

Advertising Restrictions: Protection of the Young and Vulnerable?

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Abstract:

This paper is intended to inform debate regarding proposed restrictions on advertising to children, particularly in New Zealand. It reviews the literature and arguments for and against such restrictions and attempts to establish

whether these restrictions are likely to work as intended. Alternatives for addressing the legislative, regulatory and ethical dimensions associated with advertising to children are discussed together with a future research agenda.

1. Introduction

The Labour-led coalition government that came to power in New Zealand late 1999, announced that, in common with several other countries, it intended to review existing advertising legislation/regulation as part of a wider review of broadcasting policy and that "as a priority Labour will promote the elimination of advertising around children's programmes"⁽¹⁾ p.5.

Underpinning sound public policy and decision-making is informed debate. A purpose of this paper is to present a snapshot of the existing literature and views on the issue of advertising to children in order to help illuminate and stimulate the discussion on how society should identify and address any potential detrimental effects of such advertising. The paper also attempts to establish whether restrictions on advertising on children's television are likely to work as intended, and examines alternatives for addressing the legislative, regulatory and ethical dimensions associated with advertising to children. Further, it points to the need for future research that will close the information gap, on both parent/guardian and children's perspectives, on the issue of advertising restrictions on children's television programmes.

2. Restrictions on Advertising to Children: The Current New Zealand Scenario

New Zealand, in common with many other OECD countries is well provided for in terms of consumer protection legislation (e.g. Fair Trading Act⁽²⁾; Consumer Guarantees Act⁽³⁾). In addition, the New Zealand Bill of Rights Act⁽⁴⁾ includes rights to free speech, which, again in common with many other countries, is held to provide the legal basis of the right to advertise. Gray⁽⁵⁾ suggests that restricting commercial expression in terms of which products companies may promote and the conditions of their promotion requires closer examination within the context of free speech in view of its implications for other areas of individual freedom.

The Fair Trading Act includes coverage of misleading and deceptive conduct. Misleading advertising is clearly covered, both in the specific wording of the Act and in case law (see, e.g. Fisher,⁽⁶⁾). The Consumer Guarantees Act provides for rights and remedies for consumers relating to transactions that involve the provision of goods and services and includes guarantees that goods are fit for the purposes intended and are free from defects. Safety and durability provisions are also specified.

Beneath the layer of legislation, a number of specific regulations relating to advertising to children exist. In this context, a child is defined as a person under the age of 14 years. The principal provisions of the Advertising Standards Authority's Code for Advertising to Children, in place since 1989, are:

1. Separation of Advertisements:

Advertisements must be clearly recognisable as such by children and separated from editorials or programmes.

If there is any likelihood of advertisements being confused with editorial or programme content, they should be clearly labeled "advertisement" or identified in an equally clear manner.

2. Content:

i. *Advertising should not clearly portray violence or aggression*

ii. *Advertising should not contain menacing or horrific elements likely to disturb children*

iii. *Advertisements should not encourage anti-social behaviour or depict children behaving in an anti-social manner. Vindictiveness, bullying and certain facial expressions and body movements can all be defined as anti-social.*

iv. *Children in advertisements should be reasonably well-mannered and well-behaved.*

v. *Children should not be urged in advertisements to ask their parents to buy particular products for them.*

vi. *No advertisement should suggest to a child that he / she will be in any way inferior through not owning the advertised product.⁽⁷⁾ pp.:33-34).*

In addition, there are provisions prohibiting portrayal of unsafe situations and unsafe product use, together with provisions relating to the prevention of ambiguity, including competitions and premium offers and clear disclosure of any assembly, skill needed or additional items needed (e.g. batteries). This code is currently under review and an additional code for advertising food is proposed.

