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## **Submission on Proposal P293 Nutrition, Health & Related Claims**

**Submitter Name** – Foundation for Advertising Research, Email [gwiggs@ffar.org](mailto:gwiggs@ffar.org)

### **Submission**

As a preliminary matter we support draft Standard 1.2.7. Reform is well overdue and will enable advertisers to make true claims, which will be for the benefit of consumers, industry, regulators and self-regulators.

Our comments come from an advertising and marketing perspective and focus on the communication of the permitted claims to consumers.

*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 revised draft does capture the regulatory intent as provided in Attachment B. However the intent as expressed in the Attachment is not in keeping with the objectives and intent of the FSANZ Act. As a consequence 'user-friendliness' from a consumer perspective is reduced and the hoped for health benefits that will flow from the new Standard will be curtailed.

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."*

There is a strong consumer focus in the purpose of the FSANZ Act – to provide consumer confidence in the quality and safety of food and to provide information to enable consumers to make informed choices. The remaining two purposes relate to good regulation for the benefit of the food industry.

The Purpose as stated in Clause 1 of the draft Standard reflects the aspect of good regulation for the benefit of the food industry. We accept that a consumer focus is implied as it is subject to the Act.

The issue becomes relevant in the wording of the permitted claims. For instance 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 features. Benefits flow from the features 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 features.

Furthermore people in higher socio-economic groups will generally understand that reduction of cholesterol and lower blood pressure is beneficial but it is a huge leap in logic to assume that vast numbers of those in lower decile groups fully understand the significance. 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."*

If this clause is slightly modified to allow benefits to be stipulated then the matter would be resolved.

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

*3. 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.*

We support Option 2.

It has been shown that self-regulation is effective. The New Zealand ASA Advertising of Food Code 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.”*

In Australia the AANA Food & Beverages Advertising & Marketing Communications Code provides that all advertising and marketing communications *“shall be truthful and honest”*.

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 Code to replicate the ASA provisions.

In both countries there are restrictions against misleading advertising administered by the ACCC and Commerce Commission.

*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.*

We do not support any further regulatory requirements. The issues are properly covered

by self-regulatory codes.

Glen Wiggs

Director

**Foundation for Advertising Research**

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