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Proposal P293 Nutrition, Health and Related Claims

I am writing on behalf of the Publishers' Advertising Advisory Bureau, an association of Australia's major newspaper and magazine publishers established over 30 years ago. It is the pre-eminent industry advisory body on matters relating to advertising. The Bureau provides advice to its publisher members and their constituent publications, on legal and other issues affecting advertising.

As a matter of course we support the draft Standard 1.2.7 and welcome the progress of the reform which has been in development for many years.

The comments we make are related to the communication of permitted advertising claims to consumers.

We confine our comments to the following questions from the Discussion Paper.

Question 1: Does the revised drafting accurately capture the regulatory intent as provided in Attachment B? Please consider the clarity of drafting, any enforceability issues and the level of “user-friendliness”.

The Bureau believes that the revised draft captures the regulatory intent, although the intent as expressed in Attachment 2 does not appear to be in keeping with objectives and intent of the Food Standards Australia New Zealand Act. Therefore a reduction in the “user-friendliness”, from a consumer's point of view is created and the benefits from the health claims that the new Standard will allow become limited.

Section 3 of the FSANZ Act states:

“The object of this Act is to ensure a high standard of public health protection throughout Australia and New Zealand by means of the establishment and operation of a joint body to be known as Food Standards Australia New Zealand to achieve the following goals:

- (a) *a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand;*
- (b) *an effective, transparent and accountable regulatory framework within which the food industry can work efficiently;*
- (c) *the provision of adequate information relating to food to enable consumers to make informed choices;*
- (d) *the establishment of common rules for both countries and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection.”*

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The FSANZ Act has a strong consumer focus to ensure the confidence and consistency in the quality and safety of food and to allow informed choices to be made.

The Bureau accepts that a consumer focus is implied as it is subject to the Act, whilst Clause 1 of the draft Standard reflects the aspect of good regulation for the benefit of the food industry.

We believe the issue becomes relevant in the wording of the permitted claims.

For example in Schedule 2 a reduction of blood pressure claim can be made for a low salt food and a reduction of blood cholesterol claim can be made about food containing phytosterols. From an advertising perspective reduction of blood pressure and reduction of cholesterol are attributes. Benefits flow from the attributes such as a longer life, a healthier life, less risk of heart disease, etc. For an advertisement to be effective not only should the features of the product be contained in the advertisement but also the benefits that flow from the attributes.

The benefits need to be emphasized. This is especially so when research consistently finds that those in lower decile groups have higher rates of obesity and generally their diets are less healthy.

In short the language of the permitted claims is too technical and not understood by large and vulnerable sectors of society.

However there is some room for discretion. Clause 9 of the draft Standard states,

“9 Standard does not prescribe words

- (1) *Nothing in this Standard is to be taken to prescribe the words that must be used when making a claim.*
- (2) *Any statement or information required by this Standard may be modified if the modification does not alter or contradict the intended effect of the statement or information.”*

We believe that the suggested modification by the Foundation of Advertising Research to allow benefits to be stipulated has merit and should be fully considered.

We accordingly submit that sub-clause (2) be amended to read,

- “(2) *Any statement or information required by this Standard may be modified **and benefits described** if the modification **or description of the benefits** does not alter or contradict the intended effect of the statement or information”*

Question 2: What evidence can you provide that shows consumers are purchasing foods of lower nutritional quality because they are being misled by fat-free or % fat-free claims?

None

Question3: Do you support option 1 (status quo), option 2 (voluntary action through a code of practice), or option 3 (regulate with additional regulatory requirements for fat-free and % fat-free claims)? Please give your reasons.

The Bureau supports Option 2.

The self-regulation system recognises that advertisers share a common interest in promoting consumer confidence in, and respect for, general standards of advertising.

It has been shown that self-regulation is effective. It should be noted that Australia has led the world in the protection of the consumers and in prevailing community standards.

In Australia, Australian Association of National Advertiser's (AANA) Food & Beverages Advertising & Marketing Communications Code provides that all advertising and marketing communications “shall be truthful and honest” as does the PAAB's Publishers' Advertising Code of Practice.

This meets the concerns of fat-free claims misleading consumers but if further strengthening is needed in Australia there could be a simple amendment to the AANA's Code to replicate the requirements of the New Zealand ASA Advertising of Food Code which has the following provisions:

- "2(g) *Advertisements for foods high in sugar should not claim to be "low fat" or "fat free" which could mislead the consumer to believe the food is low in energy or beneficial to health.*
- 2(h) *Advertisements for food high in fat should not claim to be "low in sugar" or "sugar free" which could mislead the consumer to believe the food is low in energy or beneficial to health."*

Both countries have consumer protection legislation prohibiting misleading advertising which is administered by the ACCC in Australia, and the Commerce Commission in New Zealand.

Question 4: Please comment on the possible options for additional regulatory requirements for fat-free and % fat-free claims (option 3) as follows:

- a. Which option do you support and why?**
- b. What is an appropriate sugar concentration threshold for options 3(b) and 3(d)?**
- c. Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.**

The Bureau does not believe there to be a need for further regulatory requirements as the issues are addressed by self-regulatory codes and by consumer legislation already in place.

As we stated in our submission in February 2008 the Bureau welcomes any Code or Standard which prevents consumers from being misled or confused over product claims, and any which would ease any enforcement difficulties.

Given its history of participation on various Advertising Committees and Code Councils, the Bureau is always very keen to contribute in any forum which promotes a balanced approach to social and corporate responsibility in the role of advertising.

The Bureau would welcome the opportunity to work with the FSANZ on any initiative developed from the outcomes of the discussion paper.

We believe at the Bureau that it is the ethical and social responsibility of us all to advocate and reflect prevailing community standards and we are always very keen to contribute in any forum which promotes a balanced approach to social and corporate responsibility in the role of advertising.

Yours faithfully,

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