An additional indirect restriction on advertising, which should also be considered in the context of any potential ban, is the quota of advertising on electronic media. The New Zealand industry self-regulates for a maximum of 12 minutes of advertising and programme promotion per hour on television. No advertising is permitted in programmes aimed at pre-school aged children;

advertising in other children's programmes is restricted to 10 minutes per hour - a move some critics see as an arbitrary restriction on the right of commercial free speech and inconsistent with the total absence of quotas in print media.

3. Restrictions on Advertising to Children: The International Scenario

Recently there has been a renewed call for increased restrictions on advertising to children especially in European Union countries. Greece has already imposed a total ban on toy advertising, Sweden bans all advertising targeted at children under the age of 12 and Ireland bans advertising within children's programmes. Appeals to the European Union on the basis that such bans represent an unlawful barrier to cross-border trade in the supposedly single European market have not been successful.

Sweden takes over presidency of the European Union in January 2001 and has indicated that they will seek to extend restrictions on advertising aimed at children across all EU members. This move appears to be motivated by the Swedish authorities being unable to control the content of satellite telecasts coming in from other EU countries. Their proposed moves do not sit comfortably with countries such as Britain with a long history of self-regulation, nor with manufacturers who see their access to substantial markets being restricted.

4. Advertising to Children: Issues and Ethical Dilemmas

Advertising targeting children is a high growth area. It is fuelled by the significant buying power of this group and the recognition by advertisers that

the children audience is an emerging market. The marketing communication stance is that it has a perfect right to go about its business, if it is done honestly and ethically. The popular industry response is that if it is legal to sell a product, it should be legal to advertise (Jenkins⁽⁸⁾). Somewhat naively, a second argument proposes that advertising is a fact of life and the sooner children become familiar with it and learn to treat it with the scepticism it sometimes demands, the better equipped they will be to face adult life.

The perceived social ill effects of advertising usually underpin the rationale for advertising restrictions. The two major strands of argument here focus on the harmful health effects of advertising and the broader issue of consumerism, which can be damaging to society. Characteristic of the latter contention is that advertising creates a materialistic, consumerist mentality, which has for example environmentally damaging implications (see, e.g. Higham⁽⁹⁾; Denny,⁽¹⁰⁾; Kirkpatrick⁽¹¹⁾). The debate on the harmful health effects of advertising has centred principally on controversy surrounding tobacco advertising that targets the young and advertising of food products that lead to unhealthy dietary habits and nutrition problems.

There is extensive research on the impact of cigarette advertising. The harmful effects of smoking, while still debated at length by cigarette manufacturers and their opponents are now accepted (see, e.g. Laugesen⁽¹²⁾) and recent tobacco industry settlement of American state claims have stressed the harmful effects of smoking (see, e.g. Anon⁽¹³⁾).

Proponents of restrictions on food advertising cite studies such as "eight in ten adults agree that business marketing and advertising exploit children by convincing them to buy things that are bad for them or that they don't need" (Heubusch⁽¹⁴⁾), with concerns highest in relation to food/nutrition issues e.g. Dibbs⁽¹⁵⁾ representing the UK National Food Alliance and Marquis⁽¹⁶⁾ citing the National Forum on Coronary Heart Disease.

It is commonly highlighted that the majority of foods advertised to children are 'processed', such as crisps, sweets, icecreams, and fizzy drinks. The preponderance of these foods is seen as not only undermining parents' dietary preferences but also contributing to increasing weight and associated health problems among children. There is an implied cause and effect relationship in these criticisms - that advertising of these products is the direct cause of the weight and health problems. The causal factors behind these problems may however be complex.

A major 1996 British study undertaken for the Ministry of Agriculture, Fisheries and Food (Young & Webley⁽¹⁷⁾) counters many of the direct advertising / food linkages assumptions, suggesting that there is no evidence that advertising is the principal influence on children's eating behaviours. In addition, the study stresses that there is no serious and methodologically sound evidence that shows that food advertising leads to an increase in the consumption by children of whole categories of food. UK government research (see, e.g. The Advertising Association⁽¹⁸⁾) shows that children are healthier than ever before in nutritional terms, and that obesity is more

directly linked to a lack of exercise than to over-eating. The report suggests that a dramatic decrease in physical exercise has occurred as children turn to solitary, physically static electronic games / computer based activity rather than traditional team sports.

