

UK to Impose New Restrictions on Food Advertisements to Children

By: Sarah A. Key

Introduction

The United Kingdom's Office of Communication ("Ofcom"), which regulates advertising in the UK, recently finalized its plans to implement a total ban on certain "junk" food and beverage television advertisements geared towards children under the age of 16. In particular, the ban would apply to advertisements for food and beverage products that are high in fat, salt and sugar ("HFSS") according to nutrient profiling standards established by the UK Food Standards Agency. The new restrictions are the culmination of a three year debate in the UK over the effect of food advertising on children's health and nutrition.

The ban would apply to advertisements that are broadcast at any time of the day or night, on any channel, in programs "of particular appeal to children under the age of 16," which are any shows that have a 20 percent or higher proportion of viewers below the age of 16. All advertising must conform to the new rules by the end of June 2007, although the restrictions for channels dedicated to children's programming, such as Nickelodeon and the Cartoon Network, will be phased in over a period of 24 months through the end of 2008.

International Scrutiny

The issue of food and beverage advertising to children is also being considered on an international level. A report published by the World Health Organization ("WHO") last fall – *Marketing of Food and Non-Alcoholic Beverages to Children* – calls for broad restrictions on the marketing of food and beverages to children. Specifically, the report encourages "national action to protect children from marketing" but also says a global response is needed to address advertising that reaches across country borders. The report further suggests that development of an international code on the types of foods that can be promoted to children is one possible course of action for addressing the issue. In light of the WHO's recommendations, Ofcom's innovation in developing a new children's advertising policy may well establish the model for other European Community members to implement similar restrictions.

For more information on the matters discussed in this **LegalNews: Food Industry Update**, please contact one of the following Foley & Lardner LLP professionals, or the member of the firm who normally handles your legal matters.

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U.S. Industry Prefers Self-Regulation

Meanwhile, in the United States, ten of the country's largest food and beverage companies have established the U.S. Children's Food and Beverage Advertising Initiative. The Initiative is a voluntary industry self-regulation program that requires its members to agree to new restrictions on product advertising to children under the age of 12. Despite the U.S. industry's efforts to restrict food and beverage advertising to children, consumer groups such as the Center for Science in the Public Interest ("CSPI") have argued that the industry's efforts at self-regulation are "inadequate."

CSPI has cited Ofcom's new rules as more representative of the measures that should be implemented in the United States. However, even with childhood obesity rates continuing to rise, it seems unlikely that measures such as those being implemented by Ofcom would be enacted in the United States. Moreover, even if advertising restrictions were adopted, those restrictions would likely face, and may not survive, legal challenges under the free speech guarantees of the U.S. Constitution.

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