

Television Advertising of Food and Drink Products to Children ISBA response to the Ofcom Statement and further consultation

21 December 2006

1 About ISBA

ISBA is the single representative body on all aspects of commercial communications for some 400 leading UK advertisers whose total spend on all marketing communications exceeds £10b.

2 Consultation issue

2.1 Following the Ofcom Board announcement of its decisions on the volume and scheduling of advertising of food and drink to children and its modification and approval of the industry BCAP content code there remained the issue of the Board's new proposal to extend the upper age limit from under 10 to under 16. Ofcom is consulting on this issue alone in the following terms:

In light of the impact of Modified Package 1, in particular on the revenues of music channels, Ofcom is seeking views on Modified Package 1 in so far as it extends the restrictions in Package 1 to children up to 16.

2.2 ISBA is concerned that Ofcom has already reached a firm decision on the proposal that is the subject of this consultation, i.e. that the issue may have been predetermined. Ofcom is on record in December 2006¹ stating that 'Ofcom has decided that one of its regulatory objectives is to reduce significantly the exposure of children under 16...'. With the decision of principle already made, the consultation process appears to be for form's sake only and to render any third parties' views ineffectual.

3 Summary ISBA response to current consultation

ISBA opposes the proposal by Ofcom to extend the restrictions in Modified Package 1 to children under 16. Having studied Ofcom's announcement of 17 November 2006, and the evidence and analysis cited in support of it, ISBA is willing to accept the restrictions there proposed for the under 10s. It can even see some evidential basis for an extension to the under 12s. But it is unable to accept that an extension to the under 16s is justifiable in practice or defensible in law. The relationship between the various competing interests (freedom of expression and public health) would be badly unbalanced.

1. It captures programmes and channels not previously part of the proposals or consultations and will damage the quality and provision of UK media.
2. Increasing the age threshold to 16 is disproportionate to the regulatory objective pursued by Ofcom in its investigation/consultation process; namely to restrict food/drink promotions to *young* children;
3. The evidence collected and presented by Ofcom focused almost exclusively on young children and is not applicable to older children.
4. The reasons cited by Ofcom for the extension to under 16s (influence on siblings and increased purchase power) are not expressed in Ofcom's body of evidence, nor were these aspects considered during the main consultation process. This supplemental consultation process is too brief, and light on evidence, to compensate for those earlier flaws.
5. There is academic consensus that levels of advertising literacy amongst teenagers greatly reduce the influence of adverts and allow adolescents more successfully to negotiate the media environment. Teenagers are well equipped to think critically about commercial messages by the age of 12 and restrictions including those to age 15 are unjustifiable. In fact far from being vulnerable teenagers are more sophisticated, discerning and discriminating than many adults in this regard. Their need for protection is much less than Ofcom seems to think.

In sum, ISBA considers (and is advised) that there is a real prospect that the proposed extension to cover the under 16s would be found unlawful, if challenged.

¹ Ofcom Media Literacy Bulletin 8, December 2006

4 Capture of new programmes and channels damages UK media

4.1 Advertisers are concerned that the last minute change to the proposal will capture new programmes using the 120 index and new dedicated channels, which in the short term will have been part of advertisers' marketing plans for 2007.

4.2 Money previously committed to TV advertising may now be reallocated to other media, or to less effective channels and/or times of day. The effect on UK competitiveness will only be noticeable after the damage has occurred.

4.3 Removing a source of funding to music channels and programmes of interest to teenagers may seriously damage the longer-term provision of these services under UK licensing arrangements. This would lead to a potential loss to the UK media industry and a lost opportunity for UK advertisers.

5 Disproportionate to the regulatory objectives pursued by Ofcom

5.1 Ofcom has significantly expanded its recommendations to include under-16s, despite the absence of any supporting scientific or other compelling evidence. Extending the restriction to children under 16 goes well beyond the original Ofcom and Government objective of protecting 'young children'.

5.2 ISBA is concerned by Ofcom's decision to change the key regulatory objective of its three-year investigation (to protect young children aged 2 to 11 from the effects of food/drink promotions) – so late in the process. The consultation was structured to investigate the impact of food/drink promotions on young children, and all discussions have so far been focussed on that age group. A more than doubling of the age range² after the close of consultation does not merely affect the extra capture of programmes and channels but fundamentally changes the nature of the argument that all consultees would have made. There is an inadequate procedural basis for the supplemental consultation.