The assumption appears to be that a range of societal problems will be removed through the imposition of bans on advertising - the most visible and accessible form of external influence'. (see, e.g. Higham⁽⁹⁾) Governments are under pressure to be seen to act on constituents' concerns - restricting advertising to a group seen as particularly vulnerable to marketing manipulation may seem an easy way to show that the government takes such issues seriously. The factual evidence for, and the efficacy of, such action is dubious.

Many children are comfortable using electronic technology, including the Internet, unsupervised. Weller⁽¹⁹⁾ cites USA research which indicates that, while 3 - 15 year olds spend as much as 22 hours a week watching screens, television viewing is declining -in favour of interactive games and the Internet. This raises the complex question of whether and how Internet advertising can be regulated and how children can be protected from "Net Nasties" (see, e.g. Siebert⁽²⁰⁾). The opposite view however, is that there is unnecessary anti-advertising hysteria about internet advertising (DeFalco⁽²¹⁾). Internet advertising is an area currently being investigated by industry and legislators and is beyond the scope of this paper.

The role of advertising in promoting "ideal" behaviour is also contested. Critics of television food advertising aimed at children focus on an imbalance

between the types of foods advertised and recommendations in dietary guidelines (e.g. Hammond et al.⁽²²⁾). Wilson et al.⁽²³⁾ support this approach and suggest, via a content analysis of television advertising targeted at children, that there would be substantial negative impact on children if they ate a diet composed exclusively of such foods. Peterson⁽²⁴⁾ extends the "ideal" concept and provides another content analysis of television advertising to children. This is used as the basis for criticizing it as not depicting children in positive scholastic roles. The resultant suggestion is that more favourable depictions could not only improve the image of scholastic activity, but also reduce criticisms of advertising. A further concern, originating from the USA in the wake of recent shootings in schools, is whether television programmes, movies and advertising have an impact on children's behaviour. This, while warranting further investigation, is well beyond the scope of this study.

The school environment itself comes in for additional scrutiny. Davidson⁽²⁵⁾ describes the increasing marketing / sponsorship of schools in which various forms of promotional activity - including advertising - are exposed to students in return for funding of equipment and resources schools would not otherwise be able to acquire as a "Faustian bargain".

A review of marketing tactics within schools (Gray⁽²⁶⁾ p.30) notes that cash-strapped schools accept the value of good quality teaching aids "even with a brand endorsement". The payoffs for marketers are the precise targeting and repeat exposure gained by the various marketing communications used. However, the ethical caveats imposed by such activity

are recognized - and the likelihood of a ban being extended to this activity is recognized. Seyfer⁽²⁷⁾ p.8, notes moves in some US schools to restrict access to children, with bans on the sale of any products made by tobacco company subsidiaries and restrictions on some snack foods and drink products' promotional activity - and on "texts which contain excessive mention of brand names".

A ban on advertising to children is unlikely to provide a panacea - or help promote a somewhat idealist, social engineering based vision of children's lifestyles. Children will see advertisements in other media and in 'prime time' programmes. Recognition of the responsibility in protecting children is already acknowledged by broadcasters in the Broadcasting Standards Authority's Broadcasting Practice: Codes and Principles⁽²⁸⁾ and by advertisers by the Code for Advertising to Children referred to earlier.

Investigation, based on sound empirical research, of areas of concern should be undertaken to adequately inform future debate. Davidson⁽²⁵⁾ notes the tension between some 'candid' members of the marketing communication industry who acknowledge that they are "relying on the kid to pester the mom to buy the product" and the need to recognize children's vulnerability and lack of experience in the marketplace. Among areas of growing concern are children's programmes designed around licensed characters - seen by some parents as 'programme-length commercials, with children unable to distinguish between the programme and commercial content (see, e.g. Paine⁽²⁹⁾).

