



International Chamber of Commerce

The world business organization

Department of Policy and Business Practices

Commission on Marketing and Advertising

ICC comments on Codex Proposed Draft Definition of Advertising in relation to health and nutrition claims, CL 2006/31-FL

The Codex Committee on Food Labelling (CCFL) was established to focus on provisions on labelling applicable to all foods. Recently, CCFL has considered undertaking projects on advertising in relation to health and nutrition claims, including a definition of advertising as complementary to labelling, in view of the terms of reference of the Committee. Regulations and standards for claims on food labels and claims in advertising are neither identical, nor need to be identical, to appropriately serve the communications goal. They are treated under different regulatory regimes at the national level. Thus ICC opposes the proposed definition of “advertising” as overly broad. Any definition of advertising devised under CCFL’s mandate should be guided by explicit reference only to commercial promotion of food products through the use of health and nutritional claims.

ICC recognizes the important mission of Codex Alimentarius in protecting the health of consumers and ensuring fair practices in the food trade. ICC also supports the efforts of Codex Alimentarius to promote coordination of all food standards work undertaken by intergovernmental and non-governmental organizations. To this end, world business promotes the notion that responsible commercial communications can assist consumers in making appropriate choices about food and beverage products and in understanding the role of nutrition, diet and physical activity in healthy lifestyles. By conveying commercial messages consistent with the principles of good nutrition, physical activity and personal choice, business can play an important role.

The application of self-regulation and sound business practice in food advertising requires that communications be honest, decent and truthful. Commercial advertising informs consumers about available products and enables consumer choice according to tastes, desires, and personal priorities. Freedom of such commercial speech in the sale of legal products is a fundamental principle of free markets. This freedom nourishes competition among companies and has led to demonstrable benefits to consumers. As companies compete, consumers are presented with a wider array of choices, more information on which to base those choices and better prices.

In July 2006 the Codex Alimentarius Commission approved continuation of work by CCFL to consider a definition of advertising, as related to health and nutrition claims. ICC opposes the broad language of the proposed draft definition, which defines advertising as any type of food promotion, and feels it is not within the remit of CCFL. As the ICC and CCFL itself have previously pointed out, “advertising” is already defined and regulated under national law. The Canadian Discussion Paper on Advertising (CL

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38, Cours Albert 1er, 75008 Paris, France
Telephone +33 1 49 53 28 28 Fax +33 1 49 53 28 59
Website www.iccwbo.org E-mail icc@iccwbo.org

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2004/54-FL) suggesting the development of a Codex definition of advertising rightly notes that ‘different countries have varied political, cultural, social, and educational influences which impact how they define advertising in their country.’ Indeed the Scope of the Guidelines on Nutrition and Health Claims states "These guidelines relate to the use of nutrition and health claims in food labelling and, where required by the authorities having jurisdiction, in advertising." ICC agrees and is seriously concerned that the CCFL's work on an overly broad definition of advertising would be inconsistent with CCFL's mandate and conflict with both national law and self-regulatory initiatives.

The proposed definition of “advertising” would potentially restrict the dissemination of truthful and non-misleading information in advertising useful to consumers, as well as speech that is not “advertising” as the term is commonly understood under relevant self-regulatory and regulatory standards. The ICC’s own Code of Advertising and Marketing Communication Practice explicitly notes that its guidelines are not intended to apply indiscriminately to every type of corporate communication. For example, public affairs messages, annual reports, and communications whose primary purpose is entertaining or educational are outside the scope of the ICC Code (see the Consolidated ICC Code of Advertising and Marketing Communication Practice Introduction). So too should a definition of advertising devised within CCFL be guided by its mandate and apply only and explicitly to commercial promotion of food products through the use of health and nutrition claims.

While the CCFL should endeavour to ensure that labelling is fair, not liable to mislead, and accurately show the contents of the goods being sold, any foray into international regulation of advertising practice would be duplicative, unnecessarily cumbersome and beyond the scope of the Committee. Furthermore, there is scarce evidence that lax national treatment and current advertising and marketing communications practice are undermining the Committee’s laudable gains in food labelling.

For the last 70 years, world business has worked through ICC to promote high standards of ethics by business self-regulation through the ICC international advertising and marketing codes. These codes have been implemented, referenced and endorsed by companies, associations, governments and national organizations across the world. The ICC codes govern all goods, including food and beverage products. In the case of food and beverage products, the ICC International Code of Advertising and Marketing Communication Practice has been comprehensively revised and updated to simplify ease of use and to reflect social, economic and technical trends across the globe. The Code also contains a Framework on Responsible Food and Beverage Communications that provides further guidance for industry and self-regulatory bodies. This has resulted in a dynamic system of advertising self-regulation with ICC Codes as a trusted guide. Self regulation properly implemented benefits consumers, governments and businesses by providing accessible, effective and flexible national mechanisms to handle complaints and enforce the long-standing framework for advertising communications, including food and beverage advertising. CCFL should rely on these existing processes and focus on food labelling and facilitating fair trade in foodstuffs internationally.