6 The evidence presented by Ofcom is not relevant to, nor does it support, an increase in the age threshold to 16 years:

6.1 Ofcom has always claimed to be an evidence-based regulator. As such, it is required to present a sound and robust evidential foundation to justify shifts in policy and action. ISBA recognises that Ofcom owes a duty of care to the broadcast media, and that it is seeking to find a fair balance between restricting advertising and protecting broadcast revenues. We support Ofcom's efforts to strike this balance. But this latest proposal fails to do so. In fact both Ofcom and the academic expert Sonia Livingstone acknowledge that there is a troubling lack of reliable evidence on the impact of food/drink advertising on older children (the over 11s). In addition there is even less evidence linking food/drink advertising with obesity, which has been the main investigative objective of this consultation. Even Ofcom accepts that such advertising plays a modest direct role at best. When put together, the great uncertainties surrounding these two key factors leave a very flimsy basis for regulation. The higher the age rises, the flimsier becomes the evidential basis.

6.2 An analysis of the Livingstone reports of 2004³ and 2006⁴ reveals that nearly all of the evidence presented is not applicable or relevant to children above 12. Of the 49 key studies cited by Livingstone in both reports, only nine (18%) specifically examined the link between obesity and food/drink advertising.⁵ And none examined the impact on older children. The

² The main consultation envisages a 5-9 younger children restricted group. The Supplemental consultation is for 5-15 group.

³ Livingstone, Sonia and Helsper, Ellen 2004 *ADVERTISING FOODS TO CHILDREN: Understanding Promotion In The Context Of Children's Daily Lives: A review of the literature prepared for the Research Department of the Office of Communications (OFCOM)*.

⁴ Livingstone, Sonia, 2006: *New Research on advertising foods to children*, LSE for Ofcom

⁵ *Effect of television advertisements for foods on food consumption in children. (2003)*, Jason C.G. Halford,

children studied were aged between two and 12 and the small size of the sample (all comprising between 42 and 192 children) make the results highly questionable.

Moreover the flawed sample size is not limited to the nine key studies that examined the link between food/drink advertising and obesity. Of the total of 49 key studies reviewed 37 involved sample sizes of 200 or fewer children. In addition 42 of the 49 did not conduct research for a period longer than one month.

More pertinently none of the 49 key studies found that older children (over 12) should be targeted for restrictions.

6.3 Ofcom has tried hard to gather reliable evidence throughout this process. All of that effort has been focussed on children aged from two to 11. As part of this information gathering exercise, there were a small number (5%) of studies considered that looked beyond the age of 12 years. But the overwhelming majority of studies (95%) examined did not analyse those over 11.

6.4 Livingstone's 2006 report supports the view that young people are capable of understanding the role and aim of advertising. Most, if not all, reviews agree that below the age of four or five, children regard advertising as simply entertainment, that between the ages of four and seven they begin to be able to distinguish advertising from programmes, that most have grasped the intention to persuade by the age of eight and that beyond 11 or 12 they can articulate a critical understanding of advertising and of the intentions of their advertisers: see for example Bandyopadhyay, Kindra and Sharp 2001, van Evra 1998, Hastings et al 2003, Valkenburg and Cantor 2001, Young et al 1996, Young 2003).

6.5 The 2006 Livingstone report considers the most recent studies published since 2004. However, nearly all of the studies reviewed do not consider food advertising's impact on obesity nor do they take place in the UK. The report cites a number of studies that are not relevant to the current Ofcom consultation – examining the impact of TV watching/sedentary behaviour, electronic games, and others that do not include advertising. Furthermore, these studies take place outside the UK – in the US, Switzerland and other parts of Europe.

6.6 In addition to the great difficulty in applying these types of studies to the UK environment, Livingstone also acknowledges the absence from the available literature of any focus on food/drink advertising or on its supposed connection with obesity. By way of illustration, she states:

“As presently conducted, surveys do not distinguish among three possible explanations for the observed association between television exposure and diet/health/obesity: (a) viewing > increased exposure to food advertisements, (b) viewing > increased snacking while viewing and reduced family meal times, and (c) viewing > reduced exercise and more sedentary lifestyle. Many researchers suggest that all three factors operate, but further research is required to disentangle the direction of causality, the range of the other causal factors operating, and the interaction among these factors.”⁶

ADVERTISING FOODS TO CHILDREN: *Understanding Promotion In The Context Of Children's Daily Lives*. (2004): A review of the literature prepared for the Research Department of the Office of Communications (OFCOM). Sonia Livingstone and Ellen Helsper.