5. Are Children Vulnerable or Savvy?

A broad argument of the proponents of stringent restrictions on television advertising hinges on the extensive exposure of children to TV and their limited cognitive ability to deal with the commercial activities that advertising represents (e.g. Brucks et al.⁽³⁰⁾). Not only has the extent of television viewing by children declined in favour of other media forms, as mentioned in the earlier section, but also the degree of their limited information processing and judgment skills when exposed to advertising, is a moot point.

Adolescents' scepticism towards advertising has been extensively researched (e.g. Mangleburg & Bristow⁽³¹⁾). What is considerably less clear is the age at which younger children are able to differentiate between advertising and editorial content, with conflicting evidence put forward. McCall⁽³²⁾ suggests that this may be as young as 5 years of age. Marquis⁽¹⁶⁾ stresses that today's children are considerably more media literate than earlier generations and that they are aware of the value of money and show considerable ability to choose. He notes that, however attractive and persuasive advertising and promotion may be, if they do not like the product, they will not buy it. Pecheux and Debaix⁽³³⁾, in one of the very rare empirical studies of children's attitudes to entertainment, food and clothing brands found that children aged 8 - 12 years rely more heavily on hedonistic rather than utilitarian factors but that they were able to comprehend the selling content of marketing communication activity.

Young and Claessen⁽³⁴⁾, reporting on the results of three studies into children's categorization of food across an age

range of 7 - 13 year olds, concluded that branding has a minor, if not negligible influence on how children mentally organize food. Their findings also indicated that children were able to differentiate between 'healthy' and 'unhealthy' foods, foods eaten at meal times and foods consumed as a snack, and between natural and processed foods. A further finding was that children possessed a developed nutritional awareness derived primarily from parental and family influence. This would suggest that proponents of stronger restrictions on advertising to children might overestimate the role of advertising in shaping nutritional awareness. As with other aspects of this debate, there is a dearth of adequate empirical data in this area.

6. Do Bans Work? The Evidence

Advertising revenue plays an important role in funding programme production. A total ban on television advertising during children's programmes would mean the loss of money to support these programmes that potentially affects programme quality and the volume of 'local' as opposed to programmes produced overseas.

Dignam⁽³⁵⁾ p. 27, argues that the "intellectual argument for banning TV ads to children is in itself infantile". He notes that such bans will not prevent children from seeing ads in other media, nor on television outside children's programme slots. In addition, he asserts that it will not prevent pester power which has been around long before advertising, nor will it prevent children from being swayed by other elements in the marketing mix - such as branding, point of sale and packaging.

The standard economics arguments on the social value of advertising centres on reduced search and information costs to consumers arising from advertising; higher sales of advertised products leading to economies of scale and lower prices (if the advertiser's monopoly power does not operate to the contrary (see e.g. Comanor and Wilson⁽³⁶⁾); advertising resulting in a increased price elasticity of demand for the advertised products in contrast to the price inelasticity of demand exhibited by lesser advertised products and the level of advertising acting as a signal for quality (Telser⁽³⁷⁾, Nelson⁽³⁸⁾). A well-known example is the case of spectacles where some states in the US banned advertising of prices by sellers. In states where there was no ban on advertising the average price of spectacles was lower (Benham⁽³⁹⁾). More particularly in relation to this paper, the toy industry states that television-advertised toys are sold at lower prices than toys not advertised on television as high demand volumes created by advertising allows for volume component purchasing. TV-promoted toys are also used as loss leaders to build general store traffic (see, e.g. Toy Industry⁽⁴⁰⁾). Furthermore, bans may lessen competition, thus raising prices and potentially reducing dollars invested in research and development.

