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Submission on Proposal P293 Nutrition, Health & Related Claims

About FIG

The Food Industry Group (FIG) was formed to encourage food companies to work with Government and the community in finding ways to help solve the obesity issue in New Zealand.

FIG members include those of the New Zealand Food and Grocery Council (FGC), The Association of New Zealand Advertisers (ANZA), the Communications Agencies Association of New Zealand (CAANZ) and the Television Broadcasters Council (TBC), food manufacturers, fast food providers, supermarket retailers and a range of other media.

The food industry has an important role to play in solving the obesity problem and members are genuinely trying to find ways to help. There is a lot of work being undertaken by many FIG member companies to produce healthier foods, provide better nutritional information, support community lifestyle initiatives, and to ensure children's best interests are taken into account.

It has to be acknowledged, however, that the obesity issue is a complex one. There are a large number of factors involved - from the psychology of eating to cultural perspectives and genetic predisposition. There have also been dramatic changes in lifestyle, behaviour, societal pressures and physical activity levels in recent decades.

FIG strongly supports self-regulation of industry and public education as the methodology for tackling such a complex problem.

Submission – Overall Response

On one hand, FIG supports revision of the current law to enable advertisers to make true claims. Allowing the advertising of the health benefits of food is certainly more conducive to people eating more healthy diets.

On the other hand, FIG has concerns about Standard 1.2.7 in its current form. The level of prescription now far exceeds the expectations of industry and if it is implemented, we expect industry to be hit by substantially increased financial costs, plus those in terms of time and loss of innovation. Inevitably, these costs will flow on to the consumer.

Submission – Specific Answers to Questions

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’.

FIG’s Answer: While the revised draft captures the regulatory intent as provided in Attachment B, the intent is not in keeping with the objectives and intent of the FSANZ Act. The level of prescription now reflected in the draft Standard has resulted in a Standard that is excessively restrictive, stifling of innovation and costly to implement.

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?

FIG’s Answer: Absolutely none. In New Zealand, consumers are already protected by existing Fair Trading and Consumer Protection laws, which are administered by the Commerce Commission. Further protection is provided by the Advertising Standards Association self-regulatory Codes of Practice.

Question 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.

FIG’s Answer: We support both Option 1 (status quo) and Option 2 (voluntary action through a code of practice). There are already restrictions against misleading advertising under existing legislation administered by the Commerce Commission, and self-regulation works where there is a proven problem and need for improvement. Self-regulation in New Zealand has been very effective.

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.*

FIG’s Answer:

- FIG strongly supports the status quo in this area. We do not believe change is warranted for the following reasons:

- The resulting duplication of restrictions and over-regulation;
 - A lack of evidence demonstrating consumer misunderstanding;
 - The added costs for Government and industry with no increased benefits to the consumer.
- The 'fat-free' and '% fat-free' claims are already regulated under New Zealand's existing consumer laws. In addition, the New Zealand ASA Advertising of Food Code already has the following provisions which meet the concerns of fat-free claims misleading consumers:

"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."

- FIG opposes categorisation for a negative list of foods. FIG believes that there is no such thing as "bad" food; rather it is inappropriate eating that is often at the root of the problem.
- FIG opposes sugar concentration thresholds as unnecessarily complex, wrought with difficulty (given the sugar concentration in many fruits) and could potentially be misleading.

FIG's other concerns include:

1. **Health Claims Approval Process:** FIG strongly opposes the pre-assessment of general level claims and the removal of self-substantiation of general level health claims.

The time required for FSANZ to process general applications will pose logistical problems for industry waiting to label products in time to deliver to market. Such a cumbersome process is also a significant barrier to innovation through cost and time impediments. The list of food-health relationships is very limited for general level claims.

The problem we will face is an area of law that is potentially so over-regulated as to be unworkable.

FIG urges FSANZ to include self-substantiation as an option, along with those of applying for approval or prescribing the source of claims. These are not mutually exclusive.

In any event, we recommend that:

- The transition period is extended to 4 years to allow for food-health relationships that are not yet approved to be assessed by FSANZ for

inclusion within the transition period;

- FSANZ be required to assess the health claims presently proceeding through the European Parliamentary system (and that have already been subject to rigorous assessment by the European Food Safety Authority) for inclusion in Standard 1.2.7 before the end of transition; and
- FSANZ consider the claims assessed by other countries with world class assessment processes for inclusion in the Standard. Using their claims might avoid duplication.

2. **Dietary Information:** Regulating educational information on diet is excessive and unhelpful. It is absurd that advice such as 'eat a balanced diet' or 'eat more fruit and vegetables' are to be regulated.

Prohibiting industry from participating in education about diets will potentially close off an enormous amount of donated, voluntary and 'good corporate citizen' work, often undertaken in low socio-economic areas.

FIG considers that more effort needs to be applied to identifying the problem and finding a non-regulatory solution.

3. **Regulatory Impact :** FIG is concerned that that the revised Standard is not accompanied by a regulatory impact statement. There is therefore no evidence presented about the cost of regulating dietary information. The information foregone by the consumer as a result of regulation in the area is likely to be significant. Similarly, the cost of re-regulating 'fat-free' and '% fat free' claims given they are already subject to consumer protection law would likely to be significant compared to any accrued benefit. Only a cost-benefit analysis of duplicative regulatory administration would provide the information on this point.

Ends