Evidence of a possible link between obesogenic food advertising and child overweight (2005), T. Lobstein and S. Dobb,

Food advertising on British children's television: A content analysis and experimental study with nine-year olds. (1998) Lewis,

Reducing children's television viewing to prevent obesity: a randomized controlled trial (1999) Robinson, T.N., *Review of research on the effects of food promotion to children (Hastings Review)*. (2003). Hastings, G. et al. for the Food Standard Agency.

The influence of advertising on the pattern of food consumption in the UK (1999) Duffy, M.,

The 30-second effect: an experiment revealing the impact of television commercials on food preference of preschoolers (2001) Borzekowski and Robinson

The Role of television advertising in children's food choice (1996), Brian Young.

⁶ Livingstone, 2006, page 12.

6.7 Livingstone also addresses directly the near absence of any academic studies about the impact of food/drink advertising on *older* children. She admits that the research on the effects of such advertising is even less reliable than the literature dealing with the effect of advertising on young children. Tellingly, she concludes that this is one of the ‘important gaps in the research evidence base.’⁷ She adds:

*“Effects on teenagers, where research is less clear, but which is important if the long-term effects on children are to be tracked through their development into adulthood (footnote: The previous report (Livingstone 2004) concluded that evidence for effects was fairly similar across the age range from toddlers to teenagers...Unfortunately, few if any experimental studies have been conducted on teenagers, so survey evidence relating to overall television exposure to diet/weight is the main source of evidence: this limitation on the evidence base led the US Institute of Medicine report to observe that evidence of effects is stronger for children than it is for adolescents.”*⁸

6.8 Against this worrying background, ISBA opposes Ofcom’s proposal to extend the threshold for restrictions. There is a dearth of evidence relating to food/drink advertising’s impact on older children (under 16). Such evidence as has been collected by Ofcom in the last three-year does not demonstrate the need for – or even address - this extension.

7 No substantiation for factors cited in support of the extension to a 16 year olds ban

7.1 Livingstone (2004 and 2006) did not review the evidence concerning the impact of food advertising on obesity in older children (eg those 12-16 years), nor did Ofcom provide evidence to substantiate the arguments deployed to justify the decision to raise the age to 16 years.

7.2 The following arguments are used by Ofcom to support the age increase to 16:

- Older children have younger siblings and influence them
- Older children have more spending power than young children
- Older children have a significant obesity problem

7.3 Ofcom has not provided any evidence to substantiate these aspects of older children’s influence. Nor has it attempted to quantify or demonstrate how they are relevant to the evidence relating to the effect of food/drink advertising on children. The suppositions presented are anecdotal and do not match Ofcom’s usual rigorous approach to research. ISBA believes, therefore, that Ofcom has not provided nearly enough reliable evidence to demonstrate any of the phenomena set out above.

7.4 As a contrary indication consumer research indicates that teenagers are aware of the intent of advertising. For example in a YouGov survey conducted 5-8 December 2006 80% thought that children under 16 were able to understand and think critically about advertising designed to market food and drinks high in fat, sugar and salt.⁹

8 Advertising literacy levels mitigate advertising’s impact

8.1 Livingstone 2006 acknowledges academic agreement on the phases of cognitive development for a child when becoming advertising literate, as well as the usefulness and importance of advertising literacy in children. However Livingstone argues that advertising literacy is an insufficient ‘cognitive defence’ against the effects of advertising. But she is isolated in the academic community on this. In fact, her views are not shared by her peers and are contradicted by significant figures in the media and media education community, eg David Buckingham and Renee Hobbs. It is simply not good enough for Ofcom to identify a single academic to justify the effectiveness and proportionality of a proposed measure. In effect, there is no reliable evidence to support an application to under 16s. Moreover, Ofcom’s own work in the area of media literacy recognises the value of media literacy and, in this regard, it is carrying

⁷ Livingstone, 2006, page 12.

⁸ Livingstone, 2006, page 12.

⁹ YouGov Survey of 2,375 adults across Great Britain, Survey conducted 5-8 December 2006. unpublished APCO Insight Survey.

out work through designated partners because it believes in media literacy as an effective and important part of broadcast policy.

8.2 Nearly all academics working on children's understanding and use of media state that children are confident, critical viewers of advertising by the time they are 12¹⁰. Highly acclaimed and respected medical and public health organisations have concluded that there is a difference in media use between young and older children and that media literacy is an important way that children intentionally filter commercial messages and navigate through complex media, "one solution that is non-controversial and would be easy to implement is to educate children and teenagers about the effects of advertising - media literacy. Media education seems to be protective in mitigating harmful effects of media, including the effects of cigarette, alcohol and food advertising."¹¹ This sentiment – that children can understand and negotiate advertising messages by the age of 12 years is repeated throughout the literature, as confirmed by Livingstone in her two Ofcom reports.