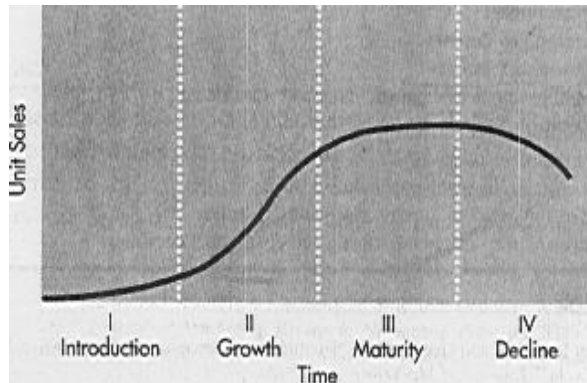
To estimate the impact of bans, it is necessary to draw on the experiences of bans on other products. This presents a problem, as bans on other product areas such as tobacco products do not offer an exact parallel. The experiences in these areas do, however, offer some insights into the complexity behind what appears to be perceived as a simple problem for which a simplistic solution is proposed.

The impact of anti-smoking policies and advertising bans on tobacco products have been extensively examined (e.g. Bardsley and Olekalns⁽⁴¹⁾; Calfee and Scheraga⁽⁴²⁾). These studies conclude that advertising does not have a substantial effect on tobacco sales. Far stronger effects come from social factors such as the attitudes and behaviours of parents and peers - and the addictive nature of tobacco products per se. Tremblay and Tremblay⁽⁴³⁾ acknowledge that advertising bans generally have had no significant effect on market demand. These authors propose a theoretical model that shows that advertising bans may reduce cigarette consumption but this would be accomplished by hampering competition and thus producing higher profits for major cigarette producers. They conclude that such bans do not represent 'optimal policy'.

Ambler⁽⁴⁴⁾ discusses whether banning advertising can reduce alcohol misuse. He reviews a number of studies and concludes that such bans would not achieve either a significant reduction in alcohol consumption or in its misuse. Ambler notes the impact of entrenched cultural, dietary and social rituals as being more strongly correlated with alcohol consumption than advertising alone. He highlights a concept, which appears to present legislators with difficulty - total advertising does not affect total market size in a mature market.

Taking classic product life cycle theory to illustrate this, patterns of sales of a product form or class (as opposed to a single brand within it) typically follow an 'S' shaped pattern over time. This is

broken into four stages as illustrated by the following:



Source: Guiltinan et al.⁽⁴⁵⁾ : Figure 7-2

At the introduction stage, the product is new to the market, there are few competitors - buyers must be educated about what the product does, how it is to be used, whom it is for and where to buy it. At the growth stage, the product is more widely known and sales grow rapidly with new buyers entering the market. Competitors are attracted to enter the growing market. At maturity, sales growth stabilises. Repeat buying makes up the bulk of sales. Survival of the strongest competitors characterises this stage. At the product decline phase, there is a gradual falling-off in sales with changing buyer needs or due to competition from new products (Guiltinan et al.⁽⁴⁵⁾ p. 183).

Added restrictions on advertising for products that have entered the maturity phase of the product life cycle is unlikely to have significant impact on demand. However, application of the product life cycle theory to explain the profile of short-life "fad" products is not well researched. Such products may last in the market only a short period of time and may progress through one or more of the stages in a very short period of time.

Advertising to these products is quite crucial. New restrictions on television advertising would mean an active search for alternative means to communicate with the target market.

Bans on advertising in one/some media segment(s) usually leads marketers to reposition their advertising to the other non-regulated media. Drastic intervention such as bans can have a perverse effect. Illustrative is an interesting study from the 1970s on the impact of cigarette advertising bans. This study inferred that a ban on cigarette advertising in the broadcast media had led the tobacco companies to sharply increase their print media advertising, accounting for an increase in the percentage of smokers over the period of the study (Teel et al.⁽⁴⁶⁾).

