote directly or indirectly, the sale or intake of a food through the use of nutrition and health claims in relation to the food and its ingredients.”

KENYA:

Kenya proposes that the definition of advertising in relation to health and nutrition claims of products would be handled better at the national level of the country of origin because it will give each country a chance to choose from the market what is best for its citizens.

MEXICO:

México supports the definition, proposing only the following wording for the Spanish version:

*“Advertising means any commercial communication directed to the public, by ~~any~~ other means **different** from the label, in order to promote directly or indirectly, the sale or intake of a food through the use of nutrition and health claims in relation to the food and its ingredients.”*

Mexico is also of the opinion that the definition should be included in the *Guidelines for Use of Nutrition and Health Claims CAC/GL 23-1997, Ref. 1-2004* in the definitions chapter.

PERU:

Peru would like to express its agreement with the proposal; we believe the evaluation of the text in which the definition of advertising will be included should continue.

PHILIPPINES:

For Comment	Position
The Delegation of China expressed the view that advertising should not be defined in the framework of Codex but should be left to national authorities	We support the position expressed by the China delegation and we believe that there is no need for CCFL to consider a definition for advertising because this is best regulated at the national level. The adoption of a definition of advertising or advertisement at the Codex level may impede Member Countries from adopting appropriate definitions that are reflective of the legal, cultural and social influences of its society.

UNITED STATES:

The United States notes that the definition of advertising, agreed to at the 35th Session of the CCFL, is limited in its scope to its relation to health and nutrition claims only and not to a broader definition of advertising.

Therefore, the United States believes that the definition should be included within the Codex *Guidelines for Use of Nutrition and Health Claims (CAC/GL 23-1997, Rev. 1-2004)*. The United States recommends the inclusion of the definition as a footnote to the word “advertising,” which appears in section 1.1 under Scope, as follows:

1. *Scope*

1.1 *These guidelines relate to the use of nutrition and health claims in food labelling and, where required by the authorities having jurisdiction, in advertising².*

Footnote to read as follows:

2 *Advertising means any commercial communication to the public, by any means other than labelling, in order to promote directly or indirectly, the sale or intake of a food through the use of nutrition and health claims in relation to the food and its ingredients.*

INTERNATIONAL DAIRY FEDERATION (IDF):

The International Dairy Federation (IDF) appreciates the opportunity to submit comments on the draft definition of advertising in relation to health and nutrition claims (at step 6):

“Advertising means any commercial communication to the public, by any means other than labelling, in order to promote directly or indirectly, the sale or intake of a food through the use of nutrition and health claims in relation to the food and its ingredients.”

The IDF respectfully requests that the following points to be considered for the definition of “advertising” as it relates to nutrition and health claims:

1. Improvements of the definition and explanatory notes are needed to exempt communication of scientific nutrition and health education information, training and publications directed to health professionals, other specialized groups and nutrition education information to the general public and generic advertising using truthful and non-misleading scientific research and nutrition information.

- a) The proposed definition is very broad and although it captures the key areas of advertising, by the reference "commercial communication to the public," its meaning could be interpreted to include communications of scientific research in the area of nutrition and health, for example; academic papers, news, editorials, public interest programs, educational materials, or text books which should not be considered as commercial communication.
- b) The proposed definition should not suppress any dissemination of truthful and non-misleading health and nutrition information and of emerging scientific research.
- c) The proposed definition should specifically exempt any educational literature or websites aimed at health professionals, other specialized groups and the general public referencing published scientific research that may be used directly and/or indirectly by organizations including government agencies, health and nutrition professional organizations, generic industry service bodies (e.g. fruits and vegetables, nuts, dairy, or grain industry organizations), or commercial companies.
- d) The proposed definition should also exempt generic advertising campaigns using truthful and non-misleading scientific data and nutrition information, generally produced by generic service bodies (e.g.; fruits and vegetable, dairy, nuts, or grain industry organizations). Further explanation of generic advertising includes:

- Communication on general categories of food (e.g.; dairy products, grain, fruits and vegetables) or general subcategories (e.g.; cheese, rice, apples) or generic foods (e.g.; Cheddar Cheese, brown rice, apples) and not to specific company brands or commercially identifiable products, which may be seeking a competitive advantage.
 - Information and/or pedagogical messages provided to fulfill a need of general interest, without any commercial aim, nor special benefit to any particular economic operator (e.g.; "Beef contains iron.", " Dairy products are a good source of calcium.")
- e) Specific exemptions from the definition should also be considered to clarify that professional advice, nutrition-related statements from government agencies, professional bodies, non-government organizations, and speeches and presentations to conference or other invited audiences would be considered as diet and/or health advice and education, and is not "commercial communication."
- f) The term "indirectly" makes the definition unclear. Forms of communication that are seen as advice and educational information intended to inform, educate and change attitudes and beliefs and are not intended to promote the sale or purchase of foods should not be considered as commercial communication and consequently as "advertising." To avoid and misunderstanding and provide clarity to the definition of commercial communication it is suggested to delete the word "indirectly."
- g) A reference to food "constituents" should be added as ingredients are often seen as a component being added to foods, but constituents which are intrinsically present in food should also be taken in to account. Food constituents, which are naturally occurring in a food, may include a nutrient or other substance or a combination of nutrients and other substances.

In summary, the draft definition of Advertising should allow generic advertising and communication to generate and circulate scientific nutrition and health education information about food and generic products to the public and should not be considered as commercial communication.

IDF therefore proposes the CCFL consider the following definition

(Added text underlined, deleted text is struck):

"Advertising means any commercial communication² to the public, by any means other than labelling, in order to promote directly ~~or indirectly~~, the sale or intake of a food through the use of nutrition and health claims in relation to the food and/or its ingredients or constituents."

WORLD SUGAR RESEARCH ORGANISATION (WSRO):

²Commercial communication does not include: communications in the form of academic papers, news, editorials, articles of public interest, textbook information, website referencing scientific data and nutrition information, educational material or professional advice from any source including, government agencies, professional bodies, non-government organizations, commercial organizations and generic advertising campaigns intended to provide scientific data, nutrition and health information to the public.

It is the opinion of WSRO that while the draft definition of advertising in relation to health and nutrition claims has considerable merit, it has significant disadvantages related to the fact that the definition is drawn too widely. We would urge the Codex Alimentarius Commission to consider a more circumscribed definition of advertising than that proposed.

WSRO agree with the view expressed by the Delegation of China, that advertising in relation to health and nutrition claims should be left to national authorities and should not be defined within the framework of Codex. Population differences do not allow the effective application of advertising principles on a worldwide scale. Less developed countries may not have the capacity to enforce recommendations and country-to-country diet and health patterns need to be considered. These issues are best dealt with by individual national governments.