9 Advertiser response to the main consultation

9.1 Industry Package 4. ISBA made a joint industry submission to Ofcom in response to its consultation document *Television advertising of food and drink products to children* on 30 June 2006¹². A new package 4 was proposed that took account of Ofcom's regulatory objective of protecting primary school age children, reducing the impacts on these children and respected the need for a competitive and high quality media service sector in the UK. The industry Package 4 built on the three packages in the Ofcom consultation. The combined industry position is to reject the effectiveness and scientific underpinning of the Food Standards Agency's nutrient profiling model, consequently our proposal follows Package 2 in banning the advertising of 'all foods' during times restricted by Ofcom for terrestrial TV with the scheduling restrictions provisions of package 3 for dedicated children's channels. Package 4 meets Ofcom's regulatory objective in reducing impacts on a 2003 base year by nearly 50%.

9.2 Opportunity lost in rejection of Package 4. Advertisers regret that Package 4 was not accepted as a basis for a balanced solution.

- **High quality children's programming endangered.** The industry proposal had the advantage over the Ofcom solution in that it helped to maintain a high quality and competitive UK children's TV sector, which recognised the importance of advertising revenues to children's channels.
- **Capable of adaptation.** It was also capable of adaptation, including the imposition of the use of nutrient profiling against the advice of the food companies.
- **Damage to food innovation.** Imposing nutrient profiling has given government backing to the flawed concept of 'good' food and 'bad' food, rather than emphasising the strategic goal of improving people's diets and lifestyles. As a result it is less likely that food companies will be able to innovate 'better for you' variants and successfully market them, thus damaging one of the key justifications for the Ofcom intervention.
- **Ignored reduced impacts on 2003.** In rejecting Package 4 Ofcom claimed that it produced the lowest level of advertising impact reductions. However Ofcom's decision to take 2005 as the base date rather than 2003 skews this argument. Package 4 was designed to take into account the extensive reduction of impacts that had been achieved through industry self-restraint since the Government first raised the possible need for reducing food and drink advertising to young children as part of the drive to reduce childhood obesity.
- **Undervalued the significance of the code changes.** In assessing Package 4 Ofcom appears to have not acknowledged that the industry proposed BCAP code changes will have a significant impact on the nature and occurrence of food and drink advertising. This adds to

¹⁰ Emulation, Fears and Understanding: A review of recent research on children and television advertising', Brian Young 1998.

¹¹ American Academy of Paediatrics, 2006 'Children, Adolescents and Advertising' *Pediatrics*.2006 ;118:2563 -2569

¹² *The Food, Soft Drink and Advertising Industries' response to Ofcom's Option 4 Challenge*, Food Advertising Unit, ISBA, Advertising Association, IPA and Food and Drink Federation, 30 June 2006.

the underestimation of the reduced impacts of the industry proposal in reaching the Government's objectives. It consequently also underestimates the impact of Ofcom's enhanced Package 1, which is an added indication that it is disproportionate in its effect.

- **Sponsorship.** No account has been taken of the impact of bans and restrictions on sponsorship, which whilst not formerly part of Package 4 were always seen as a key part of the overall Ofcom response by advertisers

10 Conclusion

ISBA is concerned that the proposed extension to cover the under 16s is a step too far, in practice and in law.

It gives far too much weight to the imponderable, and at best, modest influence of food/drink advertising on childhood obesity, given the array of other more powerful factors in play such as parents, friends, school, exercise and lifestyle. It gives far too little weight to the competing interests: for example, the public interest in balance, diversity and quality in programmes and the more private interests of broadcasters and advertisers. One of the principle advantages of imposing a lower upper age limit (under 9 or under 12) is that it helps the measures to be precise. An upper age limit of 16 makes it far more difficult for scheduling restrictions to target programmes viewed by the protected group. This is because audiences will be much more mixed in terms of age. There will be more collateral effects and more unintended consequences.

ISBA urges Ofcom to review in detail the wealth of academic evidence supporting an upper age of 12 and to set the ceiling there. Otherwise the proposed measures would be a disproportionate and unduly indiscriminatory response, which will not have the effect, desired by us all: namely, a reduction in the levels of childhood obesity. Instead, they would damage both broadcasting and the food industry, which is an important component of UK plc, without prompting any real benefit for those aged 12-15.

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