7. Alternatives to Government Bans

Assuming that a positive correlation between television advertising and detrimental social outcomes might be established, measures to protect vulnerable groups from such adverse outcomes may be argued as justified. At issue then are two, linked questions: Who should assume responsibility for protection? What form should the protection take? Objective examination of these dual considerations helps assess the relative merit of bans on advertising versus other alternatives for protection.

Four options may be put forward in relation to responsibility for protection of children from the negative impact of television advertising: government; an independent regulatory institution; parents/guardians; and the broadcasting and marketing industry.

Some argue that it is government's responsibility to safeguard children from harm in the sphere of television advertising (Hustan et al.⁽⁴⁷⁾). If this be the case, the imposition of bans on commercials for children's TV and other intensive monitoring measures and restrictions of advertising in prime time TV as the form for safeguards is also asserted as unnecessarily severe and of limited efficacy (Armstrong and Brucks⁽⁴⁸⁾).

An independent organization for shielding children from potential detrimental effects of advertising directed at them, through setting and 'watch-dogging' of industry standards, may be seen as a more desirable alternative to stringent legislative control by government (Kunkel⁽⁴⁹⁾). This body can also resolve other related issues such as that of in-built advertising in programmes as with toy-based programmes (Teletubbies and Pokemon being recent examples) relative to the regulatory requirements specified for stand-alone commercials.

Another opinion is that parents should assume responsibility for their children's television viewing. Armstrong and Brucks⁽⁴⁸⁾ emphasize that parental involvement in children's television viewing provides an opportunity for mediating the impact of television programming and advertising, as well as educating their children toward discernment in their consumption choices. Parents are the main occupants of the driver's seat when it comes to 'point-of-viewing' evaluation and criticism of television programmes and advertising content. While it may be argued that the potential for such input from parents is circumscribed by the

absence of many parents during their children's viewing, nevertheless there still remains scope for parental educative input. Armstrong and Brucks⁽⁴⁸⁾ contend that rule-setting on television watching for children can mitigate dangers of advertising to children, even if parents are not always present.

The fourth option for protection of the vulnerable involves accountability and self-regulation by the TV and advertising industries themselves. While it should be stressed that industry already has in place measures for self-policing, a discussion of this option brings to the fore the thorny question of business ethics and social responsibility, a subject of much debate and study. There is a range of opinion on the subject with Milton Friedman's⁽⁵⁰⁾ contention that the only responsibility of business is to maximise profit, at one extreme end of the spectrum. Industry responsibility as it pertains directly to children's TV is discussed by Ward⁽⁵¹⁾ who suggests that the provision of quality children's television is part of an implicit contract with parents.

Perhaps it might be suggested that a judicious mix of assigning responsibility for the regulation of advertising to children and a collaborative approach for determining the appropriate form of regulation, should be the objective. Ultimately, the regulation of advertising must not be a result of ad hoc decision-making but rather the result of well-researched and informed policy debate. Additionally, analysis within a principal-agent framework (where the principal is the government or a regulatory body and the agent is the regulated firm or industry) could help illuminate the way toward determining an optimal regulation

strategy. In this connection work in the new economics of regulation (for a summary see for example Laffont, ⁽⁵²⁾), in relation to the advertising industry, would be a step in the right direction.

8. Directions for Future Research

In order to inform the debate and future policy direction, the following research programme is underway by the authors of this paper:

- a) Studies of parental preferences on the mode of advertising regulation are in progress. Results will be compared with similar studies undertaken in other countries.
 - b) A pilot study of primary school aged children, broken down into several age cohorts, will also be undertaken to investigate children's actual abilities to:
 - i) distinguish between television programmes and advertising, and
 - ii) understand the commercial intention of advertisements, and
- In addition, children's perceptions regarding healthy versus unhealthy dietary practice will also be investigated.

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Note 1: for a good summary and bibliography on information regulation, including regulation of advertising, see: Rubin, P. (1997) "Information Regulation (incl. Regulation of Advertising)" (5110) available <http://encyclo.findlaw.com>. Accessed 21/2/2000.

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